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**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Parts 1005 and 1026**

**[Docket No. CFPB-2014-0031]**

**RIN 3170-AA22**

**Prepaid Accounts under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule; official interpretations.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau or CFPB) is issuing this final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act; Regulation Z, which implements the Truth in Lending Act; and the official interpretations to those regulations. The final rule modifies general Regulation E requirements to create tailored provisions governing disclosures, limited liability and error resolution, and periodic statements, and adds new requirements regarding the posting of account agreements. Additionally, the final rule regulates overdraft credit features that may be offered in conjunction with prepaid accounts. Subject to certain exceptions, such credit features will be covered under Regulation Z where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with a prepaid card.

**DATES:** This rule is effective on October 1, 2017, except for the addition of § 1005.19(b), which is delayed until October 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Jane Raso, Yaritza Velez, and Shiri Wolf, Counsels; Kristine M. Andreassen, Krista Ayoub, and Marta I. Tanenhaus, Senior Counsels, Office of Regulations, at (202) 435-7700.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of the Final Rule**

Regulation E implements the Electronic Fund Transfer Act (EFTA), and Regulation Z implements the Truth in Lending Act (TILA). On November 13, 2014, the Bureau issued a proposed rule to amend Regulations E and Z, which was published in the *Federal Register* on December 23, 2014 (the proposal or the proposed rule).<sup>1</sup> The Bureau is publishing herein final amendments to extend Regulation E coverage to prepaid accounts and to adopt provisions specific to such accounts, and to generally expand Regulation Z's coverage to overdraft credit features that may be offered in conjunction with prepaid accounts. The Bureau is generally adopting the rule as proposed, with certain modifications based on public comments and other considerations as discussed in detail in part IV below. This final rule represents the culmination of several years of research and analysis by the Bureau regarding prepaid products.

*Scope.* The final rule's definition of prepaid accounts specifically includes payroll card accounts and government benefit accounts that are currently subject to Regulation E. In addition, it covers accounts that are marketed or labeled as "prepaid" that are redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that are usable at automated teller machines (ATMs). It also covers accounts that are issued on a prepaid basis or

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<sup>1</sup> 79 FR 77102 (Dec. 23, 2014). See also Press Release, CFPB, *CFPB Proposes Strong Federal Protections for Prepaid Products* (Nov. 13, 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-proposes-strong-federal-protections-for-prepaid-products>. The Bureau had previously published an advance notice of proposed rulemaking (Prepaid ANPR) that posed a series of questions for public comment about how the Bureau might consider regulating GPR cards and other prepaid products. 77 FR 30923 (May 24, 2012).

capable of being loaded with funds, whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct person-to-person (P2P) transfers, and that are not checking accounts, share draft accounts, or negotiable order of withdrawal (NOW) accounts.

The final rule adopts a number of exclusions from the definition of prepaid account, including for gift cards and gift certificates; accounts used for savings or reimbursements related to certain health, dependent care, and transit or parking expenses; accounts used to distribute qualified disaster relief payments; and the P2P functionality of accounts established by or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities.

*Pre-acquisition disclosures.* The final rule establishes pre-acquisition disclosure requirements specific to prepaid accounts. Under the final rule, financial institutions must generally provide both a “short form” disclosure and a “long form” disclosure before a consumer acquires a prepaid account. The final rule provides guidance as to what constitutes acquisition for purposes of disclosure delivery; in general, a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid account. The final rule offers an alternative timing regime for the delivery of the long form disclosure for prepaid accounts acquired at retail locations and by telephone, provided certain conditions are met. For this purpose, a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account.

The short form disclosure sets forth the prepaid account’s most important fees and certain other information to facilitate consumer understanding of the account’s key terms and

comparison shopping among prepaid account programs. The long form disclosure, on the other hand, provides a comprehensive list of all of the fees associated with the prepaid account and detailed information on how those fees are assessed, as well as certain other information about the prepaid account program. The final rule also adopts specific content, form, and formatting requirements for both the short form and the long form disclosures.

The first part of the short form contains “static” fees, setting forth standardized fee disclosures that must be provided for all prepaid account programs, even if such fees are \$0 or if they relate to features not offered by a particular program. The second part provides information about some additional types of fees that may be charged for that prepaid account program. This includes a statement regarding the number of additional fee types the financial institution may charge consumers; they must also list the two fee types that generate the highest revenue from consumers (excluding certain fees, such as those that fall below a de minimis threshold) for the prepaid account program or across prepaid account programs that share the same fee schedule. The final part of the short form provides certain other key information, including statements regarding registration and Federal Deposit Insurance Corporation (FDIC) deposit or National Credit Union Administration (NCUA) share insurance eligibility, and whether an overdraft credit feature may be offered in conjunction with the account. In addition, the final rule requires that short form disclosures for payroll card accounts and government benefit accounts include, at the top of the form, a statement regarding alternative wage or benefit payment options.

The long form disclosure, in contrast, sets forth in a table all of the prepaid account’s fees and their qualifying conditions, as well as certain other information about the prepaid account program. This includes, for example, more detailed information regarding FDIC or NCUA

insurance eligibility and a separate disclosure for the fees associated with any overdraft credit feature that may be offered in conjunction with the prepaid account.

The final rule includes several model short form disclosures that offer a safe harbor to the financial institutions that use them, provided that the model forms are used accurately and appropriately. The final rule also includes one sample long form disclosure as an example of how financial institutions might choose to structure this disclosure.

The final rule also includes requirements to disclose certain information such as any purchase price or activation fee outside, but in close proximity to, the short form disclosure; disclosures required to be printed on the prepaid card itself; and short form and long form disclosure requirements for prepaid accounts with multiple service plans.

The final rule requires financial institutions to provide pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. The financial institution also must provide the long form disclosure in English upon a consumer's request and on its website where it discloses this information in a foreign language.

*Access to account information.* The final rule adopts an alternative to Regulation E's periodic statement requirement that permits financial institutions to make available to consumers certain methods for accessing information about their prepaid accounts in lieu of sending periodic statements. The final rule also adopts a requirement that financial institutions provide summary totals of the fees they have assessed against the prepaid account on a monthly and annual basis.

*Limited liability and error resolution, including provisional credit.* The final rule extends Regulation E's limited liability and error resolution requirements to all prepaid accounts,

regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account, but does not require provisional credit for unverified accounts. Once an account has been verified, the financial institution must comply with the provisional credit requirements, for both errors that occur prior to and after account verification, within the provisional credit timeframe.

*Submission and posting of prepaid account agreements.* Under the final rule, prepaid account issuers must submit their prepaid account agreements to the Bureau. The final rule also requires that prepaid account issuers publicly post on their own websites prepaid account agreements that are offered to the general public. Financial institutions must make any agreements not posted on their own websites available upon request for consumers who have prepaid accounts under those agreements.

*Remittance transfers.* The final rule makes several revisions to the rules governing remittance transfers in subpart B of Regulation E that are intended to continue the current application of those rules to prepaid products. Specifically, they clarify that for prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from for purposes of application of the rules in subpart B. They also clarify that the temporary exception allowing insured institutions to use estimates when providing certain disclosures does not apply to prepaid accounts, unless the prepaid account is a payroll card account or government benefit account.

*Overdraft credit features.* The final rule amends Regulations E and Z generally to regulate prepaid accounts that offer overdraft credit features. Specifically, the final rule generally covers under Regulation Z's credit card rules any credit feature offered in conjunction with a prepaid account where the credit feature is offered by the prepaid account issuer, its

affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers. The final rule generally requires that such credit features be distinct from the asset portion of the prepaid account—structured as a separate credit account or a credit sub-account to the asset account—to facilitate transparency and compliance with various Regulation Z requirements. The final rule uses the term “hybrid prepaid-credit card” to refer to a prepaid card that can access both an overdraft credit feature that is subject to the Regulation Z credit card rules and the asset portion of a prepaid account.

An issuer may not extend credit via a negative balance on the prepaid account except in several limited circumstances where the credit is incidental and the issuer generally does not charge credit-related fees for that credit; in these circumstances, the incidental credit is not subject to Regulation Z. These exceptions for incidental credit cover situations where the issuer has a general established policy and practice of declining to authorize transactions when the consumer has insufficient or unavailable funds to cover the transaction but credit is nonetheless extended as a result of so-called “force pay” transactions, transactions that will not take the account negative by more than \$10 (i.e., a de minimis “purchase cushion”), or certain transactions that are conducted while incoming deposits to the prepaid account are pending.

The final rule’s provisions regarding hybrid prepaid-credit cards are largely housed in new Regulation Z § 1026.61. To effectuate these provisions and provide compliance guidance to industry, the final rule also amends certain other existing credit card provisions in Regulation Z. The final rule does not adopt the proposal’s provisions that would have made certain account numbers into credit cards where the credit could only be deposited directly to particular prepaid accounts specified by the creditor.

The final rule subjects overdraft credit features accessible by hybrid prepaid-credit cards to various credit card rules under Regulation Z. For open-end products, this includes rules restricting certain fees charged in the first year after account opening, limitations on penalty fees, and a requirement to assess a consumer's ability to pay. In addition, the final rule requires issuers to wait at least 30 days after a prepaid account is registered before soliciting a consumer to link a covered credit feature to the prepaid account and to obtain consumer consent before linking such a credit feature to a prepaid account. The final rule permits issuers to deduct all or a part of the cardholder's credit card debt automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so, and requires that issuers allow consumers to have at least 21 days to repay the debt incurred in connection with using such features. It also amends the compulsory use provision under Regulation E so that prepaid account issuers are prohibited from requiring consumers to set up preauthorized electronic fund transfers (EFTs) to repay credit extended through an overdraft credit feature accessible by a hybrid prepaid-credit card.

*Effective date.* The final rule generally becomes effective on October 1, 2017. Financial institutions are not required to pull and replace prepaid account packaging materials prepared in the normal course of business prior to that date that do not comply with the final rule's disclosure requirements. The final rule also contains several additional provisions addressing notices of certain changes in terms and updated initial disclosures as a result of this final rule taking effect in certain circumstances, and for rolling compliance with certain access to account information requirements if financial institutions do not have readily accessible the data necessary to comply with the final rule's requirements as of October 1, 2017. The requirement that issuers submit

their prepaid account agreements to the Bureau pursuant to § 1005.19(b) becomes effective on October 1, 2018, as described in § 1005.19(f).

## **II. Background**

### *A. Prepaid Financial Products*

Prepaid products—in various forms—have been among the fastest growing types of payment instruments in the United States. A 2013 study by the Board of Governors of the Federal Reserve System (the Board) reported that compared with noncash payments such as credit, debit, automated clearing house (ACH), and check, prepaid card payments increased at the fastest rate from 2009 to 2012.<sup>2</sup> Among other things, the study found that the number of prepaid card payments reached 9.2 billion transactions in 2012 (up from 5.9 billion in 2009).<sup>3</sup>

The U.S. market for prepaid products can largely be categorized into two general market segments: closed-loop and open-loop products. The total amount of funds loaded onto open-loop and closed-loop prepaid products has grown significantly, from approximately \$358 billion in 2009 to approximately \$594 billion in 2014.<sup>4</sup> A consumer or other authorized party can add funds to both closed-loop and open-loop prepaid products; however, typically, consumers can only use funds stored on closed-loop prepaid products at designated locations (*e.g.*, at a specific merchant or group of merchants in the case of certain gift cards; within a specific transportation system in the case of transit cards). In contrast, consumers have more options with respect to how to spend funds held on open-loop prepaid products, because transactions made with these

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<sup>2</sup> Fed. Reserve Sys., *The 2013 Federal Reserve Payments Study, Recent and Long-Term Payment Trends in the United States: 2003-2012, Detailed Report and Updated Data Release* (2014), available at [https://www.frbservices.org/files/communications/pdf/general/2013\\_fed\\_res\\_paymt\\_study\\_detailed\\_rpt.pdf](https://www.frbservices.org/files/communications/pdf/general/2013_fed_res_paymt_study_detailed_rpt.pdf).

<sup>3</sup> *Id.* at 37.

<sup>4</sup> Mercator Advisory Group, *Twelfth Annual U.S. Prepaid Cards Market Forecasts, 2015-2018*, at 8 (Dec. 2015) (Mercator 12th Annual Market Forecasts).

products are typically run on payment network rails (often through point-of-sale (POS) terminals, ATM networks, or both).<sup>5</sup> As discussed below, a general purpose reloadable (GPR) card is one type of reloadable, open-loop prepaid product. Other open-loop products are used by third parties to distribute funds to consumers, including payroll cards, cards for the disbursement of student loans or insurance proceeds, and cards used to disburse Federal and non-needs based State and local government benefits.<sup>6</sup>

Closed-loop and open-loop prepaid products are regulated by at both the Federal and State level. Regulation E, for example, currently contains protections for consumers who use payroll card accounts and certain government benefit accounts, as well as consumers who use certain gift cards and similar products.<sup>7</sup> However, the status of GPR cards and certain other newer prepaid products such as digital and mobile wallets is less clear under existing regulation. As discussed in greater detail throughout this notice, this final rule imposes a comprehensive regulatory regime for prepaid accounts to ensure that consumers who use them receive consistent protections. This part II.A provides a condensed discussion of the detailed background information contained in the proposal, which the Bureau considered and relied on in preparing this final rule.<sup>8</sup>

### *General Purpose Reloadable Cards*

A GPR card is one of the most common and widely available forms of open-loop prepaid products. GPR cards, which can be purchased at retail locations as well as directly from financial institutions, can be loaded with funds through a variety of means and can be used to

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<sup>5</sup> Payment networks include Visa, MasterCard, American Express, and Discover; ATM networks include NYCE, PULSE, STAR, and Cirrus.

<sup>6</sup> As noted in the proposal, certain prepaid products are not reloadable. *See* 79 FR 77102, 77104 (Dec. 23, 2014).

<sup>7</sup> *See* §§ 1005.18, 1005.15, and 1005.20, respectively.

<sup>8</sup> *See* 79 FR 77102, 77103-77112 (Dec. 23, 2014).

access loaded funds at POS terminals and ATMs, online, and often through other mechanisms as well. Accordingly, they increasingly can be used as substitutes for traditional checking accounts.<sup>9</sup>

The prevalence of GPR cards has grown rapidly. According to estimates by the Mercator Advisory Group, the amount of funds loaded onto GPR cards grew from under \$1 billion in 2003 to nearly \$65 billion in 2012.<sup>10</sup> This makes GPR cards among the fastest-growing forms of prepaid products over that decade, growing from less than 8 percent of prepaid load to over 36 percent during that same period. The Mercator Advisory Group further projects that the total dollar value loaded onto GPR cards will grow annually by 5 percent through 2019, when it will exceed \$117 billion.<sup>11</sup>

The Bureau notes that the top five GPR card programs (as measured by the total number of cards in circulation) have maximum balance amounts that vary significantly.<sup>12</sup> To the extent that the cards have a maximum balance cap, the range is between \$2,500 and \$100,000.<sup>13</sup> One of these top five GPR card programs does not have a maximum balance amount, but does have a monthly cash deposit limit of \$4,000.<sup>14</sup>

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<sup>9</sup> Throughout the supplementary information for this final rule, the term checking account generally also refers to credit union share draft accounts.

<sup>10</sup> Mercator Advisory Group, *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014-2017*, at 13 (Nov. 2014).

<sup>11</sup> Mercator Advisory Group, *Thirteenth Annual U.S. Open-Loop Prepaid Cards Market Forecasts, 2016-2019*, at 9 (Sept. 2016) (Mercator 13th Annual Market Forecasts).

<sup>12</sup> See First Annapolis, *Chase Enhances Competitive Positioning of Liquid* (Sept. 2015), available at <http://www.firstannapolis.com/articles/chase-enhances-competitive-positioning-of-liquid>; see also American Express Serve® Prepaid Card Cardholder Agreement, available at [https://serve.com/intuit/pdf/ServeTemp\\_Card\\_Agreement.pdf](https://serve.com/intuit/pdf/ServeTemp_Card_Agreement.pdf).

<sup>13</sup> See Green Dot Card Cardholder Agreement, available at [https://www.greendot.com/content/docs/CardholderAgreement-Legacy\(4-2012\).pdf](https://www.greendot.com/content/docs/CardholderAgreement-Legacy(4-2012).pdf); see also American Express Serve® Prepaid Card Cardholder Agreement, available at [https://serve.com/intuit/pdf/ServeTemp\\_Card\\_Agreement.pdf](https://serve.com/intuit/pdf/ServeTemp_Card_Agreement.pdf).

<sup>14</sup> See Chase Liquid Agreement, available at [https://www.chase.com/content/dam/chasecom/en/debit-reloadable-cards/documents/chase\\_liquid\\_terms\\_conditions.pdf](https://www.chase.com/content/dam/chasecom/en/debit-reloadable-cards/documents/chase_liquid_terms_conditions.pdf).

*Virtual GPR cards.* Prepaid products are not all tied to a physical card or device. Some may exist only electronically; these virtual products are accessible and usable online or at a physical location through a mobile device such as a smartphone. To use these “virtual GPR cards,” consumers receive an account number or other information that they can then use to make purchases using a mobile application or other means. The use of GPR prepaid products not linked to a physical card or device to store and transfer funds via the internet, text, or mobile phone application appears to be growing.<sup>15</sup>

#### *GPR Card Functionality*

Consumers generally purchase or acquire GPR cards at retail locations, over the telephone, or online. When buying a GPR card at a retail location, consumers typically pay an up-front purchase fee. A GPR card is usually loaded by the retailer at the time of purchase with funds provided by the consumer. Some GPR cards purchased at retail are activated at the time of purchase so that the card can be used immediately for POS purchases and potentially certain other types of transactions; other cards require the consumer to contact the financial institution or program manager online or by phone to activate the card before it can be used. However, in order to take advantage of all of the GPR card’s features, including to make ATM withdrawals and to be able to reload the card, consumers are generally required to contact the financial institution or program manager in order to register the card. (Many financial institutions combine the activation and registration process for GPR cards.) After registration, financial institutions often send a permanent card embossed with the consumer’s name that, once activated, replaces the temporary card the consumer acquired from the retailer. The process for acquiring GPR cards directly from the financial institution or program manager online or by

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<sup>15</sup> See, e.g., Mercator Advisory Group, *Consumers and Prepaid: Rising Use, Especially by Mobile*, at 16-18 (Dec. 2014).

telephone tends to be more streamlined; financial institutions typically do not charge an up-front purchase fee and registration is completed during the acquisition process before the consumer is mailed a physical card.

Registration is driven both by Bank Secrecy Act (BSA)<sup>16</sup> requirements and by the financial institution's desire to establish full communications and an ongoing relationship with its customers. In order for financial institutions to satisfy the BSA's Customer Identification Program (CIP) requirements, financial institutions typically require consumers to provide specific identifying information (*i.e.*, full name, domestic residential address, date of birth, and a Social Security Number or Taxpayer Identification Number, or, in some instances, another government-issued identification number) as part of the registration process.<sup>17</sup> The financial institution or program manager uses the information to verify the consumer's identity. If the consumer's identity cannot be verified, the card is not considered registered; the consumer can typically spend down the card balance at POS but cannot withdraw funds at an ATM and cannot reload the card.

GPR cards can generally be reloaded through a variety of means, including direct deposit of wages, pensions, or government benefits; cash reloads conducted at, for example, retail locations designated by the card issuer or program manager,<sup>18</sup> or by purchasing a "reload pack" at retail; transfer from another prepaid account, or a checking or savings account; or deposit of a

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<sup>16</sup> See, in part, 31 U.S.C. 5311 *et seq.* See also 31 CFR chapter X.

<sup>17</sup> See Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, Fin. Crimes Enforcement Network, *Interagency Guidance to Issuing Banks on Applying Customer Identification Programs to Holders of Prepaid Access Cards* (Mar. 21, 2016), available at <http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160321a1.pdf>. Among other things, the guidance clarified that a financial institution's CIP should apply to GPR cardholders if the GPR card is issued by the financial institution.

<sup>18</sup> See, *e.g.*, Green Dot Card Cardholder Agreement, available at [https://www.greendot.com/content/docs/CardholderAgreement-Legacy\(4-2012\).pdf](https://www.greendot.com/content/docs/CardholderAgreement-Legacy(4-2012).pdf).

check at a participating check-cashing outlet or via remote deposit capture.<sup>19</sup> Consumers can typically obtain cash from their GPR cards via ATM withdrawals, bank teller transactions, or by electing to obtain cash back from merchants through POS transactions using a personal identification number (PIN). Additionally, consumers can typically make purchases with their GPR cards wherever the payment network brand appearing on the card is accepted. A number of GPR card programs also offer an online bill pay function, which sometimes has a fee associated with it. Consumers can typically obtain updates regarding their GPR card's account balance (and, for some programs, recent transaction activity) via toll-free telephone calls to the financial institution or program manager, text messages, email alerts, the program's website or mobile application, at ATMs, or by requesting written account histories sent by mail. Some GPR card providers charge consumers to speak to a customer service agent or to receive a written copy of their account history. Consumers may also incur fees to obtain balance information at ATMs.

GPR cards can vary substantially with respect to the fees and charges assessed to consumers, both in terms of their total volume as well as in the number and type of fees assessed. Based on its review of a 2012 study of consumer use of prepaid products by the Federal Reserve Bank of Philadelphia, the Bureau believes average cardholder costs for GPR and payroll cards range from approximately \$7 to \$11 per month, depending on the type and distribution channel of the account.<sup>20</sup> In a 2014 report, The Pew Charitable Trusts (Pew) estimated that the median consumer using one of the 66 major GPR cards it examined would be charged approximately

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<sup>19</sup> The Bureau understands some financial institutions permit consumers to reload GPR cards via paper checks mailed to the financial institution or program manager.

<sup>20</sup> Stephanie Wilshusen et al., *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis*, at 39 (Fed. Reserve Bank of Phila., Discussion Paper, 2012), available at <http://www.philadelphiafed.org/consumer-credit-and-payments/payment-cards-center/publications/discussion-papers/2012/D-2012-August-Prepaid.pdf> (2012 FRB Philadelphia Study). The authors of the report noted that the report's primary focus is on GPR cards and payroll cards, which will be discussed in greater detail below.

\$10 to \$30 every month for use of the cards, on average, depending on the consumer's understanding of the card's fee structure and ability to alter behavior to avoid fees.<sup>21</sup> The 2012 FRB Philadelphia Study also found that in terms of total value, maintenance and ATM withdrawal fees are among the most significant fees incurred by users of open-loop prepaid products.<sup>22</sup>

### *Consumers' Use of GPR Cards*

The 2012 FRB Philadelphia Study found that most of the prepaid products in its study are used for both cash withdrawals and purchases of goods and services, with cash withdrawals accounting for about one-third to one-half of the funds taken off a product, depending on the product. The study also concluded that prepaid cards are used primarily to purchase nondurable goods and noted that many of the products studied were also used to pay bills.<sup>23</sup>

The types of consumers who use GPR cards and their reasons for doing so vary. For consumers who lack access to more established products such as bank accounts and credit cards, GPR cards can be appealing because they are subject to less up-front screening by financial institutions. While CIP requirements for checking and savings accounts apply to GPR cards as well, banks and credit unions generally review information about prospective checking and savings account customers obtained from specialized reporting agencies that can reveal a prior history of involuntary account closure, unsatisfied balances, and other issues with prior account use. Even where financial institutions do not intend to provide overdraft services to a consumer, they may be motivated to evaluate potential checking account customers for credit risk more

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<sup>21</sup> The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards*, at 39 (Feb. 2014), available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2014/02/06/consumers-continue-to-load-up-on-prepaid-cards> (2014 Pew Study).

<sup>22</sup> 2012 FRB Philadelphia Study at 6.

<sup>23</sup> *Id.*

closely than for prepaid customers. For example, check deposits may be a more prevalent feature of checking accounts than prepaid accounts and, because a deposited check can be returned unpaid (in contrast to a cash deposit or load), a check deposit may present credit risk to a financial institution. With respect to credit cards, approvals are generally contingent on a consumer successfully navigating an underwriting process to determine whether an applicant is an appropriate credit risk. In contrast, most financial institutions do not engage in screening or underwriting GPR customers (aside from CIP) because the product involves little credit risk.

In light of these distinctions, it is not surprising that consumers who lack access to more established financial products such as bank accounts and credit cards consistently make up a sizeable segment of the consumer base that uses GPR cards on a regular basis. For example, a 2014 Pew survey found that 41 percent of prepaid card users did not have a checking account, and that 26 percent of the consumers in this group believed that they would not be approved for a checking account.<sup>24</sup> It also found that prepaid card users were much more likely to use an alternative financial product or service, such as a payday loan, compared to consumers in the general population (40 percent vs. 25 percent).<sup>25</sup> The survey also found that 33 percent of monthly users of open-loop prepaid products have never had a credit card.<sup>26</sup> A 2015 Pew survey suggested that unbanked prepaid card users tended to be less knowledgeable than consumers

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<sup>24</sup> The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders' Motivations and Views*, at 7, 14 (Feb. 2014), available at [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2014/prepaidcardssurveyreportpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2014/prepaidcardssurveyreportpdf.pdf) (2014 Pew Survey). It appears that the prepaid products discussed in the report included GPR cards, payroll cards, and government benefit cards. The report excluded closed-loop prepaid products.

<sup>25</sup> *Id.* at 9.

<sup>26</sup> *See Id.* at 7. The Bureau recognizes that this figure may include consumers that have never tried opening a credit card account, as well as those that tried to open a credit card account but had their applications denied.

with bank accounts about whether their prepaid card had FDIC insurance and about liability limits if their card is lost or stolen.<sup>27</sup>

Consistent with Pew's findings, a 2013 survey by the FDIC found that approximately 33 percent of those who reported using a prepaid card in the 30 days prior to being surveyed were unbanked.<sup>28</sup> More broadly, the survey found that 19.7 percent of underbanked and 27.1 percent of unbanked households, as well as 33 percent of previously banked households,<sup>29</sup> reported having used such cards (compared with 12 percent reported use in the entire population).<sup>30</sup> The FDIC also found that while GPR card usage among all households had remained relatively stable since 2009, the proportion of unbanked households that had used a prepaid card increased from 12.2 percent in 2009 to 17.8 percent in 2011 and to 27.1 percent in 2013.<sup>31</sup> The FDIC survey also found that prepaid card users were more likely than the general population to be young, single mothers, or disabled, and to have incomes below \$50,000; they were less likely than the general population to be homeowners, white, have college degrees, and to be employed.<sup>32</sup>

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<sup>27</sup> The Pew Charitable Trusts, *Banking on Prepaid: Survey of Motivations and Views of Prepaid Card Users*, at 10-12 (June 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2015/06/banking-on-prepaid> (2015 Pew Survey).

<sup>28</sup> See Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households*, at 31 (Oct. 2014), available at <https://www.fdic.gov/householdsurvey/2013report.pdf> (2013 FDIC Survey). The FDIC survey found, generally, that there are approximately 30 million unbanked and underbanked households in the United States. Like Pew, the FDIC found that unbanked and underbanked consumers are more likely than the general population to use open-loop prepaid products such as GPR cards. *Id.* at 4.

<sup>29</sup> Previously banked households are households that had a bank account in the past. The FDIC survey treats these households as a subset of unbanked households. 2013 FDIC Survey at 29.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 2013 FDIC Survey at 46-47.

For consumers with access to traditional financial products and services, GPR cards may be appealing as a limited-use product instead of as a transaction account substitute.<sup>33</sup> For example, the Bureau understands that one of the ways in which many consumers use such cards is for a limited purpose such as while traveling or making online purchases, because they may believe that using prepaid cards is safer than using cash, a credit card, or a debit card in those situations.<sup>34</sup> These consumers may not ever register and reload the card. Instead, they may let the card become dormant or discard it after spending down the initial balance, and then purchase another GPR card at a later date if new needs arise. The Bureau understands that another popular way in which consumers use GPR cards is as a budgeting tool to help them better manage their funds. For example, a family might budget a fixed amount each month for dining out and put those funds on a GPR card, or parents may provide a GPR card, as opposed to a credit card for example, to a child at college to control the child's spending. Pew has found that the majority of both unbanked and banked GPR card users would like their cards to have a feature allowing them to put some of their card balances into savings and a budgeting tool that would track their spending in different categories automatically and alert them if they overspent.<sup>35</sup>

Additionally, for both unbanked and banked consumers, the desire to avoid overdraft services associated with checking accounts appears to motivate many consumers to choose GPR cards over checking accounts. The 2015 Pew Survey reports that most GPR prepaid card users would rather have a purchase denied than overdraft their accounts and incur an overdraft fee.<sup>36</sup>

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<sup>33</sup> 2014 Pew Survey at 7. It found that 59 percent of prepaid card users also have a checking account and that most prepaid card users also have experience using credit cards, with almost half having used a credit card in the past year.

<sup>34</sup> *See, e.g.*, 2014 Pew Survey at 1, 13.

<sup>35</sup> 2015 Pew Survey at 7.

<sup>36</sup> *Id.*

Its 2014 survey found that 41 percent of prepaid users have closed or lost a checking account due to overdraft fees or bounced check fees.<sup>37</sup> As discussed further below, in contrast to checking overdraft fees, which are often \$35 per item,<sup>38</sup> GPR cards generally are not offered with an overdraft service nor other credit features, and the few exceptions appear to involve smaller fees.<sup>39</sup> Indeed, the Bureau has observed that many GPR cards are advertised as a “safe” or “secure” alternative to a checking account precisely because they do not offer overdraft services.

Based on the Bureau’s market research and analysis, the Bureau believes that consumer acceptance of GPR cards will grow. It also believes that some consumers that currently use GPR cards may increasingly find that they no longer want or need to have traditional financial products and services such as a checking account or a credit card in addition to their GPR card as these products continue to evolve. The Bureau notes that GPR card functionality has been expanding. For example, some GPR card programs have started to offer checking account-like features such as the ability to write checks using pre-authorized checks. Similarly, many GPR programs allow third parties to credit the GPR card account via ACH (*e.g.*, through direct deposit) and in more limited circumstances, to debit the GPR card account via ACH. Additionally, many GPR card programs have offered consumers ways to access their account online, including through mobile devices such as smartphones. For example, oftentimes consumers can use smart phone applications to closely monitor their GPR card transactions,

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<sup>37</sup> 2014 Pew Survey at 8.

<sup>38</sup> As part of this rulemaking, the Bureau calculated the median checking account overdraft fee charged as of July 2014 among the 50 largest U.S. banks ranked by consumer checking balances at \$35 per item. Nearly all banks the Bureau considered assess overdraft fees on a per-item basis. Among those that do, both the median and modal lowest-tier overdraft fee is \$35. Some banks have higher overdraft fees that apply after a certain number of overdraft occurrences. However, the Bureau’s analysis considered only the lowest-tier fees a consumer would encounter if *de minimis* or other policies do not preclude a fee. For banks that charge different amounts in different regions, Bureau staff considered pricing for the region where the bank is headquartered.

<sup>39</sup> *See, e.g.*, 2014 Pew Study at 4, 9-10.

balances, and fees; to load funds to their GPR cards; and to transfer funds between accounts.

The 2015 Pew Survey found that for both unbanked and banked GPR card users, more than half monitor their account balances through online access.<sup>40</sup> Lastly, as discussed above, like credit and debit cards, GPR cards provide access to payment networks. Consumers may find this to be an important feature of GPR cards in that some merchants may only accept payment through a card that provides access to one of these networks.

### *Marketing and Sale of GPR Cards*

In recent years, the GPR card segment has grown increasingly competitive, which has resulted in a decrease in prices, coupled with an increase in transparency for many products.<sup>41</sup> Nevertheless, various factors continue to negatively affect consumers' ability to make meaningful comparisons.<sup>42</sup> Because card packaging is generally designed to be sold in retail stores, the "J-hook package" is no larger than 4 inches by 5.25 inches.<sup>43</sup> Thus, card packages have limited space in which to explain their product and disclose key features. Consumer groups have also criticized GPR product providers for making comparison shopping challenging by, for example, using different terms to describe similar fees and providing consumers with incomplete information about fees.<sup>44</sup> In addition to the size limitations on GPR card packaging, certain other aspects of purchasing GPR cards in retail settings may also pose obstacles to comparison

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<sup>40</sup> 2015 Pew Survey at 13.

<sup>41</sup> See, e.g., Fed. Reserve Bank of St. Louis, *Cards, Cards and More Cards: The Evolution to Prepaid Cards*, Inside the Vault, at 1, 2 (Fall 2011), available at <http://www.stlouisfed.org/publications/itv/articles/?id=2168> ("Competition among prepaid card issuers and increased volume have helped lower card fees and simplify card terms."). See also 2014 Pew Study at 2 ("[O]ur research finds that the providers are competing for business by lowering some fees and are facing pressure from new entrants in the market.").

<sup>42</sup> 2014 Pew Survey at 5, 6.

<sup>43</sup> A j-hook is a looped hook used by retailers to hang prepaid cards (and other products). Retailers often sell prepaid cards on j-hooks in a standalone display rack at the end of an aisle in a store.

<sup>44</sup> See, e.g., Consumer Reports, *Prepaid Cards: How They Rate 2014*, at 5 (Nov. 2014), available at [https://consumersunion.org/wp-content/uploads/2014/11/Prepaid\\_Cards\\_How\\_They\\_Rate\\_2014.pdf](https://consumersunion.org/wp-content/uploads/2014/11/Prepaid_Cards_How_They_Rate_2014.pdf).

shopping. For example, some retail locations may only offer one or a few types of GPR cards.<sup>45</sup> Some stores may only display prepaid products behind a register, requiring a consumer to ask to see each product individually, and stores may display GPR cards with or near closed-loop products such as prepaid cellular phone plan cards or gift cards. Store personnel may not be sufficiently familiar with the different products to respond accurately to consumer questions. When consumers are purchasing a GPR card along with groceries and convenience items, general time pressures may cause consumers to make decisions quickly and ask fewer questions.

All of these factors mean that consumers often purchase a card and load initial funds on it before they have an opportunity to review the full terms and conditions. Retail locations often cannot refund the cash loaded onto the card, and the Bureau believes that few consumers are likely to realize that refunds may be available from the GPR card programs. Thus, it is likely far more typical that consumers would spend down the funds initially loaded onto a GPR card and then discard it if they find it to be unsatisfactory as a long-term product. However, monthly maintenance fees may continue to accrue on spent-down cards. Moreover, the 2015 Pew Survey suggests that it can be particularly difficult for unbanked GPR card users to disentangle themselves from their cards. For example, Pew reported that more than 40 percent of unbanked GPR card users put their wages on their GPR cards through direct deposit and approximately 75 percent of them reload their cards regularly.<sup>46</sup>

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<sup>45</sup> Prepaid card providers can establish exclusive marketing arrangements that may prevent competitors' cards from being sold in the same store. *See, e.g.*, Press Release, Blackhawk Network, *Blackhawk Network, Safeway and Blackhawk extend exclusive prepaid card distribution agreement through 2019* (Mar. 7, 2014), available at <http://blackhawknetwork.com/blackhawk-comments-on-parent-company-safeways-spin-off-announcement/>. The press release announced that Blackhawk Network Holdings, Inc., a major prepaid product provider, extended its exclusive distribution arrangement with Safeway Inc. through 2019.

<sup>46</sup> 2015 Pew Survey at 5.

### *Structure of Typical GPR Card Programs*

GPR cards are generally provided by combinations of entities working together rather than by a single, vertically integrated entity operating all aspects of the GPR card program. Although a consumer may only interact with a single entity or limited number of entities, the Bureau believes that the presence of many different companies in the supply chain could expose consumers as well as the entities themselves to greater risks, such as potential losses resulting from the insolvency or malfeasance of a business partner, than those associated with a traditional vertically integrated checking or savings account program. The Bureau discusses the various entities that may be involved in a typical GPR card program below.

*Entities involved in a typical GPR card program.* One of the most important entities involved in a GPR card program is the prepaid card issuer, which is typically either a depository institution or credit union. Some of the major payment card networks' rules require that GPR cards bearing their brand be issued by banks or credit unions, although one payment card network that issues its own cards does so through a non-bank entity. Issuers also typically manage the underlying accounts that hold funds loaded onto the cards. Some banks and credit unions are actively involved in all aspects of their GPR card programs, serving as program manager as well as issuer. Other banks and credit unions act as issuers and provide sponsorship into specific payment card networks, but work with a non-bank entity that serves as the program manager. Program managers are generally responsible for designing, managing, marketing, and operating GPR card programs. The Bureau understands that variations in issuers' roles can be

driven by the extent to which the program manager performs particular services by itself, as well as due to the particular features of a specific GPR card program.<sup>47</sup>

Program managers typically establish or negotiate a GPR card program's terms and conditions, market the card, assume most of the financial risks associated with the program, and reap the bulk of the revenue from the program.<sup>48</sup> Some program managers may exercise substantial control over and responsibility for GPR card programs. For example, some program managers maintain the databases that contain cardholder account and transaction histories. They also approve and decline transactions.<sup>49</sup> The program manager is also, in most cases, the primary consumer-facing party in connection with a GPR card because it is typically the program manager's brand on the card as well as its packaging.<sup>50</sup>

Program managers often contract with other third-party service providers to perform specific functions for a GPR card program. To produce, market, and sell GPR cards, program managers often work with manufacturers that are responsible for printing and assembling the cards and associated packaging. Distributors arrange for GPR cards to be sold through various channels including through retailers, money transfer agents, tax preparers, check cashers, and payday lenders. Further, payment processors often provide many of the back-office processing functions associated with initial account opening (including those related to transitioning from temporary to permanent cards), transaction authorization and processing, and account reporting.

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<sup>47</sup> In some cases, a white label model is used whereby banks and credit unions rely upon another institution to issue prepaid accounts, which may be branded with the bank or credit union's name. There are a handful of such programs through which banks and credit unions offer prepaid accounts (typically as a convenience to their customers or members).

<sup>48</sup> See Fumiko Hayashi & Emily Cuddy, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks*, at 6 (Fed. Reserve Bank of Kan. City, Working Paper No. RWP 14-01, Feb. 2014), available at <https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-01.pdf> (2012 FRB Kansas City Study).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* See also Aite Group LLC, *Prepaid Debit Card Realities: Cardholder Demographics and Revenue Models*, at 17 (Nov. 2013).

Lastly, the payment networks themselves also establish and enforce their own rules and security standards related to payment cards generally and prepaid products such as GPR cards specifically. The networks also facilitate card acceptance, routing, processing, and settling of transactions between merchants and card issuers.

*How funds are held.* Prepaid products including GPR cards differ from traditional checking or savings accounts in that the underlying funds are typically held in a pooled account at a depository institution or credit union. This means that rather than establish individual accounts for each cardholder, a program manager may establish a single account at a depository institution or credit union in its own name, but typically title the account to indicate that it is held for the benefit of each individual underlying cardholder. The Bureau understands that the program manager, sometimes in conjunction with the issuing depository institution or credit union or the depository institution or credit union holding the funds, will typically establish policies and procedures and put in place systems to demarcate each cardholder's funds within the pooled account. As discussed in detail below, these pooled accounts may qualify for, as applicable, FDIC pass-through deposit insurance or NCUA pass-through share insurance.

*Revenue generation.* The Bureau understands that GPR cards typically generate revenue through the up-front purchase price paid by the consumer where applicable, the assessment of various monthly maintenance and/or transactional fees, and interchange fees collected from merchants by the payment networks. The 2012 FRB Philadelphia Study found that interchange fees paid by a merchant or acquiring bank for the purpose of compensating an issuer for its involvement in prepaid programs account for more than 20 percent of issuer revenues in GPR programs and almost 50 percent of revenues in payroll program.<sup>51</sup> The Bureau understands that

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<sup>51</sup> 2012 FRB Philadelphia Study at 6.

in most cases, publicly available details of how revenue is distributed and expenses are accounted among entities involved in the GPR card supply chain is sparse, although as discussed above, program managers generally reap the bulk of the revenue from GPR card programs. The Bureau believes that allocation of revenue and expenses likely varies across programs.

#### *Prepaid Products Distributed and Funded by Third Parties*

Consumers may also receive network-branded open-loop prepaid products from third parties such as employers, student aid sources, insurance companies, and government agencies that disburse funds to consumers by loading the funds into such accounts. These prepaid products are thus taking the place of distributions to the consumer via paper check, direct deposit into a traditional checking or savings account, or cash. The following discussion highlights some of the most common or fastest growing open-loop prepaid products onto which funds are loaded that are distributed to consumers by third parties.

*Payroll cards.* Payroll cards are the most common example of prepaid products used by third parties to distribute funds to consumers. In 2013, over 5 million payroll cards were issued, and \$30.6 billion was loaded onto them.<sup>52</sup> According to the Mercator Advisory Group, payroll cards make up the second largest segment in the U.S. open-loop prepaid product market.<sup>53</sup> The total amount of funds loaded onto payroll cards is expected to grow on average 6 percent each year through 2019, when it will reach \$44.6 billion.<sup>54</sup> While direct deposit into consumer

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<sup>52</sup> See Mercator Advisory Group, *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014-2017*, at 32 (Nov. 2014).

<sup>53</sup> Mercator 13th Annual Market Forecasts at 28. The payroll card segment, as measured by the Mercator Advisory Group, is made up of wages paid to employees and 1099 workers using an employer-provided prepaid card.

<sup>54</sup> *Id.* at 29.

accounts remains the most popular form of wage distribution overall,<sup>55</sup> the number of consumers who receive their wages on payroll cards surpassed the number of consumers paid by paper checks for the first time in 2015, and an estimated 12.2 million workers are expected to receive their wages on payroll cards by 2019, compared to an estimated 2.2 million workers who are expected to get paper checks.<sup>56</sup>

An employer generally works with a financial institution to set up a payroll card program. Among other things, the financial institution issues the payroll cards and holds the funds loaded into the payroll card accounts. Section 1005.10(e)(2) of Regulation E prohibits financial institutions and employers from requiring consumers to agree to have their compensation distributed via a payroll card as a condition of employment. As discussed in greater detail below, the Bureau is finalizing specific disclosure requirements as part of the short form disclosure, to make clear § 1005.10(e)(2)'s applicability to payroll card accounts. Where employees choose to participate in a payroll card program, the employer will provide the employee with a network-branded prepaid card issued by the employer's financial institution partner that accesses a subaccount assigned to the individual employee. On each payday, the employer will transfer the employee's compensation to the payroll card account, instead of providing the employee with a paper check or making a direct deposit of funds to the employee's checking or savings account. The employee can use the payroll card to withdraw funds at an ATM or over-the-counter via a bank teller. The employee can also use the payroll card to make purchases online and at physical retail locations, and may also be able to obtain cash back at

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<sup>55</sup> Aite Group LLC, *Checkmate: U.S. Payroll Cards Trump Paper Checks*, at 5 (Apr. 2015) (reporting that according to the American Payroll Association, 90 percent of all employees currently receive their pay through direct deposit to checking accounts).

<sup>56</sup> *Id.* at 6.

POS. Some payroll cards may offer features such as convenience checks and electronic bill payment.

The Bureau understands that employers market payroll cards as an effective means to receive wages for employees who may lack a traditional banking relationship, and that unbanked consumers may find the cards to be a more suitable, cheaper, and safer method of receiving their wages as compared to other methods, such as receiving a check and going to a check-cashing store. Nonetheless, within the last 10 years, there have been increasing concerns raised about payroll cards, with specific focus on potentially harmful fees and practices associated with them. These problematic practices may impact low-income consumers disproportionately, as it has been reported that payroll cards are especially prevalent in industries that have many low-wage, hourly workers.<sup>57</sup>

As explained in greater detail below, the Bureau issued a guidance bulletin in September 2013 to remind employers that they cannot require their employees to receive wages on a payroll card and to explain some of the Regulation E protections that apply to payroll card accounts, such as those pertaining to fee disclosure, access to account history, limited liability for unauthorized use, and error resolution rights.<sup>58</sup> Although it appears that certain industry stakeholders have worked to develop industry standards incorporating and building upon the guidance given in the bulletin,<sup>59</sup> concerns persist as to whether and how employers and financial institutions are complying with the compulsory use provision and other provisions of Regulation

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<sup>57</sup> Nat'l Consumer L. Ctr., *Rating State Government Payroll Cards*, at 5 (Nov. 2015), available at <http://www.nclc.org/images/pdf/pr-reports/payroll-card-report.pdf>.

<sup>58</sup> CFPB Bulletin 2013-10, *Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), available at [http://www.consumerfinance.gov/f/201309\\_cfpb\\_payroll-card-bulletin.pdf](http://www.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf).

<sup>59</sup> See, e.g., Press Release, MasterCard, *MasterCard Introduces Payroll Card Standards* (Dec. 13, 2013), available at <http://newsroom.mastercard.com/press-releases/mastercard-introduces-payroll-card-standards/>.

E, as well as related State laws applicable to the distribution of wages.<sup>60</sup> For example, employees may not always be aware of the ways in which they may receive their wages because States may have differing and evolving requirements.<sup>61</sup>

The Bureau additionally believes that payroll card accounts raise transparency issues beyond those addressed by its payroll card accounts guidance bulletin. Employers may offer a payroll card account when an employee starts employment, when it is likely that the question of how the employee is to be paid will be one of many human resource issues confronting the employee during orientation. An employee may be provided with a stack of forms to complete and may not have the time or opportunity to review them. It is also possible that the employee may be unaware that receiving wages via a payroll card account is optional, particularly if the employer does not present the options clearly. The forms the employee may receive from the employer may not always include all of the relevant information regarding the terms and conditions of the payroll card account, such as fees associated with the card and how cardholders can withdraw funds on the card. Employees who want to complete their hiring paperwork in a single setting may not take the opportunity to comparison shop. Separately, some industry observers have raised concerns about the extent to which payroll card providers share program revenue with employers and, if so, whether that revenue sharing has negative consequences for cardholders, for instance by creating incentives to increase the fees on payroll card products.

*Campus cards.* Federal law permits Federal financial aid to be disbursed to students via prepaid products.<sup>62</sup> A number of colleges and universities partner with banks and program

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<sup>60</sup> See, e.g., N.Y. St. Att’y Gen., Labor Bureau, *The Impact of Payroll Cards on Low-Wage Workers*, available at <http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf>.

<sup>61</sup> See, e.g., <http://paycard.americanpayroll.org/compliance-regulations> (listing the various State regulations that apply to payroll cards).

managers to market and often disburse student financial aid proceeds into network-branded open-loop prepaid products that are endorsed by those colleges and universities, as a potential alternative to direct deposit into a student or parent's existing checking account, prepaid account, or other means of disbursement. The total amount of funds loaded in the open-loop campus card segment grew by 15 percent in 2015, to \$2.72 billion, and is forecasted to have an average annual growth rate of 10 percent through 2019, when it is forecasted to reach \$3.98 billion.<sup>63</sup>

Similar to payroll card accounts, some have raised concerns about the ways in which students are encouraged to obtain an endorsed prepaid product and with the potential incentives created by revenue sharing in connection with prepaid cards provided to students. A 2014 Government Accountability Office (GAO) report found that of the U.S. colleges and universities participating in Federal student aid programs for the 2011-2012 school year that had agreements with banks and program managers to provide debit and prepaid card services for students, approximately 20 percent of such agreements were for prepaid cards.<sup>64</sup> The report also stated that more than 80 percent of the schools identified in the report with card agreements indicated that students could use their cards to receive financial aid and other funds from the school.<sup>65</sup>

Among other things, the GAO noted concerns about the fees on student debit and prepaid cards, as well as the lack of ATM access and the lack of the schools' neutrality toward the card

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<sup>62</sup> See 34 CFR 668.164(c)(2) (treating certain Federal student aid payments disbursed via "an account that underlies a stored-value card" as direct payments to a student or parent).

<sup>63</sup> Mercator 13th Annual Market Forecasts at 16. These figures include campus cards used by colleges and universities, as well as K-12 institutions.

<sup>64</sup> U.S. Gov't Accountability Office, *GAO-14-91, College Debit Cards, Actions Needed to Address ATM Access, Student Choice, Transparency, a Report to the Chairman, Committee on Health, Education, Labor, and Pension, U.S. Senate*, at 8 (Feb. 2014), available at <http://www.gao.gov/assets/670/660919.pdf>. The GAO found that the rest of the agreements were for debit cards.

<sup>65</sup> *Id.* at 9.

programs.<sup>66</sup> It found instances in which schools appeared to encourage students to enroll in the school's specific prepaid card program, rather than present neutral information about disbursement options for financial aid.<sup>67</sup> As discussed in greater detail below, the U.S. Department of Education (ED) issued a final rule in October 2015 that addresses a number of concerns with campus cards that the GAO described in its report.

*Government benefit cards.* Government entities also distribute various funds onto prepaid products by partnering with financial institutions and program managers. In its latest annual report to Congress on the prevalence of prepaid card use in Federal, State, and local government-administered payment programs, the Board reports that a number of government entities now mandate that recipients receive payments electronically, through either a prepaid card or direct deposit.<sup>68</sup> The Board reported that government offices distributed \$150 billion through prepaid cards in 2015.<sup>69</sup> The Federal government and various State governments may use prepaid products to distribute government benefits such as Social Security payments,<sup>70</sup> unemployment insurance benefits,<sup>71</sup> and child support payments, as well as a distinct set of disbursements called needs-tested benefits.

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<sup>66</sup> U.S. Gov't Accountability Office, *GAO Highlights: Highlights of GAO-14-91, a Report to the Chairman, Committee on Health, Education, Labor, and Pension, U.S. Senate* (Feb. 2014), available at <http://www.gao.gov/assets/670/660920.pdf>.

<sup>67</sup> *Id.*

<sup>68</sup> Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government Administered, General-Use Prepaid Cards*, at 3 (July 2016), available at <http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201607.pdf> (2016 FRB Government Prepaid Cards Report).

<sup>69</sup> *Id.* at 1.

<sup>70</sup> The U.S. Department of the Treasury (Treasury) has established the Direct Express program for the distribution of government benefits such as Social Security payments.

<sup>71</sup> See, e.g., Nat'l Consumer Law Ctr., *2013 Survey of Unemployment Compensation Prepaid Cards*, at 3, 7 (Jan. 2013), available at <http://www.nclc.org/issues/unemployment-compensation-prepaid-cards.html> (noting that 42 States offer some form of prepaid card for distribution of unemployment compensation payments).

Most States offer a choice at least between direct deposit to a traditional checking or savings account or a prepaid product for the receipt of unemployment insurance benefits. However, the Bureau is aware that, in the recent past, several States have required the distribution of at least the first payment of such benefits onto prepaid cards.

State and local government programs for distributing needs-tested benefits are typically referred to as electronic benefit transfer (EBT) programs. Needs-tested benefits include funds related to Temporary Assistance for Needy Families (TANF), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and the Supplemental Nutrition Assistance Program (SNAP). According to the Board, State agencies administering SNAP disbursed approximately \$69 billion onto EBT cards in 2015.<sup>72</sup> As noted below in the discussion of relevant law, Regulation E does not apply to EBT programs.<sup>73</sup>

In addition, Treasury's Bureau of the Fiscal Service, on behalf of the United States military, provides both closed-loop and open-loop prepaid cards for use by servicemembers and contractors in the various branches of the armed forces.<sup>74</sup> The features of and fees charged in connection with these cards may vary.

*Other open-loop prepaid cards distributed and funded by third parties.* Open-loop prepaid cards are also used by some insurance providers to pay certain insurance claims such as claims related to a property or casualty loss and for emergency payments designed to help

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<sup>72</sup> 2016 FRB Government Prepaid Cards Report at 5.

<sup>73</sup> EFTA section 904(d)(2)(B); § 1005.15(a)(2).

<sup>74</sup> See, e.g., Navy Cash / Marine Cash, (<http://fms.treas.gov/navycash/index.html>) and Eagle Cash, ([https://www.fiscal.treasury.gov/fsservices/gov/pmt/eagleCash/eagleCash\\_home.htm](https://www.fiscal.treasury.gov/fsservices/gov/pmt/eagleCash/eagleCash_home.htm)). The Navy Cash and Marine Cash products may have multiple "purses" such that one "purse" can only be used at a limited number of linked merchants (such as various places on a Naval vessel) while the other "purse" can be linked to a payment card network that provides global acceptance to unaffiliated merchants.

consumers get through immediate problems.<sup>75</sup> During the Bureau’s pre-proposal outreach, some insurance providers informed the Bureau that, where permitted by State law, it is faster and more economical to provide workers compensation payments on prepaid cards relative to mailing paper checks. Additionally, after a natural disaster, the disbursement of funds from insurance claims onto prepaid cards may allow funds to be delivered to consumers who may be unable to use or access traditional checking or savings accounts. The Mercator Advisory Group reports that the total amount loaded onto insurance cards is expected to grow at a rate of 3 percent per year through 2019, when loads are expected to exceed \$13 billion.<sup>76</sup>

Similarly, taxpayers may direct tax refunds onto prepaid cards provided by tax preparers or arranged by government entities. These cards are typically open-loop and may or may not be reloadable. Other disbursements onto prepaid cards include disbursement of mass transit or other commuting-related funds, which are typically onto restricted closed-loop cards. However, the Bureau understands that new transit payment models are emerging, and these models tend to involve open-loop prepaid cards.<sup>77</sup> Aid distributed by relief organizations or government agencies in response to natural disasters is usually loaded onto open-loop cards. In some of these cases, the cards may be reloaded by the entity that initially disbursed funds onto the card.<sup>78</sup>

As evidenced by the discussions above in connection with payroll and campus cards, prepaid products loaded by third parties can raise a number of consumer protection concerns.

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<sup>75</sup> Mercator 12th Annual Market Forecasts at 28.

<sup>76</sup> Mercator 13th Annual Market Forecasts at 26. The insurance category in the report measures funds loaded onto prepaid cards for disbursements of insurance settlements and for emergency payments.

<sup>77</sup> See, e.g., Ventra Card, <https://www.ventrachicago.com/> (the city of Chicago’s mass transit card has reloadable open-loop features). See also SEPTA, <http://www.septa.org/key/> (the city of Philadelphia announced that its mass transit card will also have reloadable open-loop features).

<sup>78</sup> As discussed in greater detail below in the section-by-section analysis of § 1005.2(b)(3)(ii), the final rule excludes from the definition of prepaid account those accounts that are directly or indirectly established through a third party and loaded only with qualified disaster relief payments.

Some of these issues appear to be largely the same as GPR cards on items such as the lack of clear, consistent disclosures about fees and other important terms and conditions. Consumers may use these products as their primary transaction accounts, particularly when the products are loaded with all of the consumers' incoming funds (*e.g.*, wages, unemployment benefits, student loan proceeds). In accepting the product, a consumer may not fully grasp all of its fees and terms and how those fees and terms might impact the consumer over time.

However, the Bureau believes that some consumer issues may be heightened or unique to particular categories of prepaid products loaded by third parties. For example, in selecting a GPR card, the consumer is making a distinct purchase decision; while some sales channels may be more convenient than others for comparison shopping, the consumer is in any event focused on the transaction as a standalone decision. Where a prepaid product is being provided to a consumer by a third party, however, the consumer may be deciding whether to accept the prepaid product in the course of another activity (such as starting a new job or school term, or dealing with a catastrophic event). Consumers may not understand the extent to which they can reject the product being offered, may not have a practicable option to comparison shop under the circumstances if they do not already have a transaction account to serve as an alternative, and may have concerns about upsetting an employer or other third party by rejecting the option. In addition, where there are revenue sharing arrangements in place, the third party may have a financial incentive to select a product offering with higher fees and to structure the sign-up process in a way that tends to increase participation. Further, the Bureau understands many of the prepaid accounts that are loaded by third parties are distributed to very specific segments of consumers such as college-age students or very low-income consumers, and accordingly, there may be distinct consumer protection issues associated with these prepaid products.

## *Digital Wallets*

A consumer may keep cash, debit and credit cards, GPR cards, and gift cards in a physical wallet or purse. “Digital wallets” and “mobile wallets” (*i.e.*, digital wallets that a consumer could access using a mobile device such as a smartphone) similarly store one or more of the consumer’s payment credentials electronically.<sup>79</sup> These payment credentials may be accessed by the consumer through a website or mobile application. The Bureau understands that some, but not all, digital and mobile wallets allow a consumer to store funds in them directly or by funding a prepaid product, and draw down the stored funds. A 2015 survey by the Board suggests that digital wallets serve as an important funding source for mobile payments (*i.e.*, consumer payment for goods and services using mobile phones). The survey reported that 15 percent of mobile payment users reported that they used an account at a non-financial institution such as PayPal to fund their payments.<sup>80</sup>

Digital and mobile wallets have been marketed as allowing consumers to electronically transmit funds in multiple settings. Currently, such wallets can be used by a consumer for online purchases,<sup>81</sup> payments at brick-and-mortar retailers through, for example, contactless communication at the point of sale,<sup>82</sup> as well as person-to-business (*i.e.*, bill pay) and P2P

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<sup>79</sup> Aite Group LLC, *Money Goes Mobile* (May 2014).

<sup>80</sup> Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2015*, at 17 (Mar. 2015), available at <http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201503.pdf> (2015 FRB Consumers and Mobile Financial Services Survey). The survey was updated in 2016. The percentage of mobile payment users reported that they used an account at a non-financial institution such as PayPal to fund their payments appears to have held steady at 16 percent. See Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services Survey 2016*, at 17 (Mar. 2016), available at <http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201603.pdf> (2016 FRB Consumers and Mobile Financial Services Survey).

<sup>81</sup> See, e.g., Visa Checkout Terms of Service, <https://secure.checkout.visa.com/pages/terms?country=US&locale=en>.

<sup>82</sup> See, e.g., Google Wallet Terms of Service, <https://wallet.google.com/termsOfService?type=BUYER&gl=US>.

transfers.<sup>83</sup> The Bureau understands that there may be significant variations in how funds are held in digital and mobile wallets and how payments are processed by such wallets. It also understands that payment processing by digital and mobile wallets is evolving quickly. For instance, some such wallets provide methods for accessing the ACH system to make a payment. A consumer might use such a digital or mobile wallet to pay for an online purchase, and the wallet would facilitate the transfer of funds from the consumer's checking account to fund the transaction. In other cases, the consumer's funds are first transferred to the digital or mobile wallet either by the consumer or the wallet provider, and then transferred to the ultimate payee. For example, it may be possible for a consumer to maintain a positive balance in the digital or mobile wallet through transfers from sources such as a bank account, a credit, debit, or prepaid card, or a P2P transfer. The consumer's digital or mobile wallet balance may be held in the name of the wallet provider. The Bureau expects that variations of digital and mobile wallets will continue to grow and observes that the methods described herein are a few of the funding options available in the current market. As discussed above, the application of EFTA and Regulation E to digital and mobile wallets has been less clear than the application of the statute and the regulation to prepaid products such as payroll card accounts and government benefit accounts.<sup>84</sup>

#### *Credit Features, Overdraft Programs, and Prepaid Products*

As described briefly above, most prepaid products as currently offered and marketed do not generally allow consumers to spend more money than is loaded onto the product. Although

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<sup>83</sup> See, e.g., Boost Mobile Wallet Terms of Service, <https://boostmobile.wipit.me/legal/terms.aspx>.

<sup>84</sup> Law360, *PayPal Customers Take Another Stab at \$3.2M Class Deal* (Sept. 10, 2015), available at <http://www.law360.com/articles/701403/paypal-customers-take-another-stab-at-3-2m-class-deal>. The class action was brought by PayPal customers to sue PayPal for, among other things, alleged violations of EFTA in managing the customers' accounts.

there are a few exceptions, most providers of prepaid products do not currently offer overdraft services,<sup>85</sup> a linked line of credit,<sup>86</sup> access to a deposit advance product,<sup>87</sup> or other method of accessing formal credit features in connection with a prepaid product.<sup>88</sup> Instead, prepaid products, including many GPR cards, are actively marketed as “safe” alternatives to checking accounts with opt-in overdraft services, credit cards, or other credit options.<sup>89</sup> Prepaid account balances can nonetheless be taken negative under certain limited circumstances, however.

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<sup>85</sup> As discussed further below, overdraft services evolved in the context of checking accounts from ad hoc, discretionary programs in which financial institutions would sometimes cover particular transactions that would otherwise overdraw a checking account as a courtesy to the consumer rather than return the transaction and subject the consumer to a not sufficient-funds fee, merchant fees, and other negative consequences from bounced checks. Overdraft services fees are generally imposed on a per-transaction basis, and the financial institution takes the balance owed as soon as additional funds are deposited into the account. As explained below, the Board exempted overdraft services from regulation under TILA and Regulation Z, unless the payment of items that overdraw an account and the imposition of the charges for paying such items were previously agreed upon in writing. In addition, these programs are not typically subject to traditional underwriting processes used for other credit products. Under Regulation E, financial institutions must obtain an opt-in from the consumer before imposing overdraft fees on ATM and one-time debit card transactions. *See* § 1005.17(b).

<sup>86</sup> A linked line of credit is a separate line of credit that a financial institution “links” to a deposit account or prepaid product to draw funds automatically where a transaction made using funds from the account or product would otherwise take the balance on the account or product negative. Such a credit feature is generally subject to interest rates, traditional credit underwriting, and TILA and Regulation Z. Similarly, some financial institutions offer consumers an option to link their credit card to a deposit account to provide automatic “pulls” to cover transactions that would otherwise exceed the balance in the account.

<sup>87</sup> A deposit advance product (DAP) is a small-dollar, short-term loan or line of credit that a financial institution makes available to a customer whose deposit account reflects recurring direct deposits. The customer obtains a loan, which is to be repaid from the proceeds of the next direct deposit. DAPs typically do not assess interest and are fee-based products. Repayments are typically collected from ensuing deposits, often in advance of the customer’s other bills. *See* CFPB, *Payday and Deposit Advance Products: A White Paper of Initial Data Findings* (Apr. 24, 2013), available at [http://files.consumerfinance.gov/f/201304\\_cfpb\\_payday-dap-whitepaper.pdf](http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf); *see also* FDIC and OCC Final Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 FR 70552 and 78 FR 70624 (Nov. 26, 2013). Publication of the Bureau’s White Paper and the guidance issued by the FDIC and OCC has caused many financial institutions to reevaluate their DAP programs.

<sup>88</sup> For example, a financial institution could offer a product whereby consumers with a credit account access that account and “push” the credit into their prepaid accounts where it can be spent.

<sup>89</sup> *See, e.g.*, Network Branded Prepaid Card Ass’n, *Prepaid Card Benefits*, <http://www.nbpc.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx> (last visited Oct. 1, 2016) (“For many Americans, prepaid cards serve as a tool with which to more effectively budget their spending. With a prepaid card, consumers avoid the risk of over-spending or overdraft, thus avoiding the interest, fees and potential negative credit score implications of traditional credit cards. And for parents, prepaid cards provide tools to maintain control over their teens’ or college students’ spending.”); *see also* Examining Issues in the Prepaid Card Market, Hearing before the Subcomm. on Fin. Inst. and Consumer Prot., S. Comm. on Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Dan Henry, C.E.O., NetSpend Holdings, Inc.) (“Our customers are typically working Americans who want control . . .”).

Specifically, so-called “force pay” transactions can occur when the prepaid account issuer either does not receive a request to authorize a transaction in advance or the final transaction amount is higher than the authorized amount, and the prepaid account issuer is required by card network rules to pay the transaction even though there are insufficient or unavailable funds in the prepaid account to cover the transaction at settlement. In such circumstances, prepaid issuers generally are not charging credit-related fees to consumers in connection with force pay transactions.

As also discussed above, according to the 2014 Pew Survey, a desire to avoid fee-based overdraft services motivates a sizeable portion of consumers to choose prepaid products, such as GPR cards, over checking accounts.<sup>90</sup> The survey also reported that a slight majority of participants stated that one of the major reasons that they use prepaid products is that those products help those consumers control their spending.<sup>91</sup> Similarly, the Bureau’s own focus groups also found that many consumers choose prepaid products because the products help them control their spending.<sup>92</sup>

It also appears that many consumers specifically seek to acquire prepaid products that do not offer overdraft credit features because they have had negative experiences with credit products, including checking accounts with overdraft features, or want to avoid fees related to such products. As discussed above, the 2014 Pew Survey found that many prepaid consumers previously had a checking account and either lost that account (due to failure to repay overdrafts

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<sup>90</sup> 2014 Pew Survey at 1.

<sup>91</sup> *Id.* at 14 ex.12 (noting that the top two reasons consumers claim to use prepaid cards related to avoiding credit card debt (67 percent) and helping them not spend more money than they actually have (66 percent)).

<sup>92</sup> ICF Int’l, *ICF Report: Summary of Findings: Design and Testing of Prepaid Card Fee Disclosures*, at 5 (Nov. 2014), available at [http://files.consumerfinance.gov/f/201411\\_cfpb\\_summary-findings-design-testing-prepaid-card-disclosures.pdf](http://files.consumerfinance.gov/f/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf) (ICF Report I).

or related issues) or gave up the checking account due to overdraft or bounced check fees.<sup>93</sup>

Relatedly, the survey reported that prepaid products are often used by consumers who cannot obtain a checking account due to bad credit or other issues.<sup>94</sup> GPR cards, which are sometimes marketed as involving “no credit check,” provide consumers with access to electronic payment networks, the ability to make online purchases, and increased security and convenience over alternatives such as cash.<sup>95</sup>

Apart from consumers’ reasons for favoring prepaid products, regulatory factors may also have discouraged prepaid product providers from offering overdraft credit features in connection with their products. The Bureau understands that some prepaid issuers have received guidance from their prudential regulators that has deterred these financial institutions from allowing prepaid cards they issue to offer overdraft credit features. Relatedly, the Bureau believes that a 2011 Office of Thrift Supervision enforcement action regarding a linked deposit advance feature may also have had a chilling effect on the offering of deposit advance products in connection with prepaid accounts.<sup>96</sup> Further, while a number of industry commenters to the Prepaid ANPR expressed interest in offering overdraft credit features in connection with prepaid products, some industry commenters also expressed their reluctance to proceed until there is greater certainty as to whether this rulemaking would alter the permissible bounds of such a program. In addition, as

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<sup>93</sup> 2014 Pew Survey at 7-8 (noting both that “Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage” and that “Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees”).

<sup>94</sup> *Id.* at 8 (noting that 34 percent of prepaid consumers who ever had a checking account say they have closed a checking account themselves because of overdraft or bounced check fees, and 21 percent say they have had a financial institution close their account because of overdraft or bounced check fees).

<sup>95</sup> See ICF Report I at 5; see also 2014 Pew Survey at 14 ex.12 (noting that 72 percent of prepaid consumers say that a reason they have a prepaid card is to make purchases online and other places that do not accept cash).

<sup>96</sup> See *In the Matter of MetaBank*, Office of Thrift Supervision, Order No. CN 11-25 (July 15, 2011), available at <http://www.occ.gov/static/ots/enforcement/97744.pdf>.

discussed further below, the Bureau understands that a Dodd-Frank Act provision affecting interchange fees on prepaid products with overdraft features seems to have further discouraged activity.<sup>97</sup> The Board found that among prepaid cards provided to consumers pursuant to government-administered payment programs, virtually all revenue from overdraft fees disappeared in 2014.<sup>98</sup>

The Bureau understands that currently, credit features are generally not being offered on prepaid accounts. When they are offered, the Bureau understands that they are typically structured as overdraft services,<sup>99</sup> which in some ways appear less expensive as well as more consumer friendly in other respects than their checking account analogs.<sup>100</sup> For example, the programs charge a per transaction fee each time the consumer incurs an overdraft (*e.g.*, one program charges \$15), although the fees tend to be lower than those charged for overdraft services on checking accounts (median fee as of July 2014 was \$35).<sup>101</sup> Along these lines, one

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<sup>97</sup> The debit card interchange restrictions and exemptions thereto are discussed in greater detail in part II.B below.

<sup>98</sup> See Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government Administered, General-Use Prepaid Cards*, at 9 (July 2015), available at <http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201507.pdf> (2015 FRB Government Prepaid Cards Report). See also 2016 FRB Government Prepaid Cards Report at 8.

<sup>99</sup> The Bureau is aware of one prepaid account program where a linked credit service is structured as a line of credit.

<sup>100</sup> See Ctr. for Fin. Services Innovation, *CFSI Prepaid Industry Scorecard: Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 11 (March 2014), available at <http://www.cfsinnovation.com/CMSPages/GetFile.aspx?guid=b596e5ee-41fe-4d30-82e7-a9cbf407a716> (2014 CFSI Scorecard) (noting that only two in a survey of 18 GPR programs representing 25 percent of the market currently offers an opt-in overdraft service); CFPB, *Study of Overdraft Programs: A White Paper of Initial Data Findings*, at 14 (June 2013), available at [http://files.consumerfinance.gov/f/201306\\_cfpb\\_whitepaper\\_overdraft-practices.pdf](http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf) (CFPB Overdraft White Paper) (summarizing data showing that most banks and credit unions offer opt-in overdraft programs). Apart from actual overdraft programs, some prepaid programs, according to their terms and conditions, reserve the right to impose a fee for a negative balance on a prepaid account. (These programs' agreements typically state that the cardholder is not permitted to spend beyond the balance in the prepaid account, but if circumstances were to occur that cause the balance to go negative, a fee will or may be imposed. Some agreements state that repeated attempts to spend beyond the card balance will or may result in the prepaid account being closed). Roughly 10 percent of reviewed agreements noted such a charge.

<sup>101</sup> As part of this rulemaking, Bureau staff determined the median figure for checking account overdraft fees through an analysis of the overdraft fees charged by the largest 50 U.S. banks ranked by consumer checking balances.

recent study found that for consumers who overdraft, under the currently available programs, GPR cards are significantly less costly than checking accounts. For these consumers, the study found that the average total cost of checking accounts per month ranged between \$86 and \$112, while GPR cards' monthly costs ranged between \$38 and \$57.<sup>102</sup> In addition, some programs will waive the overdraft fee if the consumer repays the overdraft quickly (*e.g.*, within 24 hours) or if the amount by which the account is negative is only for a nominal amount (*e.g.*, \$5 or \$10). Further, some programs may also limit the number of overdrafts that will be permitted in a given month and the amount by which the account balance can go negative, and impose “cooling off” periods after a consumer has incurred more than a certain number of overdrafts. During the cooling off period, the consumer is typically prohibited from using the overdraft service.

Revenue from overdraft services does not appear to have significantly influenced the pricing structure of prepaid products overall, as has happened with traditional checking accounts as discussed further below. Indeed, as noted above, overdraft services offered in connection with prepaid products are relatively rare, and fees are relatively modest compared to similar fees associated with checking account overdraft programs. As discussed in greater detail in the section-by-section analysis below, as a result of several regulatory exemptions, the Bureau believes that checking account overdraft programs have evolved from courtesy programs under which financial institutions would decide on a manual, ad hoc basis to cover particular transactions and help consumers avoid negative consequences to automated programs that are the

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<sup>102</sup> Fumiko Hayashi et al., *Driver of Choice? The Cost of Financial Products for Unbanked Consumers*, at 20 (Fed. Reserve Bank of Kan. City, Working Paper No. 15-15, Nov. 2015), available at <https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp15-15.pdf> (the authors assumed that a consumer who overdrafts makes at most one overdraft transaction in a day and each overdraft transaction results in four consecutive days of negative balance in the consumer's account).

source of as much as two-thirds of financial institutions' deposit account revenue.<sup>103</sup> As a result, banks and credit unions have developed checking accounts to have low (or sometimes no) up-front costs, to add services such as online bill pay<sup>104</sup> at no additional cost, and to rely on “back end” fees such as per transaction overdraft fees and non-sufficient funds (NSF) fees to maintain profitability. The Bureau believes that financial institutions that issue prepaid accounts typically do not earn their revenue from “back-end” overdraft fees or NSF fees. Instead, they earn revenue from other types of fees, such as ATM fees and interchange fees collected from use of payment networks.<sup>105</sup>

The Bureau understands that program managers of prepaid products with overdraft credit features have structured their products to comply with Regulation E's rules regarding overdraft services. Specifically, the Bureau understands that providers of overdraft programs on GPR and payroll card accounts purport to provide a disclosure similar to Model Form A-9 in appendix A to Regulation E.<sup>106</sup> Model Form A-9 is a model consent form that a financial institution may use

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<sup>103</sup> According to information supplied to the Bureau as part of its large bank overdraft study and reported in the CFPB Overdraft White Paper, overdraft and NSF-related fees from consumer checking accounts constituted 61 percent of consumer and 37 percent of total deposit account service charges earned by study banks in 2011. If aggregate study bank fee revenue ratios could be extrapolated to all FDIC-insured institutions, this would imply the banking industry earned roughly \$12.6 billion in consumer NSF and overdraft fees in 2011. *See* CFPB Overdraft White Paper at 14-15.

<sup>104</sup> Such bill pay services may include not only electronic payments through the ACH network, but also manual generation of checks authorized through the bank or credit union's online bill pay portal. *Id* at 12.

<sup>105</sup> For example, in both 2013 and 2014, one major program manager derived approximately 60 percent of its operating revenue from cash-reload fees and interchange fees. *See* Green Dot Corp., 2014 Annual Report, at 29 (2015), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=235286&p=irol-reportsAnnual>; *see also* Green Dot Corp., 2015 Annual Report, at 30 (2016), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=235286&p=irol-reportsAnnual>.

<sup>106</sup> The Bureau understands that prepaid providers that offer overdraft services typically do so with respect to both their GPR cards and payroll card accounts, to the extent they offer both products.

to obtain a consumer's opt-in to overdraft services for a fee for one-time debit card or ATM transactions.<sup>107</sup>

The Bureau understands that prepaid products with overdraft credit features generally offer such features only to those consumers that meet specified criteria, such as evidence of the receipt of recurring deposits over a certain dollar amount. These recurring deposits presumably allow the financial institution to have some confidence that there will be incoming funds of adequate amounts to repay the debt. Further, the Bureau understands that the terms and conditions of prepaid product overdraft programs typically require that the next deposit of funds into the prepaid product—through either recurring deposits or cash reloads—be used to repay the overdraft, or the provider will claim such funds for the purpose of repaying the overdraft.

#### *B. Existing Regulation of Prepaid Products*

Various Federal and State regulations apply to prepaid products. With respect to Federal regulation, there are several Federal regulatory regimes, including those regarding consumer protection, receipt of Federal payments, interchange fees, financial crimes, and Federal student aid disbursement, that apply to some or all types of prepaid products. Some of the most relevant applicable Federal laws and regulations include EFTA and Regulation E; Treasury's rule governing the receipt of Federal payments on prepaid cards;<sup>108</sup> the Board's Regulation II on debit

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<sup>107</sup> As discussed in greater detail below, the Bureau reviewed publicly available account agreements for prepaid products that appeared to meet the Bureau's proposed definition of the term "prepaid account" and found that some programs' agreements stated that while they do not offer formal overdraft services, they will impose negative balance or other similar fees for transactions that may take an account negative despite generally not permitting such activity. See CFPB, *Study of Prepaid Account Agreements*, at 24-25 (Nov. 2014), available at [http://files.consumerfinance.gov/f/201411\\_cfpb\\_study-of-prepaid-account-agreements.pdf](http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf) (Study of Prepaid Account Agreements). However, the Bureau does not believe such fees are typically charged.

<sup>108</sup> 75 FR 80335 (Dec. 22, 2010).

card interchange and routing;<sup>109</sup> the Financial Crime Enforcement Network’s (FinCEN) prepaid access rule;<sup>110</sup> and ED’s Cash Management Regulation.<sup>111</sup>

Prudential regulators have also issued guidance about the application of their regulations to prepaid products, program managers, and financial institutions that issue prepaid products. For example, as discussed in greater detail below, both the FDIC and the NCUA have set criteria regarding how prepaid products may qualify for, as applicable, pass-through deposit (or share) insurance. In addition, the Office of the Comptroller of the Currency (OCC) has a bulletin that provides guidance to depository institutions under its supervision with respect to how to assess and manage the risks associated with prepaid access programs.<sup>112</sup> However, as the Bureau noted in the proposal, it believes that there are gaps in the existing Federal regulatory regimes that cause certain prepaid products not to receive full consumer protections, in particular under EFTA and Regulation E.

#### *EFTA and Related Provisions in Regulation E*

Congress enacted EFTA in 1978 with the purpose of “provid[ing] a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.” EFTA’s primary objective is “the provision of individual consumer rights.”<sup>113</sup> Congress also empowered the Board to promulgate regulations implementing EFTA.<sup>114</sup> With the

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<sup>109</sup> 12 CFR part 235.

<sup>110</sup> 76 FR 45403 (July 29, 2011).

<sup>111</sup> 80 FR 67126 (Oct. 30, 2015).

<sup>112</sup> Office of the Comptroller of Currency, OCC Bulletin 2011-27, *Prepaid Access Programs, Risk Management Guidance and Sound Practices* (June 28, 2011), available at <http://www.occ.gov/news-issuances/bulletins/2011/bulletin-2011-27.html>.

<sup>113</sup> See Public Law 95-630; 92 Stat. 3728 (1978).

<sup>114</sup> EFTA section 904(a).

adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), authority to implement most of EFTA transferred to the Bureau.<sup>115</sup>

The regulations first promulgated by the Board to implement EFTA now reside in subpart A of Regulation E.<sup>116</sup> These rules provide a broad suite of protections to consumers who make EFTs. An EFT is any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account.<sup>117</sup> Regulation E also provides protections for accounts from which consumers can make EFTs. In its initial rulemaking to implement EFTA, the Board developed a broad definition of "account," which closely mirrored the definition of "account" in EFTA.<sup>118</sup> The definition provides that, subject to certain specific exceptions, an account is a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.<sup>119</sup>

For covered accounts, Regulation E mandates that consumers receive certain initial disclosures, in writing and in a form that the consumer can keep.<sup>120</sup> As applicable, the initial disclosures must include, among other things, disclosures regarding a consumer's liability for unauthorized EFTs, an error resolution notice, contact information for the financial institution

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<sup>115</sup> Public Law 111-203, section 1084, 124 Stat. 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*). *See also* Dodd-Frank Act section 1061(b); 12 U.S.C. 5581(b).

<sup>116</sup> These provisions were originally adopted as 12 CFR part 205 but upon transfer of authority in the Dodd-Frank Act to implement Regulation E to the Bureau were renumbered as 12 CFR part 1005. 76 FR 81020 (Dec. 27, 2011). Unless otherwise noted, historical provisions described as residing in 12 CFR part 1005 originally were contained in 12 CFR part 205.

<sup>117</sup> § 1005.3(b)(1).

<sup>118</sup> 44 FR 18468, 18480 (Mar. 28, 1979).

<sup>119</sup> § 1005.2(b)(1).

<sup>120</sup> § 1005.4(a)(1).

providing the account, the types of transfers a consumer may make and any limitations on the frequency and dollar amount of transfers, and the fees associated with making EFTs.<sup>121</sup>

Regulation E also sets forth substantive provisions on error resolution and imposes limits on a consumer's liability for unauthorized EFTs.<sup>122</sup> Moreover, Regulation E contains, among other things, provisions specific to periodic statements (which generally must be provided in writing),<sup>123</sup> the issuance of access devices,<sup>124</sup> preauthorized EFTs and compulsory use,<sup>125</sup> overdraft services,<sup>126</sup> and ATM disclosures.<sup>127</sup>

As discussed in greater detail in the proposal,<sup>128</sup> between 1994 and 2010, the Board amended Regulation E a number of times to add consumer protection for certain prepaid and other stored-value products. First, the Board adopted consumer protections in the mid 1990s for accounts used to distribute benefits for Federally-administered government benefit programs and non-needs tested State and local government benefit programs, such as employment-related ones.<sup>129</sup> As noted in the proposal, the Board's original rule included needs-tested State and local electronic benefit transfer programs (*e.g.*, benefits such as those provided under SNAP and the

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<sup>121</sup> *See generally* § 1005.7(b).

<sup>122</sup> *See* §§ 1005.6 and 1005.11.

<sup>123</sup> § 1005.9(b).

<sup>124</sup> § 1005.5. An access device is a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate EFTs. § 1005.2(a)(1).

<sup>125</sup> § 1005.10.

<sup>126</sup> § 1005.17.

<sup>127</sup> § 1005.16. Since the transfer of authorities, the Bureau has amended Regulation E in two substantive respects. First, the Bureau added consumer protections to Regulation E in new subpart B for certain international fund transfers. §§ 1005.30 through 1005.36. Additionally, the Bureau amended Regulation E with respect to certain rules pertaining to ATM fee notices. 78 FR 18221 (Mar. 26, 2013).

<sup>128</sup> 79 FR 77102, 77113-14 (Dec. 23, 2014).

<sup>129</sup> *See* current § 1005.15.

Aid to Families with Dependent Children program),<sup>130</sup> but Congress subsequently enacted legislation that limited the application of EFTA and Regulation E with respect to State and local electronic benefit transfer programs to only those programs that are “non-needs tested.”<sup>131</sup> The Board issued updated rules in 1997.<sup>132</sup>

In the mid 2000s, the Board expanded Regulation E to provide specific protections for prepaid products that are payroll card accounts established by an employer for providing an employee’s compensation on a regular basis.<sup>133</sup> The Payroll Card Rule, among other things, brought payroll card accounts within the definition of account in § 1005.2(b).<sup>134</sup> The Board also tailored certain general Regulation E requirements to the payroll context. For example, the Board allowed providers of payroll card accounts to avoid the general requirement to provide written periodic statements, if the institution makes available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)).<sup>135</sup> Related provisions in § 1005.18(c) modify other requirements of Regulation E with respect to payroll card accounts, including initial disclosures, annual error resolution notices (otherwise required by § 1005.8(b)),

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<sup>130</sup> 59 FR 10678 (Mar. 7, 1994).

<sup>131</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105 (1996).

<sup>132</sup> 62 FR 43467 (Aug. 14, 1997).

<sup>133</sup> 71 FR 51437, 51438 (Aug. 30, 2006). The Board proposed the rule in 2004. 69 FR 55996 (Sept. 17, 2004). The Payroll Card Rule is codified in § 1005.18.

<sup>134</sup> 71 FR 51437, 51438 (Aug. 30, 2006).

<sup>135</sup> *See* § 1005.18(b).

and error resolution and limitations on liability, in recognition of the modified periodic statement requirement.

More recently, the Board adopted a rule in 2010 to implement certain sections of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act)<sup>136</sup> applicable to gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards (the Gift Card Rule).<sup>137</sup> Although the Credit CARD Act explicitly gave the Board the discretionary authority to apply the majority of Regulation E's protections, including provisions regarding periodic statements, liability for unauthorized transactions, and error resolution to covered products,<sup>138</sup> the Board chose only to implement specific statutory provisions governing expiration dates and dormancy or inactivity fees.<sup>139</sup>

The Board considered whether to regulate GPR cards under EFTA and Regulation E several times, both in the course of promulgating these other amendments and independently. For example, when the Board initiated rulemaking in 1996 to amend its 1994 rule on government benefit accounts to exclude needs-tested programs, it took notice that prepaid cards (at the time referred to as stored-value cards) were beginning to be used by more consumers. The Board explained its belief that facts supported the determination that "accounts" under Regulation E would include stored-value accounts and sought comment on whether to adopt rules specific to prepaid financial products (other than government benefit accounts) pursuant to its authority

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<sup>136</sup> Public Law 111-24, 123 Stat. 1734 (2009).

<sup>137</sup> § 1005.20.

<sup>138</sup> Credit CARD Act section 401; EFTA section 915(d)(1). The Gift Card Rule only covers certain general-use prepaid cards. Consistent with the Credit CARD Act, covered general-use prepaid cards are those that are non-reloadable cards or that are reloadable and marketed or sold as a gift card. *See* § 1005.20(a)(3) (definition of a "general-use prepaid card"). Moreover, like the Credit CARD Act, the Gift Card Rule excludes those general-use prepaid cards that are reloadable and not marketed or labeled as a gift card or gift certificate. § 1005.20(b)(2).

<sup>139</sup> *Id.*

under EFTA and noted pending legislation in Congress that would address stored-value cards.<sup>140</sup> Ultimately, Congress directed the Board to conduct a study to evaluate whether provisions of EFTA could be applied to stored-value products without adversely affecting the cost, development, and operation of such products.<sup>141</sup> The Board implemented the directive and published its findings in March 1997. It found, among other things, that the market for stored-value products was evolving rapidly and was not yet ripe for regulation.<sup>142</sup> The Board did not finalize its 1996 proposal on stored-value.

The Board again considered whether to regulate stored value cards in the course of issuing the Payroll Card Rule, but decided to focus solely on payroll card accounts because at that time they were more often used as transaction account substitutes than were other types of prepaid products.<sup>143</sup>

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<sup>140</sup> 61 FR 19696 (May 2, 1996); H.R. 2520, 104th Cong., § 443; S. 650, 104th Cong., § 601 (1995). Among the provisions considered in the 1996 proposal on stored-value, the Board proposed to extend Regulation E's error resolution provisions to stored-value accounts and provide a periodic statement alternative for such accounts similar to what was adopted for government benefit cards in 1994. The Board also noted pending legislation in Congress that would address stored-value cards.

<sup>141</sup> Public Law 104-208, 110 Stat. 3009 (1996).

<sup>142</sup> Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on the Application of the Electronic Fund Transfer Act to Electronic Stored-Value Products*, at 75 (Mar. 1997), available at [http://www.federalreserve.gov/boarddocs/rptcongress/efta\\_rpt.pdf](http://www.federalreserve.gov/boarddocs/rptcongress/efta_rpt.pdf). Notably, the products examined by the Board in this report differ from most prepaid products in use today.

<sup>143</sup> 71 FR 51437, 51441 (Aug 30, 2006). Taking stock of the market at that time, the Board noted that consumers did not often use other prepaid products such as general-use prepaid cards in the same way that they used payroll card accounts. The Board stated that “[F]or payroll card accounts that are established through an employer, there is a greater likelihood [than for general-use prepaid cards] that the account will serve as a consumer’s principal transaction account and hold significant funds for an extended period of time.” *Id.* Similarly, in an earlier interim final rule that established that payroll card accounts are covered accounts under Regulation E, the Board expressed its belief that to the extent that consumers use general-use prepaid cards like gift cards, “consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements, and error resolution rights would be quite significant for the issuer.” 71 FR 1473, 1475 (Jan. 10, 2006). At the time, the Board viewed GPR cards as “generally designed to make one-time or a limited number of payments to consumers and ... not intended to be used on a long-term basis.” *Id.*

## *FMS Regulations of the Treasury Department*

The Treasury Financial Management Service (FMS), now part of Treasury's Bureau of the Fiscal Service, manages all Federal payments. In 2010, it promulgated an interim final rule that permitted delivery of Federal payment to prepaid cards (the FMS Rule).<sup>144</sup> Among other things, the FMS Rule provides that for a prepaid card to be eligible to receive Federal payments, the card account must be held at an insured financial institution, must be set up to meet the requirements for FDIC or NCUA pass-through insurance, and must not have an attached line of credit or loan feature that triggers automatic repayment from the card account. Additionally, the card account issuer must comply with all of the requirements, and provide the cardholder with all of the consumer protections, that apply to payroll card accounts under Regulation E.<sup>145</sup>

Based on Bureau research and as explained in the proposal, the Bureau believes that many GPR card providers have chosen to structure their prepaid products generally to comply with the FMS Rule, rather than tailoring compliance only for those accounts that actually receive Federal payments.<sup>146</sup> For example, if, prior to the FMS Rule, a prepaid provider did not maintain error resolution procedures with respect to its prepaid products (or maintained procedures different from Regulation E's error resolution regulations), the provider had to either adjust its processes to provide consumers who receive Federal payments with Regulation E's error resolution rights or ensure that their prepaid products do not receive Federal payments. Rather

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<sup>144</sup> 75 FR 80335 (Dec. 22, 2010). Prior to the effective date of the FMS Rule, prepaid cards (other than those issued under FMS-established programs) were not eligible to receive Federal payments.

<sup>145</sup> 31 CFR 210.5(b)(5)(i).

<sup>146</sup> In issuing the FMS Rule, Treasury noted that it expected prepaid card issuers to comply with the FMS Rule (and thus provide Regulation E payroll card protections) to ensure that their products remain eligible to receive Federal payments. 75 FR 80335, 80338 (Dec. 22, 2010).

than provide two different error resolution regimes for individual customers, many providers have opted to apply the same procedures to all cards on their systems.

### *Pass-Through Deposit (or Share) Insurance*

Both the FDIC and NCUA have special rules regarding how the deposit or share insurance they provide generally applies to funds loaded onto prepaid products that are held in pooled accounts at banks and credit unions, as applicable.<sup>147</sup> In the case of the FDIC, its 2008 General Counsel Opinion No. 8 provides that FDIC’s deposit insurance coverage will “pass through” the custodian to the underlying individual owners of the deposits in the event of failure of an insured depository institution, provided that three specific criteria are met.<sup>148</sup> First, the account records of the insured depository institution must disclose the existence of the agency or custodial relationship.<sup>149</sup> Second, the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner. Third, the funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian (or other party).<sup>150 151</sup>

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<sup>147</sup> FDIC deposit insurance generally protects deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit against loss up to \$250,000 per depositor, per insured depository institution, within each account ownership category (*e.g.*, for individual owners, co-owners, trust beneficiaries, and the like). *See, e.g.*, <http://www.fdic.gov/deposit>. The FDIC also has resources for consumers about pass-through deposit insurance for prepaid cards. *See* [fdic.gov/deposit/deposits/prepaid.html](http://www.fdic.gov/deposit/deposits/prepaid.html). The NCUA administers the National Credit Union Share Insurance Fund (NCUSIF) for the purpose of providing insurance to protect deposits of credit union members of insured credit unions. *See, e.g.*, <http://www.ncua.gov/DataApps/Pages/SI-NCUA.aspx>.

<sup>148</sup> FDIC General Counsel Opinion No. 8, *Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms*, 73 FR 67155 (Nov. 13, 2008), internal citations omitted.

<sup>149</sup> This requirement can be satisfied by opening the account under a title such as the following: “ABC Company as Custodian for Cardholders.” *See id.* at 67157.

<sup>150</sup> *Id.*

<sup>151</sup> The FDIC has also issued guidance on the application of requirements for brokered deposits as applied to prepaid cards. *See, e.g.*, FDIC, *Identifying, Accepting and Reporting Brokered Deposits Frequently Asked Questions* (updated June 2016), *available at* <https://www.fdic.gov/news/news/financial/2016/fil16042b.pdf>.

Similarly, NCUA regulations generally require that the details of the existence of a relationship which may provide a basis for additional insurance and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.<sup>152</sup>

The Bureau believes that most prepaid products subject to this final rule are set up to be eligible for FDIC or NCUA pass-through insurance. As discussed in greater detail below in the section-by-section analysis of § 1005.18(b)(2)(xi), this final rule requires a financial institution to indicate on the short form disclosure required pursuant to § 1005.18(b)(2) whether a prepaid account is eligible for FDIC or NCUA pass-through insurance.

#### *Interchange and the Board's Regulation II*

Section 1075 of the Dodd-Frank Act added new section 920 to EFTA regarding debit card interchange and amended EFTA section 904(a) to give the Board sole authority to prescribe rules to carry out the purposes of section 920.<sup>153</sup> The statute also addresses prepaid cards that operate on debit card networks. Specifically, EFTA section 920(a)(2) requires that the amount of any interchange fee that an issuer of debit cards receives or charges with respect to an electronic debit transaction be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. It directs the Board to establish standards for assessing whether the amount of any interchange fee is reasonable and proportional to the cost incurred by the issuer. The statute also provides certain exemptions from the interchange fee limitations for certain cards, including

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<sup>152</sup> 12 CFR 745.2(c)(2).

<sup>153</sup> The amendment is known as “The Durbin Amendment,” after U.S. Senator Richard Durbin of Illinois, who was the amendment’s chief sponsor. *See, e.g.,* David Morrison, *Durbin Amendment Lawsuit Unresolved as 2013 Winds Down*, Credit Union Times Magazine, Dec. 18, 2013, available at <http://www.cutimes.com/2013/12/18/durbin-amendment-lawsuit-unresolved-as-2013-winds>; *see also* Zhu Wang, *Debit Card Interchange Fee Regulation: Some Assessments and Considerations*, 98 Econ. Q. 159 (2012), available at [https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic\\_quarterly/2012/q3/pdf/wang.pdf](https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_quarterly/2012/q3/pdf/wang.pdf).

in section 920(a)(7)(A) an exemption for general-use reloadable prepaid (and debit) cards provided to a consumer pursuant to government-administered payment programs and for certain GPR cards. In addition, there is a blanket exemption from the interchange fee limitations for cards of issuers with total assets of less than \$10 billion. Thus, interchange fees for transactions made with prepaid cards meeting the criteria for the statutory exemptions are generally not subject to the fee restrictions of EFTA section 920(a). However, the statute also provides a carveback that rescinds the exemption if certain fees, such as an overdraft fee, may be charged with respect to a card listed in section 920(a)(7)(A). There is no such carveback for the cards of issuers with total assets below \$10 billion, however. The statute uses the same definition of general-use prepaid card as the Credit CARD Act.<sup>154</sup> In July 2011, the Board promulgated Regulation II (12 CFR part 235) to implement EFTA section 920. The provisions regarding debit card interchange fee restrictions became effective as of October 1 of that year.<sup>155</sup>

#### *FinCEN's Prepaid Access Rule*

FinCEN, a bureau of the Treasury, regulates prepaid products pursuant to its mission to safeguard the financial system from illicit use, combat money laundering, and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. In 2011, pursuant to a mandate under the Credit CARD Act, FinCEN published a final rule to amend BSA regulations applicable to money services businesses with respect to stored value or “prepaid access” (FinCEN’s Prepaid Access Rule).<sup>156</sup>

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<sup>154</sup> EFTA section 920(c)(2)(B).

<sup>155</sup> 76 FR 43394 (July 20, 2011); 76 FR 43478 (July 20, 2011); *amended by* 77 FR 46258 (Aug. 3, 2012).

<sup>156</sup> 76 FR 45403 (July 29, 2011). Subject to certain specific exemptions, a “prepaid program” is defined as an “arrangement under which one or more persons acting together provide(s) prepaid access.” 31 CFR 1010.100(ff)(4)(iii). The term “prepaid access” is defined as “access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or

The rule regulates prepaid access in a number of ways, including requiring providers or sellers of prepaid access to: (1) file suspicious activity reports; (2) collect and retain certain customer and transactional information; and (3) maintain an anti-money laundering program. The customer identification and verification requirements for providers and sellers of prepaid access under this rule are largely similar to the CIP requirements for banks and credit unions. These BSA requirements are similar to those that apply to other categories of money services businesses.<sup>157</sup> However, consumer protection is not the focus of FinCEN's rules.

#### *Department of Education's Cash Management Regulations*

ED, among other things, regulates the disbursement of Federal financial aid by colleges and universities. In October 2015, it adopted a final rule that amends its cash management regulations by setting forth new criteria that apply to colleges that partner with vendors to distribute Title IV funds and/or sponsor or directly market accounts to their students.<sup>158</sup> Among other things, the rule prohibits colleges and universities that receive Federal financial aid from requiring students or parents to open a certain account into which student aid funds are deposited. Additionally, colleges and universities must provide students with a list of account options that the student may choose from to receive the student's aid disbursement. Each option must be presented neutrally and the student's preexisting bank account must be listed as the first and most prominent option with no account preselected. Further, the final rule bans point-of-sale and overdraft fees on accounts, including prepaid card accounts, that are directly marketed to students by a financial institution with which the student's college or university has an

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vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification.” 31 CFR 1010.100(ww).

<sup>157</sup> 76 FR 45403, 45419 (July 29, 2011).

<sup>158</sup> 80 FR 67126 (Oct. 30, 2015).

arrangement to disburse Federal financial aid on behalf of the post-secondary institution. Moreover, the final rule requires that college-sponsored accounts provide students with reasonable access to surcharge-free ATMs and deposit insurance.

As discussed in greater detail in the Prepaid Proposal and noted above, some colleges and universities partner with third parties to disburse financial aid proceeds into network-branded open-loop prepaid products endorsed by the colleges and universities, and questions have been raised about revenue sharing between the colleges and universities and these third parties.<sup>159</sup> Indeed, in its final rule, ED stated its belief that the new regulations are warranted because of the numerous concerns that have been raised about the practices of certain colleges and universities and third parties with respect to the distribution of Federal student aid. These practices include implying to students that they must sign up for certain accounts to receive Federal student aid and charging students onerous, confusing, or unavoidable fees in order to access student aid funds or otherwise use the account.<sup>160</sup>

### *State Laws*

As discussed in greater detail in the proposal, many States have passed consumer protection laws or other rules to regulate prepaid products in general, and in particular, certain types of prepaid products such as government benefits cards. For example, in 2013, Illinois imposed pre-acquisition, on-card, and at-the-time-of-purchase disclosure requirements on “general-use reloadable prepaid cards.”<sup>161</sup> Also in 2013, California enacted a law that extended

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<sup>159</sup> See 79 FR 77102, 77109 (Dec. 23, 2014).

<sup>160</sup> See, e.g., 80 FR 67126, 67129, 67179 (Oct. 30, 2015).

<sup>161</sup> IL SB 1829 (2013), Public Act 098-0545, *codified at* 205 Ill. Comp. Stat. 616/10 and 616/46. The Illinois law defines “general use reloadable card” as, among other things, issued for consumer use; can be reloaded; is open-loop; and not marketed or labeled as a gift card or gift certificate. 205 ILCS 616/10.

protections similar to the FMS Rule to prepaid products receiving unemployment benefits and basic-needs benefits from the State of California.<sup>162</sup>

Further, many States have money transmitter laws that may apply to prepaid product providers. The laws vary by State but generally require a company to be licensed and to post a surety bond to cover accountholder losses if it becomes insolvent. Most States further require that the companies hold high-grade investments to back the money in customer accounts. But as noted in the proposal, States vary in the amount of their oversight of companies licensed under the money transmitter laws, and many may not have streamlined processes to pay out funds in the event a prepaid product provider were to file for bankruptcy protection.<sup>163</sup>

### *C. Existing Regulation of Credit Products and Overdraft Services Offered in Connection with Transaction Accounts*

As discussed further below, this final rule sets forth certain requirements that apply to overdraft credit features offered in connection with prepaid accounts. In crafting a regime to apply to credit accessed by prepaid cards, the Bureau has been conscious of existing regimes for regulating overdraft lines of credit (where there is a written agreement to pay overdrafts) generally under TILA and its implementing Regulation Z and overdraft services in the context of checking accounts (where there is no written agreement to pay overdrafts) under EFTA and

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<sup>162</sup> CA A 1820 (2013), ch. 557, *codified at* Cal. Unemp. Ins. Code § 1339.1 and Cal. Welf. & Inst. Code § 11006.2. Similar to the FMS Rule, this law includes provisions requiring that, among other things, such accounts to be set up to be eligible for pass-through deposit or share insurance, not be attached to any credit or overdraft feature that is automatically repaid from the account after delivery of the payment, and compliance not only with the Payroll Card Rule (or other rules subsequently adopted under EFTA that apply to prepaid card accounts). *See also* CA A 2252 (2014), ch. 180, *codified at* Cal. Fam. Code § 17325 (extending similar protections to cards used for distribution of child support payments).

<sup>163</sup> *See, e.g.,* The Pew Charitable Trusts, *Imperfect Protection—Using Money Transmitter Laws to Insure Prepaid Cards* (Mar. 2013), *available at* [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2013/pewprepaidmoneytransmitterpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2013/pewprepaidmoneytransmitterpdf.pdf).

Regulation E. Such overdraft services are exempt from Regulation Z but subject to certain parts of Regulation E.

*Open-End (Not Home-Secured) Credit Products under the Truth in Lending Act and the Electronic Fund Transfer Act*

Credit products are generally subject to TILA and Regulation Z, although the application of specific provisions of the statute and regulation depends on the attributes of the particular credit product. In 1968, Congress enacted TILA to promote the informed use of consumer credit by requiring disclosures about its terms and cost and to provide standardized disclosures. Congress has revised TILA several times and its purpose now is to “assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him,” to “avoid the uninformed use of credit,” and “to protect the consumer against inaccurate and unfair credit billing and credit card practices.”<sup>164</sup> TILA defines credit broadly to mean the right granted by a creditor to a debtor to defer payment of debt or incur debt and defer its payment.<sup>165</sup>

Congress has amended TILA on several occasions to provide consumers using certain types of credit products with additional protections. The Fair Credit Billing Act (FCBA),<sup>166</sup> enacted in 1974, added a number of substantive protections for consumers who use open-end credit<sup>167</sup> or use credit cards subject to TILA.<sup>168</sup> For example, the FCBA increased rights and

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<sup>164</sup> 15 U.S.C. 1601(a).

<sup>165</sup> 15 U.S.C. 1602(f). The term creditor in Regulation Z, set forth in § 1026.2(a)(17)(i), generally means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

<sup>166</sup> Public Law 93-495, 88 Stat. 1511 (1974).

<sup>167</sup> As discussed in greater detail in the section-by-section analysis of § 1026.2(a)(20), open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended

remedies for consumers who assert billing errors and required a minimum 14-day grace period for payments for creditors that offer a grace period, prompt re-crediting of refunds, and refunds of credit balances. Credit cards are also subject to these requirements,<sup>169</sup> but also to a broad range of additional protections. Regulation Z defines the term “credit card” to mean any card, plate, or other single credit device that may be used from time to time to obtain credit.<sup>170</sup>

Cognizant that many financial institutions issue credit cards to cardholders with whom they also have a deposit account relationship, Congress in the FCBA also restricted the right of such institutions from taking funds out of a deposit account to satisfy their credit card claims.<sup>171</sup> In 1988, Congress amended TILA through the Fair Credit and Charge Card Disclosure Act, which required issuers of credit cards and charge cards to provide certain disclosures at the time of application and solicitation.<sup>172</sup>

In 2009, Congress enhanced protections for credit cards in the Credit CARD Act, which it enacted to “establish fair and transparent practices related to the extension of credit” in the credit card market.<sup>173</sup> The Credit CARD Act, which amended TILA and EFTA, regulates both

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to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available (even if not disclosed) to the extent that any outstanding balance is repaid. § 1026.2(a)(20). Closed-end credit is credit that does not meet the definition of open-end credit. § 1026.2(a)(10).

<sup>168</sup> Public Law 93-495, 88 Stat. 1511 (1974).

<sup>169</sup> Indeed, credit cards are subject to specialized and heightened disclosure requirements in advertisements, at the time of account opening, periodically for each billing cycle (*i.e.*, periodic statements), and when certain terms of the account change. In addition, for credit card accounts disclosures generally are required on or with applications or solicitations. Among the required disclosures for credit cards on or with an application or solicitation is a tabular disclosure setting forth seven different disclosures. § 1026.60. This “Schumer box” must be similar to the model forms in appendix G-10 to Regulation Z and must set forth certain fees, interest rates, transaction charges, and other required charges.

<sup>170</sup> See § 1026.2(a)(15)(i).

<sup>171</sup> See *Gardner v. Montgomery County Teachers Fed. Credit Union*, 864 F.Supp.2d 410 (D. Md. 2012) (providing an overview of the FCBA’s no offset provision).

<sup>172</sup> A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. § 1026.2(a)(15)(iii).

<sup>173</sup> Public Law 111-24, 123 Stat. 1734 (2009).

the underwriting and pricing of credit card accounts. Specifically, it prohibits credit card issuers from extending credit without assessing the consumer's ability to pay and imposes special rules regarding the extension of credit to persons under the age of 21 and to college students. The Credit CARD Act also restricts the fees that an issuer can charge during the first year after an account is opened, and limits both the instances in which issuers can charge "back-end" penalty fees when a consumer makes a late payment or exceeds his or her credit limit and the amount of such fees. Additionally, the Credit CARD Act restricts the circumstances under which issuers can increase interest rates on credit card accounts and establishes procedures for doing so. The Board generally implemented these provisions in subpart G of Regulation Z. Thus, while all open-end (not home-secured) credit plans receive some of TILA's protections, generally only open-end (not home-secured) credit plans that are accessed by credit cards receive the additional protections of the Credit CARD Act.

Although EFTA does not generally focus on credit issues, Congress provided a specific credit-related protection in that statute. Known as the compulsory use provision, it provides that no person may "condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers."<sup>174</sup> A preauthorized EFT is an EFT authorized in advance to recur at substantially regular intervals, such as a recurring direct deposit or ACH debit. Where applicable, the compulsory use provision thus prevents a creditor from requiring a particular form of payment, such as a recurring ACH debit to another account, to repay credit. This provides consumers with the ability to control how and when they repay credit and does not allow a creditor to insist on a particular form of repayment. Thus, as implemented

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<sup>174</sup> EFTA section 913(1). As implemented in Regulation E, this provision (§ 1005.10(e)(1)) contains an exception for overdraft credit plans: "No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account."

in Regulations Z and E, some of these protections are broadly applicable to credit generally while others are specific to particular credit products. For example, open-end lines of credit that consumers can link to a deposit account to pull funds when the account has insufficient funds where there is a written agreement to pay overdrafts generally are subject to certain disclosure requirements under Regulation Z and certain provisions of the FCBA. The Board, however, exempted overdraft lines of credit from the compulsory use provision, as discussed in more detail below). The Board also exempted overdraft lines of credit accessed by a debit card from the Credit CARD Act provisions.<sup>175</sup>

#### *Federal Regulatory Treatment of Deposit Account Overdraft Services*

A separate regulatory regime has evolved over the years with regard to treatment of overdraft services, which started as courtesy programs under which financial institutions would decide on a manual, ad hoc basis to cover particular check transactions for which consumers lacked funds in their deposit accounts rather than to return the transactions and subject consumers to a NSF fee, merchant fees, and other negative consequences from bounced checks. Although Congress did not exempt overdraft services or similar programs offered in connection with deposit accounts when it enacted TILA, the Board in issuing Regulation Z in 1969 carved financial institutions' overdraft programs (also then commonly known as "bounce protection programs") out of the new regulation.<sup>176</sup> The Board distinguished between bounce protection programs where there is no written agreement to pay items that overdraw the account and more formal line-of-credit overdraft programs where there is a written agreement to pay overdrafts.

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<sup>175</sup> 75 FR 7658 (Feb. 22, 2010).

<sup>176</sup> 34 FR 2002 (Feb. 11, 1969). *See also, e.g.*, § 1026.4(c)(3) (excluding charges imposed by a financial institution for paying items that overdraw an account from the definition of "finance charge," unless the payment of such items and the imposition of the charge were previously agreed upon in writing); § 1026.4(b)(2) (providing that any charge imposed on a checking or other transaction account is an example of a finance charge only to the extent that the charge exceeds the charge for a similar account without a credit feature).

Specifically, the Board exempted informal bounce protection programs but subjected overdraft lines of credit to Regulation Z when the creditor imposes a finance charge.<sup>177</sup>

The Board revisited the exception of bounce protection programs from Regulation Z in 1981, in a rulemaking in which the Board implemented the Truth in Lending Simplification and Reform Act.<sup>178</sup> In the related proposal, the Board considered adjusting its overdraft exemption to apply only to “inadvertent” overdrafts because, the Board stated, a charge imposed for honoring an instrument under any agreement between the institution and the consumer is a charge imposed for a credit extension and thus fits the general definition of a finance charge, regardless of whether the charge and the honoring of the check are reflected in a written agreement.<sup>179</sup> Ultimately, however, the Board made only a “few minor editorial changes” to the exception in § 1026.4(c)(3) from the definition of finance charge that applied to fees for paying items that overdraw an account where there is no written agreement to pay, concluding that it would exclude from Regulation Z “overdraft charges from the [definition of] finance charge unless there is an agreement in writing to pay items and impose a charge.”<sup>180</sup>

The Board also took up the status of bounce protection programs in the early 1980s in connection with the enactment of EFTA. As noted above, EFTA’s compulsory use provision generally prohibits financial institutions or other persons from conditioning the extension of credit on a consumer’s repayment by means of preauthorized EFTs. The Board, however, exercised its EFTA section 904(c) exception authority to create an exception to the compulsory

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<sup>177</sup> Later in the 1970s, the Board added provisions in Regulation Z specifically addressing credit cards. 40 FR 43200 (Sept. 19, 1975). The Board subsequently carved debit cards, where there is no agreement to extend credit, out of the definition of credit card. 46 FR 50288, 50293 (Oct. 9, 1981).

<sup>178</sup> Public Law 96-221, sec. 601, 94 Stat. 132; 45 FR 80648 (Dec. 5, 1980).

<sup>179</sup> 45 FR 80648, 80657.

<sup>180</sup> 46 FR 20848, 20855 (Apr. 7, 1981).

use provision for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.<sup>181</sup> In adopting this exception, the Board stated that "overdraft protection is a service that financial institutions have been providing to consumers at little or no extra cost beyond the cost of the protected account."<sup>182</sup>

Overdraft services in the 1990s began to evolve away from the historical model of bounce protection programs in a number of ways. One major industry change was a shift away from manual ad hoc decision-making by financial institution employees to a system involving heavy reliance on automated programs to process transactions and to make overdraft decisions. A second was to impose higher overdraft fees. In addition, broader changes in payment transaction types also increased the impacts of these other changes on overdraft services. In particular, debit card use expanded dramatically, and financial institutions began extending overdraft services to debit card transactions.

In the 1990s, many institutions expanded transactional capabilities by replacing consumers' ATM-only cards with debit cards that consumers could use to make electronic payments to merchants and service providers directly from their checking accounts using the major payment networks (and thus most merchants could accept them).<sup>183</sup> As a result, debit card transaction volumes grew quickly as payment networks that enable these transactions broadened. Acceptance by grocery stores, gas stations, fast food restaurants, and other retailers helped to drive the popularity of debit card payments across regional and global ATM networks (accessed

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<sup>181</sup> See § 1005.10(e)(1).

<sup>182</sup> 46 FR 2972, 2973 (Jan. 13, 1981).

<sup>183</sup> See R. Borzekowski et al., *Consumers' Use of Debit Cards: Patterns, Preferences, and Price Response*, at 2 (Fed. Reserve Board, Apr. 2006), available at <http://www.federalreserve.gov/pubs/feds/2006/200616/200616pap.pdf> (noting that, as of 2006, "[a]nnual debit card transactions at the point of sale have been growing at over twenty percent per year since 1996 and now exceed credit card transactions."). By 2006, debit card payment transaction volumes in the U.S. had exceeded both check and credit card payments, and from 2006 to 2011, the total volume of U.S. consumer debit card transactions nearly doubled.

by using a PIN). By the late 1990s, “signature debit” transaction volumes became the most common type of debit card transaction.<sup>184</sup> These debit cards offered acceptance at all merchants that honored payments from the major payment networks, such as internet retailers.<sup>185</sup>

As a result of these operational changes, overdraft services became a significant source of revenue for banks and credit unions as the volume of transactions involving checking accounts increased due primarily to the growth of debit cards.<sup>186</sup> Before debit card use grew, overdraft fees on check and ATM transactions formed a greater portion of deposit account overdrafts. Debit card transactions presented consumers with markedly more chances to incur an overdraft fee when making a purchase because of increased acceptance and use of debit cards for relatively small transactions (*e.g.*, fast food and grocery stores).<sup>187</sup> Over time, revenue from overdraft increased and began to influence significantly the overall pricing structure for many deposit accounts, as providers began relying heavily on back-end pricing while eliminating or reducing front-end pricing (*i.e.*, “free” checking accounts with no monthly fees) as discussed above.<sup>188</sup>

As a result of the growth of debit card transactions and the changing landscape of deposit account overdraft services, Federal banking regulators expressed increasing concern about consumer protection issues and began a series of issuances and rulemakings. First, in September

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<sup>184</sup> Fumiko Hayashi, *The New Debit Card Regulations: Initial Effects on Networks and Banks*, Fed. Reserve Bank of Kan. City Econ. Rev., at 83 chart 2 (4th quarter 2012), available at <https://www.kansascityfed.org/publicat/econrev/pdf/12q4Hayashi.pdf>. With respect to “signature debit” transactions, a consumer does not use a PIN but instead typically signs a copy of a transaction receipt provided by the merchant in order to affirm the consumer’s identity. For further information on the difference between signature-based and PIN-based card transactions, see, for example, the preamble of the Board’s proposed rule to implement the Durbin amendment. 75 FR 81722, 81723 (Dec. 28, 2010).

<sup>185</sup> See generally CFPB Overdraft White Paper at 11-17 (explaining growth of debit card transactions from consumers’ deposit accounts).

<sup>186</sup> *Id.* at 16.

<sup>187</sup> *Id.* at 11-12.

<sup>188</sup> *Id.* at 16-17.

2001, the OCC released an interpretive letter expressing concern about overdraft protection services.<sup>189</sup> The letter noted that overdrafts are credit but that related fees may not be finance charges under Regulation Z. In declining to issue a “comfort letter” regarding an unnamed overdraft service, the OCC called attention to a number of troubling practices, including inadequate disclosure to consumers of the risk of harm from overdraft services and failure to properly help consumers who were using overdraft services as “a means of meeting regular obligations” to find more economical forms of credit.<sup>190</sup>

The Board also signaled concern with overdraft services in a number of rulemaking actions. In a 2002 proposal to amend Regulation Z with regard to the status of certain credit card-related fees and other issues, the Board noted that some overdraft services may not be all that different from overdraft lines of credit and requested comment on whether and how Regulation Z should be applied to banks’ bounce-protection services, in light of the Regulation’s exclusion of such services but inclusion of lines-of-credit where a finance charge is imposed or is accessed by a debit card.<sup>191</sup> The Board did not modify the Regulation Z exemptions when it issued final rules in 2003,<sup>192</sup> but proposed revisions to Regulation DD (which implements the Truth in Savings Act (TISA)) and its commentary in 2004 to address concerns about the uniformity and adequacy of institutions’ disclosure of overdraft fees generally and to address concerns about advertised automated overdraft services in particular.<sup>193</sup> The Board specifically noted that it was not proposing to cover overdraft services under TILA and Regulation Z, but

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<sup>189</sup> Office of the Comptroller of the Currency, Interpretive Letter No. 914, *3<sup>rd</sup> Party Program*, (Aug. 3, 2001), available at <http://www.occ.gov/static/interpretations-and-precedents/sep01/int914.pdf>.

<sup>190</sup> *Id.*

<sup>191</sup> 67 FR 72618, 72620 (Dec. 6, 2002).

<sup>192</sup> The March 2003 final rule preamble stated that “[t]he Board’s staff is continuing to gather information on these services, which are not addressed in the final rule.” 68 FR 16185 (Apr. 3, 2003).

<sup>193</sup> 69 FR 31760 (June 7, 2004).

that further consideration of the need for such coverage would be appropriate if consumer protection concerns about these overdraft services were to persist in the future.<sup>194</sup>

When the Board finalized the Regulation DD proposal in 2005, it noted that it declined at that time to extend Regulation Z to overdraft services. In doing so, it noted that industry commenters were concerned about the cost of imposing Regulation Z requirements on deposit accounts and about the compliance burden of providing an annual percentage rate (APR) that is calculated based on overdraft fees without corresponding benefits to consumers in better understanding the costs of credit. The Board noted that consumer advocates stated that overdraft services compete with traditional credit products—open-end lines of credit, credit cards, and short-term closed-end loans—all of which are covered under TILA and Regulation Z and provide consumers with the cost of credit expressed as a dollar finance charge and an APR. The Board explained that these commenters believed TILA disclosures would enhance consumers’ understanding of the cost of overdraft services and their ability to compare costs of competing financial services. The Board also noted that some members of its Consumer Advisory Council believed that overdraft services are the functional equivalent of a traditional overdraft line of credit and thus should be subject to Regulation Z, but that financial institutions’ historical practice of paying occasional overdrafts on an ad hoc basis should not be covered by Regulation Z. While not specifically addressing these concerns, the Board emphasized that its decision not to apply Regulation Z did not preclude future consideration regarding whether it was appropriate to extend Regulation Z to overdraft services.<sup>195</sup>

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<sup>194</sup> *Id.* at 31761.

<sup>195</sup> 70 FR 29582, 29584-85 (May 24, 2005). In this 2005 rulemaking, the Board revised Regulation DD to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their deposit accounts. Among other things, the final rule required institutions that promote the payment of overdrafts in an advertisement to disclose on periodic statements, total fees imposed for paying overdrafts and total fees imposed for

In February 2005 (prior to the Board having finalized the Regulation DD changes discussed above), the Federal banking agencies also issued joint guidance on overdraft programs in response to the increased availability and customer use of overdraft services.<sup>196</sup> The purpose of the Joint Guidance was to assist insured banks in the responsible disclosure and administration of overdraft programs. The agencies were concerned that the banks failed to clearly disclose the terms and conditions of the programs, including the fees associated with them and that consumers might have been misled.<sup>197</sup>

The Joint Guidance stated that “the existing regulatory exceptions [*i.e.*, exceptions in Regulation Z such that the Regulation does not apply] were created for the occasional payment of overdrafts, and as such could be reevaluated by the Board in the future, if necessary. Were the Board to address these issues more specifically, it would do so separately under its clear [TILA] authority.”<sup>198</sup> The Joint Guidance went on to state that “[w]hen overdrafts are paid, credit is extended. Overdraft protection programs may expose an institution to more credit risk (*e.g.*, higher delinquencies and losses) than overdraft lines of credit and other traditional overdraft protection options to the extent these programs lack individual account underwriting.”<sup>199</sup> This guidance remains in effect.

In the late 2000s as controversy regarding overdraft services continued to mount despite the increase in regulatory activity, Federal agencies began exploring various additional measures

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returning items unpaid on periodic statements, both for the statement period and the calendar year to date, and to include certain other disclosures in advertisements of overdraft services. *Id.* Ultimately, in 2009, the Board expanded this provision to all institutions, not just those that promote the payments of overdrafts. *See* 74 FR 5584 (Jan. 29, 2009).

<sup>196</sup> 70 FR 9127 (Feb. 24, 2005) (Joint Guidance). The Office of Thrift Supervision also issued guidance on overdraft protection programs. *See* 70 FR 8428 (Feb. 18, 2005).

<sup>197</sup> 70 FR 9127, 9129 (Feb. 24, 2005).

<sup>198</sup> *Id.* at 9128.

<sup>199</sup> *Id.*

with regard to overdraft, including whether to require that consumers affirmatively opt in before being charged for overdraft services. First, in May 2008, the Board along with the NCUA and the now-defunct Office of Thrift Supervision proposed to exercise their authority under section 5 of the Federal Trade Commission Act (FTC Act)<sup>200</sup> to prohibit institutions from assessing any fees on a consumer’s account in connection with an overdraft service, unless the consumer was given notice and the right to opt out of the service, and the consumer did not opt out.<sup>201</sup> At the same time, the Board issued a proposal under Regulation DD to expand disclosure requirements and revise periodic statement requirements to provide aggregate totals for overdraft fees and for returned item fees for the periodic statement period and the year to date.<sup>202</sup> The Board finalized portions of the Regulation DD proposal in January 2009.<sup>203</sup> In addition, although the three agencies did not finalize their FTC Act proposal, the Board ultimately adopted an opt-in requirement for ATM and one-time debit card transactions under Regulation E in late 2009.

The overdraft opt-in rule in Regulation E applies to all accounts covered by Regulation E, including payroll card accounts. In addressing overdraft services for the first time as a feature of accounts in Regulation E,<sup>204</sup> the Board concluded that the opt-in rule carried out “the express purposes of EFTA by: (a) establishing notice requirements to help consumers better understand the cost of overdraft services for certain EFTs; and (b) providing consumers with a choice as to whether they want overdraft services for ATM and one-time debit card transactions in light of

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<sup>200</sup> Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. 45. *See also* Federal Deposit Insurance Act section 8 (extending to the Board authority to take appropriate action when unfair or deceptive acts or practices are discovered). 12 U.S.C. 1818.

<sup>201</sup> 73 FR 28904 (May 19, 2008).

<sup>202</sup> 73 FR 28730 (May 19, 2008).

<sup>203</sup> 74 FR 5584 (Jan. 29, 2009). Specifically, this rule required, among other things, all banks to disclose aggregate overdraft fees on periodic statements, and not solely institutions that promote the payment of overdrafts.

<sup>204</sup> 74 FR 59033 (Nov. 17, 2009).

the costs associated with those services.”<sup>205</sup> The rule did not discuss GPR cards, which as noted above, the Board had not expressly subjected to Regulation E coverage.

Following the adoption of the Board’s overdraft opt-in rule, the FDIC expanded on the previously issued Joint Guidance via a Financial Institution Letter to reaffirm its existing supervisory expectations with respect to overdraft payment programs generally and provide specific guidance with respect to automated overdraft payment programs.<sup>206</sup> In 2011, the OCC proposed similar guidance regarding automatic overdraft programs and deposit advance products. This guidance, if finalized, would have clarified the OCC’s application of principles of safe and sound banking practices in connection with deposit-related consumer credit products such as automated overdraft services and direct deposit advance programs.<sup>207</sup> The OCC withdrew this proposed guidance in 2013.<sup>208</sup>

Since the Bureau assumed authority from the Board for implementing most of EFTA in 2011, it has taken a number of steps—including research, analysis, and solicitation of comment—to assess the impact and efficacy of the Board’s 2009 overdraft opt-in rule. In early 2012, the Bureau issued a Request For Information that sought input from the public on a number of overdraft topics, including lower cost alternatives to overdraft protection programs, consumer alerts and information provided regarding balances and overdraft triggers, the impact of changes to Regulations DD and E and overdraft opt-in rates, the impact of changes in financial institutions’ operating policies, the economics of overdraft programs, and the long-term

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<sup>205</sup> *Id.* at 59037.

<sup>206</sup> Fed. Deposit Ins. Corp., FIL-81-2010, *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance* (Fin. Inst. Letter, Nov. 24, 2010), available at <https://www.fdic.gov/news/news/financial/2010/fil10081.html>.

<sup>207</sup> 76 FR 33409 (June 8, 2011). The Office of Thrift Supervision also proposed supplemental guidance on overdraft protection programs. 75 FR 22681 (Apr. 29, 2010).

<sup>208</sup> 78 FR 25353 (Apr. 30, 2013).

impact on consumers.<sup>209</sup> In response, the Bureau received over 1,000 comments. The Bureau did not request information specific to prepaid products, and few commenters specifically addressed prepaid products. The Bureau has also undertaken significant research into overdraft services that has resulted, to date, in the release of the CFPB Overdraft White Paper, noted above, and a data point in July 2014.<sup>210</sup> The Bureau is engaged in pre-rule making activities to consider potential regulation of overdraft services on checking accounts.<sup>211</sup> As part of its preparations, the Bureau has begun consumer testing initiatives related to the opt-in process set forth in current Regulation E.<sup>212</sup>

#### *Other Relevant Federal Regulatory Activity*

In addition, several Federal initiatives have specifically addressed the possibility of credit features being offered in connection with prepaid products. First, the Treasury FMS Rule (described above), adopted in late December 2011, permits Federal payments to be deposited onto a prepaid product only if the product is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments, among other conditions.<sup>213</sup> The preamble to that Interim Final Rule indicates that the goal of this requirement is to prevent payday lending and other arrangements in which a financial institution or creditor “advances” funds to a cardholder’s account, and then repays itself for the advance and

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<sup>209</sup> 77 FR 12031 (Feb. 28, 2012).

<sup>210</sup> See CFPB, *Data Point: Checking Account Overdraft* (July 2014), available at [http://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf).

<sup>211</sup> See CFPB, Spring 2016 Rulemaking Agenda (May 2016), available at <http://www.consumerfinance.gov/about-us/blog/spring-2016-rulemaking-agenda/>.

<sup>212</sup> *Id.*

<sup>213</sup> See 31 CFR 210.5(b)(5)(i)(C).

any related fees by taking some or all of the cardholder's next deposit.<sup>214</sup> The Treasury FMS Rule does not, however, directly address the permissibility of overdraft services.

Second, as discussed above, the Board's Regulation II generally caps interchange fees that may be imposed on debit card transactions. Regulation II provides an exemption from the fee restrictions for cards provided pursuant to a Federal, State, or local government-administered payment program and for certain reloadable prepaid cards.<sup>215</sup> However, Regulation II carves out of this exemption interchange fees for transactions made with these prepaid cards if, with respect to the card, an overdraft fee may be charged.<sup>216</sup> EFTA and Regulation II provide a separate, blanket exemption for cards of issuers with assets of less than \$10 billion, so these cards are not subject to the fee restrictions even if overdraft fees may be charged.<sup>217</sup>

Third, as discussed above in part II.B, ED's cash management regulation bans point-of-sale and overdraft fees on accounts, including prepaid card accounts, that are directly marketed to students by a financial institution with which the student's college or university has an arrangement to disburse Federal financial aid on behalf of the post-secondary institution.<sup>218</sup>

Separately, in 2015, the Department of Defense (DOD) issued a final rule<sup>219</sup> amending its regulation<sup>220</sup> that implements the Military Lending Act (MLA).<sup>221</sup> Under the MLA, a creditor generally may not apply a military APR (MAPR) greater than 36 percent in connection with an

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<sup>214</sup> 75 FR 80335 (Dec. 22, 2010).

<sup>215</sup> See 12 CFR 235.5(b) through (d).

<sup>216</sup> 12 CFR 235.5(d)(1).

<sup>217</sup> See EFTA section 920(a)(6)(A) and 12 CFR 235.5(a).

<sup>218</sup> See generally 80 FR 67126 (Oct. 30, 2015).

<sup>219</sup> 80 FR 43560 (July 22, 2015). The DOD issued a related interpretive rule in August 2016. See 81 FR 58840 (Aug. 26, 2016).

<sup>220</sup> 32 CFR part 232.

<sup>221</sup> 10 U.S.C. 987 *et seq.*

extension of consumer credit to a military service member or dependent.<sup>222</sup> The final rule expands the types of consumer credit covered by the regulation that implements the MLA so that it is now more consistent with the types of consumer credit covered by TILA, subject to certain statutory exemptions set forth in the MLA. Because overdraft services are exempted from Regulation Z, they are also exempted from the regulation that implements the MLA.<sup>223</sup> Additionally, although the DOD proposed that for open-end (not home-secured) credit card accounts, any credit-related charge that is a finance charge under Regulation Z (as well as certain other charges) would be included in calculating the MAPR for a particular billing cycle, and the MAPR for that billing cycle could not exceed 36 percent, the final rule provides a two-year exemption for credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.<sup>224</sup>

#### *D. Other Payments-Related Bureau Actions*

The Bureau has handled approximately 5,600 prepaid card complaints as of August 1, 2016.<sup>225</sup> Concerns have included issues related to accessing funds loaded on the prepaid cards, unauthorized transactions, fees, and error resolution.<sup>226</sup> In June 2014, the Bureau issued a Request for Information regarding the opportunities and challenges associated with the use of

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<sup>222</sup> 10 U.S.C. 987(b).

<sup>223</sup> 80 FR 43560, 43580 (July 22, 2015).

<sup>224</sup> 32 CFR 232.13.

<sup>225</sup> While this number reflects complaints since July 11, 2011, the Bureau did not officially begin accepting consumer complaints about prepaid products until July 2014. See Press Release, CFPB, *CFPB Begins Accepting Consumer Complaints on Prepaid Cards and Additional Nonbank Products* (July 21, 2014), available at <http://www.consumerfinance.gov/newsroom/cfpb-begins-accepting-consumer-complaints-on-prepaid-cards-and-additional-nonbank-products>.

<sup>226</sup> See, e.g., CFPB Monthly Complaint Report, at 11-12 (Mar. 2016), available at [http://files.consumerfinance.gov/f/201603\\_cfpb\\_monthly-complaint-report-vol-8.pdf](http://files.consumerfinance.gov/f/201603_cfpb_monthly-complaint-report-vol-8.pdf) (the monthly report included a section on prepaid card complaints).

mobile financial products and services.<sup>227</sup> The Bureau sought information on how mobile technologies are impacting economically vulnerable consumers with limited access to traditional banking systems. The Bureau received approximately 48 comments in response to this request for information, and published a summary of the comments in November 2015.<sup>228</sup> Among other things, the summary noted that the comments indicated a significant increase in the use of virtual prepaid products (prepaid products accessed via computer or on a mobile device without a physical card) by underserved consumers (*i.e.*, low-income, unbanked, underbanked, and economically vulnerable consumers).

In August 2014, the Bureau issued a consumer advisory on virtual currencies that discussed the risks to consumers posed by them.<sup>229</sup> At the same time, the Bureau also began accepting consumer complaints regarding virtual currencies. In the proposal, the Bureau stated that its analysis with respect to virtual currencies and related products and services was ongoing. The proposal did not resolve specific issues with respect to the application of either existing regulations or the proposed rule to virtual currencies and related products and services.<sup>230</sup> Nonetheless, the Bureau received some comments on whether the Bureau should regulate virtual currency products and services under this final rule. These comments are discussed in greater detail in the section-by-section analysis of § 1005.2(b) below.

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<sup>227</sup> 79 FR 33731 (June 12, 2014).

<sup>228</sup> CFPB, *Mobile Financial Services—A Summary of Comments from the Public on Opportunities, Challenges, and Risks for the Underserved* (Nov. 2015), available at [http://files.consumerfinance.gov/f/201511\\_cfpb\\_mobile-financial-services.pdf](http://files.consumerfinance.gov/f/201511_cfpb_mobile-financial-services.pdf).

<sup>229</sup> CFPB Consumer Advisory, *Risks to Consumers Posed by Virtual Currencies* (Aug. 2014), available at [http://files.consumerfinance.gov/f/201408\\_cfpb\\_consumer-advisory\\_virtual-currencies.pdf](http://files.consumerfinance.gov/f/201408_cfpb_consumer-advisory_virtual-currencies.pdf).

<sup>230</sup> 79 FR 77102, 77133 (Dec. 23, 2014).

### III. Summary of the Rulemaking Process

The Bureau undertook several years of research, analysis, and other outreach before issuing this final rule. As noted above, the Bureau issued the Prepaid ANPR in 2012, which posed a series of questions for public comment about how the Bureau might consider regulating GPR cards. The Bureau sought input on the following topics: (1) the disclosure of fees and terms; (2) if consumers should be informed whether their funds are protected by FDIC pass-through deposit insurance; (3) unauthorized transactions and the costs and benefits of requiring card issuers to provide limited liability protection from unauthorized transactions similar to those protections available for other accounts under Regulation E; and (4) other product features including credit features in general and overdraft services in particular, linked savings accounts, and credit repair or credit building features.

The Bureau received over 220 comments on the Prepaid ANPR.<sup>231</sup> Industry commenters, including banks and credit unions, prepaid program managers, payment networks and industry trade associations, submitted the majority of comments. The Bureau also received comment letters from consumer and other interest groups, as well as several individual consumers. The Bureau evaluated the comments received in response to the Prepaid ANPR in its preparation of the proposed rule.

The Bureau conducted extensive and significant additional outreach and research following the Prepaid ANPR as part of its efforts to study and evaluate prepaid products. The Bureau's pre-proposal outreach included meetings with industry, consumer groups, and non-partisan research and advocacy organizations. The Bureau also conducted market research, monitoring, and related actions pursuant to section 1022(c)(4) of the Dodd-Frank Act, which

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<sup>231</sup> The comments can be reviewed at <http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0019-0001>.

allows the Bureau to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers to aid the Bureau's market monitoring efforts. Further, the Bureau obtained information directly from consumers through focus groups and consumer testing. Additionally, as noted above, the Bureau studied publicly available account agreements for prepaid products that appear to meet the Bureau's proposed definition of the term "prepaid account" that involved Bureau staff reviewing of numerous prepaid products' terms and conditions to determine current industry practices in a number of areas to inform its understanding of the potential costs and benefits of extending various Regulation E provisions to prepaid accounts. The Bureau's consumer testing and Study of Prepaid Account Agreements are discussed in greater detail below.

To prepare this final rule, the Bureau considered, among other things, feedback provided in response to the Prepaid ANPR, feedback provided to the Bureau prior to the issuance of its proposal, including information gathered during consumer testing, interagency consultations, and feedback provided in response to the proposed rule, and additional consumer testing.

#### *A. Pre-Proposal and Post-Proposal Consumer Testing*

The Bureau conducted both pre-proposal and post-proposal qualitative testing of prepaid account prototype disclosure forms with prepaid card users to inform the Bureau's design and development of the model and sample forms included in the final rule. The prototypes included forms that could be used in the context of GPR cards, payroll and government benefits cards, and for prepaid account programs with multiple service plans. The Bureau engaged and directed a third-party vendor selected by competitive bid, ICF International (ICF), to coordinate this qualitative consumer testing. ICF prepared a report memorializing the consumer testing after

both pre-proposal and post-proposal testing in, respectively, ICF Report I and ICF Report II.<sup>232</sup> The qualitative testing was conducted in accordance with OMB Control Number 3170-0022.

Pre-proposal testing consisted of (1) four informal focus groups to gather in-depth information about how consumers shop for prepaid cards and the factors they consider when acquiring such products and (2) three rounds of one-on-one interviews to see how consumers interact with the prototype forms developed by the Bureau and use them in comparison shopping exercises. The focus groups were held in Bethesda, Maryland in December 2013; each lasted approximately 90 minutes and included eight to 10 participants. Each of the three rounds of one-on-one interviews lasted approximately 60 to 75 minutes, included nine or 10 participants each, and took place in early 2014 in Baltimore, Maryland; Los Angeles, California; and Kansas City, Missouri.

The findings from the focus groups, as well as responses to the Bureau's ANPR (see the section-by-section analysis of § 1005.18(b) below) and other outreach activities, strongly influenced the Bureau's decision to develop and propose a pre-acquisition disclosure regime that includes both an easily digestible "short form" disclosure highlighting key fees and features of a prepaid account program in a standardized format apt for comparison shopping that could fit on existing packaging material used to market prepaid products on J-hooks in retail locations and a "long form" disclosure containing a comprehensive list of fees and other information germane to the purchase and use of the prepaid account program. Pre-proposal one-on-one testing allowed the Bureau to experiment with various structures and content to arrive at an optimal design.

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<sup>232</sup> See ICF Report I, and ICF Int'l, *Final Report of Findings: Post-Proposal Testing of Prepaid Card Disclosures* (Oct. 2015), available at [http://files.consumerfinance.gov/f/201510\\_cfpb\\_report-findings-testing-prepaid-card-disclosures.pdf](http://files.consumerfinance.gov/f/201510_cfpb_report-findings-testing-prepaid-card-disclosures.pdf) (ICF Report II).

Post-proposal testing, which consisted of two rounds of one-on-one interviews, had the same goals as pre-proposal interviews but with the added goal of further refining the proposed model and sample short form and long form disclosures. This further refinement was based on the response of testing participants to changes to the prototypes resulting from the Bureau's own internal review as well as public comments received in response to the proposed rule. Each one-on-one interview lasted approximately 75 minutes and took place in Arlington, Virginia in July 2015 and Milwaukee, Wisconsin in August 2015 with 9 and 11 participants, respectively.

Eighty-nine consumers participated in the pre- and post-proposal testing, representing a range of ages, races, and education levels.<sup>233</sup> All testing was conducted in English, but each round included native speakers of languages other than English. All participants self-identified as having used a prepaid card in the previous six months (for focus group participants) or 12 months (for interview participants). Several participants had experience with payroll or government benefits cards in addition to or in lieu of GPR cards.

*Focus group findings highlights.* Few focus group participants reported doing any formal comparison shopping before purchasing a prepaid card in a retail store. Furthermore, only about half of participants indicated that they learned about the fees associated with their prepaid cards prior to purchase; a few of them reported learning about a card's fees post-acquisition only after unknowingly incurring certain fees and seeing that the fees were deducted from their card balance. When asked about which fees were most important to them, almost all participants cited one of the following fees: (1) monthly maintenance fees; (2) per purchase fees; (3) ATM withdrawal fees; and (4) cash reload fees. Based on these findings and the Bureau's outreach

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<sup>233</sup> For a detailed discussion of the methodology used in the consumer testing, including participant selection, see, respectively, ICF Report I at 2-4 and ICF Report II at 4.

more generally, the Bureau developed several “short form” and “long form” prototype disclosure forms to test with participants in the individual interview segment of the consumer testing.

*Individual interviews findings highlights.* In both pre- and post-proposal consumer testing, ICF asked participants questions to assess how well they were able to comprehend the fees and other information included on prototype forms. In some cases, ICF also asked participants to engage in shopping exercises to compare fee information printed on different prototype forms. After each round of testing, ICF analyzed and briefed the Bureau on the results of the testing. The Bureau used this feedback to make iterative changes, as necessary, to the form design for the next round of testing.

In the first round of pre-proposal testing, the Bureau tested short form disclosures that variably included: (1) a “top-line” of four fees displayed more prominently than the other fees, (2) fees grouped together by category, or (3) fees listed without including either the top-line or fee categories. Generally, participants were able to understand the basic fee information presented in all of the prototype disclosure forms. However, many participants expressed a preference for a form that is both easy to read and that prominently displays the most important fee information. These participants also said they believed that prototype forms that included a “top line” disclosure of certain fees met these objectives.

The Bureau also focused on developing and testing a short form that did not disclose all the variations for each fee and full explanations of the conditions under which those variations could be incurred. In other words, the Bureau used testing to determine how to best present a subset of key information about a prepaid product in the short form disclosure, while effectively indicating to consumers that additional information not included on the form was also available. The prototype forms in the first round of testing included a system with sets of multiple asterisks

to indicate additional information was available for fees that could vary in amount. Many participants, however, failed to notice the text associated with the asterisks or struggled to accurately connect the various symbols with the appropriate fees.

To improve comprehension, the Bureau introduced forms in the second round of testing that only included a single symbol linked to one line of explanatory text indicating all of the fees that might vary on the form. This modification appeared to increase the frequency with which participants noticed the language associated with the symbol, and thus, the frequency with which participants noticed that fees could vary also increased. In the third round of testing, in addition to reviewing additional short form disclosure prototypes, participants engaged in a shopping exercise with a prototype long form disclosure to compare the relative utility of the short form and long form disclosures.

During its pre-proposal testing, the Bureau posted a blog on its website that included two of the prototype short form disclosure designs used during the second round of testing<sup>234</sup> and invited the public to provide feedback on the prototypes, including suggestions for improvement. The Bureau received over 80 comments from industry, consumer advocacy groups, and individual consumers, in addition to e-mail submissions and other correspondence. These comments informed the Bureau's form design for the ensuing round of pre-proposal consumer testing as well as for the model forms included in the proposed rule.

Post-proposal testing consisted of two rounds of one-on-one interviews intended to further refine the model and sample forms published in the proposed rule. In addition to general refinement of the text and design of the proposed short form and long form disclosures, the

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<sup>234</sup> Eric Goldberg, *Prepaid cards: Help design a new disclosure*, CFPB Blog Post, (Mar. 18, 2014), <http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/>.

Bureau tested new elements introduced as a result of internal Bureau analysis and stakeholder input from comments to the proposal and post-proposal ex-parte communications.<sup>235</sup>

Post-proposal testing of the overall design integrity and effectiveness of the disclosures confirmed participants' general ability to navigate and understand the short and long form disclosures. Nearly all participants were able to successfully identify all fees on the short form disclosure when asked whether the prepaid account had such a fee.<sup>236</sup> Further, when asked about a fee that did not appear on or with the short form disclosure, almost all participants referred to the long form disclosure and were able to successfully find the information for which they were looking.<sup>237</sup> Also, when comparing short forms for two different hypothetical prepaid account programs, most participants were able to compare fees between forms and reach an informed decision as to which card would be best for their circumstances.<sup>238</sup> This was true even when one of the forms described a prepaid card with a more complex, multiple fee plan structure.<sup>239</sup> With regard to the requirement to disclose the highest fee in the short form disclosure, continued refinement in post-proposal testing of the asterisk system to alert consumers of when the fee amount could be lower resulted in increased participant comprehension with almost all participants correctly applying the text to fees with an asterisk, and fewer misapplications of the text to fees without an asterisk.<sup>240</sup>

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<sup>235</sup> For more detailed discussion of post-proposal testing, see ICF Report II and the specific section-by-section analysis of the particular disclosure elements below.

<sup>236</sup> See ICF Report II at 5.

<sup>237</sup> *Id.* at 7.

<sup>238</sup> *Id.* at 5.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.* See also the section-by-section analysis of § 1005.18(b)(3)(i) below.

Post-proposal testing of a statement regarding overdraft and credit generally showed participants correctly understood that they would not necessarily be offered credit or overdraft by the prepaid provider, would have to wait 30 days to get the feature, and might be charged fees for the feature.<sup>241</sup> Testing of a statement regarding FDIC insurance coverage generally showed participants understood whether or not the prepaid card offered such insurance and that insurance coverage was a positive feature, although less than half were able to accurately explain against what FDIC insurance would protect them.<sup>242</sup> The testing of two versions of language at the top of the short form disclosure for payroll cards and government benefits cards explaining that other methods were also available for potential card recipients to receive their wages or benefits indicated that participants who saw this language generally understood they did not have to accept payment on the card.<sup>243</sup> Testing also revealed that neither version affected whether or not participants said they would be interested in receiving wages or benefits via the card.<sup>244</sup>

Post-proposal testing indicated the effectiveness of the removal or addition of some disclosure elements from the proposed short form disclosures that the Bureau is adopting in this final rule. For example, in an attempt to streamline the short form with a single disclosure for like fees, when testing participants were presented with a single fee for ATM withdrawals, as opposed to separate fees for both “in-network” and “out-of-network” withdrawals, all participants seemed to understand that the amount of this fee would not depend on whether the cardholder used an in-network or out-of-network ATM.<sup>245</sup> Also, the testing of the addition of a

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<sup>241</sup> *Id.* at 6, 14-15, and 24-25. See also the section-by-section analysis of § 1005.18(b)(2)(x) below.

<sup>242</sup> *Id.* at 7. See also the section-by-section analysis of § 1005.18(b)(2)(xi) below.

<sup>243</sup> *Id.* at 7. See also the section-by-section analysis of § 1005.18(b)(2)(iv)(A) below.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.* at 5. See also the section-by-section analysis of § 1005.18(b)(3)(iii) below.

second symbol (a dagger symbol (†), in addition to the asterisk discussed above) linked to a statement about situations in which the monthly fee would be waived or discounted revealed that most participants saw the dagger and were able to link it to the appropriate statement.<sup>246</sup>

Results from the focus groups and one-on-one testing conducted by the Bureau and ICF in pre- and post-proposal consumer testing, fortified with a variety of forms of stakeholder input and the Bureau's own research and analysis, led the Bureau to its final disclosure requirements and the design of the model and sample forms contained in this final rule.

### *B. Study of Prepaid Account Agreements*

To determine current industry practices with respect to existing compliance with Regulation E and other features and protections currently offered by prepaid products and to inform its understanding of the potential costs and benefits of extending various Regulation E protections to prepaid accounts, the Bureau conducted a study of 325 publicly available account agreements for prepaid products that appeared to meet the Bureau's proposed definition of the term "prepaid account," and published the results in the Study of Prepaid Account Agreements concurrently with the Bureau's issuance of the proposal.

The study contains the Bureau's analysis of key provisions regarding error resolution protections, including provisional credit; limited liability protections; access to account information; overdraft and treatment of negative balances and declined transaction fees; FDIC or NCUA pass-through insurance; and general disclosure of fees. The agreements the Bureau analyzed included GPR card program agreements (including GPR cards marketed for specific purposes, such as travel or receipt of tax refunds, or for specific users, such as teenagers or students), payroll cards agreements, agreements for cards used for the distribution of certain

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<sup>246</sup> *Id.* at 5. See also the section-by-section analysis of § 1005.18(b)(3)(ii) below.

government benefits, and agreements for similar card programs. The Bureau also included agreements for prepaid products specifically used for P2P transfers that appeared to be encompassed by the proposal's definition of prepaid account. The Bureau did not include gift, incentive and rebate card programs, health spending account and flexible spending account programs, and needs-tested State and local government benefit card programs in the study, because the Bureau proposed to exclude such products from the rulemaking. As discussed in greater detail in the proposal, the Bureau cautioned that its agreement collection was neither comprehensive nor complete. In addition, the study was not intended to be relied upon as an assessment of legal issues, including actual compliance with current Regulation E provisions that apply to payroll card accounts or cards used for the distribution of certain government benefits, the FMS Rule, or the proposal.<sup>247</sup>

### *C. The Bureau's Proposal*

In November 2014, the Bureau released for public comment a notice of proposed rulemaking regarding Regulations E and Z that proposed comprehensive consumer protections for prepaid accounts. The proposal was published in the *Federal Register* in December 2014.<sup>248</sup> Although prepaid products are among the fastest growing types of payment instruments in the United States, with certain limited exceptions prepaid products have not been subject to the existing Federal consumer regulatory regime in Regulation E that provides consumer disclosures, error resolution, and protection from unauthorized transfers.<sup>249</sup>

The Bureau proposed to establish a new definition of "prepaid account" within Regulation E and adopt comprehensive consumer protection rules for such accounts. The

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<sup>247</sup> 79 FR 77102, 77123 (Dec. 23, 2014).

<sup>248</sup> 79 FR 77102 (Dec. 23, 2014).

<sup>249</sup> *See generally* 12 CFR part 1005.

proposal would have extended Regulation E protections to prepaid products that are cards, codes, or other devices capable of being loaded with funds, not otherwise accounts under Regulation E and redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at either ATMs or for P2P transfers; and are not gift cards (or certain other types of limited purpose cards), by bringing these products under the proposed definition of “prepaid account.”

The proposal also would have modified Regulation E, as it would pertain to prepaid accounts, in several key respects. First, the proposal would have required financial institutions to make certain disclosures available to consumers before a consumer acquires a prepaid account. These disclosures would have taken two forms, whether provided orally, in writing, or electronically. The first would have been a short form highlighting key fees that the Bureau believed to be most important for consumers to know about prior to acquisition. The second would have been a long form setting forth all of the prepaid account’s fees and the conditions under which those fees could be imposed. In certain circumstances, the proposed rule would have provided an exception for financial institutions that offered prepaid cards for sale over the phone or in retail stores that would have allowed such institutions to provide consumers with access to the long form disclosure by telephone or internet, but otherwise not make the long form available until after a consumer had acquired the prepaid account. To facilitate compliance, the proposal contained new model forms and sample forms, as well as revisions to existing Regulation E model forms and model clauses. The use of the model forms would have established a safe harbor for compliance with the short form disclosure requirement.

In addition, with certain modifications, the proposed rule would have extended to all prepaid accounts the existing Regulation E requirements regarding the provision of transaction

information to accountholders that currently apply to payroll card accounts, Federal government benefit accounts, and non-needs tested State and local government benefit accounts. These provisions would have allowed financial institutions to either provide periodic statements or, alternatively, make available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covered at least 18 months; and (3) a written history of account transactions that covered at least 18 months upon request. For all prepaid accounts, the proposed rule would have required financial institutions to disclose monthly and annual summary totals of all fees imposed on a prepaid account, as well as the total amount of all deposits to and debits from a prepaid account when providing a periodic statement or electronic or written account history.

Further, the proposed rule would have modified Regulation E to adopt error resolution and limited liability provisions specific to prepaid accounts. Regulation E limits consumers' liability for unauthorized transfers, provided that the consumer gives timely notice to the financial institution, and requires financial institutions to resolve certain errors in covered accounts. The proposal would have extended these consumer protections to registered prepaid accounts, with modifications to the timing requirements for reporting unauthorized transfers and errors when a financial institution followed the periodic statement alternative described above.

In addition, the proposed rule would have required prepaid account issuers to post prepaid account agreements on the issuers' websites (or make them available upon request in limited circumstances) and to submit new and amended agreements to the Bureau on a quarterly basis for posting on a website maintained by the Bureau.

The proposed rule would have also revised various other provisions in subparts A and B of Regulation E. With respect to subpart A, the proposed amendments included a revision that

would have made clear that, similar to payroll card accounts, a consumer could not be required to establish an account with a particular institution for receipt of government benefits.

Additionally, the Bureau proposed to revise official interpretations to Regulation E to incorporate a preemption determination the Bureau made regarding certain State laws related to unclaimed gift cards. With respect to subpart B, which applies to remittance transfers, the Bureau proposed certain conforming and streamlining changes to the official interpretations that would not have affected the substance of the interpretations.

#### *Overdraft Services and Certain Other Credit Features*

The proposed rule would have modified Regulations Z and E to address the treatment of overdraft services and certain other credit features offered in connection with prepaid accounts.

*Regulation Z.* The proposal would have amended Regulation Z so that prepaid account issuers that offered prepaid accounts with overdraft services and certain other credit features and charged a fee for the service (such as interest, transaction fees, annual fees, or other participation fees) generally would have become subject to Regulation Z's credit card rules and disclosure requirements for open-end (not home-secured) consumer credit plans. In addition, the proposed rule would have revised Regulation Z so that its credit card rules have applied to separate lines of credit linked to prepaid accounts. The proposed rule would have also required an issuer to obtain an application or request from a consumer before adding overdraft credit features to a prepaid account and would have prohibited the issuer from adding such features until at least 30 calendar days after a consumer registered the prepaid account. Moreover, the proposed rule would have amended Regulation Z to provide that a consumer would receive a periodic statement not more often than once per month and then have at least 21 days to repay the debt the consumer incurred in connection with using an overdraft service or credit feature. The proposed rule would have

also prevented an issuer from automatically deducting overdraft amounts from the next deposit to the prepaid account, such as cash loads or direct deposits, to repay and replenish the credit line.

*Regulation E.* The proposed rule would have revised Regulation E to include disclosures about overdraft services and certain other credit features that could be linked to prepaid accounts in the short form and long form disclosures. The proposed rule also would have provided that the compulsory use prohibition would apply to overdraft services and certain other credit features linked to prepaid accounts. Prepaid account issuers would have been prohibited from requiring consumers to set up preauthorized EFTs to repay credit extended through an overdraft service or credit feature. Lastly, the proposed rule would have amended Regulation E to restrict issuers from applying to a consumer's prepaid account different terms and conditions such as charging different fees for accessing funds in a prepaid account, depending on whether the consumer elects to link the prepaid account to an overdraft service or credit feature.

#### *Effective Date*

The proposed rule would have provided that with certain exceptions, the effective date for the requirements set forth in a final rule would be nine months after publication in the *Federal Register*. The exception would have been that for a period of 12 months after the final rule is published in the *Federal Register*, financial institutions would be permitted to continue selling prepaid accounts that do not comply with the final rule's pre-acquisition disclosure requirements, if the account and its packaging material were printed prior to the proposed effective date.

### *Requests to Extend the Comment Period*

The Bureau set the length of the comment period on the proposal at 90 days from the date on which it was published in the *Federal Register*. The proposal was published on December 23, 2014, thus making March 23, 2015 the last day of the comment period. A number of members of Congress and two national trade associations representing prepaid product providers submitted written requests that asked the Bureau extend the 90-day comment period by an additional 60 days. The requests indicated that additional time would enable industry to evaluate the proposal in a more thorough manner. The Bureau believes that the 90-day comment period set forth in the proposed rule gave interested parties a sufficient amount of time to consider the proposal and prepare their responses, and thus did not extend the comment period beyond March 23, 2015. However, as discussed below, the Bureau considered *ex parte* comments submitted after the deadline as part of its deliberations.

### *D. Feedback Provided to the Bureau*

The Bureau received over 65,000 comments on the proposal during the comment period. Approximately 150 comments were unique, detailed comment letters representing diverse interests. These commenters included consumer advocacy groups; national and regional industry trade associations; prepaid industry members including issuing banks and credit unions, program managers, payment networks, and payment processors; digital wallet providers; virtual currency companies; non-partisan research and advocacy organizations; members of Congress; State and local government agencies; and individual consumers.

Approximately 6,000 consumers submitted comments generally supporting the availability of overdraft services for prepaid products (approximately 1,000 of which were form comments). Approximately 56,000 form comments were submitted by individual consumers as

part of a comment submission campaign organized by a national consumer advocacy group, generally in support of the proposal—particularly related to limited liability and the requirement to assess consumers’ ability to pay before offering credit attached to prepaid cards.<sup>250</sup> These form comments also urged the Bureau to go further in certain respects; requesting, among other things, that the Bureau add additional information to its proposed disclosure forms and require that funds loaded into prepaid accounts be FDIC insured. Several hundred of these 56,000 comments contained additional remarks from consumer commenters, though many of these were outside the scope of this rulemaking.

In addition, the Bureau also considered comments received after the comment period closed via approximately 65 ex parte submissions, meetings, and telephone conferences.<sup>251</sup> Materials on the record, including ex parte submissions and summaries of ex parte meetings and telephone conferences, are publicly available at <http://www.regulations.gov>. Relevant information received is discussed below in the section-by-section analysis and subsequent parts of this notice, as applicable. The Bureau considered all the comments it received regarding the proposal, made certain modifications, and is adopting the final rule as described part V below.

#### **IV. Legal Authority**

The Bureau is issuing this final rule pursuant to its authority under EFTA, the Dodd-Frank Act, and TILA, as discussed in this part IV and throughout the section-by-section analyses of the final rule in part V below.

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<sup>250</sup> The Bureau typically does not post form letters containing identical comments to the docket. Rather, the Bureau generally posts a single example of the form letter to the docket. Form letter comments that contain some customization from the sender are all posted to the docket.

<sup>251</sup> See also CFPB Bulletin 11-3, *CFPB Policy on Ex Parte Presentations in Rulemaking Proceedings* (2011), available at [http://files.consumerfinance.gov/f/2011/08/Bulletin\\_20110819\\_ExPartePresentationsRulemakingProceedings.pdf](http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf).

### *A. The Electronic Fund Transfer Act*

EFTA section 902 establishes that the purpose of the statute is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in EFT and remittance transfer systems but that its primary objective is the provision of individual consumer rights. Among other things, EFTA contains provisions regarding disclosures made at the time a consumer contracts for an EFT service,<sup>252</sup> notices of certain changes to account terms or conditions,<sup>253</sup> provision of written documentation to consumers regarding EFTs,<sup>254</sup> error resolution,<sup>255</sup> consumers' and financial institutions' liability for unauthorized EFTs,<sup>256</sup> and compulsory use of EFTs.<sup>257</sup>

With respect to disclosures provided prior to opening an account, EFTA section 905(a) states that the terms and conditions of EFTs involving a consumer's account shall be disclosed at the time the consumer contracts for an EFT service, in accordance with regulations of the Bureau. EFTA section 904(b) establishes that the Bureau shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of EFTA section 905 and to aid consumers in understanding the rights and responsibilities of participants in EFTs by utilizing readily understandable language. As discussed in the section-by-section analysis below, the final rule's pre-acquisition disclosure requirements (including those in final § 1005.18(b)) are adopted pursuant to the Bureau's authority under EFTA sections 904(a), (b), 905(a), and its adjustments and exceptions authority under EFTA section 904(c).

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<sup>252</sup> EFTA section 905(a).

<sup>253</sup> EFTA section 905(b).

<sup>254</sup> EFTA section 906.

<sup>255</sup> EFTA section 908.

<sup>256</sup> EFTA sections 909 and 910.

<sup>257</sup> EFTA section 913.

As amended by the Dodd-Frank Act, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of EFTA. As noted above, the express purposes of EFTA, are to establish “the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems” and to provide “individual consumer rights.”<sup>258</sup> EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain such classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions, for any class of EFTs or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion, or to facilitate compliance. The Senate Report accompanying EFTA noted that regulations are “essential to the act’s effectiveness” and “[permit] the [Bureau] to modify the act’s requirements to suit the characteristics of individual EFT services. Moreover, since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act’s basic protections continue to apply.”<sup>259</sup> As discussed in the section-by-section analyses below, the Bureau is adopting amendments to Regulation E, including with respect to the definition of account, limited liability, procedures for resolving errors, access to account information, and prepaid accounts that may offer an overdraft credit feature, pursuant to the Bureau’s authority under, as applicable, EFTA sections 904(a) and (c).

#### *B. Section 1022 of the Dodd-Frank Act*

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules “as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.” Among

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<sup>258</sup> EFTA section 902(b).

<sup>259</sup> See S. Rept. No. 95-1273, at 26 (Oct. 4, 1978).

other statutes, title X of the Dodd-Frank Act, EFTA, and TILA are Federal consumer financial laws.<sup>260</sup> Accordingly, in adopting this final rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under EFTA, TILA, and title X that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). See part VII below for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

Dodd-Frank Act section 1022(c)(1) provides that, to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. Section 1022(c)(3) provides that the Bureau shall publish not fewer than one report of significant findings of its monitoring in each calendar year and may make public such information obtained by the Bureau under this section as is in the public interest.<sup>261</sup> Moreover, section 1022(c)(4) provides that, in conducting such monitoring or assessments, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. As discussed in the section-by-section analysis below, new § 1005.19 is adopted pursuant to the Bureau's authority under Dodd-Frank Act sections 1022(c) and 1032(a), as well as its authority under EFTA sections 904 and 905. It requires submission of prepaid account agreements to the Bureau. It also requires that financial institutions disclose such agreements on their websites.

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<sup>260</sup> Dodd-Frank Act section 1002(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12) (defining "enumerated consumer laws" to include TILA and EFTA).

<sup>261</sup> Dodd-Frank Act section 1022(c)(3).

### *C. Section 1032 of the Dodd-Frank Act*

Section 1032(a) of the Dodd-Frank Act provides that the Bureau “may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.” The authority granted to the Bureau in section 1032(a) is broad, and empowers the Bureau to prescribe rules regarding the disclosure of the “features” of consumer financial products and services generally. Accordingly, the Bureau may prescribe disclosure requirements in rules regarding particular features even if other Federal consumer financial laws do not specifically require disclosure of such features.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau “shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.” Accordingly, in developing this final rule under Dodd-Frank Act section 1032(a), the Bureau has considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. Moreover, the Bureau has considered the evidence developed through its consumer testing of the model forms as discussed above and in ICF Report I and ICF Report II.

In addition, Dodd-Frank Act section 1032(b)(1) provides that “any final rule prescribed by the Bureau under [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.” Any model form issued pursuant to that authority shall contain a clear and conspicuous disclosure that, at a

minimum, uses plain language that is comprehensible to consumers, contains a clear format and design, such as an easily readable type font, and succinctly explains the information that must be communicated to the consumer.<sup>262</sup>

As discussed in more detail below, certain portions of this final rule are adopted pursuant to the Bureau's disclosure authority under Dodd-Frank Act section 1032(a).

#### *D. The Truth in Lending Act*

As discussed above, TILA is a Federal consumer financial law. In adopting TILA, Congress explained that:

[E]conomic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.<sup>263</sup>

TILA and Regulation Z define credit broadly as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.<sup>264</sup> TILA and Regulation Z set forth disclosure and other requirements that apply to creditors. Different rules apply to creditors depending on whether they are extending "open-end credit" or "closed-end credit." Under the statute and Regulation Z, open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made

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<sup>262</sup> Dodd-Frank Act section 1032(b)(2).

<sup>263</sup> TILA section 102(a); 15 U.S.C. 1601(a).

<sup>264</sup> TILA section 103(f); 15 U.S.C. 1602(f); § 1026.2(a)(14); 15 U.S.C. 1602(f).

available to the extent that any outstanding balance is repaid.<sup>265</sup> Closed-end credit is credit that does not meet the definition of open-end credit.<sup>266</sup>

The term “creditor” generally means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.<sup>267</sup> TILA defines finance charge broadly as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.<sup>268</sup> The term “creditor” also includes a card issuer, which is a person or its agent that issues credit cards, when that person extends credit accessed by the credit card.<sup>269</sup> Regulation Z defines the term “credit card” to mean any card, plate, or other single credit device that may be used from time to time to obtain credit.<sup>270</sup> In addition to being subject to the general rules of TILA and Regulation Z applicable to all creditors, card issuers also generally must comply with the credit card rules set forth in the FCBA and in the Credit CARD Act (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G.<sup>271</sup>

*TILA section 105(a)*. As amended by the Dodd-Frank Act, TILA section 105(a)<sup>272</sup> directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such

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<sup>265</sup> § 1026.2(a)(20).

<sup>266</sup> § 1026.2(a)(10).

<sup>267</sup> TILA section 103(g); 15 U.S.C. 1602(g); § 1026.2(a)(17)(i).

<sup>268</sup> TILA section 106(a); 12 U.S.C. 1605(a); § 1026.4.

<sup>269</sup> TILA section 103(g); 15 U.S.C. 1602(g); § 1026.2(a)(17)(iii) and (iv).

<sup>270</sup> § 1026.2(a)(15). As noted above, under Regulation Z, a charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. § 1026.2(a)(15)(iii).

<sup>271</sup> See generally §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12, and 1026.51 through 1026.60.

<sup>272</sup> 15 U.S.C. 1604(a).

regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. As discussed above, pursuant to TILA section 102(a), a purpose of TILA is “to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.” Moreover, this stated purpose is tied to Congress’s finding that “economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.”<sup>273</sup> Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA’s purposes.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. However, Dodd-Frank Act section 1100A clarified the Bureau’s section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain “additional requirements” that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). Accordingly, as amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to

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<sup>273</sup> TILA section 102(a).

TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb).<sup>274</sup>

For the reasons discussed in this notice, the Bureau is adopting amendments to Regulation Z with respect to certain prepaid accounts that are associated with overdraft credit features to carry out TILA's purposes and is adopting such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of this final rule pursuant to its authority under TILA section 105(a),<sup>275</sup> the Bureau has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

## **V. Section-by-Section Analysis**

### *Regulation E*

#### *Subpart A—General*

##### *Overview of the Bureau's Approach to Regulation E*

As discussed above in part III.C, the Bureau proposed to amend Regulation E, which implements EFTA, along with the official interpretations thereto. The proposal would have created comprehensive consumer protections for prepaid financial products by expressly

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<sup>274</sup> 15 U.S.C. 1602(bb).

<sup>275</sup> As discussed further in the section-by-section analysis of Regulation Z § 1026.60(b), the Bureau also relies on TILA section 127(c)(5) for the requirements in the final rule for additional disclosures provided on or with charge card applications and solicitations.

bringing such products within the ambit of Regulation E as prepaid accounts. In addition, the proposal would have created several new provisions specific to such accounts.

After consideration of the feedback received at every stage of the rulemaking process (in response to the Prepaid ANPR, in the course of developing the proposal, and since issuing the proposal) as well as multiple rounds of consumer testing, and interagency consultations, the Bureau is adopting this same general approach in the final rule, with some modifications, as discussed herein.

The Bureau's rationale for its approach in the final rule, and its response to specific comments addressing each of the proposed revisions and additions, are discussed in greater detail in the section-by-section analyses that follow.

#### *Comments Received on the Bureau's Proposed Approach Generally*

In addition to comments regarding specific sections of the proposal, the Bureau received comments addressing more generally its proposed approach to regulating prepaid accounts under Regulation E. Consumer group commenters largely praised the Bureau for proposing to add protections for prepaid accounts. They pointed to what they described as a gap in regulatory protection relating to GPR cards, and noted the importance of additional protections for this product segment, especially in light of what they characterized as increased consumer usage and increased complexity of product offerings in the GPR card market. In particular, following a high-profile service disruption affecting a particular issuer and thousands of its prepaid accountholders, several consumer groups submitted a joint letter commending the Bureau for its proposal to extend Regulation E to all prepaid accounts. The letter suggested that, had Regulation E applied uniformly to all prepaid accounts at the time of the incident, consumers may have had more and better tools at their disposal to address the incident. In addition to

generally commending the Bureau for proposing a rule that, in their view, would provide necessary protections for prepaid account consumers that consumers of other account types already have, consumer group commenters voiced general support for specific key portions of the Bureau's proposal, in particular the standardization of prepaid account disclosures, extending Regulation E's limited liability and error resolution provisions to prepaid accounts, and regulating credit features offered in connection with prepaid accounts.

Most consumer group commenters, however, urged the Bureau to go farther by finalizing additional protections beyond those that were proposed. Specifically, several consumer groups urged the Bureau to ban or limit specific fees generally or to do so for specific products. For example, commenters argued that the Bureau should ban or limit balance inquiry fees, fees for making customer service calls, declined transaction or NSF fees, card replacement fees, inactivity fees, maintenance fees, legal process fees, research fees, and account closing fees. Still other commenters argued that the Bureau should ban all fees on cards used by correctional facilities to distribute funds to formerly-incarcerated individuals, or that it should ban or limit all fees for withdrawing salary or wages, or insurance, tax, or student financial aid funds, especially in cases where the cardholder has no choice but to receive those funds on a prepaid account.

Consumer group commenters also sought certain prohibitions unrelated to fees. For example, a number of consumer groups asked the Bureau to prohibit forced arbitration and class action ban clauses in prepaid account agreements. One consumer group urged the Bureau to limit financial institutions' ability to place holds on account funds while a transaction clears. Other consumer groups urged the Bureau to require that additional features be offered in connection with prepaid accounts. For example, a number of consumer groups asked the Bureau to consider requiring, or at least encouraging, financial institutions to offer linked savings

accounts in connection with prepaid accounts, and a coalition of consumer groups urged the Bureau to require that consumers' prepaid account usage be reported to the credit reporting agencies.<sup>276</sup>

While most commenters, including industry groups, did not object to the general concept of bringing prepaid products within the ambit of Regulation E, many industry commenters voiced concern about the overall level of burden that would be imposed by the proposal on entities that issue or act as service providers for issuers of prepaid accounts. This includes some trade associations, issuing banks and credit unions, program managers, and others, as well as a member of Congress, who argued that the overall burdens of the proposal would be disproportionate to what they viewed as limited benefits. Some of these commenters argued in particular that the rule was unnecessary because most issuers of GPR cards are already following Regulation E. A subset of these commenters, including an issuing bank, a law firm writing on behalf of a coalition of prepaid issuers, and a payment network, argued that the proposed rule would over-burden industry because it was impractical or impossible to comply with, overly complex, highly prescriptive, or overly broad. These and other commenters, including industry trade associations, issuing banks, and a payment network, argued further that financial institutions would respond to these additional burdens by either exiting the market, reducing their product offerings, or raising prices, all of which, they said, have the potential to reduce overall consumer choice in the prepaid marketplace. Some of these commenters expressed concern particularly about the impacts of the rule on digital wallets and other emerging products. Some

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<sup>276</sup> In the Prepaid ANPR, the Bureau sought input and data on the efficacy of certain other features that are or could be offered in connection with prepaid accounts, including linked savings features and credit-building features whereby consumers' transaction history may be reported to credit reporting agencies. Based on the ANPR comments received, as well as its understanding of the state of the market, the Bureau stated its belief that it would not be appropriate to take further action on those issues in the context of the proposal. Nonetheless, the Bureau solicited additional input and data on these issues.

commenters, including a program manager, industry trade associations, an issuing bank, and the law firm writing on behalf of a coalition of prepaid issuers, also argued that the burdens imposed by the rule were not justified by the intended consumer benefits or by the Bureau's desire to remedy what the commenters viewed as relatively minor or hypothetical consumer harms.

Commenters urged the Bureau to exclude specific types of entities from coverage under the rule. In particular, a number of industry commenters noted the unique burdens they believed the rule would place on small banks and credit unions, while a subset of these commenters, including an issuing credit union, trade associations representing banks and credit unions, and a program manager, argued that the Bureau should exempt these smaller institutions from the rule altogether. By contrast, one industry trade association urged the Bureau to take additional steps to supervise and enforce against non-depository financial institutions in the prepaid market, such as by issuing a rule under section 1024 of the Dodd-Frank Act,<sup>277</sup> arguing that without direct oversight from the Bureau, these non-depository players would be unfairly advantaged by lower compliance costs.

#### *Summary of the Bureau's Approach to Regulating Prepaid Accounts under Regulation E*

The Bureau has considered these general comments and has made certain modifications to the rule, as discussed in detail in the section-by-section analyses that follow, to calibrate carefully with regard to burden concerns. The major provisions of the final rule are organized as follows: § 1005.2(b)(3) adds the term prepaid account to the general definition of account in Regulation E and sets forth a definition for that term, revised from the proposal for clarity and

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<sup>277</sup> Under section 1024 of the Dodd-Frank Act, the Bureau is authorized to supervise certain non-bank covered persons for compliance with Federal consumer financial laws and for other purposes. Under section 1024(a)(1)(B) of the Dodd-Frank Act, for certain markets, the supervision program generally will apply only to "larger participant[s]" of these markets. The Bureau has defined larger participants in several markets and is considering issuing additional regulations to define further the scope of the Bureau's non-bank supervision program.

with some additional exclusions. Comment 10(e)(2)-2 clarifies that the existing prohibition on compulsory use in § 1005.10(e)(2) prohibits a government agency from requiring consumers to receive government benefits by direct deposit to any particular institution. Section 1005.15, which includes preexisting provisions applicable to government benefit accounts, also includes new provisions setting forth and clarifying the application of several provisions of revised § 1005.18 (concerning disclosures, access to account information, error resolution and limited liability requirements, and overdraft credit features) to government benefit accounts.

Section 1005.18 contains the bulk of the final rule's specific requirements for prepaid accounts. Section 1005.18(a) states that prepaid accounts must comply with subpart A of Regulation E, except as modified by § 1005.18. Section 1005.18(b)(1) sets forth that, in general, both the short form and long form disclosures must be provided before a consumer acquires a prepaid account. For prepaid accounts sold at retail locations, however, a financial institution may provide the long form disclosure after acquisition so long as the short form contains information enabling the consumer to access the long form by telephone and on a website. A similar accommodation is made for prepaid accounts acquired orally by telephone. Section 1005.18(b)(2) contains the general content requirements for the short form disclosure, while § 1005.18(b)(3) addresses specific short form requirements related to disclosure of variable fees and third-party fees, as well as treatment of finance charges on overdraft credit features offered in connection with a prepaid account. Section 1005.18(b)(4) contains the content requirements for the long form disclosure. Section 1005.18(b)(5) requires that certain additional information be disclosed outside but in close proximity to the short form, including the purchase price and activation fee, if any, for the prepaid account. Section 1005.18(b)(6) contains requirements regarding the form of the pre-acquisition disclosures, including specific requirements applicable

when disclosures are provided in writing, electronically, or orally by telephone. Section 1005.18(b)(7) sets forth formatting requirements for the short form and long form disclosures generally, as well as formatting requirements for payroll card accounts and prepaid accounts that offer multiple service plans in particular. Section 1005.18(b)(8) requires that fee names and other terms must be used consistently within and across the disclosures required by final § 1005.18(b). Section 1005.18(b)(9) requires financial institutions to provide pre-acquisition disclosures in foreign languages in certain circumstances.

Next, § 1005.18(c) addresses access to account information requirements for prepaid accounts. It states that a financial institution is not required to provide periodic statements if it makes available to the consumer balance information by telephone, at least 12 months of electronic account transaction history, and upon the consumer's request, at least 24 months of written account transaction history. Periodic statements and account transaction histories must disclose the amount of any fees assessed against the account, and must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date. Section 1005.18(d) sets forth alternative disclosure requirements for both the initial disclosures and annual error resolution notices for financial institutions that provide information under the periodic statement alternative in § 1005.18(c).

Section 1005.18(e) clarifies that prepaid accounts must generally comply with the limited liability provisions in existing § 1005.6 and the error resolution requirements in § 1005.11, with some modifications. Specifically, the final rule extends Regulation E's limited liability and error resolution requirements to all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account, but

does not require provisional credit for unverified accounts. Section 1005.18(f) contains certain other disclosure requirements, such as a requirement that the initial disclosures required by § 1005.7 include all of the information required to be disclosed in the long form and specific disclosures that must be provided on prepaid account access devices. Finally, § 1005.18(h) sets forth a general effective date of October 1, 2017 for most of the final rule, with some specific accommodations related to disclosures and account information. Among other things, the final rule permits financial institutions to continue distributing prepaid account packaging material that was manufactured, printed, or otherwise produced prior to the effective date provided certain conditions are met.

Section 1005.19 contains the requirements for submitting prepaid account agreements to the Bureau and for posting the agreements to the website of the prepaid account issuer. Section 1005.19(a) provides certain definitions specific to § 1005.19. Section 1005.19(b)(1) requires an issuer to make submissions to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer any prepaid account agreement. Sections 1005.19(b)(2) and (3) set forth the requirements for the submission of amended agreements and the notification of agreements no longer offered. Sections 1005.19(b)(4) and (5) provide de minimis and product testing exceptions to the submission requirement. Section 1005.19(b)(6) sets forth the form and content requirements for prepaid account agreements submitted to the Bureau. Section 1005.19(c) generally requires an issuer to post and maintain on its publicly available website prepaid account agreements that are offered to the general public. Section 1005.19(d) requires issuers to provide consumers with access to their individual prepaid account agreements either by posting and maintaining the agreements on their website, or by promptly providing a copy of the

agreement to the consumer upon request. Section 1005.19(f) provides a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau.

The final rule also adds provisions to Regulation E that supplement and complement the final rule amendments to Regulation Z regarding overdraft credit features offered in connection with a prepaid account. As discussed below in the section-by-section analyses under Regulation Z, the final rule generally applies the Regulation Z credit card rules to overdraft credit features that can be accessed in the course of a transaction with the prepaid card where such credit features are provided by the prepaid account issuer, its affiliate, or its business partner. The final rule generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account. Under the final rule, a prepaid card that can access such an overdraft credit feature is defined as a “hybrid prepaid-credit card,” and the overdraft credit feature is defined as a “covered separate credit feature.” Related modifications to Regulation E include a revision to § 1005.10(e)(1) that prohibits issuers from requiring consumers to set up preauthorized EFTs to repay credit extended through a covered separate credit feature accessible by a hybrid prepaid-credit card. Section 1005.12(a) clarifies whether Regulation E or Regulation Z governs the issuance of a hybrid prepaid-credit card, and a consumer’s liability and error resolution rights with respect to transactions that occur in connection with a prepaid account with a covered separate credit feature. Section 1005.17 clarifies that a covered separate credit feature accessible by a hybrid prepaid-credit card is not an “overdraft service” as that term has been defined under Regulation E in connection with checking accounts. Finally, § 1005.18(g) requires a financial institution to provide the same account terms, conditions, and features on a prepaid account without a covered separate credit feature that it provides on prepaid accounts in the same prepaid account program that have such a

credit feature, except that the financial institution may impose higher fees or charges on a prepaid account with such a credit feature.

In finalizing these provisions, the Bureau has carefully considered the general comments summarized above expressing concerns about the Bureau's proposal to extend Regulation E coverage to prepaid accounts. The Bureau believes that comments opposing this approach generally fell into three categories. First, some commenters argued that the potential burden and risk to financial institutions of formally subjecting their prepaid account programs to Regulation E requirements would not produce substantial benefits for consumers because, among other reasons, many programs (particularly those for GPR cards) are already generally operated in compliance with the requirements for payroll cards in Regulation E. Second, some commenters were concerned that the rulemaking would define prepaid accounts broadly to include digital wallets and other emerging products, thereby chilling innovation in the payments market. Third, some commenters were primarily concerned about the burden and complexity of specific portions of the proposal. The Bureau has carefully considered the potential benefits and costs with regard to each of these sub-issues in deciding to finalize the rule.

As discussed in greater detail below in connection with the definition of prepaid account in § 1005.2(b)(3) that shapes the scope of coverage under the final rule, the Bureau believes that there is substantial benefit to consumers in subjecting prepaid accounts to Regulation E coverage even if some issuers are already generally in compliance. The Bureau notes that those issuers who are in fact in compliance will face a substantially lesser implementation burden than those who are not, as discussed in part VII below. Moreover, the Bureau believes that consumer protections are clearer and more effective when companies are accountable for complying with them as a matter of law, rather than by the choice or discretion of individual issuers. Indeed, the

Bureau agrees with the consumer group commenters who asserted that uniform coverage of prepaid accounts under Regulation E will better equip and empower consumers to work with financial institutions to address problems with their prepaid accounts.

As discussed in greater detail in connection with § 1005.2(b)(3) below, the Bureau has carefully evaluated the benefits and costs of extending Regulation E to digital wallets and other similar products, as well as to government benefit accounts, payroll card accounts, GPR cards, and other types of prepaid products. The Bureau recognizes that there is some need for tailoring of particular provisions for prepaid accounts in certain circumstances, and has made revisions to various specific requirements to address such nuances. For example, the Bureau has revised proposed § 1005.19(c) such that the final rule does not require issuers to post on their publicly-available websites account agreements that are not offered to the general public, such as those for government benefit and payroll card accounts. Nevertheless, the Bureau believes that there is substantial value to both consumers and financial institutions in promoting consistent treatment where logical and appropriate across products. The Bureau has considered the possibility that providers might pass on increased costs to consumers or be more cautious in developing additional products or features, as discussed in part VII below, and believes that such concerns are relatively modest.

Likewise, the Bureau acknowledges industry's concerns about the volume of information financial institutions will have to disclose under the final rule's pre-acquisition disclosure regime, and the potential redundancies between the short form and long form disclosures. The Bureau continues to believe, however, that there is clear consumer benefit to ensuring consumers have access to both of these disclosures pre-acquisition because the disclosures play crucial but distinct roles. The Bureau designed and developed the short form disclosure to provide a concise

snapshot of a prepaid account's key fees and features that is both easily noticeable and digestible by consumers. The Bureau believes that the overall standardization of the short form disclosure will facilitate consumers' ability to comparison shop among prepaid account programs. On the other hand, the Bureau also recognizes that providing only a subset of a prepaid account program's fee information on the short form might not provide all consumers with the information they need to make fully-informed acquisition decisions in all cases. For this reason, the final rule also requires the long form disclosure to be provided as a companion disclosure to the short form, offering a comprehensive repository of all of a prepaid account's fees and the conditions under which those fees could be imposed, along with certain other key information about the prepaid account. The Bureau notes that, under the alternative timing regime for disclosures provided in a retail location or by phone, a financial institution may provide the long form disclosure after acquisition so long as the short form contains information enabling the consumer to access the long form by telephone and on a website. In sum, the short form and the long form disclosures together provide consumers with an overview of the key information about the prepaid account and an unabridged list of fees and conditions and other important information about the account.

The Bureau has also considered concerns about burden and complexity both with regard to specific elements of the proposal and regarding coverage and compliance more broadly, and has made numerous adjustments to more finely calibrate the final rule to promote compliance and a smooth implementation process, as discussed in more detail with regard to individual provisions in the section-by-section analyses that follow. At the outset, the Bureau notes that the fact that a significant majority of these products are already substantially in compliance with existing Regulation E provisions applicable to payroll card accounts will reduce implementation

burdens considerably. Furthermore, the Bureau notes that several provisions of the final rule have been adjusted to take more careful account of current industry practices, and as such should not require significant changes to existing procedures. For example, the Bureau has specifically clarified the timing of acquisition requirements for purposes of delivering pre-acquisition disclosures in final comment 18(b)(1)(i)-1 for payroll card accounts and prepaid accounts generally, and in final comments 15(c)-1 and -2 for government benefit accounts. These revisions are consistent with what the Bureau believes to be the current practices of many employers and government agencies and therefore should not require significant modifications to current procedures.

The Bureau also has incorporated certain burden-reducing measures to address various concerns raised by commenters about the burden on industry they asserted would result from the proposed pre-acquisition disclosure regime. These burden-alleviating modifications include the various changes to the additional fee types disclosures, including disclosure of two fees rather than three; a de minimis threshold; and reassessment and updating required every 24 months rather than 12. Other measures in the final rule that reduce burden include permitting reference in the short form disclosure for payroll card accounts (and government benefit accounts) to State-required information and other fee discounts and waivers pursuant to final § 1005.18(b)(2)(xiv)(B); permitting disclosure of the long form within other disclosures required by Regulation E pursuant to final § 1005.18(b)(7)(iii); and flexible updating of third-party fees in the long form disclosure pursuant to § 1005.18(b)(4)(ii).

As another example, the Bureau has modified the periodic statement alternative in § 1005.18(c)(1)(ii) to require at least 12 months of electronic account transaction history (instead of 18 months as proposed), which commenters explained many financial institutions already

make available; the Bureau therefore believes any changes needed to comply with that portion of the rule for most financial institutions should be minimal. Likewise, implementing changes to provide at least 24 months of written account transaction history upon request pursuant to final § 1005.18(c)(1)(iii) should also not be problematic because the Bureau understands financial institutions generally retain several years of account transaction data in archived form.

Relatedly, final § 1005.18(c)(5) requires financial institutions to provide a summary total of the fees assessed against the consumer's prepaid account for the prior calendar month and calendar year to date, but not summary totals of all deposits to and debits from a consumer's prepaid account as proposed.

Similarly, regarding the prepaid account agreement posting requirement, the Bureau believes the modification in final § 1005.19(c) to require issuers to post on their publicly-available websites only the agreements that are offered to the general public will reduce the number of agreements prepaid account issuers must post. In addition, this is generally consistent with the types of agreements that issuers post to their websites already, thus reducing the burden associated with this requirement relative to the proposal. Likewise, the Bureau believes that the revision in final § 1005.19(b)(1) to submit agreements to the Bureau on a rolling basis (instead of quarterly) should reduce the burden of the submission requirement on issuers relative to the proposal.

The Bureau has also given substantial thought to ways in which it can facilitate industry's implementation process for this final rule. For example, the Bureau has extended the general effective date of the rule from the proposed nine months following the publication of the rule in the *Federal Register* to approximately 12 months following the Bureau's issuance of this final rule. The Bureau has also eliminated the proposed requirement to pull and replace non-

compliant prepaid account access devices and packaging materials after the effective date, which the Bureau believes obviates commenters' concerns about the environmental impact and cost of retrieving and destroying old packaging. The Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule for the convenience of the prepaid industry and to help reduce development costs.<sup>278</sup> The Bureau also believes the accommodation set forth in new § 1005.18(h)(3) for financial institutions that do not have readily available the data necessary to comply in full with the periodic statement alternative or summary totals of fees requirements as of October 1, 2017 should provide financial institutions with the additional flexibility in preparing for this final rule's effective date. Finally, the Bureau believes the delayed effective date of October 1, 2018 set forth in new § 1005.19(f)(2) for the prepaid account agreement submission requirement, as well as the other modifications made to the posting requirement in final § 1005.19, as discussed above, should help alleviate the time pressures prepaid account issuers might otherwise face when complying with those provisions.

In addition to these specific modifications to the rule to reduce burden to industry relative to the proposal, the Bureau is committed to working with industry to facilitate the transition process through regulatory implementation support and guidance, including by developing and providing a compliance guide to covered entities.<sup>279</sup>

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<sup>278</sup> These files are available at [www.consumerfinance.gov/prepaid-disclosure-files](http://www.consumerfinance.gov/prepaid-disclosure-files).

<sup>279</sup> Under section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis under 5 U.S.C. 605(b), the Bureau is required to publish a small entity compliance guide. As set forth in part VIII below, the Bureau has certified that this rule does not require a final regulatory flexibility analysis. Accordingly, the Bureau is not required under SBREFA to publish a small entity compliance guide, but nonetheless intends to do so to assist industry with implementation and compliance.

Regulatory implementation materials related to this final rule are available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid>.

In light of the modifications the Bureau has made to the rule as proposed, as well as the benefits of the final rule to consumers, the Bureau does not believe that further modifications to its general approach of regulating prepaid accounts under Regulation E—that is, beyond those specific modifications discussed in the following section-by-section analyses—are warranted. Nor does it believe that it would be appropriate to exempt from the final rule entire categories of financial institutions, as some commenters writing on behalf of smaller banks and credit unions suggested. The Bureau notes, however, that to the extent smaller banks or credit unions merely sell prepaid accounts issued by other entities, they are not covered financial institutions under Regulation E, since they do not satisfy either part of the definition of financial institution (*i.e.*, they do not hold prepaid accounts, nor do they issue prepaid accounts and agree with consumers to provide EFT services in connection with prepaid accounts).<sup>280</sup> As such, while some of the required changes may be implemented by third-party service providers, such as program managers or processors, the burden of and liability for complying with this final rule would generally fall on the financial institution that issues the prepaid accounts, not on the banks or credit unions selling those products. Moreover, to help alleviate some of the burdens anticipated by smaller banks and credit unions in this situation with respect to disclosures, the Bureau has expanded the alternative timing regime for pre-acquisition disclosures that applies to prepaid accounts acquired in person to apply to any retail location, not just a retail store—under the final rule, therefore, banks and credit unions that sell other financial institutions’ prepaid accounts in their branches will be able to provide the long form disclosure after acquisition, provided they comply with the requirements set forth in final § 1005.18(b)(1)(ii).

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<sup>280</sup> See § 1005.2(i).

With respect to the comment requesting the Bureau to increase its supervisory authority over non-depository financial institutions in the market for prepaid accounts, the Bureau notes that this final rule's requirements apply equally to depositories and non-depositories alike. The Bureau will continue to monitor the markets, and may consider future rulemakings aimed at defining larger participants in this or other relevant markets, pursuant to its authority under section 1024 of the Dodd-Frank Act.

With respect to specific requests made by consumer groups for additional requirements or prohibitions, the Bureau notes that many of the requests go significantly beyond the scope of what the Bureau contemplated in the proposed rule. Specifically, requests to ban certain fees, either in general or in the context of particular types of cards, are outside the scope of this rulemaking, and as such, the Bureau declines to include any such blanket fee bans in the final rule. Nonetheless, the Bureau recognizes commenters' concerns regarding financial institutions' fee practices, particularly with respect to practices that disproportionately impact vulnerable populations, such as formerly incarcerated individuals, and will continue to monitor these practices going forward. Likewise, the final rule does not address financial institutions' practices with respect to placing holds on funds pending clearance of a transaction.<sup>281</sup>

The request that the Bureau ban arbitration or class action waivers in prepaid account agreements is also outside the scope of this rulemaking. The Bureau notes, however, that if finalized as proposed, the Bureau's recent Arbitration Agreements NPRM would prohibit covered providers of certain consumer financial products and services from using an arbitration

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<sup>281</sup> The Bureau notes that the U.S. transition from magnetic strip to EMV chip payment cards is expected to reduce the incidence of card-related fraud. As such, account holds related to fraud prevention may likewise reduce in amount or frequency.

agreement to bar the consumer from filing or participating in a class action with respect to the covered consumer financial product or service.<sup>282</sup>

Finally, with respect to consumer group commenters' requests that the Bureau require or encourage financial institutions to add savings or credit building features to prepaid accounts, the Bureau agrees with commenters that such features can be beneficial to consumers. Linked savings programs, for instance, may allow participating consumers to better manage their current spending and set aside funds for planned or unexpected expenses. Nevertheless, the Bureau does not believe it would be appropriate to mandate one at this juncture. The Bureau will continue to encourage financial institutions to expand their offerings in this area, in such a way as to provide protections and opportunities for consumers.<sup>283</sup>

#### *Other Regulation E Subpart A Provisions Applicable to Prepaid Accounts*

The Bureau explained in the proposal that unless as otherwise provided under the proposed rule, the requirements of current subpart A of Regulation E would extend to prepaid accounts in the same manner they currently apply to payroll card accounts. This aspect of the proposal is adopted as proposed.

A law firm commenter representing a coalition of prepaid issuers asserted that the Bureau should permit financial institutions to provide all required disclosures related to prepaid accounts electronically regardless of whether a financial institution complies with the Electronic Signatures in Global and National Commerce Act (E-Sign Act),<sup>284</sup> which generally requires

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<sup>282</sup> 81 FR 32830 (May 24, 2016). The proposal would also facilitate monitoring of consumer arbitrations by requiring providers to report certain information to the Bureau in connection with individual arbitration proceedings.

<sup>283</sup> See also Press Release, CFPB, *CFPB Project Catalyst Study Finds Savings Offers Double the Number of Consumers Saving* (Sept. 29, 2016), available at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-project-catalyst-study-finds-savings-offers-double-number-consumers-saving/>.

<sup>284</sup> 15 U.S.C. 7001 *et seq.*

consumer consent and a demonstration that the consumer can receive materials electronically before written disclosures can be delivered electronically.

In general, the Bureau believes that existing § 1005.4(a)(1) should apply to prepaid accounts. Section 1005.4(a)(1) permits the electronic delivery of disclosures required pursuant to subpart A of Regulation E, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. However, the final rule permits financial institutions to provide the short form and long form disclosures electronically without E-Sign consent for prepaid accounts that are acquired electronically, including via a mobile device, to ensure that consumers receive relevant disclosure information at the appropriate time. During the pre-acquisition time period for prepaid accounts, the Bureau believes that it is important for consumers who decide to go online to acquire a prepaid account to see the relevant disclosures in electronic form. The Bureau believes that many consumers may decide whether to acquire a particular prepaid account after doing research online, and that if they are not able to see disclosures on the prepaid account program's website, they cannot make an informed acquisition decision. But the fact that the consumer has used the website once to acquire the account does not mean that the consumer intends to receive all disclosures later in the account relationship via website, absent a formal process by which the consumer is informed of and consents to that delivery method. And with accounts acquired through other means, the Bureau similarly believes it is important that consumers have an opportunity to consent to electronic delivery of disclosures in general. Accordingly, the Bureau declines to permit financial institutions to provide all required disclosures related to prepaid accounts electronically regardless of whether a financial institution complies with the E-Sign Act.

Finally, current § 1005.10(c) provides that a consumer can revoke authorization of preauthorized EFTs orally or in writing. If the consumer gives the stop payment request orally, a financial institution may require the consumer to then give written confirmation, or else the oral stop payment order will cease to bind the financial institution. A consumer group commenter requested that the Bureau clarify that consumers can revoke their authorization of preauthorized EFTs in writing, electronically, or orally in any manner, as long as the method provides a consumer's creditor with reasonable notice and opportunity to act. The Bureau declines to modify § 1005.10(c) in this way, as doing so would be outside of the scope of this rulemaking insofar as any such clarification would presumably apply to all Regulation E accounts, not just prepaid accounts.

The Bureau notes that among the other various Regulation E provisions that will apply to prepaid accounts are the limitations on the unsolicited issuance of an access device in existing § 1005.5 and the requirement in existing (§ 1005.13) to retain records that evidence compliance with the requirements of EFTA and Regulation E.

### *Section 1005.2 Definitions*

#### *2(b) Account*

##### *2(b)(2) Bona Fide Trust Account*

The current definition of account in Regulation E includes an exception for bona fide trust accounts.<sup>285</sup> To accommodate the proposed definition for the term prepaid account and a proposed adjustment to the definition of payroll card account, the Bureau proposed to renumber the exception for bona fide trust accounts as § 1005.2(b)(2) without any substantive changes to the exception. The Bureau did not receive any comments on this portion of the proposal and is

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<sup>285</sup> See existing § 1005.2(b)(3).

finalizing this change as proposed. As explained in the proposal, to accommodate this change, the Bureau does not need to renumber existing comments 2(b)(2)-1 and -2 because those comments are currently misnumbered in the Official Interpretations to Regulation E.

### *2(b)(3) Prepaid Account*

#### *The Bureau's Proposal*

The Bureau proposed several changes to § 1005.2(b), as discussed below. In sum, these changes would have created a broad new defined term, “prepaid account,” as a subcategory of the definition of “account” in existing § 1005.2(b)(1), and thus subject to Regulation E. As discussed in detail in the proposal, existing § 1005.2(b)(1) defines an “account” generally for purposes of Regulation E as a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. EFTA and existing Regulation E contain explicit provisions applying specifically to payroll card accounts, as well as accounts used for the distribution of government benefits in existing §§ 1005.18 and 1005.15, respectively. Gift cards, although not included in the § 1005.2(b) definition of account, are addressed specifically in § 1005.20. The Board, in adopting rules to include payroll card accounts within the ambit of Regulation E, explicitly stated that Regulation E did not, at that time, cover general spending cards to which a consumer might transfer by direct deposit some portion of the consumer’s wages.<sup>286</sup> As a result, some regulators, the prepaid industry, and others had interpreted Regulation E as not applying to various types of

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<sup>286</sup> 71 FR 51437, 51441 (Aug. 30, 2006).

prepaid products that are not payroll card accounts, accounts used for the distribution of government benefits, or gift cards.<sup>287</sup>

After the Bureau assumed authority for implementing most of EFTA pursuant to the transfer of certain authorities from the Board to the Bureau under the Dodd-Frank Act, it analyzed whether other types of prepaid products not already specifically identified in Regulation E could or should be covered by the regulation. It first considered the applicability of EFTA to prepaid products. EFTA, among other things, governs transactions that involve an EFT to or from a consumer's account. It defines an account to be "a demand deposit, savings deposit, or other asset account . . . as described in regulations of the Bureau, established primarily for personal, family, or household purposes."<sup>288</sup> Insofar as the statute defines account broadly to include any other asset account and for the other reasons discussed below, the Bureau believed it was reasonable to interpret "account" in EFTA to include prepaid accounts. Thus, it proposed to include prepaid accounts expressly within Regulation E's definition of account. To clarify the scope of the proposed rule and to modify Regulation E to reflect the characteristics of prepaid accounts, the Bureau proposed to modify the definition of "account" under § 1005.2(b) to create a specific sub-definition for prepaid account.

The Bureau believed that proposing to apply Regulation E to prepaid accounts was appropriate for several reasons. First, it concluded that consumers' use of prepaid products had evolved significantly since 2006, when the Board last examined the issue in the course of its payroll card account rulemaking. The Bureau noted that a substantial number of consumers

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<sup>287</sup> See, e.g., FMS Rule, 75 FR 80335, 80337 (Dec. 22, 2010). However, as evidenced by the Study of Prepaid Account Agreements, many prepaid providers have, for a variety of reasons, elected to apply some or all of Regulation E's provisions (as modified by the Payroll Card Rule) to their non-payroll prepaid products generally.

<sup>288</sup> EFTA section 903(2), 15 U.S.C. 1693a(2).

could and do use prepaid accounts that involve substantial sums of money, in part because many have wages and/or benefits loaded onto prepaid cards through direct deposit.<sup>289</sup> In addition, consumers use prepaid cards for a variety of purposes, including making purchases, paying bills, and receiving payments.<sup>290</sup> Indeed, the Bureau noted that some consumers without other transaction accounts depend on prepaid cards to meet all of their payment account needs.<sup>291</sup> As a result, the Bureau believed that such products should be considered consumer asset accounts subject to EFTA and Regulation E.

Second, the Bureau concluded that inclusion aligned appropriately with the purposes of EFTA. The legislative history of EFTA indicates that Congress's primary goal was to protect consumers using EFT services. Although, at the time, providers of electronic payment services argued that enactment of EFTA was premature and that the electronic payment market should be allowed to develop further on its own, Congress believed that establishing a framework of rights and duties for all parties would benefit both consumers and providers. Likewise, in the proposal, the Bureau stated its belief that it was appropriate to establish such a framework for prepaid accounts, because doing so would benefit both consumers and providers.<sup>292</sup>

In addition, were it to finalize the proposal, the Bureau believed that consumers would be better able to assess the risks of using prepaid products. Indeed, the Bureau was concerned that because prepaid cards could be so similar to credit and debit cards (which are protected under

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<sup>289</sup> See, e.g., Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households*, at 55 (Oct. 2014), available at <https://www.fdic.gov/householdsurvey/2013report.pdf> (2013 FDIC Survey) (finding that for households that reloaded prepaid debit cards in the last 12 months, 17.7 percent of all households and 27.7 percent of unbanked households did so via direct deposit of a paycheck).

<sup>290</sup> See, e.g., *id.* at 48 (finding that for all households that used prepaid debit cards in the last 12 months, 44.5 percent did so to pay for everyday purchases or to pay bills and 19.4 percent did so to receive payments).

<sup>291</sup> See, e.g., *id.* (finding that for unbanked households that used prepaid debit cards in the last 12 months, 65 percent did so to pay for everyday purchases or to pay bills and 41.8 percent did so to receive payments).

<sup>292</sup> 79 FR 77102, 77127 (Dec. 23, 2014).

Regulations Z and E), consumers may not realize that their prepaid cards lack the same benefits and protections as those other cards. The Bureau stated its belief that the proposal, if finalized, would serve to make those protections more consistent and eliminate a regulatory gap.

With these considerations in mind, the Bureau proposed to bring a broad range of prepaid products within the ambit of Regulation E and also proposed to modify certain substantive provisions of Regulation E as appropriate for different types of prepaid accounts. To facilitate this, the Bureau proposed to add a definition of “prepaid account,” the specifics of which are discussed in greater detail in the section-by-section analyses that follow, to the existing definition of “account” in § 1005.2(b). In sum, the proposed definition would have created a broad general umbrella definition for prepaid accounts that are issued on a prepaid basis or loaded with funds thereafter and are usable to conduct transactions with merchants or at an ATM, or usable to facilitate P2P transfers. The definition would not have depended on whether such accounts were reloadable or non-reloadable. Payroll card accounts and government benefit accounts would have been subsumed within the broader definition, though still enumerated as specific subcategories for purposes of tailoring certain substantive rules. The Bureau noted that while not all prepaid products covered by the proposed definition could or would be used as full and ongoing transaction account substitutes, it was concerned that to try to carve out very specific types of products that were, or could be, used for short-term limited purposes would create substantial complexity and could result in consumer confusion as to what protections would apply to otherwise indistinguishable products. The proposed definition would have excluded accounts that were already subject to Regulation E.<sup>293</sup>

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<sup>293</sup> *Id.* at 77127-28.

### *Comments Received*

As with the comments the Bureau received in response to the ANPR, most commenters to the proposal (industry, consumer advocacy groups, and others) did not object to the general concept of bringing prepaid products within the ambit of Regulation E.<sup>294</sup> While there were some concerns from industry and others, discussed in more detail below, about exactly which types of prepaid products the Bureau might subject to Regulation E, most commenters favored inclusion of GPR cards. Among other reasons, several industry trade associations noted that insofar as many GPR card issuers and program managers already voluntarily comply with Regulation E, the Bureau should formalize GPR cards' inclusion in Regulation E as a means of standardizing protections for consumers.

A number of industry commenters, however, took issue with the Bureau's proposal to define prepaid account more broadly than just GPR cards. A number of these commenters, including program managers, a trade association, and a law firm writing on behalf of a coalition of prepaid issuers, stated that the scope of the proposal's coverage was a significant departure from the Bureau's Prepaid ANPR, which they noted focused exclusively on GPR cards and like products. A number of commenters, including trade associations and an issuing bank, urged the Bureau to focus its rulemaking on products that could be used in the same ways as traditional transaction accounts. The commenters contrasted such products, which they contended include GPR cards, with products that have limitations on use, such as non-reloadable cards or so-called

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<sup>294</sup> A trade association representing credit unions asserted that the Bureau lacked the statutory authority to extend Regulation E to GPR cards. The commenter argued that, because Congress expressly exempted GPR cards from the provisions of the Credit CARD Act that apply to gift cards, the Bureau lacks the authority to extend the requirements of all of Regulation E to prepaid cards absent a statutory amendment to EFTA to define "account" to include prepaid cards. The Bureau disagrees. The provisions in the Credit CARD Act that apply to gift cards were specific requirements that Congress mandated for the unique context of gift cards. These provisions do not take away from the Bureau's authority and discretion to regulate accounts more generally under EFTA as a whole, and the Bureau believes that "account" is reasonably interpreted to include prepaid accounts.

reload packs, which are cards that can only be used to load funds onto GPR cards. According to the commenters, products that had limited uses or functions were generally characterized by a more limited relationship between the issuer and consumer, which made these types of products inherently riskier—from a fraud-prevention perspective—and less profitable to financial institutions than GPR cards. The commenters asserted that if these more limited product types were covered under the definition of prepaid account, the cost of adding Regulation E protections may cause issuers of those products to discontinue offering them. A number of trade associations advocated that the Bureau specifically exclude non-reloadable cards for these reasons. Similarly, these and other commenters urged the Bureau to exclude reload packs.

Other industry commenters objected to the Bureau’s decision to cover “innovative” payment products, such as digital wallets capable of storing funds, mobile and electronic payments, mobile applications, and other products that were being or may one day be developed. A digital wallet provider argued for an explicit exemption for digital wallets, which it defined as card, code, or other device that is capable of accessing two or more payment credentials for purposes of making payment for goods and services at multiple unaffiliated merchants. According to the commenter, digital wallets and GPR cards should not be encompassed within the same regulatory regime because they have fundamentally different consumer use cases and functionalities, and as such are not viewed by consumers as interchangeable. For example, the commenter asserted, in contrast with GPR cards, digital wallets are used primarily to access payment credentials, not funds. The commenter further stated that, to the extent digital wallets store funds, such funds are almost always loaded onto the wallets as a result of a P2P transaction, not because the accountholder purposefully loads the wallet with funds for future use. In addition, the commenter argued, digital wallets do not present the same risks as prepaid

accounts—specifically, digital wallets charge lower fees than GPR cards and do not offer overdraft features.

Other commenters, including an issuing bank, several industry trade associations, a think tank, and a group of members of Congress, argued that if the Bureau’s prepaid accounts rule applied to such products, it would stifle growth and innovation by imposing a one-size-fits-all regime on a diverse and evolving market. These commenters advocated that the Bureau take an incremental approach to broadening the definition of prepaid account by including GPR cards in this final rule, and reevaluating the possible addition of other products at a later time.

A subset of these commenters, joined by a number of additional trade associations, a payment network, and an issuing bank, argued that the proposed definition was ambiguous and vague. Specifically, these commenters argued that the proposed definition did not draw a sufficiently clear line between accounts that were already covered by Regulation E—namely, demand deposit (checking) accounts, savings accounts, and other consumer asset accounts—and accounts that would newly be covered as prepaid accounts. These commenters expressed concern that under the proposed definition certain accounts could qualify as both prepaid accounts subject to the augmented Regulation E requirements of the proposal and traditional bank accounts (or other consumer asset accounts) subject to existing Regulation E requirements. Relatedly, other commenters stated that certain prepaid account issuers already considered their products covered under Regulation E as consumer asset accounts. As a result, commenters asserted, essentially identical products could be subject to different consumer protection regimes, resulting in inconsistent consumer protections for similar products and heightened compliance risk stemming from industry’s uncertainty regarding which regime their products fall under. These commenters urged the Bureau to create a clearer demarcation between prepaid accounts

and other types of accounts. Specifically, commenters proposed that the Bureau add greater clarity by limiting the definition of prepaid account. They had various suggestions for how to limit the definition, including, *inter alia*, limiting it to GPR cards, accounts that can only be accessed by a physical card, accounts that are marketed and labeled as prepaid accounts, accounts held by a financial institution in an omnibus (or pooled) account structure, or accounts featuring some combination of these characteristics.

Consumer groups likewise urged the Bureau to apply Regulation E to those prepaid products that consumers can use as transaction account substitutes because, in part, consumers do not know that their prepaid products lack certain protections offered by other transaction accounts. The consumer groups diverged from industry commenters, however, by largely supporting the breadth of the Bureau's proposed definition. A number of groups agreed with the Bureau's decision to include both reloadable and non-reloadable accounts in the proposed definition, arguing that the focus of the definition should be on how the account is used, not on how it is loaded. A think tank argued that consumer usage supported covering non-reloadable cards, noting that one-third of prepaid account users in its survey do not reuse their account after the initial amount of funds was depleted. A number of consumer groups advocated that the Bureau expand the proposed definition further to include specific types of non-reloadable cards loaded by third parties, such as student loan disbursement cards and prison release cards. Other consumer groups argued that a broad definition was necessary to accommodate new and changing products. These commenters supported the Bureau's decision to cover mobile and virtual payment systems, arguing that, as payment systems evolve, it was important not to adopt a narrow definition that would permit evasion.

Some commenters also urged the Bureau to expand the scope of the definition of government benefit account so that it applied to more categories of government benefit programs. Those comments and the Bureau's response thereto are discussed in greater detail in the section-by-section analysis of § 1005.15(a) below.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing the rule to define the term “account” under Regulation E to include a “prepaid account,” while making several revisions to the proposed definition of prepaid account, as summarized below and discussed in greater detail in the section-by-section analyses that follow. EFTA section 903(2) defines an account broadly to be “a demand deposit, savings deposit, or other asset account . . . as described in regulations of the Bureau, established primarily for personal, family, or household purposes.” Insofar as the statute defines account broadly to include any other asset account and for the other reasons discussed below, the Bureau believes it is reasonable to interpret account in EFTA to include prepaid accounts. In general, the Bureau declines to narrow the scope of the proposed definition to cover, for example, only GPR cards, reloadable accounts, or cards that otherwise function as transaction account substitutes, as some commenters had requested.

As it stated in the proposal, the Bureau recognizes that not all types of prepaid products lend themselves to permanent use as transaction account substitutes. Nevertheless, the Bureau continues to believe that the features of non-GPR card prepaid products as well as the ways consumers can and do use those products warrant Regulation E protection and that the prepaid regime provided in this final rule is the most appropriate regime to apply. Consumers can receive significant disbursements of funds—such as tax refunds or pay-outs of home insurance proceeds—on non-reloadable prepaid cards. They can then use such cards for a variety of

purposes, including making purchases and paying bills, for which error resolution and other Regulation E protections could be important.<sup>295</sup> Indeed, even though some types of prepaid cards may not be reloadable, consumers who lack other transaction accounts may depend entirely on such cards to meet their payment account needs, at least until the cards are spent down.<sup>296</sup> Likewise, consumers increasingly use digital wallets to conduct daily financial transactions for which Regulation E protections are important. The Bureau is not convinced by the argument that digital wallets used in this fashion are fundamentally dissimilar to other types of prepaid accounts. Indeed, to the extent that they are used to access funds the consumer has deposited into the account in advance, the Bureau believes digital wallets operate very much like a prepaid account. The Bureau notes that the fact that digital wallets currently on the market may not charge usage fees, as one commenter asserted, may not hold true in the future, especially if these products become more widely used and the features and services offered broaden.<sup>297</sup>

The Bureau is thus finalizing a definition of prepaid account that covers a range of products including GPR cards, as well as other products that may not be used as transaction account substitutes, such as certain non-reloadable accounts and digital wallets. The Bureau recognizes that the scope of the final rule's coverage extends beyond the types of accounts that were the primary focus of in the Prepaid ANPR, as some commenters remarked. The Bureau notes, however, that the ANPR also asked broader questions regarding the potential definitional scope for a prepaid rulemaking. While an ANPR is not a required part of the rulemaking process

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<sup>295</sup> See, e.g., 2013 FDIC Survey at 34 (finding that for all households that used prepaid debit cards in the last 12 months, 47.6 percent did so to pay for everyday purchases or to pay bills and 31.8 percent did so to receive payments).

<sup>296</sup> See, e.g., *id.* (finding that for unbanked households that used prepaid debit cards in the last 12 months, 65 percent did so to pay for everyday purchases or to pay bills and 41.8 percent did so to receive payments).

<sup>297</sup> The same commenter argued in the alternative that, if digital wallets were not explicitly exempted from the definition of prepaid account, they be exempted from the pre-acquisition disclosure regime. That request, and the Bureau's response to it, are discussed in greater detail below.

under the Administrative Procedures Act, the over 220 comments received in response helped inform the scope the Bureau's proposal. The Bureau notes in addition, and in response to comments from consumer groups, that the final rule's definition is broad enough to cover prepaid accounts used by consumers in various scenarios and for various purposes, so long as those accounts meet the specific provisions of the definition, as set forth below. This would include, for example, student loan disbursement cards and prison release cards that meet the other criteria set forth in the definition.

At the same time, the Bureau appreciates commenters' concerns that the single broad proposed umbrella definition could have created too much uncertainty as to treatment of products that were already subject to Regulation E prior to this rulemaking, and their concern that certain additional narrow categories of products should be excluded from the definition due to various unique circumstances. The Bureau has considered various avenues for addressing these concerns, including, as suggested by commenters, limiting coverage under the final rule to only GPR cards or to accounts held by a financial institution in an omnibus (or pooled) structure. As set forth in greater detail below, the Bureau has decided to add further clarity to the proposed definition by adding a reference to the way the account is marketed or labeled, as well as to the account's primary function. The Bureau is not finalizing a definition that would limit coverage to only GPR cards, as stated above, because it continues to believe that the features of non-GPR card prepaid products as well as the ways consumers can and do use those products warrant Regulation E protection. In addition, the Bureau declines to limit coverage under the definition to accounts held in a pooled account structure, because the Bureau believes that the characteristics that make an account a prepaid account should not be dependent on the product's back-office infrastructure.

In addition to minor changes to streamline the definition and sequence of the regulation, the Bureau has reorganized the structure of the definition and added certain wording to the final rule that is designed to more cleanly differentiate products that are subject to this final rule from those that are subject to general Regulation E. First, to streamline the definition and to eliminate redundancies, the Bureau is omitting the phrase “card, code, or other device, not otherwise an account under paragraph (b)(1) of this section, which is established primarily for personal, family, or household purposes” from final § 1005.2(b)(3)(i). Second, the Bureau is clarifying the scope of the definition by adding a reference to the way the account is marketed or labeled, as well as to the account’s primary function. Under the final definition, therefore, an account is a prepaid account if it is a payroll card account or government benefit account; *or* it is marketed or labeled as “prepaid,” provided it is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs; *or* it meets *all* of the following criteria: (a) it is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter; (b) its primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers; and (c) it is not a checking account, share draft account, or NOW account.

The final rule also contains several additional exclusions from the definition of prepaid account for: (1) accounts loaded only with funds from a dependent care assistance program or a transit or parking reimbursement arrangement; (2) accounts that are directly or indirectly established through a third party and loaded only with qualified disaster relief payments; and (3) the P2P functionality of accounts established by or through the U.S. government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities. Other than these clarifications and exclusions discussed herein, the

Bureau does not intend the changed language in the final rule to significantly alter the scope of the proposed definition of the term prepaid account.

*2(b)(3)(i)*

Proposed § 1005.2(b)(3)(i) would have defined the term prepaid account as a card, code, or other device, not otherwise an account under § 1005.2(b)(1), that was established primarily for personal, family, or household purposes, and that satisfied three additional criteria as to how the account was loaded and used, as laid out in proposed § 1005.2(b)(3)(i)(A) through (C), which are discussed separately below. This proposed definition of prepaid account was based on the formulation for the definition of general-use prepaid card in the Gift Card Rule (§ 1005.20). Proposed comment 2(b)(3)(i)-1 would have clarified that for purposes of subpart A of Regulation E, except for § 1005.17 (requirements for overdraft services), the term “debit card” also included a prepaid card. Proposed comment 2(b)(3)(i)-2 would have explained that proposed § 1005.2(b)(3) applied only to cards, codes, or other devices that were acquired by or provided to a consumer primarily for personal, family, or household purposes. For further guidance interpreting the phrase “card, code, or other device,” proposed comment 2(b)(3)(i)-2 would have referred to existing comments 20(a)-4 and -5.

The Bureau received comment from an industry trade association asserting that defining a prepaid account as a “card, code, or other device” may conflate the actual covered account with the access device that the consumer can use to transact or withdraw from that account. Upon further consideration, the Bureau has revised § 1005.2(b)(3)(i) to remove the phrase “card, code, or other device,” so that the definition does not conflate the access device that may be used to access the underlying account with the account itself. The Bureau intends the definition of prepaid account to cover the account itself, not the device used to access it.

The Bureau has also removed the reference to the prepaid account being an account that is “not otherwise an account under paragraph (b)(1) of this section.” As discussed below, the prepaid account definition’s interaction with the existing definition of account in Regulation E is now addressed in other paragraphs of final § 1005.2(b)(3)(i)(D). Specifically, excluded from the definition of prepaid account by new § 1005.2(b)(3)(i)(D)(3) are checking accounts, share draft accounts, and NOW accounts, while commentary to final § 1005.2(b)(3)(i) clarifies that other types of accounts, such as savings accounts, are excluded from the definition of prepaid account because they do not have the same primary functions.

The Bureau has revised comment 2(b)(3)(i)-1 to state that for purposes of subpart A of Regulation E, unless where otherwise specified, the term debit card also includes a prepaid card. The Bureau has removed the proposed reference to § 1005.17 in this paragraph, as the Bureau’s revisions to § 1005.17, discussed below, have rendered its reference here unnecessary.

Finally, the Bureau has also removed the phrase “established primarily for personal, family, or household purposes” from the definition of prepaid account. Upon further consideration, the Bureau believes that phrase is unnecessary here as it already appears in the main definition of account in § 1005.2(b)(1), and prepaid accounts are expressly included as a subcategory within that broader definition. The Bureau has likewise removed proposed comment 2(b)(3)(i)-2, which would have provided guidance with respect to the meaning of “established primarily for personal, family, or household purposes.”

*2(b)(3)(i)(A)*

As discussed above, the proposed rule would have created a broad general definition of prepaid account that hinged in significant part on how the account could be loaded and used, as set forth in proposed § 1005.2(b)(3)(i)(A) through (C). Rather than relying on a single broad

umbrella definition, the Bureau has concluded in response to commenters' concerns about ambiguity as to the scope of coverage that it would provide greater clarity to specify several types of products that are included within the general definition of prepaid account, and then specify an additional, narrower category for the balance of covered products by reference to those products' functionality. Accordingly, the final rule has been reorganized to list the specific categories of products first. The reorganization is not intended to substantively alter the scope of the proposed prepaid account definition's coverage.

Final § 1005.2(b)(3)(i)(A) defines the first such category, payroll card accounts. As discussed above, Regulation E currently contains provisions specific to payroll card accounts and defines such accounts.<sup>298</sup> Insofar as the Bureau was generally proposing to adapt existing payroll card account rules to prepaid accounts in § 1005.18 (which currently addresses only payroll card accounts), payroll card accounts would have been subsumed within the broad general definition of prepaid account. Nevertheless, the Bureau believed that because there are certain provisions of Regulation E that would remain specific to payroll card accounts, it was appropriate to propose to maintain the term payroll card account as a standalone sub-definition of prepaid account. Specifically, proposed § 1005.2(b)(3)(ii) would have provided that the term "prepaid account" included a "payroll card account," and would have restated the existing payroll card account definition.

In addition, the Bureau proposed to renumber existing comment 2(b)-2, which concerns certain employment-related cards not covered as payroll card accounts, as comment 2(b)(3)(ii)-1. The Bureau proposed to add to comment 2(b)(3)(ii)-1 an explanation that would have clarified that, while the existing examples given of cards would not be payroll card accounts (*i.e.*, cards

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<sup>298</sup> See existing § 1005.2(b)(2).

used solely to disburse incentive-based payments, such as bonuses, disbursements unrelated to compensation, and cards used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations where other payment methods are unavailable), such cards could constitute prepaid accounts generally, provided the other conditions of the definition of that term in proposed § 1005.2(b)(3) were satisfied. Similar to existing comment 2(b)-2, proposed comment 2(b)(3)(ii)-1 would have also stated that all transactions involving the transfer of funds to or from a payroll card account or prepaid account were covered by the regulation, even if a particular transaction involved payment of a bonus, other incentive-based payment, or reimbursement, or the transaction did not represent a transfer of wages, salary, or other employee compensation.

The Bureau did not receive any comments on this portion of the proposal, and as such, is finalizing the regulatory text and commentary largely as proposed, with minor modifications in the commentary for clarity and consistency with terms used elsewhere in this final rule.<sup>299</sup> To accommodate several substantive changes to the definition of prepaid account, however, the Bureau has renumbered several sub-sections of § 1005.2(b)(3), including § 1005.2(b)(3)(ii) and its related commentary. Under the new numbering scheme, proposed § 1005.2(b)(3)(ii) is now final § 1005.2(b)(3)(i)(A) and proposed comment 2(b)(3)(ii)-1 is accordingly renumbered as comment 2(b)(3)(i)-2.

*2(b)(3)(i)(B)*

As discussed above, Regulation E currently contains provisions in § 1005.15 that are specifically applicable to an account established by a government agency for distributing

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<sup>299</sup> The Bureau received several comments from industry requesting that the Bureau maintain a separate section for payroll card accounts, rather than treat payroll card accounts in § 1005.18, which, as the Bureau proposed, will become the general prepaid account section. Those comments, and the Bureau's response to them, are summarized in the section-by-section analysis of § 1005.18(a) below.

government benefits to a consumer electronically. While such accounts are currently defined only in existing § 1005.15(a)(2), the Bureau stated its belief in the proposal that given the other modifications to Regulation E proposed therein, it was appropriate to explicitly add such accounts used for the distribution of government benefits as a stand-alone sub-definition of prepaid account as well. Specifically, the Bureau proposed to have § 1005.2(b)(3)(iii) state that the term prepaid account includes a government benefit account, as defined in existing § 1005.15(a)(2).

The Bureau did not receive any comments on this portion of the proposal.<sup>300</sup> Consistent with its overall approach in specifying particular product types that are “prepaid accounts” before defining an additional, narrower category for the balance of covered accounts, the Bureau is finalizing the proposed language concerning government benefit accounts as § 1005.2(b)(3)(i)(B) without any other changes. Relatedly, as discussed in the section-by-section analysis of § 1005.2(b)(3)(ii)(E) below, the Bureau has added an exclusion from the definition of government benefit accounts for accounts used to distribute needs-tested benefits in a program established by under State or local law or administered by a State or local agency. That exclusion is part of the existing definition of government benefit account in § 1005.15(a)(2), and the Bureau believes it should be repeated as part of final § 1005.2(b)(3).

*2(b)(3)(i)(C)*

As noted above, several commenters requested that the Bureau revise the proposed definition of prepaid account to add greater certainty as to the scope of coverage. One commenter, a trade association, specifically suggested that the Bureau modify the definition to only apply to products that are expressly marketed and labeled as “prepaid.” The Bureau agrees

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<sup>300</sup> Comments received recommending that the Bureau expand the reach of the term government benefit account, and the Bureau’s response thereto, are discussed in the section-by-section analysis of § 1005.15(a) below.

that the addition of a provision focusing on marketing and labeling would provide greater clarity. The Bureau believes that all or most GPR cards are currently marketed or labeled as “prepaid,” either on the packaging or display of the card or in related advertising. As such, the Bureau believes that most, if not all, GPR cards will qualify as prepaid accounts under this provision of the definition. In addition, the Bureau believes that, in order to prevent consumer confusion and conform to consumer expectations, accounts that are marketed or labeled as “prepaid” should be accompanied by the same disclosures and protections that consumers will expect prepaid accounts to provide pursuant to this final rule.

The Bureau is thus adopting new § 1005.2(b)(3)(i)(C) to define as a prepaid account an account that is marketed or labeled as “prepaid.” The Bureau understands, however, that there are certain products that are intended for specific, limited purposes—for example, prepaid phone cards—that may use the term “prepaid” for marketing or labeling purposes, but which the Bureau did not intend to include under the definition of prepaid account by function of this prong. The Bureau is clarifying, therefore, that in order to qualify as a prepaid account under the “marketed or labeled” prong, an account must also be redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs. Accordingly, although products such as prepaid phone cards are marketed or labeled as “prepaid,” they would not qualify as prepaid accounts under this prong because they are not redeemable at multiple, unaffiliated merchants or usable at ATMs.

To clarify the meaning of “marketed or labeled,” the Bureau is also adopting new comment 2(b)(3)(i)-3. That comment, which draws on similar existing commentary to Regulation E concerning the marketing and labeling of gift cards,<sup>301</sup> clarifies that the term

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<sup>301</sup> See comment 20(b)(2)-2.

“marketed or labeled as ‘prepaid’” means promoting or advertising an account using the term “prepaid.” For example, an account is marketed or labeled as prepaid if the term “prepaid” appears on the access device associated with the account or the access device’s packaging materials, or on a display, advertisement, or other publication to promote purchase or use of the account. The comment further clarifies that an account may be marketed or labeled as prepaid if the financial institution, its service provider, including a program manager, or the payment network on which an access device for the account is used, promotes or advertises, or contracts with another party to promote or advertise, the account using the label “prepaid.” Finally, the comment clarifies that a product or service that is marketed or labeled as prepaid is not a “prepaid account” if it does not otherwise meet the definition of account in § 1005.2(b)(1).

*2(b)(3)(i)(D)*

Final § 1005.2(b)(3)(i)(D) contains a descriptive, general definition of the term “prepaid account” that largely preserves the structure of the proposed definition, with an increased focus on the account’s functionality for greater clarity. The provision builds on elements of proposed § 1005.2(b)(3)(i)(A) and (B), which focused on whether an account was issued to a consumer on a prepaid basis or was capable of being loaded with funds thereafter and whether the account was redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at ATMs, or usable for P2P transfers. To constitute a prepaid account under final § 1005.2(b)(3)(i)(D), an account must satisfy all three of the prongs of final § 1005.2(b)(3)(i)(D)(1) through (3), which are discussed in turn below.

2(b)(3)(i)(D)(1)

*The Bureau's Proposal*

Proposed § 1005.2(b)(3)(i)(A) would have defined a prepaid account as either issued on a prepaid basis to a consumer in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter. This portion of the proposed definition expanded upon the phrase “issued on a prepaid basis” used in the Gift Card Rule’s definition of general-use prepaid card in § 1005.20(a)(3),<sup>302</sup> by also including a prepaid product that was “not issued on a prepaid basis but capable of being loaded with funds thereafter.”

As it explained in the proposal, the Bureau sought to ensure that accounts that are not loaded at acquisition are nonetheless eligible to be prepaid accounts. The Bureau proposed this approach to address concerns that prepaid providers could restructure existing products to avoid coverage by the proposed rule if they were to separate account acquisition from initial funding. In addition, the Bureau believed the proposed provision would have ensured that consumers who used prepaid accounts received the protections in the proposed rule—particularly the pre-acquisition disclosures regarding fees and other key terms—prior to and upon establishment of the account.

Proposed comment 2(b)(3)(i)-3 would have clarified that to be “issued on a prepaid basis,” a prepaid account had to be loaded with funds when it was first provided to the consumer for use. For example, if a consumer purchased a prepaid account and provided funds that were loaded onto a card at the time of purchase, the prepaid account would have been issued on a

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<sup>302</sup> Section 1005.20(a)(3) defines the term general use prepaid card as “a card, code, or other device that is: (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.”

prepaid basis. A prepaid account offered for sale in a retail store would not have been issued on a prepaid basis until it was purchased by the consumer.

Proposed comment 2(b)(3)(i)-4 would have explained that a prepaid account that was not issued on a prepaid basis but was capable of being loaded with funds thereafter included a prepaid card issued to a consumer with a zero balance to which funds could be loaded by the consumer or a third party subsequent to issuance. This would not have included a product that could never store funds, such as a digital wallet that only held payment credentials for other accounts.

Proposed comment 2(b)(3)(i)-5 would have clarified that to satisfy proposed § 1005.2(b)(3)(i)(A), a prepaid account would have to either be issued on a prepaid basis or be capable of being loaded with funds. This would have meant that the prepaid account had to be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product was only capable of storing a consumer's payment credentials for other accounts but was incapable of having funds stored on it, such a product would not have been a prepaid account. However, if a product allowed a consumer to transfer funds, which could be stored before the consumer designated a destination for the funds, the product would have satisfied proposed § 1005.2(b)(3)(i)(A).

With these examples, the Bureau sought to make clear that it did not intend to extend the proposed definition of prepaid account to a product that could never store funds. To the extent that a digital wallet, for example, merely stores payment credentials (*e.g.*, a consumer's bank account or payment card information), rather than storing the funds themselves, the digital wallet would not have been considered a prepaid account under the proposed rule. If, however, a digital wallet allowed a consumer to store funds in it directly, then the digital wallet would have

been a prepaid account if the other criteria of the proposed definition were also met. Finally, proposed comment 2(b)(3)(i)-6 would have provided that prepaid accounts did not have to be reloadable by the consumer or a third party.

### *Comments Received*

As discussed above, some industry commenters urged the Bureau to limit the final rule to those products that could be reloaded by a consumer, arguing that such products were more likely to act as transaction account substitutes. Those comments are summarized in the section-by-section analysis of § 1005.2(b)(3) above. In short, these commenters argued that, to the extent the Bureau was seeking to create a uniform regulatory regime for like products, non-reloadable products did not function like other accounts already covered by Regulation E and thus should be excluded from coverage. They noted, for example, that non-reloadable cards were not generally accompanied by an expectation of a continued relationship between the financial institution and the consumer. In addition, these commenters argued, such accounts were largely used as a substitute for cash, such that adding disclosure and other substantive requirements to these cards would add unnecessary complexity that would far outweigh consumer expectations or needs with respect to these products. Commenters also noted that with respect to many types of non-reloadable cards, such as cards used to disburse insurance claim proceeds or tax refunds, consumers did not in fact have a choice with respect to which card they received. Comparison shopping in such circumstances, they argued, was unhelpful. Finally, with respect to the Bureau's proposed rationale that including non-reloadable accounts in the definition of prepaid account would help prevent evasion, a trade association stated that they believed that such evasion was unlikely, and further argued that the Bureau could address this

risk through the adoption of an anti-evasion provision specifically aimed at preventing financial institutions from morphing their products to avoid coverage under this rule.

With respect to the clarification in proposed comment 2(b)(3)(i)-5 that the prepaid account definition only covered accounts that were capable of holding funds (rather than just acting as a pass-through), several commenters, including issuing banks, a payment network, a digital wallet provider, and a consumer group, agreed with the proposed approach. These commenters asserted that, to the extent a digital wallet was simply acting as a pass-through of credentials for accounts that were already protected under Regulation E (or other regulations), consumers using those digital wallets were already receiving sufficient protections. As stated in the section-by-section analysis of § 1005.2(b)(3) above, other commenters objected to the Bureau's decision to cover digital wallets under the rule in any respect.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing the general content of proposed § 1005.2(b)(3)(i)(A), renumbered as § 1005.2(b)(3)(i)(D)(I), with minor edits to streamline the language. Specifically, final § 1005.2(b)(3)(i)(D)(I) defines a prepaid account, in part, as an account that is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter. In addition, the Bureau is finalizing proposed comments 2(b)(3)(i)-3, -4, -5, and -6, renumbered as comments 2(b)(3)(i)-4, -5, -6, and -7, largely as proposed, with some minor revisions for clarity.

The Bureau continues to believe that it would be inappropriate to exclude a product from the definition of prepaid account based on whether it can be reloaded or who can (or cannot) load funds into the account. The Bureau notes that products that may limit consumers from loading funds include payroll card accounts, which are already subject to Regulation E. Other products

reloadable only by a third party also may hold funds which similarly represent a meaningful portion of a consumer's available funds. This may be true, for example, for students receiving financial aid disbursements or a consumer receiving worker's compensation payments. The Bureau believes that, like consumers relying on payroll card accounts,<sup>303</sup> consumers may use these products as transaction account substitutes for a substantial period of time even when consumers cannot reload the cards themselves, and thus such products should be similarly protected. In addition, while it is true that non-reloadable products are distinct from transaction accounts (to the extent that the funds will eventually be spent down in their entirety and the account abandoned), while the accounts are in use, they may be used to conduct a significant portion of a consumer's transactions or hold a substantial portion of a consumer's funds, and as such the Bureau believes that they warrant the protections of Regulation E, including error resolution in particular. Furthermore, the Bureau believes that extending protections to all broadly usable prepaid accounts is necessary to avoid consumer confusion as to what protections apply to similar accounts. Finally, the Bureau remains concerned that, if it were to exclude non-reloadable cards from the definition of prepaid account, a financial institution could evade the Bureau's rulemaking on prepaid accounts by issuing non-reloadable cards repeatedly to the same consumer, such as to provide repeated disbursements (*e.g.*, providing a new student loan disbursement card each semester). The Bureau does not believe that an anti-evasion provision is the optimal method for dealing with this concern; rather, the Bureau is concerned that, at this time, such a provision would in fact cause some uncertainty without addressing all other concerns.

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<sup>303</sup> See 71 FR 51437, 51441 (Aug. 30, 2006).

The Bureau also is not persuaded by commenters' objections to the Bureau's proposal to cover digital wallets that can hold funds under the definition of prepaid account. The Bureau continues to believe that digital wallets that can hold funds operate in large part in a similar manner to physical or online prepaid accounts—a consumer can load funds into the account, spend the funds at multiple, unaffiliated merchants (or conduct P2P transfers), and reload the account once the funds are depleted. Accordingly, the Bureau believes that consumers who transact using digital wallets deserve the same protections as consumers who use other prepaid accounts. Indeed, as with other prepaid accounts, a consumer's digital wallet could fall victim to erroneous or fraudulent transactions. In addition, while the Bureau understands that most digital wallets available today do not typically charge many fees (with few exceptions, such as, for example, foreign exchange fees in certain circumstances or a fee for having funds from the account issued to the consumer in the form of a check), it is impossible to rule out that existing or new digital wallet providers will charge such fees in the future. If fees do become standard in this space, consumers ought to know what those fees are and when they will be imposed.

*2(b)(3)(i)(D)(2)*

#### *The Bureau's Proposal*

The next part of the Bureau's proposed definition of prepaid account would have addressed how such products must be able to be used to be considered a prepaid account. As the Board noted in adopting the Gift Card Rule, a key difference between a general-use prepaid card and a store gift card is where the card can be used.<sup>304</sup> While store gift cards and gift certificates can be used at only a single merchant or an affiliated group of merchants,<sup>305</sup> a general-use

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<sup>304</sup> See 75 FR 16580, 16588 (Apr. 1, 2010).

<sup>305</sup> See § 1005.20(a)(1)(ii) and (2)(ii).

prepaid card is defined in part under the Gift Card Rule as redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs.<sup>306</sup> The Bureau proposed to add § 1005.2(b)(3)(i)(B), which would have stated that to qualify as a prepaid account, the card, code or other device had to be redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at ATMs, or usable for P2P transfers. Proposed comment 2(b)(3)(i)-7 would have referred to existing comments 20(a)(3)-1 and -2 from the Gift Card Rule for guidance regarding the meaning of the phrase multiple, unaffiliated merchants.<sup>307</sup>

The Bureau believed it was appropriate to limit the definition of prepaid account to those products that consumers could use at multiple, unaffiliated merchants for goods or services, at ATMs, or for P2P transfers. The Bureau noted in the proposal that a core feature of a conventional debit card is that it is usable at multiple, unaffiliated merchants and at ATMs. Insofar as a purpose of the Bureau's rulemaking on prepaid accounts is to provide comparable coverage for products with comparable functionality—in this case traditional debit cards and prepaid cards—the Bureau believed it was appropriate to structure the proposed definition in a way that products with similar features had the protections afforded by Regulation E. Pursuant to the proposed definition, therefore, a prepaid account would have been an account that was accepted widely at unaffiliated merchants, rather than only a single merchant or specific group of merchants, such as those located on a college campus or within a mall or defined shopping area.

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<sup>306</sup> § 1005.20(a)(3)(ii).

<sup>307</sup> The Gift Card Rule provides that a card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network. *See* comment 20(a)(3)-1.

Next, the Bureau recognized that prepaid products were also growing in popularity as a vehicle for consumers to transmit payments to each other or to businesses. The Bureau noted that an increasing number of products allowed consumers to make P2P or P2B payments without using a third-party branded payment network. These services may not always have wide merchant acceptance, but they do allow consumers to send money to other consumers and businesses. The Bureau proposed to add new comment 2(b)(3)(i)-8 to further explain when accounts capable of P2P transfers were prepaid accounts. Specifically, the comment would have explained that a prepaid account capable of P2P transfers was an account that allowed a consumer to send funds to another consumer or business. As the comment made clear, an account could qualify as a prepaid account if it permitted P2P transfers even if it was neither redeemable upon presentation at multiple, unaffiliated merchants for goods or services, nor usable at ATMs. A transaction involving a store gift card would not have been a P2P transfer if it could have only been used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

#### *Comments Received*

The only specific aspect of proposed § 1005.2(b)(3)(i)(B) on which the Bureau received comment concerned its decision to include products that could only be used to facilitate P2P transfers. A number of consumer groups and a trade association voiced support for the Bureau's decision to include such products in the proposal. Other industry commenters who commented on the issue either opposed coverage of products usable for P2P transfers or requested that the Bureau adopt specific carve-outs from this prong of the definition. A digital wallet provider urged the Bureau to exclude P2P products from the definition of prepaid account, arguing that P2P functionality is more similar to a closed-loop payment system than to open-loop GPR cards.

Two industry trade associations and a law firm writing on behalf of a coalition of prepaid issuers argued that regulation of products used solely to facilitate P2P transfers would be premature, and could limit future development of innovative products, to the detriment of consumers. An issuing bank, a program manager, and a commenter representing non-bank money transfer providers noted that products used to facilitate P2P transfers could be interpreted to include products or services offered by State-licensed money transmitters, which they said are already covered under existing regulations. They argued that to avoid duplicative and potentially inconsistent regulation, the Bureau should specifically exclude any product or service that is subject to State or Federal money transmitter laws.

As described above, the Bureau also received a number of more general comments urging greater clarity to distinguish what existing products are subject to general Regulation E from those subject to the Bureau's final rule governing prepaid accounts.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.2(b)(3)(i)(B) largely as proposed, but with refinements to limit the scope to accounts whose primary function is among those specifically listed. To accomplish this change, the Bureau has removed the phrase “is redeemable upon presentation at” and replaced it with “whose primary function is,” to clarify that, in order to qualify as a prepaid account under this portion of the definition, an account must be more than merely capable of being used in the ways specified. Finally, as part of its overall reordering of § 1005.2(b)(3), the Bureau has renumbered proposed § 1005.2(b)(3)(i)(B) as final § 1005.2(b)(3)(i)(D)(2). Specifically, final § 1005.2(b)(3)(i)(D)(2) defines a prepaid account, in part, as an account whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers.

The Bureau has considered the comments regarding the appropriateness of extending the definition of prepaid account to products that can only be used for P2P transfers, and has decided to finalize its decision to include such products in the definition of prepaid account. The Bureau continues to believe that the structure and usage of P2P products warrants their inclusion in the final rule. Unlike many limited-use prepaid products that have acceptance limited to a restricted location (such as at merchants located on a college campus or in a mall), P2P products do not have such a limitation. Indeed, as the Bureau noted in the proposal, insofar as a P2P product could be accepted by anyone that contracts with the P2P provider, the model is not very different from a card association that contracts with unaffiliated merchants. Further, insofar as consumers could use these products to pay anyone with funds stored in the account, the Bureau continues to believe that they should be included in the definition of prepaid account. Accordingly, the Bureau declines to exclude such products from coverage under the final rule. The Bureau is therefore finalizing the reference to P2P transfers in § 1005.2(b)(3)(i)(D)(2), and finalizing proposed comment 2(b)(3)(i)-8, renumbered as comment 2(b)(3)(i)-10, largely as proposed.

The Bureau has also revised proposed § 1005.2(b)(3)(i)(B), renumbered as § 1005.2(b)(3)(i)(D)(2), to more clearly delineate the distinction between accounts that are covered by existing Regulation E and accounts that are covered under the new definition of prepaid account. Specifically, the Bureau has refocused the definition to apply only to accounts “whose primary function is to conduct” transactions with multiple, unaffiliated merchants or at ATMs, or P2P transfers. (In addition, as discussed below, the Bureau is adding a new prong, § 1005.2(b)(3)(i)(D)(3), to explicitly exclude checking accounts, share draft accounts, and NOW accounts from the residual definition of prepaid accounts.) The Bureau is aware that many types of accounts, including accounts already covered by Regulation E, may be capable of being used

for the above functions. The Bureau is therefore concerned that the language used in proposed § 1005.2(b)(3)(i)(B) could be over-inclusive, contributing to the uncertainty raised by some commenters regarding which accounts are covered under which provisions of Regulation E.

The Bureau intends its change here to narrow the definition of prepaid account to focus on products whose primary function for consumers is to provide general capability to use loaded funds to conduct transactions with merchants, or at ATMs, or to conduct P2P transfers, while excluding products that only provide such capability incidental to a different primary function. For example, the primary function of a traditional brokerage account is to hold funds so that the consumer can conduct transactions through a licensed broker or firm, not to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers. Similarly, the primary function of a savings account is to accrue interest on funds held in the account; such accounts restrict the extent to which the consumer can conduct general transactions and withdrawals.<sup>308</sup>

To provide greater clarity about this intended interpretation, the Bureau is making minor wording revisions to § 1005.2(b)(3)(i)(D)(2) and related commentary to accommodate the “primary function” approach, and is adding a comment with several illustrative examples of when an account satisfies the “primary function” prong of final § 1005.2(b)(3)(i)(D). New comment 2(b)(3)(i)-8 clarifies that, to qualify as a prepaid account, an account’s primary function must be to provide consumers with general transaction capabilities, including by enabling consumers to use loaded funds to conduct the transactions enumerated in

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<sup>308</sup> See, e.g., the Board’s Regulation D, 12 CFR 204.2(d) (defining a savings deposit as a deposit or account with respect to which the depositor may be required by the depository institution to give written notice of an intended withdrawal or a deposit or account from which the depositor is permitted or authorized to make no more than six transfers and withdrawals, or a combination of such transfers and withdrawals, per calendar month or statement cycle).

§ 1005.2(b)(3)(i)(D)(2), and that accounts that provide such capabilities only incidentally are excluded from the definition, and as such are not prepaid accounts as defined by final § 1005.2(b)(3). The comment provides examples of accounts that provide the enumerated transactional capabilities only incidentally—specifically, brokerage accounts and savings accounts, where a consumer deposits money, for example, with a financial institution for the primary purpose of conducting transactions with the institution (*e.g.*, to conduct trades in a brokerage account) rather than with third parties. The comment then provides several examples for additional guidance. New comment 2(b)(3)(i)-8.i clarifies that an account’s primary function is to enable a consumer to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers, even if it also enables a third party to disburse funds to a consumer. For example, a prepaid account that conveys tax refunds or insurance proceeds to a consumer meets the primary function test if the account can be used, *e.g.*, to purchase goods or services at multiple, unaffiliated merchants.

Next, new comment 2(b)(3)(i)-8.ii clarifies that whether an account satisfies final § 1005.2(b)(3)(i)(D) is determined by reference to the account, not the access device associated with the account. An account satisfies final § 1005.2(b)(3)(i)(D) even if the account’s access device can be used for other purposes, *e.g.*, as a form of identification. Such accounts may include, for example, a prepaid account used to disburse student loan proceeds via a card device that can be used at unaffiliated merchants or to withdraw cash from an ATM, even if that access device also acts as a student identification card.

New comment 2(b)(3)(i)-8.iii clarifies that, where multiple accounts are associated with the same access device, the primary function of each account is determined separately. The comment goes on to clarify that one or more accounts can satisfy final § 1005.2(b)(3)(i)(D) even

if other accounts associated with the same access device do not. This commentary is intended to address situations where two or more separate “wallets” or “purses” are associated with the same access device. It provides the specific example of a student identification card, which may act as an access device associated with two separate accounts: an account used to conduct transactions with multiple, unaffiliated merchants for goods or services, and an account used to conduct closed-loop transactions on campus. The comment clarifies that the account used to conduct transactions with multiple, unaffiliated merchants for goods or services satisfies final § 1005.2(b)(3)(i)(D), even though the account used to conduct closed-loop transactions does not.

Next, new comment 2(b)(3)(i)-8.iv clarifies that an account satisfies final § 1005.2(b)(3)(i)(D) if its primary function is to provide general transaction capability, even if an individual consumer does not in fact use it to conduct multiple transactions. For example, the fact that a consumer may choose to withdraw the entire account balance at an ATM or transfer it to another account held by the consumer does not change the fact that the account’s primary function is to provide general transaction capability. The Bureau is including this comment to clarify that an account’s primary function is not determined by how frequently an individual consumer chooses to use the account for a given function. This clarification aligns with the Bureau’s decision, discussed in the section-by-section analysis of § 1005.2(b)(3) above, to cover under the final rule as prepaid accounts those products that do not necessarily act as transaction account substitutes. For example, the Bureau understands that some consumers who receive funds from third parties—such as tax refunds or insurance proceeds—via prepaid accounts may not always transact with the accounts on an ongoing basis, opting instead to withdraw the funds from the account in their entirety after acquisition or transfer them to another account. Pursuant

to new comment 2(b)(3)(i)-8.iv, these consumer's accounts would still meet the "primary function" prong set forth in final § 1005.2(b)(3)(i)(D)(2).

Finally, new comment 2(b)(3)(i)-8.v states the corollary of the general rule set forth in § 1005.2(b)(3)(i)(D)(2). Specifically, it explains that an account whose primary function is other than to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct P2P transfers, does not satisfy final § 1005.2(b)(3)(i)(D). The comment goes on to provide the example of an account whose only function is to make a one-time transfer of funds into a separate prepaid account as an account that would not qualify as a prepaid account under this prong of the definition. Such accounts could include, for example, so-called reload packs, which several industry commenters urged the Bureau to exclude from coverage under the final rule. In contrast to non-reloadable prepaid cards, which can be used to make purchases or other transactions, reload packs can only be used to transfer funds into prepaid accounts.

The Bureau is also adopting proposed comment 2(b)(3)(i)-7, renumbered as comment 2(b)(3)(i)-9, which cross-references comments 20(a)(3)-1 and -2 for guidance on the meaning of the term redeemable upon presentation at multiple, unaffiliated merchants.

#### *2(b)(3)(i)(D)(3)*

As discussed in greater detail in the section-by-section analyses of § 1005.2(b)(3) and (3)(i)(C) above, the Bureau received several comments requesting that it revise the proposed definition of prepaid account to provide a clearer line between accounts that were already covered by the existing definition of account in § 1005.2(b) and accounts that would be covered by the newly created prepaid account definition. A number of commenters, including a payment network and an industry trade association, noted a specific lack of clarity with respect to

products that could arguably qualify as both. To illustrate, they noted that some prepaid accounts offer preauthorized check-writing capability, while some checking accounts allow consumers to transact using the ACH routing number or online passcode. These commenters asked the Bureau to resolve this ambiguity.

As set forth in the section-by-section analyses of § 1005.2(b)(3)(i)(C) and (D)(2) above, the Bureau is finalizing several changes to the proposed definition of prepaid account to provide a clearer delineation between accounts that are covered by Regulation E generally and accounts that will be covered as prepaid accounts. In addition to those changes, the Bureau is also adding a third prong to § 1005.2(b)(3)(i)(D). Pursuant to final § 1005.2(b)(3)(i)(D)(3), only accounts that are not otherwise a checking account, a share draft account, or a NOW account will qualify as a prepaid account. For purposes of this element, the Bureau does not consider the capability to issue preauthorized checks to qualify an account as checking, share draft, or NOW accounts. The Bureau notes that it intended to exclude checking and other demand deposit accounts from the proposed definition of prepaid account by including the phrase “not otherwise an account under paragraph (b)(1) of this section.” The Bureau acknowledges, however, that its proposed approach did not sufficiently resolve the potential ambiguity referenced by commenters. The Bureau believes that its express reference in final § 1005.2(b)(3)(i)(D)(3) to the account not being a checking, share draft, or NOW account, together with the primary function test in final § 1005.2(b)(3)(i)(D)(2), more directly address these concerns.

*2(b)(3)(ii)*

The next portion of the final definition of prepaid account includes several express exclusions from that definition. In addition to the exclusions included in the proposed rule, the Bureau is adding exclusions for (1) accounts loaded only with funds from a dependent care

assistance program or a transit or parking reimbursement arrangement; (2) accounts that are directly or indirectly established through a third party and loaded only with qualified disaster relief payments; and (3) the P2P functionality of accounts established by or through the U.S. government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities. The Bureau notes that, to the extent certain accounts were already covered as accounts under existing Regulation E generally, these exclusions do not change that, and only exclude from the definition of prepaid account.

*2(b)(3)(ii)(A)*

Proposed § 1005.2(b)(3)(iv) would have addressed prepaid products established in connection with certain health care and employee benefit programs. Specifically, the proposed provision would have stated that the term prepaid account did not include a health savings account, flexible spending account, medical savings account, or a health reimbursement arrangement. Proposed comment 2(b)(3)(iv)-1 would have defined these terms by referencing existing provisions in the Internal Revenue Code. Specifically, the Bureau proposed to define “health savings account” as a health savings account as defined in 26 U.S.C. 223(d); “flexible spending account” as a cafeteria plan which provides health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; “medical savings account” as an Archer MSA as defined in 26 U.S.C. 220(d); and “health reimbursement arrangement” as a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106.

The Bureau believed that, while these health care and employee benefit accounts could, in some ways, be similar to other types of prepaid accounts, coverage under Regulation E was not necessary at this time. Specifically, the Bureau noted that these products typically come with

limits on the amount of funds that could be loaded on to them, the methods for loading, and numerous restrictions on where, when, and how those funds could be spent.

The Bureau received several comments in response to this aspect of the proposal. Several consumer groups opposed the exclusion, noting that the accounts at issue can hold large amounts of money that consumers use over long periods of time. These commenters noted further that these types of accounts especially warrant error resolution protections since—according to the commenters—healthcare billing is notoriously error-prone. In addition, these commenters asserted that compliance should not be overly burdensome for issuers of these types of accounts, since many of the underlying benefit programs already provide consumers with error resolution protections.

By contrast, industry commenters, including issuing banks and credit unions, trade associations representing both financial institutions and employers, a payment network, and a program manager, expressed support for the proposed exclusions, and urged the Bureau to expand them further to include additional categories of similar employer-sponsored compensation programs. Specifically, several commenters urged the Bureau to add exclusions for accounts used to disburse parking, transit, dependent care, and wellness benefits. They argued that these programs are similar in several key respects to the types of programs the Bureau excluded from the definition of prepaid account in the proposal. For example, they explained that these accounts are typically funded from the employer's general assets, not by consumers, and as such they belong to the employer rather than the consumer. They argued further that these accounts do not warrant coverage under the rule because they are not consumer asset accounts in the sense that their use is highly restricted and, for certain types of programs, the funds held in them are notional, rather than actual, in nature. A subset of these commenters

also urged the Bureau to reconsider referring to specific sections of the Internal Revenue Code when specifying the types of programs that would qualify for the exclusion, noting that the Code's numbering may change in the future.

For the reasons set forth herein, the Bureau is finalizing exclusions for health savings accounts, flexible spending arrangements, medical savings accounts, and health reimbursement arrangements in proposed § 1005.2(b)(3)(iv), renumbered as § 1005.2(b)(3)(ii)(A). The Bureau is likewise finalizing proposed comment 2(b)(3)(iv)-1, renumbered as 2(b)(3)(ii)-1. The Bureau is persuaded that accounts used to disburse funds related to these programs are fundamentally different from other prepaid accounts covered by the final rule. As stated in the proposal, these products are governed by the terms of their plans and related regulations, such that, for example, health savings accounts and medical savings accounts can typically only be used to pay for qualified medical expenses. The Bureau believes that the limited use of funds under such arrangements distinguish them from consumer transaction accounts. As such, the Bureau believes such accounts are appropriately excluded from the rule. The Bureau believes that the term account is reasonably interpreted not to include these types of products or, in the alternative, to further the purposes of EFTA; the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to finalize an express exclusion in final § 1005.2(b)(3)(ii)(A).

The Bureau has also considered the comments requesting that additional categories of employer-sponsored compensation be added to the exclusion in § 1005.2(b)(3)(ii)(A). The Bureau agrees that, to the extent other programs exist that are significantly similar to health savings accounts, flexible spending arrangements, medical savings accounts, and health reimbursement arrangements, those programs should also be excluded from the rule for the same

reasons. Accordingly, the Bureau is expanding the exclusion to encompass accounts associated with other employer-sponsored benefit arrangements, namely, accounts used to disburse funds from a dependent care assistance program or a transit or parking reimbursement arrangement. The Bureau is adding a reference to these additional program types in final § 1005.2(b)(3)(ii)(A) and the Internal Revenue Code sections that reference them in final comment 2(b)(3)(ii)-1. The Bureau is finalizing that comment with references to the relevant Internal Revenue Code sections because it believes that specificity will help ensure that the exclusions remain limited in scope, and because it believes that the clarity provided by such specificity outweighs the potential difficulty that may occur in the event the numbering scheme of the Internal Revenue Code changes.

The Bureau is otherwise finalizing § 1005.2(b)(3)(ii)(A) and comment 2(b)(3)(ii)-1 as proposed. The Bureau notes, in response to commenters that requested that it add an exclusion for employee wellness programs, that such programs are likely excluded from the rule under the exclusion for loyalty, award, or promotional gift cards. That exclusion applies to loyalty, award, or promotional gift cards, as defined in § 1005.20(a)(4) and (b). Existing comment 20(a)(4)-1.vi lists incentive programs through which an employer provides cards to employees to encourage employee wellness as a type of loyalty, award, or promotional gift card.

#### *2(b)(3)(ii)(B)*

Several commenters, including a payment network, an issuing bank, several industry trade associations, and a national relief organization, urged the Bureau to add a separate exclusion for accounts used to distribute disaster relief funds. Most notably, the national relief organization noted that the accounts used to distribute the funds, as well as the funds themselves, are the property of the relief organization, not the consumer, which makes these accounts distinct

from other consumer asset accounts the Bureau proposed to cover. Commenters argued that such accounts are different because consumers who receive these accounts cannot shop for them, and tend to use them for a short period of time without reloading—in most cases, the trade association commenter noted, the cards will expire if not used within 60 days. The payment network argued that the proposed pre-acquisition disclosure requirements would delay consumers' receipt of relief funds in the wake of tragic events. In addition, commenters noted that these accounts rarely feature any of the fees that would be required to be disclosed on the proposed short form. Accordingly, these commenters asserted, covering these accounts under the Bureau's final rule on prepaid accounts would increase the cost of providing them to consumers in need for the sake of disclosures that are neither necessary nor useful to those consumers. The national relief organization, which uses prepaid cards to disburse disaster relief funds in some circumstances, noted further that the proposed disclosure requirements in conjunction with the packaging replacement requirements in proposed § 1005.18(h) would render much of its prepaid card inventory useless. A consumer group commenter, by contrast, argued that disaster relief cards should not be excluded so long as they are used in the same way as other prepaid accounts—*i.e.*, as open-loop accounts used to make purchases at multiple, unaffiliated merchants.

The Bureau agrees that the nature of these accounts—such as, for example, the fact that the underlying funds are owned by the relief organization, rather than the consumer—warrant their exclusion from the rule. The Bureau believes that such an exclusion is further warranted because, on balance, the burden of requiring these accounts to comply with the requirements of this final rule outweighs the potential utility of those requirements to consumers who have had the misfortune of experiencing a disastrous event. The Bureau does not believe it would be

appropriate at this time to place such additional burdens on providers. Accordingly, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to finalize an express exclusion in new § 1005.2(b)(3)(ii)(B) for accounts that are established directly or indirectly by a third party and loaded only with qualified disaster relief payments. This express exclusion will protect consumers by ensuring that they have quick access to crucial funds provided by disaster relief organizations in the wake of tragic events. The Bureau is also adding new comment 2(b)(3)(ii)-2 to clarify that the exclusion is limited to funds made available through a qualified disaster relief program, as that term is defined in the Internal Revenue Code.<sup>309</sup>

*2(b)(3)(ii)(C)*

The Bureau received a request through the interagency consultation process to expressly exempt from the prepaid account definition certain accounts, currently marketed under the brand names Eagle Cash and Navy Cash/Marine Cash, that are primarily used by members of the armed forces to conduct closed-loop transactions on military property. According to the request, these accounts allow servicemembers to conduct closed-loop transactions in forward-deployed environments, such as an army base or a naval vessel, where cash is inconvenient and other commercially available payments technologies are unavailable. These accounts sometimes offer a P2P feature that allows users to transfer loaded funds to other accountholders from the closed-loop “purse” of the account, but such functionality, the Bureau understands, is incidental to the primary closed-loop function of the account.

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<sup>309</sup> See 26 U.S.C. 139(b) (defining “qualified disaster relief payment” as, generally, any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary expenses incurred as a result of, or for the repair or rehabilitation of property necessitated by, a qualified disaster).

The Bureau agrees that accounts whose primary function is to facilitate closed-loop transactions by members of the armed forces in forward-deployed environments are sufficiently distinguishable and unique to warrant a narrow, express exclusion from the final rule. Accordingly, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to finalize an express exclusion in new § 1005.2(b)(3)(ii)(C) for the P2P transfer functionality of an account established or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities. This express exclusion will protect servicemember consumers by ensuring that they have access to a convenient and well-established payment method at a time when alternate payment methods such as cash or bank accounts may not be available for operational reasons. The Bureau notes that this is a narrow exclusion intended to accommodate a specific set of closed-loop products that are used in unique circumstances, such as on military vessels or bases, or similar government facilities (*e.g.*, embassies or consulates) in remote locations. The Bureau notes further that, to the extent that such accounts offer an open-loop capability that allows the consumer to conduct transactions at multiple, unaffiliated merchants for goods or services, that functionality would not be covered by this exclusion.

*2(b)(3)(ii)(D)*

#### *The Bureau's Proposal*

Regulation E's gift card provisions cover some prepaid products that also could fall within the proposed definition of prepaid account. In particular, § 1005.20 contains provisions

applicable to gift certificates, store gift cards, and general-use prepaid cards.<sup>310</sup> For those products marketed and sold as gift cards (and that meet certain other qualifications), the Gift Card Rule requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. The Gift Card Rule is distinct from the rest of subpart A of Regulation E, however, and does not provide consumers who use gift cards with the other substantive protections of Regulation E, such as limited liability and error resolution protections, or periodic statements. The Gift Card Rule in § 1005.20(b)(2) expressly excludes those general-use prepaid cards that are reloadable and not marketed or labeled as gift cards or gift certificates, while including general-use prepaid cards that are not reloadable as well as those that are marketed or labeled as gift cards or gift certificates. The Bureau proposed to add § 1005.2(b)(3)(i)(C), which would have provided that a prepaid account was not a gift certificate as defined in § 1005.20(a)(1) and (b); a store gift card as defined in § 1005.20(a)(2) and (b); a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); or a general-use prepaid card as defined in § 1005.20(a)(3) and (b) that is both marketed and labeled as a gift card or gift certificate.

The Bureau believed that having to apply both the existing gift card regulatory requirements and the proposed prepaid account requirements could adversely impact the gift card market. The Bureau further expressed concern that if the requirements of the proposed rule were applied to gift cards, it was possible that those requirements, in the context of the typical gift card, could confuse consumers. Relatedly, the Bureau noted that, because most gift cards are not reloadable, not usable at ATMs, and not open loop, consumers were less likely to use gift cards as transaction account substitutes. Finally, the Bureau was concerned that, were it to impose

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<sup>310</sup> The Gift Card Rule defines a general-use prepaid card as “a card, code, or other device that is: (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.” § 1005.20(a)(3).

provisions for access to account information and error resolution, and create limits on consumers' liability for unauthorized EFTs, the cost structure of gift cards could change dramatically, since, unlike other types of prepaid products, many gift cards do not typically offer these protections. The Bureau noted in the proposal that the exemption in the Gift Card Rule for general-use prepaid cards applies to products that are reloadable and not marketed *or* labeled as gift cards or gift certificates.<sup>311</sup>

By contrast, the Bureau proposed to exclude from the definition of prepaid account only such general-use prepaid products that were *both* marketed and labeled as gift cards or gift certificates. The Bureau was concerned that, absent this approach, some products it intended to cover in the proposal may be inadvertently excluded due to occasional or incidental marketing activities. For example, comment 20(b)(2)-2 describes, in part, a network-branded GPR card that is principally advertised as a less-costly alternative to a bank account but is promoted in a television, radio, newspaper, or internet advertisement, or on signage as “the perfect gift” during the holiday season. For purposes of the Gift Card Rule, such a product would be considered marketed as a gift card or gift certificate because of this occasional holiday marketing activity. For purposes of proposed § 1005.2(b)(3)(i)(C), however, such a product would not have been considered to be both marketed and labeled as a gift card or gift certificate and thus would have been covered by the proposed definition of prepaid account. Proposed comment 2(b)(3)(i)-9 would have explained this distinction.

#### *Comments Received*

A number of issuing banks, a digital wallet provider, and an industry trade association submitted comments in support of the proposed exclusion for gift cards. Two trade association

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<sup>311</sup> See § 1005.20(b)(2).

commenters urged the Bureau to expand the exclusion to also cover rebate or refund cards used by retailers or other businesses as part of their merchandise return or reimbursement programs. In addition, a program manager and a payment network objected to the Bureau's decision to exclude only those GPR products that were both marketed and labeled as gift cards. These commenters urged the Bureau to exclude any prepaid product that was subject to the Gift Card Rule, regardless of how it was marketed or labeled. They argued that any card subject to the Gift Card Rule was likely to be limited in function and therefore did not warrant coverage by a rule aimed at protecting transaction account substitutes. In the same vein, they argued that the burden of complying with the proposal would far outweigh the benefit to consumers for these products, and could effectively remove these products from the marketplace. In addition, the payment network noted that the fact that some prepaid products could be subject to both the proposal and the Gift Card Rule could confuse consumers and create regulatory ambiguity for industry.

Two consumer group commenters, by contrast, opposed this proposed exclusion. One group urged the Bureau to cover network-branded, open-loop reloadable gift cards loaded with at least \$500, while the other urged the Bureau to cover reloadable gift cards with a balance of at least \$250, each arguing that a card that is loaded with more than those amounts poses a higher consumer risk associated with unauthorized transactions.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.2(b)(3)(i)(C) and proposed comment 2(b)(3)(i)-9, renumbered as § 1005.2(b)(3)(ii)(D) and comment 2(b)(3)(ii)-3, respectively, with technical revisions to conform internal references to reordering elsewhere in the final rule. Gift certificates and gift cards do not meet the Bureau's definition of prepaid accounts, as they typically cannot be used with multiple, unaffiliated merchants. With

regard to general-use prepaid cards that are both marketed and labeled as a gift card or gift certificate, the Bureau believes it is necessary and proper to finalize this exclusion pursuant to its authority under EFTA section 904(c) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers.

After consideration of the comments, the Bureau remains convinced that subjecting this general category of products to both the Gift Card Rule and the requirements of this final rule would place a significant burden on industry without a corresponding consumer benefit. On the other hand, the Bureau continues to believe that the gift card exclusion should not extend to products that consumers may use as or confuse with transaction account substitutes, even if such products are also covered by the Gift Card Rule. To illustrate, the Bureau understands that some consumers may use multiple non-reloadable cards as transaction accounts to pay important household expenses like utilities and groceries, spending them down and discarding them when the funds are depleted. These cards may be subject to the Gift Card Rule because they are not reloadable and thus do not qualify for the GPR card exclusion in § 1005.20(b)(2). However, if these cards are not labeled or marketed as gift cards, it is possible that consumers will unwittingly acquire these cards thinking that they carry the same protections as other prepaid accounts under this final rule. As previously stated, the Bureau believes consumers who use non-reloadable prepaid products in this way deserve the same protections as consumers who use GPR cards. Further, the Bureau believes that consumers generally understand the protections associated with, and limitations of, gift cards to the extent they are labeled as such. Accordingly, the Bureau declines to expand the proposed exclusion for accounts that are *both* marketed and labeled as gift cards to accounts that are labeled *or* marketed as gift cards, as some industry commenters suggested. The Bureau notes that in the gift card provisions of the Credit CARD

Act, Congress expressly granted to the Board (now to the Bureau) authority to determine the extent to which the individual definitions and provisions of EFTA or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.<sup>312</sup>

The Bureau has considered the comments asserting that coverage under both the Prepaid and Gift Card Rules will cause consumer confusion and regulatory ambiguity. However, the Bureau understands that, currently, prepaid issuers consciously avoid marketing and labeling their products in such a way as would cause such products to be covered under the Gift Card Rule. As such, the Bureau believes that, in practice, very few products that are subject to the Gift Card Rule will also qualify as prepaid accounts under this final rule.

Finally, the Bureau declines to expressly expand the exclusion for accounts that are both marketed and labeled as gift cards to rebate cards, as two commenters suggested. The Bureau believes such an express exclusion would be unnecessary, since such programs are generally excluded from the rule under the exclusion for loyalty, award, or promotional gift cards, as defined in § 1005.20(a)(4) and (b). Existing comment 20(a)(4)-1.iii lists rebate programs operated or administered by a merchant or product manufacturer that can be redeemed for goods or services.

*2(b)(3)(ii)(E)*

As discussed above, Regulation E currently contains provisions in § 1005.15 that are specifically applicable to an account established by a government agency for distributing government benefits to a consumer electronically. Existing § 1005.15(a)(2) defines a government benefit “account” to exclude accounts for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency. The

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<sup>312</sup> Public Law 111-24, 123 Stat. 1734, 1754 (2009); EFTA section 915(d)(1)(B); 15 U.S.C. 16931-1(d)(1)(B).

Bureau proposed to have § 1005.2(b)(3)(iii) state that the term prepaid account included a government benefit account, as defined in existing § 1005.15(a)(2), but did not repeat the exclusion in § 1005.15(a)(2) for State and local needs-tested benefit programs as part of the definition of prepaid account in proposed § 1005.2(b)(3). To make clear that accounts excluded from the definition of government benefit account in § 1005.15(a)(2) are also excluded from the general definition of prepaid account in § 1005.2(b)(3), and pursuant to its authority under EFTA section 904(d) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau is finalizing new § 1005.2(b)(3)(ii)(E) to explicitly exclude accounts established for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency, as set forth in § 1005.15(a)(2).

#### *Virtual Currency*

As noted in part II.D above, the Bureau received a number of comments on whether the Bureau should regulate virtual currency products and services under this final rule. Commenters included banks, a digital wallet provider, a virtual currency exchange, industry trade associations, consumer advocacy groups, a law firm representing a coalition of prepaid issuers, and a non-governmental virtual currency policy organization.

Industry commenters had mixed reactions to whether the Bureau should regulate virtual currency products and services. Two trade association commenters representing banks stated that the proposed definition of “prepaid account” should be modified to expressly include accounts funded or capable of being funded with virtual currencies and submitted a definition of virtual currency they urged the Bureau to adopt. They asserted that virtual currencies are “funds” under EFTA, and coverage is needed to ensure consumers get the kind of protections

they would have if they used other comparable but closely regulated traditional payment systems and products. They further asserted that virtual currency products and systems pose greater risks to consumers than traditional payment products and systems funded with fiat currency.

These trade association commenters further asserted their belief that, with few exceptions, regulating prepaid accounts funded in virtual currencies would be consistent with the Bureau's goal of providing comprehensive consumer protections for prepaid products. With respect to the exceptions, the commenters suggested that it was unnecessary to regulate virtual currencies that can only be used (1) at a specific merchant or defined group of affiliated merchants; (2) within online gaming platforms with no market or application outside of those platforms; or (3) as part of a customer affinity or rewards program. They asserted that their suggested carve outs are similar to the proposed exclusions for certain store gift cards and for loyalty, award, or promotional gift cards, in the proposed definition of prepaid account.

On the other hand, a diverse group of industry commenters and a non-governmental virtual currency policy organization commenter urged the Bureau to expressly provide in the final rule that it does not apply to virtual currency products and services. Commenters expressed concern that regulation would be premature, thus potentially stifling innovation. Several commenters highlighted the low rate of consumer adoption of virtual currency products and services. Commenters also asserted that the Bureau has not adequately studied the virtual currency industry, and that regulations developed for GPR cards are unsuitable to apply to virtual currency products and services because of the differences between such products and services and GPR cards.

A law firm commenting on behalf of a coalition of prepaid issuers and a virtual currency trade association commented that they supported the Bureau's desire to ensure consumer

protection rules are applied consistently across different industries that share similar functionalities. However, neither commenter supported regulating virtual currency products and services in the context of the prepaid rulemaking. The law firm commenter asserted that it was premature to regulate virtual currency products and services, and that adopting regulations to apply to virtual currency products and services would impose significant regulatory burden on such products and services and also stifle innovation. It further suggested that the Bureau adopt the approach the Board took with respect to the regulation of prepaid cards generally. It asserted that despite the Board's decision to not extend the coverage of its Payroll Card Rule to GPR cards, issuers of GPR cards have nonetheless applied consumer protection comparable to those established in that rule. The trade association commenter asserted that the Bureau should address virtual currencies in a separate rulemaking.

Consumer group commenters generally urged the Bureau to regulate those virtual currency products and services that are used by or marketed to consumers. Specifically, two consumer group commenters stated that the Bureau was right to develop rules that, they believed, anticipated the increasing role of virtual currencies. One urged the Bureau to extend the definition of account to include virtual currency wallets, stating that such extension would be appropriate because it is important for consumer protection rules to be in place before consumer adoption of such wallets becomes widespread, and the application of Regulation E to virtual currency wallets could incentivize virtual currency wallet providers to ensure that the funds consumers put into virtual currency wallets are adequately protected (to the extent they are not already doing so). Another consumer group commenter asserted that as long as virtual currencies are used for consumer purposes, consumers need protection. It observed that current virtual currency systems lack such protections and highlighted the lack of protection in the areas

of limited liability, dispute rights, and error resolution. However, one consumer group commenter opposed regulating virtual currency products and services as prepaid accounts. The commenter stated that it did not believe that accounts that convert fiat money into stored value in a form that is not fiat currency should be classified as prepaid accounts, because the funds in those accounts would be protected once they are converted back into fiat currency.

As discussed above, the Bureau stated in the proposal that the Bureau's analysis is ongoing with respect to virtual currencies and related products and services. The proposed rule did not resolve specific issues with respect to the application of either existing regulations or the proposed rule to virtual currencies and related products and services. Accordingly, although the Bureau received some comments addressing virtual currency products and services, the Bureau reiterates that application of Regulation E and this final rule to such products and services is outside of the scope of this rulemaking. However, the Bureau notes that as part of its broader administration and enforcement of the enumerated consumer financial protection statutes and title X of the Dodd-Frank Act, the Bureau continues to analyze the nature of products or services tied to virtual currencies.

#### *Section 1005.4 General Disclosure Requirements; Jointly Offered Services*

##### *4(a)(1) Form of Disclosures*

Existing § 1005.4(a)(1) sets forth general requirements for disclosures required by Regulation E. Among other things, it provides that the disclosures must be clear and readily understandable. Existing comment 4(a)-1 explains that there are no particular rules governing type size, number of pages, or the relative conspicuousness of various terms in the disclosures. As discussed in greater detail below, the short form and long form disclosures under final § 1005.18(b) are subject to the specific formatting requirements, including prominence and size

requirements, that are set forth in final § 1005.18(b)(7). Similarly, remittance transfers subject to subpart B of Regulation E are also subject to specific formatting requirements set forth in existing § 1005.31(c). Accordingly, the Bureau is adopting a conforming change to comment 4(a)-1 to clarify that §§ 1005.18(b)(7) and 1005.31(c) are exceptions to this general principle explained in comment 4(a)-1.

### *Section 1005.10 Preauthorized Transfers*

#### *10(e) Compulsory Use*

##### *10(e)(1) Credit*

In the discussion below of the Bureau’s final changes to Regulation Z, the Bureau explains in detail its approach to the regulation of credit offered in connection with prepaid accounts. (That discussion provides an overall explanation of the Bureau’s approach in this rulemaking to credit offered in connection with prepaid accounts, including with respect to changes to Regulation E, the details of which are set forth below.)

As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau is adopting a new definition of “hybrid prepaid-credit card” in new Regulation Z § 1026.61 which sets forth the circumstances in which a prepaid card is a credit card under Regulation Z.<sup>313</sup> A prepaid card that is a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61 is a credit card under final Regulation Z § 1026.2(a)(15)(i). *See also* new Regulation Z § 1026.61(a)(1) and new Regulation Z comment 2(a)(15)-2.i.F. As set forth in new Regulation Z § 1026.61(a)(1), a prepaid card that is not a “hybrid prepaid-credit card” is not a credit card for purposes of Regulation Z. *See also* new Regulation Z comment 2(a)(15)-2.ii.D.

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<sup>313</sup> Throughout the section-by-section analyses of Regulations E and Z, the term “hybrid prepaid-credit card” refers to a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section and in more detail in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or business partners. New Regulation Z § 1026.61(b) generally requires that such credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New Regulation Z § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New Regulation Z § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card accesses both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit

feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as “non-covered separate credit features,” as discussed in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below. Under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit.<sup>314</sup> A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

As part of the Bureau’s approach to the regulation of credit offered in connection with prepaid accounts, the Bureau’s final rule revises the compulsory use provision of Regulation E, existing § 1005.10(e)(1), to make clear that it applies to covered separate credit features accessible by hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61. The Bureau also is providing guidance to explain that incidental credit described in new Regulation Z § 1026.61(a)(4) is exempt from the compulsory use provisions in Regulation E, similar to checking overdraft services.

EFTA’s compulsory use provision, EFTA section 913(1),<sup>315</sup> prohibits any person from conditioning the extension of credit to a consumer on the consumer’s repayment by means of preauthorized EFTs. As implemented in Regulation E, existing § 1005.10(e)(1) currently states that “[n]o financial institution or other person may condition an extension of credit to a consumer

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<sup>314</sup> Throughout the section-by-section analyses of Regulations E and Z, the term “incidental credit” is used to refer to credit that meets the conditions of new Regulation Z § 1026.61(a)(4).

<sup>315</sup> 15 U.S.C. 1693k(1).

on the consumer's repayment by preauthorized EFTs, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account." The term "credit" is defined in existing § 1005.2(f) to mean the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor. The term preauthorized EFT is defined in existing § 1005.2(k) to mean an EFT authorized in advance to recur at substantially regular intervals.

Congress enacted the compulsory use provision to prevent financial institutions that are creditors from mandating repayment of credit by future preauthorized EFTs. Were the compulsory use provision not to exist, creditors could access consumers' available funds at the same institution via direct transfers, or at other institutions via recurring ACH transfers, to repay the debt. By doing so, consumers could lose access to these funds and lose the ability to prioritize repayment of debts, as a creditor could compel the consumer to grant the creditor preauthorized transfer access to the consumer's asset account as a condition for agreeing to provide credit to that consumer.

In adopting what is now existing § 1005.10(e)(1) in 1981 to implement EFTA section 913(1), the Board used its EFTA exception authority to exclude overdraft credit plans from the general compulsory use rule of EFTA section 913(1).<sup>316</sup>

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<sup>316</sup> See 46 FR 2972, 2973 (Jan. 13, 1981) ("After careful consideration of the issues raised, the Board is adopting the amendment as proposed. The Board believes that it has the legal authority to adopt this exception [for overdraft credit plans] under section 904(c) of the act, which expressly authorizes the Board to provide adjustments and exceptions for any class of electronic fund transfer that in the Board's judgment are necessary or proper to carry out the purposes of the act or to facilitate compliance.").

*The Bureau's Proposal*

The Bureau proposed certain modifications to the compulsory use provision. In particular, the proposal would have provided that the provision's exception for overdraft credit plans would not have extended to overdraft credit plans accessed by prepaid cards that are credit cards under Regulation Z. Specifically, the proposal would have amended existing § 1005.10(e)(1) to provide that the exception for overdraft plans from the compulsory use provision does not apply to a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z. Thus, under the proposal, the compulsory use provision in proposed § 1005.10(e)(1) would have applied to overdraft credit plans accessed by prepaid cards that are credit cards under Regulation Z.

Under the proposal, existing comment 10(e)(1)-2 related to the exception for overdraft credit plans would have been amended to explain that this exception does not apply to credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z § 1026.2(a)(15)(i).

The proposal would have added comment 10(e)(1)-3 to provide guidance on how the prohibition in proposed § 1005.10(e)(1) would have applied to credit extended under a credit plan that is a credit card account accessed by a prepaid card under Regulation Z as discussed above. Specifically, proposed comment 10(e)(1)-3 would have explained that under proposed § 1005.10(e)(1), creditors must not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z.

Proposed comment 10(e)(1)-3 also would have provided that the prohibition in proposed § 1005.10(e)(1) would have applied to any credit extended under a credit card plan as described above, including credit arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses a credit card plan as discussed above, the resulting credit would be subject to the prohibition in proposed § 1005.10(e)(1) since it is incurred through a credit card plan, even though the consumer did not use an associated credit card.

Under Regulation Z proposed comment 2(a)(15)-2.i.F, a prepaid card would not have been a credit card under Regulation Z where the prepaid card only accesses credit that is not subject to any finance charge, as defined in Regulation Z § 1026.4, or any fee described in Regulation Z § 1026.4(c), and is not payable by written agreement in more than four installments. Proposed comment 10(e)(1)-3 would have cross-referenced Regulation Z § 1026.2(a)(15)(i), proposed comment 2(a)(15)-2.i.F to explain that a prepaid card is not a credit card under Regulation Z if the access device only accesses credit that is not subject to any finance charge, as defined in Regulation Z § 1026.4, or any fee described in Regulation Z § 1026.4(c), and is not payable by written agreement in more than four installments. Thus, under the proposal, the prohibition in proposed § 1005.10(e)(1) would not have applied to credit extended in connection with a prepaid account under an overdraft credit plan that is not a credit card account. Under the proposal, an overdraft credit plan would not have been a credit card account if it would have been accessed only by a prepaid card that only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4, or any fee described in Regulation Z § 1026.4(c), and is not payable by written agreement in more than four installments.

Proposed comment 10(e)(1)-3.i also would have explained the connection between the prohibition in proposed § 1005.10(e)(1) on the compulsory use of preauthorized EFT to repay credit extended under a credit plan accessed by prepaid cards that are credit cards under existing Regulation Z § 1026.2(a)(15)(i) and proposed comment 2(a)(15)-2.i.F, and the prohibition on offsets by credit card issuers in proposed Regulation Z § 1026.12(d). Under existing Regulation Z § 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

Under proposed Regulation Z § 1026.12(d)(3), with respect to credit card accounts that are accessed by prepaid cards, a card issuer generally would not have been prohibited from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under a plan that is authorized in writing by the cardholder, so long as the creditor does not make such deductions to the plan more frequently than once per calendar month. Therefore, a card issuer for such credit card accounts would have been prohibited under proposed Regulation Z § 1026.12(d)(3) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. Under proposed Regulation Z § 1026.12(d)(3), with respect to credit card accounts that are accessed by prepaid cards, EFTs pursuant to a plan described in Regulation Z § 1026.12(d)(3) would have been preauthorized EFTs under existing § 1005.2(k) because such EFTs would be authorized in advance to recur periodically (but could not recur more frequently than once per calendar month). Proposed comment 10(e)(1)-3.i thus would have explained that

proposed § 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (including a prepaid account) of credit card balances by electronic means on a preauthorized, recurring basis where the credit card account is accessed by an access device for a prepaid account.

As a technical revision, the proposal also would have moved existing guidance in existing comment 10(e)(1)-1 related to when financial institutions may provide incentives to consumers to agree to automatic repayment plans to a new proposed comment 10(e)(1)-4; no substantive changes were intended.

#### *Comments Received*

A trade association and an issuing bank urged the Bureau not to adopt the proposed changes to the compulsory use exception in Regulation E for overdraft credit plans that are accessed by prepaid cards that are credit cards under Regulation Z. These commenters asserted that allowing financial institutions to recoup overdraft balances from incoming credits to the account is the only way for those institutions to mitigate the credit risk caused by overdrafts. These commenters suggested that the Bureau's proposed compulsory use and offset prohibitions, for example, would effectively deny consumers the ability to access short-term credit in connection with prepaid accounts. These concerns about the rule's impact on small-dollar credit are discussed in more detail below in the *Overview of the Final Rule's Amendments to Regulation Z* section.

Nonetheless, other industry trade associations representing credit unions agreed with the Bureau's proposal not to extend the overdraft credit plan exception in the compulsory use provision in existing § 1005.10(e)(1) to overdraft credit plans accessed by prepaid cards that are credit cards under Regulation Z.

One consumer group likewise supported the Bureau’s proposal not to exempt from the compulsory use provision in existing § 1005.10(e)(1) overdraft credit plans that are accessed by prepaid cards that are credit cards under Regulation Z. This commenter stated that giving consumers control over how and when to repay overdraft credit would protect consumers that hold prepaid cards that are credit cards under Regulation Z and give creditors incentives to consider whether those consumers have the ability to pay credit that will be extended under such overdraft credit plans. This commenter also noted that the exemption from the compulsory use provision for overdraft credit plans is not statutory.

#### *The Final Rule*

*Covered separate credit features accessible by hybrid prepaid-credit cards.* For the reasons set forth herein, the Bureau is finalizing § 1005.10(e)(1) as proposed with certain revisions to be consistent with provisions in new Regulation Z § 1026.61 for when a prepaid card is a credit card under Regulation Z.<sup>317</sup> Specifically, the Bureau has modified existing § 1005.10(e)(1) to provide that the overdraft credit plan exception in existing § 1005.10(e)(1) does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61. As discussed above, under the final rule, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit

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<sup>317</sup> The Regulation Z proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1005.10(e)(1) would have provided that the compulsory use provision’s general prohibition against conditioning the extension of credit to a consumer on the consumer’s repayment by means of preauthorized EFTs would have applied to credit card accounts under Regulation Z accessed by such account numbers. Proposed comments 10(e)(1)-2 and -3 would have provided additional guidance on how proposed § 1005.10(e)(1) would have applied to these credit card plans accessed by these account numbers. For the reasons set forth in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the final rule does not adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z. Thus, the provisions in proposed § 1005.10(e)(1) and proposed comments 10(e)(1)-2 and -3 in connection with these account numbers have not been adopted.

feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)).

Consistent with the intent of the proposal, the Bureau has revised existing comment 10(e)(1)-2 which relates to the exception for overdraft credit plans. The final rule has moved existing comment 10(e)(1)-2 to new comment 10(e)(1)-2.i and revised it to provide that the exception for overdraft credit plans in final § 1005.10(e)(1) applies to overdraft credit plans other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61. Proposed comment 10(e)(1)-3 would have referenced guidance on when a prepaid card would not have been a credit card under Regulation Z as proposed, such that the overdraft exception in proposed § 1005.10(e)(1) would have still applied to credit accessed by those prepaid cards. The final rule moves this guidance to final comment 10(e)(1)-2.ii and revises it as discussed below.

In addition, the Bureau is finalizing the other guidance in proposed comment 10(e)(1)-3, renumbered as new comment 10(e)(1)-3.i, with revisions to be consistent with new Regulation Z § 1026.61. Specifically, final comment 10(e)(1)-3.i explains that under final § 1005.10(e)(1), creditors may not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61. Consistent with the proposal, final comment 10(e)(1)-3.i also clarifies that the prohibition in final § 1005.10(e)(1) applies to any credit extended under such a credit feature, including preauthorized checks. Final comment 10(e)(1)-3.i also cross-references new Regulation Z § 1026.61 and new comment 61(a)(1)-3, which provide guidance related to the credit extended under a covered separate credit feature by use of a preauthorized check on the prepaid account.

Also, the Bureau has moved the guidance in proposed comment 10(e)(1)-3.i to new comment 10(e)(1)-3.ii and has revised it to be consistent with new Regulation Z § 1026.61. New comment 10(e)(1)-3.ii explains the connection between the prohibition in final § 1005.10(e)(1) on the compulsory use of preauthorized EFTs to repay credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card, as defined in Regulation Z § 1026.61, and the prohibition on offsets by credit card issuers in final Regulation Z § 1026.12(d). Specifically, new comment 10(e)(1)-3.ii provides that under existing Regulation Z § 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

Under final Regulation Z § 1026.12(d)(3), with respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61, a card issuer generally is not prohibited from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer therefore is prohibited under final Regulation Z § 1026.12(d)(3) from automatically deducting all or part of the cardholder's credit card debt from a covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. In Regulation E, final § 1005.10(e)(1) provides a complementary prohibition on the card issuer from requiring payment from a deposit account

(such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

Consistent with the proposal, as a technical revision, the Bureau has moved existing guidance in comment 10(e)(1)-1 related to when financial institutions may provide incentives to consumers to agree to automatic repayment plans to a new comment 10(e)(1)-4; no substantive change is intended.

Consistent with the statutory text and purposes of EFTA, the Bureau is not extending the exception for overdraft credit plans currently in § 1005.10(e)(1) to covered separate credit features accessible by hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61. The purposes of EFTA are to establish the rights, liabilities, and responsibilities of consumers participating in EFT systems and to provide individual consumer rights.<sup>318</sup> Further, EFTA's legislative history states that the EFTA compulsory use provision is designed to assure that "EFT develops in an atmosphere of free choice for the consumer."<sup>319</sup> The Bureau believes its final rule, which does not extend Regulation E's existing exception for overdraft credit plans to covered separate credit features accessible by hybrid prepaid-credit cards, should ensure that consumers have choice when deciding whether and how to link their prepaid accounts to covered separate credit features accessible by hybrid prepaid-credit cards and have control over the funds in their prepaid accounts if and when such a link is established.

As discussed in greater detail in the section-by-section analyses of Regulation Z §§ 1026.5(b)(2)(ii), 1026.7(b)(11), and 1026.12(d) below, the Bureau also believes that not extending the exception for overdraft credit plans to covered separate credit features accessible

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<sup>318</sup> See EFTA section 902(b); 15 U.S.C. 1693(b).

<sup>319</sup> See Senate Report No. 95-915 at 16 (1978).

by hybrid prepaid-credit cards is consistent with the purposes of and provisions in TILA. In particular, TILA section 169 prohibits offsets by credit card issuers.<sup>320</sup> In addition, TILA sections 127(b)(12) and (o) require that for credit card accounts under an open-end consumer credit plan, payment due dates—which must be the same date each month—must be disclosed on the Regulation Z periodic statement.<sup>321</sup> In addition, TILA section 163 provides that, for credit card accounts under an open-end consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that: (1) periodic statements for those accounts are mailed or delivered at least 21 days prior to the payment due date disclosed on the Regulation Z statement as discussed above; and (2) the card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the Regulation Z periodic statement disclosing the due date for that payment.<sup>322</sup>

In particular, the Bureau believes that the revisions to existing § 1005.10(e)(1) complement the offset prohibition and the periodic statement requirements in Regulation Z by helping to ensure that consumers do not lose access to prepaid account funds and lose the ability to prioritize repayment of debts, one of the main purposes of EFTA section 913(1), as implemented by final § 1005.10(e)(1). The Bureau is concerned that absent these protections, with respect to covered separate credit features accessible by hybrid prepaid-credit cards, some card issuers might attempt to avoid the TILA offset prohibition by requiring that all or part of the cardholder's credit card debt under the covered separate credit feature be automatically deducted from the prepaid account to help ensure that the debt is repaid (similar to how overdraft services function today). For example, the Bureau believes that without its revisions to the compulsory

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<sup>320</sup> 15 U.S.C. 1666h(a); *see also* Regulation Z § 1026.12(d).

<sup>321</sup> 15 U.S.C. 1637(b)(12) and (o); *see also* Regulation Z § 1026.7(b)(11)(i)(A).

<sup>322</sup> 15 U.S.C. 1666b; *see also* Regulation Z § 1026.5(b)(2)(ii)(A).

use provision, financial institutions might require that prepaid account consumers set up automated payment plans to repay the credit card debt under the covered separate credit feature and set the payment due date each month to align with the expected date of incoming deposits to the prepaid account. The Bureau believes that this type of payment arrangement would undermine the purposes of EFTA section 913(1), as implemented by final § 1005.10(e)(1), which is designed to help ensure that consumers do not lose access to account funds and lose the ability to prioritize repayment of debts. Thus, the Bureau does not believe that it is appropriate to extend the exception for overdraft credit plans to covered separate credit features accessible by hybrid prepaid-credit cards.

To the extent that the Board justified its original treatment of overdraft credit plans as providing benefits to consumers from automatic payment, the Bureau notes that under this final rule consumers would still be allowed to *choose* to make payments on the covered separate credit features on an automatic basis once per month if they find it beneficial to do so. The Bureau also believes that certain credit card rules in Regulation Z that apply under the final rule to covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan will help consumers avoid late payments and excessive late fees with respect to their covered separate credit features. For example, as discussed above, under the final rule, card issuers would be required, under final Regulation Z § 1026.5(b)(2)(ii)(A)(I), to adopt reasonable procedures to ensure that Regulation Z periodic statements for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement. The Bureau believes this will help ensure that consumers have sufficient time after

receiving a periodic statement for such a covered separate credit feature accessible by a hybrid prepaid-credit card to make a payment on that credit feature. Also, as discussed in more detail in the section-by-section analyses of Regulation Z §§ 1026.52(b) and 1026.55 below, with respect to covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers are limited in the circumstances in which they could increase interest rates for late payments and are limited in the amount of late fees they could charge to consumers who pay late, as set forth in final Regulation Z §§ 1026.52(b) and 1026.55.

*Credit features not accessible by hybrid prepaid-credit cards.* As discussed above, the final rule moves existing comment 10(e)(1)-2 to new comment 10(e)(1)-2.i and revises it to provide that the exception for overdraft credit plans in final § 1005.10(e)(1) applies to overdraft credit plans other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61. Proposed comment 10(e)(1)-3 would have referenced guidance on when a prepaid card would not have been a credit card under Regulation Z as proposed, such that the overdraft exception in proposed § 1005.10(e)(1) would have still applied to credit accessed by those prepaid cards. As explained in more detail below, the final rule moves this guidance to final comment 10(e)(1)-2.ii and revises it.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or

conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

New comment 10(e)(1)-2.i provides that the exception for overdraft credit plans in final § 1005.10(e)(1) applies to overdraft credit plans other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61. The final rule also adds new comment 10(e)(1)-2.ii to provide additional guidance on the application of the exception in § 1005.10(e)(1) with respect to the circumstances described above in which a prepaid card is not a credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. Specifically, new comment 10(e)(1)-2.ii provides that credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z § 1026.61(a)(4) is considered credit extended pursuant to an overdraft credit plan for purposes of § 1005.10(e)(1). Thus, the exception for overdraft credit plans in § 1005.10(e)(1) applies to this credit.

A credit feature that does not qualify as a covered separate credit feature under new Regulation Z § 1026.61 because it cannot be accessed in the course of a prepaid card transaction

to obtain goods or services, obtain cash, or conduct P2P transfers would be subject to the compulsory use rule under final § 1005.10(e)(1); the exception to final § 1005.10(e)(1) does not apply because such a credit product is not an overdraft line of credit or overdraft service. The Bureau also does not believe that the exception to § 1005.10(e)(1) would be invoked with regard to a credit feature that does not qualify as a covered separate credit feature under new Regulation Z § 1026.61 because it is offered by an unrelated third party, since that unrelated third party will typically not be aware that the consumer had chosen to link the credit feature to his or her prepaid account.

#### *10(e)(2) Employment or Government Benefit*

##### *The Bureau's Proposal*

EFTA section 913(2), as implemented by § 1005.10(e)(2), provides that no financial institution or other person may require a consumer to establish an account for receipt of EFTs with a particular institution as a condition of employment or receipt of a government benefit. Existing comment 10(e)(2)-1 explains that an employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. These provisions regarding compulsory use precede the addition of the Payroll Card Rule to Regulation E.<sup>323</sup>

No parallel comment currently exists with respect to the application of the compulsory use provision to the distribution of government benefits. In the proposal, the Bureau noted that questions had arisen as to whether the compulsory use prohibition applied to prepaid cards used

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<sup>323</sup> In September 2013, the Bureau reiterated the applicability of Regulation E's prohibition on compulsory use for payroll card accounts. CFPB Bulletin 2013-10, *Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), available at [http://files.consumerfinance.gov/f/201309\\_cfpb\\_payroll-card-bulletin.pdf](http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf). The Bureau explained that, among other things, Regulation E's compulsory use provision prohibits employers from mandating that employees receive wages only on a payroll card of the employer's choosing. *Id.* at 3.

to distribute non-needs tested government benefits. EFTA and Regulation E clearly apply to the electronic distribution of non-needs tested government benefits generally, and EFTA section 913(2) prohibits “requiring a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of ... receipt of a government benefit.” To provide greater clarity, the Bureau proposed to add comment 10(e)(2)-2, which would have stated that a government agency could not require consumers to receive government benefits by direct deposit to any particular institutions. The comment would have also stated that a government agency could, alternatively, require recipients to receive their benefits via direct deposit, so long as the recipient could choose which institution would receive the deposit, or provide recipients with a choice of having their benefits deposited at a particular institution or receiving their benefits via another means.

The Bureau sought comment on whether a financial institution complies with the compulsory use prohibition if it provides the first payment to a benefit recipient on a government benefit card and, at that same time, provides information on how to divert or otherwise direct future payments to an account of the consumer’s choosing. In addition, the Bureau sought comment on whether a similar restriction on compulsory use should be extended to other types of prepaid accounts (other than payroll card accounts and government benefit accounts), such as cards used by post-secondary educational institutions for financial aid disbursements or insurance companies to pay out claims.

#### *Comments Received*

*Requests to clarify whether certain enrollment methods comply with § 1005.10(e)(2).*

Two commenters—a program manager of government benefit cards and a State government agency—generally objected to the Bureau’s proposal to clarify the application of compulsory use

to government agencies. They argued that government agencies should be allowed to require that consumers receive their benefit payments on a prepaid card of the agency's choosing, since doing so allows the agencies to save money by outsourcing the disbursement process and preventing fraud related to false benefits claims. These commenters urged the Bureau to remove proposed comment 10(e)(2)-2. In the alternative, the program manager, along with a payment network and several other State government agency commenters, urged the Bureau to clarify that a covered person complies with § 1005.10(e)(2) by providing the first payment to a government benefit recipient on a prepaid card and, at that time, providing information to the recipient on how to divert or otherwise direct future payments to an account of the his or her choosing. According to these commenters, this enrollment method would allow the financial institution or other person to adopt a single, streamlined on-boarding process for beneficiaries, while still providing consumers with a real—if delayed—choice on how to receive their payments. One State government agency argued that, if the Bureau did not adopt the requested clarification allowing agencies to unilaterally disburse funds onto prepaid cards, the Bureau should delay the rule's effective date with respect to government benefit accounts to allow the agencies to identify and implement the most economical and efficient means of complying with the compulsory use prohibition.

Other commenters, including issuing banks, program managers, trade associations, a payment network, and an employer that disburses compensation via payroll card accounts, asked the Bureau to address situations—for both government benefit accounts and payroll card accounts—where the consumer is provided a choice but does not make a selection. Specifically, these commenters asked the Bureau to confirm in the final rule that a financial institution or other person complies with the compulsory use prohibition by providing a consumer with two or

more alternative methods for receiving funds, and, if the consumer fails to affirmatively select from among the available methods within a prescribed period of time, disbursing the consumer's payment to a pre-selected, default enrollment method, such as a payroll card account or government benefit account. According to these commenters, this method of enrollment is standard practice among many employers and government benefit programs, and is in fact permitted under some State laws. Mandating changes to these existing practices, they argued, would require costly system changes.

Several consumer group commenters, by contrast, urged the Bureau to clarify that a financial institution or other person that unilaterally enrolls a consumer in a payroll card account or government benefit account program violates the compulsory use prohibition, regardless of whether the person only disburses the consumer's initial payment onto that card or provides the consumer with information about how to divert future payments to an account of the consumer's choosing. In general, these commenters argued that an automatic, unilateral disbursement of a first payment onto a prepaid card is tantamount to a condition that the consumer have an account with a particular institution in order to receive his or her salary or government benefit, in violation of the compulsory use prohibition. Moreover, these commenters argued, default options are "sticky," meaning that once consumers are enrolled in one payment method, they are unlikely to go through the effort to un-enroll or otherwise direct payments to another account. In other words, the commenters asserted, a consumer who continues to receive payments to a payroll card account or government benefit account after being unilaterally enrolled in that card program has not made an affirmative choice to be paid that way. A nonprofit organization representing the interests of restaurant workers provided the Bureau with survey results showing that more than a quarter of employees at a particular restaurant company who responded to the

organization's survey reported that they were never told that they had options other than a payroll card account by which to receive their wages. With regards to the possibility of a financial institution's use of a default enrollment method where consumers are provided with a choice of payment method but fail to communicate a preference after a certain period of time, one consumer group indicated that it was not categorically opposed to this practice, but suggested that the period the financial institution should have to wait before enrolling a non-responsive consumer in a default enrollment method should be 30 days or more.

One consumer group commenter asked the Bureau to go further and require that, in order to comply with the compulsory use prohibitions, a financial institution or other person obtain a consumer's written consent before disbursing the consumer's payment via a payroll card account or government benefit account. Another consumer group argued that the Bureau should mandate a specific waiting period before a consumer was required to make a selection with respect to his or her preferred payment method.

*Requests to expand the scope of § 1005.10(e)(2) beyond payment of salary or government benefit.* Although it did not propose alterations to the scope of the compulsory use prohibition, the Bureau did seek comment on whether a similar restriction should be extended to other types of prepaid accounts, as discussed above. In response, numerous consumer group commenters urged the Bureau to expand the compulsory use prohibition to other types of prepaid accounts used by third parties to disburse funds to consumers, including accounts used to disburse student aid or student loans, accounts used to disburse insurance or workers' compensation payments, and accounts used by correctional facilities to disburse funds to incarcerated or formerly incarcerated individuals. The commenters expressed concern that consumers in these circumstances could not otherwise avoid the high fees or restrictive terms and conditions that

they allege often accompany such cards, if the consumers must accept the cards to access their funds.

Several commenters, including several members of Congress, pointed to prison release cards as a particularly troubling example of a prepaid account product that they say comes with high fees and terms and conditions that limit consumers' ability to access their own funds. Funds disbursed onto prison release cards may include prison job wages or public benefits paid to the prisoner while in prison. The commenters argued that consumers who receive these prepaid products should have a choice with respect to how they get paid. In the alternative, the commenters urged the Bureau to limit fees on cards that the consumer has to accept, as well as on cards issued on an unsolicited basis. In response, a commenter that manages several prison release card programs, as well as other "correction-related" services submitted a comment disputing the consumer groups' allegations with respect to its programs. This commenter objected to the suggestion that its prepaid products are or should be subject to the compulsory use provision. Among other arguments, the commenter noted that prison release cards are a superior alternative to checks, which are often accompanied by excessive check cashing fees, or cash, which can be mismanaged by correctional staff. This commenter also took issue with the suggestion that its prepaid account programs are accompanied by particularly high fees, noting that State departments of corrections that bid for its services look carefully at the fees charged to card users. The commenter provided fee schedules for several of its programs that it argued show that the programs' cardholder fees are not exorbitant.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting comment 10(e)(2)-2 as proposed with minor modifications for clarity and conformity. The Bureau declines to amend regulatory

text or adopt additional commentary as requested by some commenters. The Bureau continues to believe it is important that consumers have a choice with respect to how they receive their salary or government benefits. Whether a financial institution or other person complies with § 1005.10(e)(2), therefore, depends on whether the financial institution or other person provides the consumer with a choice regarding how to receive his or her payment. For example, a financial institution or other person that mandates that consumers receive their salary or government benefit on a specific prepaid card violates EFTA section 913(2) and § 1005.10(e)(2), as the statutory and regulatory text make clear. Accordingly, the Bureau declines to revise § 1005.10(e)(2) to allow government agencies to require consumers to receive government benefits on a prepaid card of the agency's choosing, as some commenters requested.

Likewise, after considering the comments on this issue, the Bureau agrees with consumer group commenters that a financial institution or other person that mandates that a consumer receive the *first* payment of salary or government benefits on a prepaid card does not give the consumer a choice regarding how to receive the payment, even if the consumer can later re-direct the payment to an account of his or her choice.<sup>324</sup> In such a scenario, the consumer does not have a choice with respect to how to receive the first payment of salary or government benefit; rather, at least with respect to that first payment, the consumer was required to establish an account with the financial institution that issued the prepaid account as a condition of receiving the funds.

The Bureau does not at this time and on this record believe it would be appropriate to set a bright-line test based solely on amount of time or whether the consumer agrees to the preferred

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<sup>324</sup> The Bureau likewise declines to grandfather in or provide an extended timeframe to amend or rebid existing vendor contracts for government benefit accounts beyond the final rule's general effective date, as requested by some commenters. See the section-by-section analysis of § 1005.18(h) below for a more detailed discussion of the final rule's effective date.

payment method in writing, as some commenters suggested. As the Bureau noted in the proposal, there are many ways a consumer can obtain a prepaid account, and the Bureau believes its disclosure regime should be—and is—adaptable to this variety.<sup>325</sup> The Bureau notes that how long a consumer had to select a preferred payment method may not always be indicative of whether the consumer was given a choice regarding how to receive his payment. For example, a company’s policies and procedures may dictate that employees be given at least two weeks to select a preferred payment method. However, such a policy may not help an employee who is ordered by his direct supervisor to accept wages via a payroll card. Likewise, the way a consumer expresses her preferred payment method may not be indicative of whether she exercised a choice with respect to how to receive her payments. Relatedly, as some industry commenters noted, consumers are sometimes given a choice between two or more payment alternatives, but may fail to indicate their preference. Depending on the facts and circumstances—for example, the date by which the consumer has to be paid her wages under State law—it may be reasonable for a financial institution or other person in this scenario to employ a reasonable default enrollment method.

The Bureau also declines to amend existing regulatory text or adopt additional commentary concerning which alternative payment methods must be made available to a consumer to comply with the compulsory use prohibition. In response to requests for clarification from a member of Congress and an industry commenter on the one hand, and several consumer group commenters on the other, the Bureau notes that the compulsory use prohibition does not amount to a requirement that a financial institution or other person provide a consumer with any particular alternative to a prepaid account. More specifically,

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<sup>325</sup> 79 FR 77102, 77148 (Dec. 23, 2014).

§ 1005.10(e)(2) does not mandate that a covered person offer a consumer the option of getting paid by paper check (to address concerns from the member of Congress and industry commenter), nor require that one of the payment options made available to the consumer be direct deposit to an account of the consumer's choosing (as the consumer groups requested). Rather, the consumer must not be required to establish a particular account and must be presented with at least one alternative to the prepaid account, which may be a paper check, direct deposit to the consumer's bank account or to her own prepaid account, or some other payment method.

With respect to the comments recommending that the Bureau expand application of the compulsory use prohibition to other types of prepaid accounts, the Bureau has concluded that it would not be appropriate to take such a step at this time. The compulsory use prohibition has been in place and largely unchanged since its adoption in 1978 in EFTA.<sup>326</sup> The Bureau believes it would be inappropriate to alter the application of the prohibition in the manner suggested by commenters in this final rule without additional public participation and information gathering about the specific product types at issue. The Bureau notes that to the extent that student, insurance, or prison release cards are used to disburse consumers' salaries or government benefits, as defined under applicable law, such accounts are already covered by § 1005.10(e)(2) and will continue to be so under this final rule. The Bureau notes further that it is continuing to monitor financial institutions' and other persons' practices relating to consumers' lack of choice (including with respect to prepaid accounts that are not subject to the compulsory use prohibitions). Depending on the facts and circumstances, the Bureau may consider whether

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<sup>326</sup> EFTA section 913; Public Law 95-630, 92 Stat. 3737 (1978) (codified at 15 U.S.C. 1693k).

exercise of the Bureau's authority under title X of the Dodd-Frank Act, including its authority over unfair, deceptive, or abusive acts or practices, would be appropriate.

### *Section 1005.11 Procedures for Resolving Errors*

#### *11(c) Time Limits and Extent of Investigation*

The Bureau is making a conforming change to § 1005.11 to except unverified accounts from the provisional credit requirements therein, in conformance with changes to the error resolution requirements for prepaid accounts in revised § 1005.18(e) below.

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit, and is implemented for accounts under Regulation E generally, including payroll card accounts, in § 1005.11. Section 1005.11(c)(1) and (3)(i) require that a financial institution, after receiving notice that a consumer believes an EFT from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.*, whether the transfer was unauthorized), within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account). Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within 10 business days, its investigation may take up to 45 days if it provisionally credits the amount of the alleged error back to the consumer's account within 10 business days of receiving the error notice.<sup>327</sup> Provisional credit is not required if the financial institution requests but does not receive written confirmation within 10 business days of an oral notice by the consumer, or if the alleged error involves an account that is subject to Regulation T

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<sup>327</sup> The financial institution has 90 days (instead of 45) to investigate if the claimed unauthorized EFT was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. § 1005.11(c)(3)(ii).

of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220).<sup>328</sup>

The Bureau proposed in § 1005.18(e)(2) to extend to all prepaid accounts the error resolution provisions of Regulation E, including provisional credit, with modifications to the § 1005.11 timing requirements in proposed § 1005.18(e)(2) for financial institutions following the periodic statement alternative in proposed § 1005.18(c)(1). In addition, the Bureau proposed to use its exception authority under EFTA section 904(c) to propose § 1005.18(e)(3); that provision would have provided that for prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution disclosed to the consumer the risks of not registering a prepaid account using a notice that is substantially similar to the proposed notice contained in paragraph (c) of appendix A-7, a financial institution would not have been required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account for which it had not completed its collection of consumer identifying information and identity verification.

As discussed in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is revising the limitation on financial institutions' obligations to provide limited liability and error resolution protections for prepaid accounts that have not completed the consumer identification and verification process. Rather than allow financial institutions to forego providing all of the limited liability and error resolution protections for such unverified accounts, as the Bureau proposed, the final rule allows financial institutions to forego extending provisional credit to such accounts as part of the error resolution process—under the final rule, therefore, financial institutions may take up to 45 days (or 90 days, where applicable) to

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<sup>328</sup> § 1005.11(c)(2)(i)(A) and (B).

investigate an error claim without provisionally crediting the account in the amount at issue for prepaid accounts with respect to which the financial institution has not completed its consumer identification and verification process. To implement this revision, the Bureau is adopting an exception to the general requirement in § 1005.11(c)(2) that a financial institution must provide provisional credit if it takes longer than 10 business days to investigate and determine whether an error occurred. As stated above, there are two existing exceptions listed in § 1005.11(c)(2)(i)(A) (no provisional credit where institution required, but did not receive, written confirmation of the oral notice of error within 10 business days) and § 1005.11(c)(2)(i)(B) (no provisional credit where error involves an account subject to the Board's Regulation T). The Bureau is adding a third exception in new § 1005.11(c)(2)(i)(C), which, together with § 1005.11(c)(2)(i), provides that a financial institution does not have to provisionally credit a consumer's account if the alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not completed its consumer identification and verification process, as set forth in § 1005.18(e)(3)(ii).<sup>329</sup> The Bureau believes it is necessary and proper to finalize this exclusion pursuant to its authority under EFTA section 904(c) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers.

By adding an exception for unverified accounts to the provisional credit requirement set forth in § 1005.11(c)(2)(i), the Bureau intends to clarify the scope of the revised exception in final § 1005.18(e)(3). Specifically, although the Bureau is finalizing a provision that would

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<sup>329</sup> Pursuant to § 1005.18(e)(3)(ii), a financial institution has not completed its consumer identification and verification process where it has not concluded its consumer identification and verification process; it has concluded its consumer identification and verification process, but could not verify the identity of the consumer; or it does not have a consumer identification and verification process by which the consumer can register the prepaid account. See the section-by-section analysis of § 1005.18(e)(3) below for a detailed explanation of these provisions and related commentary.

allow financial institutions not to extend provisional credit to prepaid accounts for which the financial institution has not completed its consumer identification and verification process, all other timing and related requirements set forth in § 1005.11(c), as modified by final § 1005.18(e)(2), will apply to both verified and unverified accounts. The addition of new § 1005.11(c)(2)(i)(C), therefore, is intended to make clear that accounts referenced in that provision are only exempted from the provisional credit requirement in § 1005.11(c)(2)(i), and not from any other provisions of § 1005.11(c). Final §§ 1005.11(c)(2)(i)(C) and 1005.18(e)(3) reference each other for added clarity.

A full discussion of the Bureau's revisions to the limited liability and error resolution requirements for prepaid accounts in this final rule can be found in the section-by-section analysis of § 1005.18(e) below.

#### *Section 1005.12 Relation to Other Laws*

##### *12(a) Relation to Truth in Lending*

Existing § 1005.12(a) provides guidance on whether the issuance provisions in existing Regulation E § 1005.5 or the unsolicited issuance provisions in existing Regulations Z § 1026.12(a) apply where access devices under Regulation E also are credit cards under Regulation Z. (For discussion of when this may occur, see Regulation Z below.) In addition, existing § 1005.12(a) also provides guidance on how the provisions on liability for unauthorized use and for resolving errors in existing Regulation E §§ 1005.6 and 1005.11 and existing Regulation Z §§ 1026.12(b) and 1026.13 interact where a credit transaction is incidental to an EFT.

## *Issuance Rules*

### *The Bureau's Proposal*

Consistent with EFTA section 911(a),<sup>330</sup> existing § 1005.5(a) provides that a financial institution generally may issue an access device for an account that is subject to Regulation E to a consumer only: (1) in response to an oral or written request for the device; or (2) as a renewal of, or in substitution for, an accepted access device, whether issued by the institution or a successor. Nonetheless, consistent with EFTA section 911(b),<sup>331</sup> existing § 1005.5(b) provides that a financial institution may distribute an access device to a consumer on an unsolicited basis if four enumerated situations are met. These exceptions are particularly important to issuance of debit cards to access checking accounts for which the consumer is eligible for overdraft services or has opened an overdraft line of credit.

In contrast, the issuance rules for a credit card under Regulation Z are more restrictive. Consistent with TILA section 132,<sup>332</sup> existing Regulation Z § 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

Existing § 1005.12(a) provides guidance on whether the issuance provisions in Regulation E or the unsolicited issuance provisions in Regulations Z apply where access devices under Regulation E also are credit cards under Regulation Z. Specifically, existing § 1005.12(a)(1) currently provides that EFTA and Regulation E govern: (1) the addition to an

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<sup>330</sup> 15 U.S.C. 1693i(a).

<sup>331</sup> 15 U.S.C. 1693i(b).

<sup>332</sup> 15 U.S.C. 1642.

accepted credit card, as defined in Regulation Z (existing § 1026.12, comment 12-2), of the capability to initiate EFTs; (2) the issuance of an access device that permits credit extensions pursuant to an overdraft line of credit (involving a preexisting agreement between a consumer and a financial institution to extend credit only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account), or under an overdraft service (as defined in existing § 1005.17(a)); and (3) the addition of an overdraft service, as defined in existing § 1005.17(a), to an accepted access device.

On the other hand, existing § 1005.12(a)(2) provides that TILA and Regulation Z apply to (1) the addition of a credit feature to an accepted access device; and (2) the issuance of a credit card that is also an access device, except the issuance of an access device that permits credit extensions pursuant to a preexisting overdraft line of credit or under an overdraft service as discussed above. The application of these various provisions to prepaid accounts and revisions to the relevant prongs of existing § 1005.12 are discussed below. The proposal would have amended provisions in existing § 1005.12(a)(1)(ii) so that the rules in TILA and Regulation Z would govern whether a prepaid card could be a credit card when it is issued. Proposed Regulation Z § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule) would have required a credit card issuer to wait at least 30 days from prepaid account registration before opening a credit card account for a holder of a prepaid account, or providing a solicitation or application to the holder of the prepaid account to open a credit card account that would be accessed by the access device for a prepaid account that is a credit card. Thus, proposed Regulation Z § 1026.12(h) would have prevented a prepaid card from being a credit card at the time it was issued if it was issued before the expiration of the 30-day period set forth in proposed Regulation Z § 1026.12(h). Under the proposal, because a prepaid card could not have been a

credit card at the time it was issued if it was issued before the expiration of the 30-day period discussed above, the issuance of such a prepaid card would have been governed under the issuance rules in EFTA and Regulation E.

Existing § 1005.12(a)(2)(ii) currently provides that TILA and Regulation Z apply to the issuance of a credit card that is also an access device, except the issuance of an access device that permits credit extensions pursuant to a preexisting overdraft line of credit or under an overdraft service as discussed in existing § 1005.12(a)(1)(ii). Existing § 1005.12(a)(1)(ii) provides that the issuance rules of EFTA and Regulation E govern the issuance of an access device that permits credit extensions under a preexisting agreement between a consumer and a financial institution only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service as defined in existing § 1005.17(a).

For checking accounts, a consumer may have a preexisting agreement with the financial institution to cover checks that overdraw the account. This overdraft line of credit would be subject to Regulation Z. If a debit card is then added to access this overdraft line of credit under the preexisting agreement, existing § 1005.12(a)(1)(ii) provides that the debit card (which would also be a credit card under Regulation Z) may be issued under the issuance rules in Regulation E, instead of the issuance rules in Regulation Z. In contrast, Regulation Z's issuance rules apply if the access device can access another type of credit feature when it is issued; for example, one permitting direct extensions of credit that do not involve the asset account. Existing comment 12(a)-2 provides that for access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in existing § 1005.17(a). Regulation Z rules apply if there is another type of credit

feature; for example, one permitting direct extensions of credit that do not involve the asset account.

The proposal would have amended existing § 1005.12(a)(1)(ii) to provide that this provision relating to preexisting overdraft lines of credit and overdraft services does not apply to access devices for prepaid accounts. The proposal also would have moved existing comment 12(a)-2 related to preexisting overdraft lines of credit and overdraft services to proposed comment 12(a)-1 and would have revised the comment to explain that it does not apply to access devices for prepaid accounts. Thus, under the proposal, because the existing exception for preexisting overdraft line of credit and overdraft services would not have applied to an access device for a prepaid account, the issuance rules in TILA and Regulation Z would have applied to the issuance of a prepaid card that also a credit card at the time it is issued.

Nonetheless, under the proposal, in proposed Regulation Z § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule), a prepaid card could not have been a credit card when it was issued if it was issued before the expiration of the 30-day period set forth in proposed § 1026.12(h). Proposed Regulation Z § 1026.12(h) would have required a credit card issuer to wait at least 30 days from prepaid account registration before opening a credit card account for a holder of a prepaid account, or providing a solicitation or application to the holder of the prepaid account to open a credit card account, that would be accessed by the access device for a prepaid account that is a credit card. The Bureau proposed to comment 12(a)-3 to explain that an access device for a prepaid account may not access a credit card account when the access device is issued and would have cross referenced proposed Regulation Z § 1026.12(h). Under the proposal, because a prepaid card could not have been a credit card when it was issued if it was issued before the expiration of the 30-day period set forth in proposed Regulation Z

§ 1026.12(h), the issuance of such a prepaid card would have been governed under the issuance rules in EFTA and Regulation E.

The proposal also would have amended existing § 1005.12(a)(1)(iii) and (2)(i) to address whether Regulation E or Regulation Z governs the addition of a credit feature or plan (including an overdraft credit plan) to a previously issued access device for a prepaid account where the credit feature or plan would have made the access device into a credit card under Regulation Z. Existing § 1005.12(a)(1)(iii) provides that the issuance rules of EFTA and Regulation E govern the addition of an overdraft service, as defined in existing § 1005.17(a), to an accepted access device. The proposal would have amended existing § 1005.12(a)(1)(iii) to provide that this provision does not apply to access devices for prepaid accounts. The proposal also would have moved comment 12(a)-3 which discussed overdraft services as defined in existing § 1005.17(a) to proposed comment 12(a)-2 and revised the comment to indicate that this comment does not apply to access devices for prepaid accounts. As discussed in more detail in the section-by-section analysis of § 1005.17 below, the proposal would have revised the term “overdraft service” as defined in existing § 1005.17(a) to exclude a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z, because these credit plans would have been subject to the provisions in Regulation Z.

The proposal also would have amended existing § 1005.12(a)(2)(i) to provide that the unsolicited issuance rules in TILA and existing Regulation Z § 1026.12(a) would have applied to the addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z. The proposal would have added proposed comment 12(a)-4 that would have explained that Regulation Z governs the addition of any credit feature or plan to an access device for a prepaid

account where the access device also would be a credit card under Regulation Z. Proposed comment 12(a)-4 also would have stated that Regulation Z (existing § 1026.2(a)(20), proposed comment 2(a)(20)-2.ii) would have provided guidance on whether a program constitutes a credit plan, and that Regulation Z (existing § 1026.2(a)(15)(i), proposed comment 2(a)(15)-2) would have defined the term credit card and provided examples of cards or devices that are and are not credit cards.

#### *Comments Received and the Final Rule*

The Bureau did not receive any specific comments on its proposal to amend existing § 1005.12(a) and related commentary with respect to the issuance rules, other than those related to general comments from industry not to cover overdraft plans offered on prepaid accounts under Regulation Z. See the *Overview of the Final Rule's Amendments to Regulation Z* section for a discussion of those comments.

As explained in more detail below, with respect to the issuance rules, the Bureau is amending existing § 1005.12(a) and related commentary consistent with the proposal, with revisions to clarify the intent of the provisions and to be consistent with new Regulation Z § 1026.61.

*Issuance of a prepaid card.* As discussed above, existing § 1005.12(a)(2)(ii) generally provides that the unsolicited issuance rules in TILA and Regulation Z, which prohibit the unsolicited issuance of credit cards, govern the issuance of a credit card that is also an access device. Existing § 1005.12(a)(1)(ii) provides that the issuance rules of EFTA and Regulation E govern the issuance of an access device that permits credit extensions under a preexisting agreement between a consumer and a financial institution only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an

overdraft service, as defined in existing § 1005.17(a). Existing comment 12(a)-2 provides that for access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting overdraft line of credit attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in existing § 1005.17(a). Regulation Z rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

Consistent with the proposal, the Bureau is amending existing § 1005.12(a)(1)(ii) to provide that this provision does not apply to access devices for prepaid accounts. Consistent with the proposal, the final rule moves existing comment 12(a)-2 related to preexisting overdraft lines of credit and overdraft services to final comment 12(a)-1 and revises it to explain that it does not apply to access devices for prepaid accounts. Thus, under the final rule, the existing exception in § 1005.12(a)(1)(ii) for credit extended under a preexisting overdraft line of credit or under an overdraft service does not apply to an access device that accesses a prepaid account. Thus, under the final rule, § 1005.12(a)(2)(ii) provides that the issuance rules in TILA and Regulation Z govern the issuance of an access device for a prepaid account that is a credit card at the time it is issued.

Nonetheless, under new Regulation Z § 1026.61(c), a prepaid card may not be a credit card under Regulation Z when it is issued if the prepaid card is issued prior to expiration of the 30-day period set forth in new § 1026.61(c). New Regulation Z § 1026.61(c) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate

credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed above, the proposal would have added comment 12(a)-3 to explain that an access device for a prepaid account may not access a credit card account when the access device is issued and would have cross referenced proposed Regulation Z § 1026.12(h). Consistent with the proposal, the Bureau is adopting new comment 12(a)-3, with revisions to clarify the intent of the provision and to be consistent with new Regulation Z § 1026.61. New comment 12(a)-3 provides that an access device for a prepaid account cannot access a covered separate credit feature as defined in new Regulation Z § 1026.61 when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in new Regulation Z § 1026.61(c). New comment 12(a)-3 also explains that an access device for a prepaid account that is not a hybrid prepaid-credit card as that term is defined in new Regulation Z § 1026.61 is subject to the issuance rules in Regulation E. Because a prepaid access device cannot access a covered separate credit feature that would make the access device into a credit card when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in new Regulation Z § 1026.61(c), the issuance rules in EFTA and Regulation E will

apply to the issuance of the prepaid access device that does not access a covered separate credit feature as defined in new Regulation Z § 1026.61.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

The issuance rules in EFTA and Regulation E apply to those prepaid cards that are not hybrid prepaid-credit cards even though the prepaid card accesses the credit feature at the time the prepaid card is issued.

*Addition of a covered separate credit feature to an existing access device for a prepaid account.* The Bureau is amending existing § 1005.12(a)(2)(i) as proposed to provide that the issuance rules in TILA and Regulation Z govern the addition of a credit feature or plan to an

accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z.

The proposal would have added comment 12(a)-4 that would have explained that Regulation Z governs the addition of any credit feature or plan to an access device for a prepaid account where the access device also would be a credit card under Regulation Z. Proposed comment 12(a)-4 also would have stated that Regulation Z (existing § 1026.2(a)(20), proposed comment 2(a)(20)-2.ii) would have provided guidance on whether a program constitutes a credit plan, and that Regulation Z (existing § 1026.2(a)(15)(i), proposed comment 2(a)(15)-2) would have defined the term credit card and provided examples of cards or devices that are and are not credit cards. Consistent with the proposal, the Bureau is finalizing new comment 12(a)-4, with revisions to be consistent with new Regulation Z § 1026.61. New comment 12(a)-4 provides that Regulation Z governs the addition of a covered separate credit feature as that term is defined in new Regulation Z § 1026.61 to an existing access device for a prepaid account. In this case, the access device becomes a hybrid prepaid-credit card under Regulation Z. A credit card feature may be added to a previously issued access device for a prepaid account only upon the consumer's application or specific request as described in final Regulation Z § 1026.12(a)(1) and only in compliance with new Regulation Z § 1026.61(c), as discussed above. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

For the reasons set forth in the Overview of the Final Rule's Amendments to Regulation Z section, the Bureau believes that credit card rules in Regulation Z, including the unsolicited issuance rules in final Regulation Z § 1026.12(a), should apply to hybrid prepaid-credit cards that access covered separate credit features. The Bureau believes that the more restrictive issuance rules in Regulation Z for issuance of a credit card are appropriate in this context. As discussed above, consistent with TILA section 132, final Regulation Z § 1026.12(a) provides that no credit card generally may be issued to any person on an unsolicited basis. This is in contrast to Regulation E which allows an access device to be provided to a consumer on an unsolicited basis if four enumerated situations are met.

The Bureau believes in particular that the addition of a covered separate credit feature to an accepted prepaid access device that would make the prepaid card into a hybrid prepaid-credit card causes a significant transformation with respect to a prepaid account. The Bureau believes that applying the Regulation Z unsolicited issuance rules to the addition of such a credit feature to a prepaid access device will help ensure that consumers must take affirmative steps to effect such a transformation by permitting financial institutions to link covered separate credit features to prepaid cards only in response to consumers' applications or requests that the credit features be linked. A card issuer also must comply with new Regulation Z § 1026.61(c) with respect to linking the covered separate credit feature to the prepaid card, as discussed above and in the section-by-section analysis of Regulation Z § 1026.61(c) below. New Regulation Z § 1026.61(c) will help ensure that consumers are fully aware of the implications of their decisions to link covered separate credit features to prepaid cards by prohibiting card issuers from linking a covered separate credit feature to a prepaid card until 30 days after the prepaid account has been registered.

*Overdraft credit services defined in § 1005.17.* Existing § 1005.12(a)(1)(iii) provides that the issuance rules of EFTA and Regulation E govern the addition of an overdraft service, as defined in existing § 1005.17(a), to an accepted access device. Existing comment 12(a)-3 provides that the addition of an overdraft service, as that term is defined in existing § 1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (existing § 1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (existing § 1005.17). The proposal would have provided that existing § 1005.12(a)(1)(iii) would not have applied to access devices for prepaid accounts. The proposal would have moved existing comment 12(a)-3 to proposed comment 12(a)-2 and would have revised it to provide that the comment does not apply to access devices for prepaid accounts.

The final rule does not adopt the proposed changes to existing § 1005.12(a)(1)(iii). The final rule moves existing comment 12(a)-3 to new comment 12(a)-2 for organizational purposes, but does not amend the comment as proposed. The Bureau has not adopted the proposed amendments to existing § 1005.12(a)(1)(iii) and new comment 12(a)-2 because the Bureau believes such revisions are unnecessary in light of changes in other parts of the rule. As discussed in the section-by-section analysis of § 1005.17 below, the Bureau is adding § 1005.17(a)(4) to provide that an overdraft service does not include any payment of overdrafts pursuant to (1) a credit feature that is a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61; or (2) credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of new § 1026.61(a)(4). Thus, because a covered separate credit feature accessible by a hybrid prepaid-

credit card is not an overdraft service under final § 1005.17(a), existing § 1005.12(a)(1)(iii) and new comment 12(a)-2 related to the addition of an overdraft service as defined in final § 1005.17(a) to an access device are not applicable to a covered separate credit feature accessible by a hybrid prepaid-credit card.

*Rules Applicable to Limits on Liability for Unauthorized Use and to Billing Errors Procedures*  
*The Bureau's Proposal*

Current § 1005.6 generally sets forth provisions for when a consumer may be held liable, within the limitations described in existing § 1005.6(b), for an unauthorized EFT involving the consumer's account. Current § 1005.11 generally sets forth the procedures for resolving errors relating to EFTs involving a consumer's account. The Bureau is adding new § 1005.18(e) to set forth a consumer's liability for unauthorized EFTs and the procedures for investigating errors related to EFTs involving prepaid accounts. See generally the section-by-section analysis of § 1005.18(e) below.

Relatedly, current Regulation Z § 1026.12(b) sets forth limits on the amount of liability that a credit card issuer may impose on a consumer for unauthorized use of a credit card. Current Regulation Z § 1026.13 generally sets forth error resolution procedures for billing errors that relate to extensions of credit that are made in connection with open-end credit plans or credit card accounts.

Existing Regulation E § 1005.12(a)(1)(iv) currently provides guidance on how the provisions on limits on liability for unauthorized use and the provisions setting forth error resolution procedures under Regulations E and Z apply when credit is extended incident to an EFT. Specifically, current § 1005.12(a)(1)(iv) provides that EFTA and Regulation E govern a consumer's liability for an unauthorized EFT and the investigation of errors involving an

extension of credit that occurs pursuant to an overdraft line of credit (under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account), or under an overdraft service, as defined in existing § 1005.17(a).

Current comment 12(a)-1.i provides that for transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E's liability limitations apply, in addition to existing Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the checking account).<sup>333</sup> If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply. Current comment 12(a)-1.ii sets forth examples that illustrate these principles.

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<sup>333</sup> Existing Regulation Z § 1026.13(d) sets forth certain requirements that apply until a billing error is resolved. For example, existing Regulation Z § 1026.13(d)(1) provides that a consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to a disputed amount reflected on the consumer's credit card bill. It also provides that if the cardholder has enrolled in an automatic payment plan, the card issuer shall not deduct any part of the disputed amount or related finance or other charges from the consumer's asset account if the consumer provides to the card issuer a billing error notice that the card issuer receives any time up to 3 business days before the scheduled payment date. Existing Regulation Z § 1026.13(g) sets forth requirements governing what a creditor must do if it determines that a consumer owes all or part of the disputed amount and related finance or other charges.

With respect to limits on consumer liability for unauthorized use, existing § 1005.12(a) and comment 12(a)-1 are consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized EFT and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn.<sup>334</sup> In adopting rules in 1980 to implement EFTA, the Board generally applied Regulation E's error resolution procedures to credit transactions that are incident to an EFT involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.<sup>335</sup> In proposing these rules, the Board stated that the proposed rule would simplify procedures for financial institutions where an EFT results in both a debit to a consumer's account and a credit extension.<sup>336</sup>

For the reasons discussed in more detail in the section by section analysis of Regulation Z § 1026.13(i) below, the Bureau proposed to amend existing § 1005.12(a)(1)(iv) by moving the current language to proposed § 1005.12(a)(1)(iv)(A) and applying it to accounts other than prepaid accounts. The Bureau also proposed to add § 1005.12(a)(1)(iv)(B) to provide that with respect to a prepaid account, EFTA and Regulation E govern a consumer's liability for an unauthorized EFT and the investigation of errors involving an extension of credit, under a credit plan subject to Regulation Z subpart B, that is incident to an EFT when the consumer's prepaid account is overdrawn.

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<sup>334</sup> 15 U.S.C. 1693g(c).

<sup>335</sup> 45 FR 8249, 8266 (Feb. 6, 1980).

<sup>336</sup> 44 FR 25850, 25857 (May 3, 1979).

Proposed § 1005.12(a)(1)(iv)(B) that would have applied to credit in connection with a prepaid account was similar but not the same as proposed § 1005.12(a)(1)(iv)(A) that would have applied to accounts other than prepaid accounts. Like proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) generally would have applied Regulation E's limits on liability for unauthorized use and error resolution procedures to transactions that are partially funded through an EFT using an access device and partially funded through credit under a plan that is accessed by an access device when the consumer's prepaid account is overdrawn.

However, unlike proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) would not have focused on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's prepaid account is overdrawn or to maintain a specified minimum balance in the consumer's prepaid account. Instead, proposed § 1005.12(a)(1)(iv)(B) would have focused on whether credit is extended under a "plan" when the consumer's prepaid account does not have sufficient funds to complete a transaction and the plan is subject to the provisions in Regulation Z subpart B. For example, under the proposal, a credit plan that is accessed by a prepaid card that is a credit card would have been subject to the provisions of subpart B. Under the proposal, a prepaid card would have been a credit card under Regulation Z even if the creditor retains discretion not to pay the credit transactions. Thus, proposed § 1005.12(a)(1)(iv)(B) would have focused on whether credit is extended under an "plan" that is subject to the provisions of subpart B, rather than whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

The proposal would have added comment 12(a)-5.i to provide that for an account other than a prepaid account where credit is extended incident to an EFT under an agreement to extend

overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions would have applied, in addition to § 1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the asset account). With respect to an account other than a prepaid account, credit that is incident to an EFT that is not extended under an agreement between the consumer and the financial institution where the financial institution agrees to extend credit is governed solely by the error resolution procedures in Regulation E and Regulation Z § 1026.13(d) and (g) do not apply. With respect to a prepaid account where credit is extended under a credit plan that is subject to Regulation Z subpart B, Regulation E's liability limitations and error resolution provisions would have applied, in addition to Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). In addition, proposed comment 12(a)-5.i would have provided that a credit plan is subject to Regulation Z subpart B if it is accessed by an access device that is a credit card under Regulation Z or if it is open-end credit under Regulation Z. An access device for a prepaid account would not have been a credit card if the access device only accesses credit that is not subject to any finance charge, as defined in Regulation Z § 1026.4, or any fee described in Regulation Z § 1026.4(c), and is not payable by written agreement in more than four installments. Proposed comment 12(a)-5.i also would have provided that credit incident to an EFT under a credit plan that only can be accessed by an access device for a prepaid account that is not a credit card is not subject to Regulation Z subpart B and is governed solely by the error resolution procedures in Regulation E because the credit plan would not have been accessed by a credit card and the plan would not have been open-end credit. In this case, Regulation Z § 1026.13(d) and (g) would not have applied.

As discussed above, existing comment 12(a)-1.i provides guidance on how the principles in existing § 1005.12(a)(1)(iv) apply to transactions involving access devices that are credit cards under Regulation Z. The proposal would have moved existing comment 12(a)-1.i to proposed comment 12(a)-5.ii and made revisions to make clear that this guidance applies to prepaid cards that would have been credit cards under the proposal. The proposal also would have made technical revisions to proposed comment 12(a)-5.ii for clarity.

Existing comment 12(a)-1.ii.A through D provide examples of how the principles described in existing comment 12(a)-1.i relate to transactions involving access devices that also function as credit cards under Regulation Z. Specifically, these examples describe different types of transactions that involve a debit card that also is a credit card and discuss whether Regulation E or Regulation Z's liability limitations and error resolution requirements apply to those transactions. The proposal would have moved existing comment 12(a)-1.ii.A through D to proposed comment 12(a)-5.iii.A through D respectively. The proposal also would have revised the examples in proposed comment 12(a)-5.iii.A through D to clarify that these examples relate to a credit card that also is an access device that draws on a consumer's checking account, and would have made technical revisions to clarify the intent of the examples. No substantive changes would have been intended with these revisions. The proposal also would have added proposed comment 12(a)-5.iii.E that would have provided that the same principles in proposed comment 12(a)-5.iii.A through D apply to prepaid cards that would have been credit cards under the proposal.

*Comment Received and the Final Rule*

The Bureau did not receive any specific comments on this proposal to amend existing § 1005.12(a)(1)(iv) related to applicability of limits on liability for unauthorized use and error resolution provisions under Regulations E and Z.

The Bureau is amending existing § 1005.12(a)(1)(iv) and adding new § 1005.12(a)(2)(iii) to be consistent with new Regulation Z § 1026.61.

For the reasons discussed in more detail in the section-by-section analysis of Regulation Z § 1026.13(i) below, consistent with the proposal, the Bureau is amending existing § 1005.12(a)(1)(iv) by moving the current language to § 1005.12(a)(1)(iv)(A) and applying it to transactions that do not involve prepaid accounts. The Bureau also is adding new § 1005.12(a)(1)(iv)(B) to provide that with respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, EFTA and Regulation E govern a consumer's liability for an unauthorized EFT and the investigation of errors involving an extension of credit that is incident to an EFT that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed below, the final rule also adds new § 1005.12(a)(1)(iv)(C), and (D), and (2)(iii) to provide guidance on whether Regulation E or Regulation Z governs the consumer's liability for unauthorized use and the investigation of errors with respect to transactions made by prepaid cards that are not hybrid prepaid-credit cards as defined in new Regulation Z § 1026.61.

Proposed comment 12(a)-5.i would have provided guidance on the provisions in both proposed § 1005.12(a)(1)(iv)(A) and (B). As discussed in more detail below, the final rule retains the guidance related to credit extended in connection with prepaid accounts in new comment 12(a)-5.i with revisions to be consistent with new Regulation Z § 1026.61. As discussed in more detail below, the final rule moves guidance related to other types of credit from proposed comment 12(a)-5.i to new comment 12(a)-5.ii and revises it to be consistent with new Regulation Z § 1026.61. Consistent with the proposal, the final rule also moves current comment 12(a)-1.i and ii to new comment 12(a)-5.iii and iv and revises this comment to be consistent with new Regulation Z § 1026.61.

Consistent with the proposal, with respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, new § 1005.12(a)(1)(iv)(B) does not focus on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's prepaid account is overdrawn or to maintain a specified minimum balance in the consumer's prepaid account. Under the final rule, whether a prepaid card is a hybrid prepaid-credit card does not depend on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's prepaid account is overdrawn or to maintain a specified minimum balance in the consumer's prepaid account. Instead, under the final rule, a prepaid card is a credit card under Regulation Z

when it is a “hybrid prepaid-credit card” as defined in Regulation Z. In particular, new Regulation Z comment 61(a)(1)-1 provides that a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature even if, for example: (1) the person that can extend the credit does not agree in writing to extend the credit; (2) the person retains discretion not to extend the credit; or (3) the person does not extend the credit once the consumer has exceeded a certain amount of credit.

Thus, consistent with the proposal, new § 1005.12(a)(1)(iv)(B) focuses on transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, where an extension of credit that is incident to an EFT occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. These are the situations in which Regulations Z and E would overlap with respect to covered separate credit features accessible by hybrid prepaid-credit cards. New § 1005.12(a)(1)(iv)(B) provides that in these circumstances, EFTA and Regulation E generally govern a consumer’s liability for an unauthorized EFT and the investigation of errors with respect to these transactions. Regulation Z’s provisions related to a consumer’s liability for unauthorized transactions and error resolution procedures generally do not apply, except for existing Regulation Z § 1026.13(d) and (g) that apply to the credit portion of the transaction.

New § 1005.12(a)(1)(iv)(B) and new comment 12(a)-5.i and iii through iv are discussed first. New § 1005.12(a)(1)(iv)(C) and (D), and (2)(iii) are discussed second. New § 1005.12(a)(1)(iv)(A) and new comment 12(a)-5.ii are discussed third.

*Transactions involving covered separate credit features accessible by hybrid prepaid-credit cards.* As discussed above, new § 1005.12(a)(1)(iv)(B) provides that with respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, EFTA and Regulation E govern a consumer's liability for an unauthorized EFT and the investigation of errors involving an extension of credit incident to an EFT that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction.

Proposed comment 12(a)-5.i would have provided guidance on the provisions in both proposed § 1005.12(a)(1)(iv)(A) and (B). In the final rule, the guidance related to credit extended in connection with prepaid accounts is retained in new comment 12(a)-5.i with revisions to be consistent with new Regulation Z § 1026.61. As discussed in more detail below, the final rule moves guidance related to other types of credit from proposed comment 12(a)-5.i to new comment 12(a)-5.ii with revisions.

Under the final rule, new comment 12(a)-5.i provides that with respect to a transaction that involves a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, where credit is extended under a covered separate credit feature accessible by a hybrid prepaid-credit card that is incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of a prepaid account and credit extensions from the credit feature with respect to a particular transaction, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to existing Regulation Z § 1026.13(d)

and (g) (which apply because of the extension of credit associated with the covered separate credit feature).

As discussed above, existing comment 12(a)-1.i provides guidance on how the principles in existing § 1005.12(a)(1)(iv) apply to transactions involving access devices that are credit cards under Regulation Z. The proposal would have moved existing comment 12(a)-1.i to proposed comment 12(a)-5.ii and made revisions to make clear that this guidance applies to prepaid cards that would have been credit cards under the proposal. The proposal also would have made technical revisions to proposed comment 12(a)-5.ii for clarity; no substantive changes were intended. The final rule moves current comment 12(a)-1.i to new comment 12(a)-5.iii and adopts this comment consistent with the proposal, with additional technical revisions for clarity. New comment 12(a)-5.iii provides guidance on how the principles in final § 1005.12(a)(1)(iv) apply to transactions involving access devices that are credit cards under Regulation Z, including hybrid prepaid-credit cards that access covered separate credit features. New comment 12(a)-5.iii provides that for transactions involving access devices that also function as credit cards under Regulation Z, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not access funds in a consumer asset account, such as a checking account or prepaid account, the liability limitations and error resolution requirements of Regulation Z apply. If the transaction accesses funds in an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction access funds in an asset account but also involves an extension of credit under an overdraft credit feature subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to existing Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the

overdraft feature on the asset account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from an asset account, but also is used to obtain unauthorized cash advances directly from a credit feature that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

Existing examples in comment 12(a)-1.ii.A through D provide examples of how the principles in existing comment 12(a)-1.i relate to transactions involving access devices that also function as credit cards under Regulation Z. Specifically, these examples describe different types of transactions that involve a debit card that also is a credit card and discuss whether Regulation E or Regulation Z's liability limitations and error resolution requirements apply to those transactions. The proposal would have moved existing comment 12(a)-1.ii.A through D to proposed comment 12(a)-5.iii.A through D respectively and would have made several revisions as discussed above.

The final rule moves the existing examples from existing comment 12(a)-1.ii.A through D to new comment 12(a)-5.iv.A through D respectively. Consistent with the proposal, the final rule also revises the examples in new comment 12(a)-5.iv.A through D to clarify that these examples relate to a credit card that also is an access device that draws on a consumer's checking account, and makes technical revisions to clarify the intent of the examples. No substantive changes are intended with these revisions. Consistent with the proposal, the final rule also adds new comment 12(a)-5.iv.E that provides that the same principles in new comment 12(a)-5.iv.A through D apply to an access device for a prepaid account that also is a hybrid prepaid-credit card with respect to a covered separate credit feature under Regulation Z § 1026.61. New comment 12(a)-5.iv.E also provides a cross-reference to final Regulation Z § 1026.13(i)(2) and new comment 13(i)-4 that deals with the interaction between Regulations E and Z with respect to

billing error resolution for transactions that involve covered separate credit features accessible by hybrid prepaid-credit cards.

*Prepaid cards that are not hybrid prepaid-credit cards.* As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

As discussed above, the final rule adds new § 1005.12(a)(1)(iv)(C), (D), and (2)(iii) to provide guidance on whether Regulation E or Regulation Z governs the consumer’s liability for unauthorized use and the investigation of errors with respect to transactions made by prepaid cards that are not hybrid prepaid-credit cards as defined in Regulation Z § 1026.61. New § 1005.12(a)(1)(iv)(C) provides that Regulation E governs the consumer’s liability for an

unauthorized EFT and the investigation of errors with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z § 1026.61(a)(4). New comment 12(a)-5.i clarifies that § 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z § 1026.61(a)(4), these transactions are governed solely by the liability limitations and error resolution procedures in Regulation E, and Regulation Z does not apply.

New § 1005.12(a)(1)(iv)(D) provides that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, Regulation E governs the consumer's liability for an unauthorized EFT and the investigation of errors with respect to transactions that access the prepaid account, as applicable. New § 1005.12(a)(2)(iii) provides that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, Regulation Z governs the consumer's liability for unauthorized use and the investigation of errors with respect to transactions that access the non-covered separate credit feature, as applicable. New comment 12(a)-5.i clarifies that § 1005.12(a)(1)(iv)(D) and (2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

As discussed above, EFTA section 909(c) provides that EFTA's limits on liability for

unauthorized use apply to transactions which involve both an unauthorized EFT and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn.<sup>337</sup> The Bureau believes, however, that EFTA section 909(c) does not apply to transactions that access a non-covered separate credit feature. Non-covered separate credit features only include overdraft credit features with respect to prepaid accounts provided by unrelated third-party creditors other than the prepaid account issuer, its affiliates, or its business partners. Thus, a non-covered separate credit feature could not be offered by a financial institution that is offering overdraft on the prepaid account. For purposes of EFTA section 909(c), the Bureau believes extending credit is reasonably interpreted only to apply where the financial institution is itself the creditor, and thus would not encompass a situation where the financial institution who is the prepaid account issuer would be accessing credit, pursuant to an agreement with the consumer, from the consumer's non-covered separate credit feature. Thus, as explained in new comment 12(a)-5.i, new § 1005.12(a)(1)(iv)(D) and (2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z § 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable. See also the section-by-section analysis of Regulation Z § 1026.13(i) below.

*Transactions that do not involve prepaid accounts.* As discussed above, final § 1005.12(a)(1)(iv)(A) provides that EFTA and Regulation E generally govern a consumer's

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<sup>337</sup> 15 U.S.C. 1693g(c).

liability for an unauthorized EFT and the investigation of errors with respect to transactions that (1) do not involve a prepaid account; and (2) involve an extension of credit that is incident to an EFT that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in final § 1005.17(a).

As discussed above, proposed comment 12(a)-5.i would have provided guidance on the provisions in both proposed § 1005.12(a)(1)(iv)(A) and (B). In the final rule, the proposed guidance related to credit extended in connection with prepaid accounts is retained in new comment 12(a)-5.i with revisions. The final rule moves guidance related to other types of credit from proposed comment 12(a)-5.i to new comment 12(a)-5.ii and revises it to be consistent with new Regulation Z § 1026.61.

The final rule adds new comment 12(a)-5.ii to provide guidance with respect to accounts other than prepaid accounts. Specifically, new comment 12(a)-5.ii provides that with respect to an account (other than a prepaid account) where credit is extended incident to an EFT under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to existing Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). Access devices that access accounts other than prepaid accounts are credit cards under Regulation Z when there is an agreement by the financial institution to extend credit. *See* final Regulation Z § 1026.2(a)(15)(iv) and existing Regulation Z comments 2(a)(15)-2.i.B and ii.A. As discussed above, new comments 12(a)-5.iii and iv provide guidance on, and examples of, how the principles in final § 1005.12(a)(1)(iv) apply to transactions involving access devices that are

credit cards under Regulation Z.

### *12(b) Preemption of Inconsistent State Laws*

#### *The Bureau's Proposal*

In 2013, the Bureau published a final determination as to whether certain laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by EFTA and Regulation E.<sup>338</sup> The Bureau stated that it had no basis for concluding that the provisions at issue in Maine's unclaimed property law relating to gift cards are inconsistent with, or therefore preempted by, Federal law. The Bureau did determine, however, that one provision in Tennessee's unclaimed property law relating to gift cards is inconsistent with, and therefore preempted by, Federal law. The Bureau's final determination stated that the determination would also be reflected in the commentary accompanying Regulation E.

The Bureau proposed to add a summary of its preemption determination with respect to Tennessee's unclaimed property law as comment 12(b)-4. Proposed comment 12(b)-4 would have stated that the Bureau had determined that a provision in the State law of Tennessee is preempted by the Federal law, effective April 25, 2013. It would have further stated that, specifically, section 66-29-116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and stored-value cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or stored value cards and their underlying funds are permitted to expire under § 1005.20(e).

Existing comment 12(b)-2 states that the Bureau recognizes State law preemption determinations made by the Board prior to July 21, 2011, unless and until the Bureau makes and

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<sup>338</sup> 78 FR 24386, 24391 (Apr. 25, 2013).

publishes any contrary determination. The Bureau proposed to make this statement into a standalone comment in proposed comment 12(b)-2 under the heading *Preemption determinations generally*. The Bureau proposed to renumber the remainder of existing comment 12(b)-2 as proposed comment 12(b)-3, to make the heading for that comment *Preemption determination—Michigan* for clarity, and to update proposed comments 12(b)-3.i through iv to provide full citations to the preempted Michigan law at issue therein, which appear in chapter 488 of the Michigan Compiled Laws. Additionally, the Bureau proposed adding language in proposed comment 12(b)-3.iv to clarify that the preemption of sections 488.17 and 488.18 of Michigan law does not apply to transfers of \$15 or less, which, pursuant to existing § 1005.9(e), are not subject to § 1005.9. Section 1005.9(e) (then § 205.9(e)) was added by the Board in 2007 to eliminate the requirement to provide terminal receipts for transactions of \$15 or less.<sup>339</sup>

#### *Comments Received*

The Bureau received no comments regarding the proposed revisions to the commentary for § 1005.12(b). The Bureau did, however, receive comments from a consumer group and the office of a State Attorney General urging the Bureau to clarify that this final rule does not preempt stronger State laws with respect to payroll, student, prison, and government benefit accounts and to acknowledge that State laws may require additional disclosures and obligations not required by this final rule. These commenters specifically referenced the Illinois payroll card law, which they stated provides certain employee protections that are not contemplated by this rule, and recommended that the Bureau emphasize that employers may have additional obligations and restrictions under State law.

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<sup>339</sup> See 72 FR 36589 (July 5, 2007).

The Bureau also received a comment from a payment network, urging the Bureau to expressly provide that all State law requirements that are inconsistent with the requirements of the Bureau's final rule governing prepaid accounts are preempted. The commenter stated that inconsistent State requirements would detract from any required Federal disclosures and add costs to prepaid programs that ultimately will be borne by consumers. The commenter specifically expressed concern regarding State laws governing disclosures of fees or terms because, it said, such laws will frustrate the goals of consistent disclosure and comparison shopping.

#### *The Final Rule*

The Bureau is finalizing comments 12(b)-2 and -3 generally as proposed, with several minor modifications for clarity. The Bureau is also finalizing comment 12(b)-4 as proposed, but in lieu of the proposed reference to "stored value cards," the Bureau is using "general-use prepaid cards" in final comment 12(b)-4.i for consistency with § 1005.20(a). The Bureau considered the comments discussed above from the consumer group, the office of a State Attorney General, and the payment network, but does not believe that a revision to the regulatory text or commentary is necessary. EFTA section 922 makes clear that it does not preempt State laws except to the extent those laws are inconsistent with EFTA (and then only to the extent of that inconsistency). It further provides that "[a] State law is not inconsistent with [EFTA] if the protection such law affords any consumer is greater than the protection afforded by [EFTA]." The Bureau acknowledges that State laws may require additional disclosures and obligations not required by this final rule, and agrees that financial institutions and other persons involved in prepaid account programs, including employers, should be aware of additional obligations and restrictions under State law.

*Section 1005.15 Electronic Fund Transfer of Government Benefits*

Section 1005.15 of Regulation E currently contains provisions specific to certain accounts established by government agencies for distributing government benefits to consumers electronically, such as through ATMs or POS terminals. In 1997, the Board modified Regulation E to exempt “needs-tested” EBT programs established or administered under State or local law in response to a 1996 change to EFTA made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.<sup>340</sup> All accounts used to distribute benefits for Federally administered programs (including needs-tested EBT programs) and non-needs tested State and local programs, such as those used to distribute unemployment insurance payments, pensions, and child support, are currently covered by § 1005.15.<sup>341</sup>

The Bureau proposed to modify existing § 1005.15 to address the proposed revisions for government benefit accounts, rather than subsuming the rules for such accounts into proposed § 1005.18 (as the Bureau proposed to do with respect to payroll card accounts). The Bureau sought general comment on whether it should subsume all requirements for government benefit accounts into § 1005.18, as well. The majority of industry commenters who commented on this issue supported maintaining a separate section for requirements specifically applicable to government benefit accounts, arguing that government benefit accounts had unique legal and functional characteristics that warranted separate treatment. No commenter opposed maintaining a separate section for government benefit cards. After considering the comments and reading no reasons to the contrary, the Bureau is maintaining the government benefit account provisions in a separate section (§ 1005.15) as proposed.

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<sup>340</sup> Public Law 104-193, 110 Stat. 2105 (1996).

<sup>341</sup> *See, e.g.*, 62 FR 43467 (Aug. 14, 1997).

*15(a) Government Agency Subject to Regulation*

Existing § 1005.15(a)(1) provides, *inter alia*, that a government agency shall comply with all applicable requirements of EFTA and Regulation E, except as provided in § 1005.15.

Existing § 1005.15(a)(2), in turn, defines the term “account” to mean an account established by a government agency for distributing government benefits to a consumer electronically, such as through ATMs or POS terminals (not including an account for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency).

The Bureau proposed to adjust the final sentence of § 1005.15(a)(1) to reflect that proposed § 1005.15 would include substantive requirements, and not just exceptions to Regulation E requirements. In addition, for ease of reference, the Bureau proposed to define an account under § 1005.15(a)(2) as a “government benefit account.”

As it stated in the proposal, the Bureau did not intend for the proposed revisions to impact the existing scope of § 1005.15(a). Numerous commenters asked the Bureau to clarify that government benefit accounts would continue to be covered under the existing requirements of Regulation E, rather than under the new requirements applying to prepaid accounts. One industry commenter, for example, argued that the final rule should exempt from coverage all cards used to distribute government benefits, regardless of whether such benefits are needs-tested. Other industry commenters asked the Bureau to exempt cards used to disburse certain types of benefits—for example, child support, unemployment insurance, and workers’ compensation benefits. Currently, these commenters noted, the issuers of these cards administer the programs at no cost to the government agency disbursing the benefit, and at little cost to consumers. If saddled with the costs of complying with the various requirements of the proposed

rule, they argued, these issuers may increase their fees or stop issuing government benefit cards altogether.

Consumer group commenters, by contrast, advocated that the Bureau expand the scope of the “government benefit account” definition to include additional account types, including accounts that are expressly exempted from Regulation E now. A significant number of consumer group commenters argued that the Bureau should clarify that the exemption for needs-tested government benefit programs established or administered under State or local law does not apply to prepaid accounts. According to these commenters, the rationales for the exemption were either outdated or should not apply to prepaid cards. For example, one consumer group commenter noted that the exemption was intended to relieve regulatory burden for State and local governments, whereas the vast majority of government benefit accounts today are administered by financial institutions that are well-equipped to handle Regulation E compliance. Commenters argued additionally that the recipients of needs-tested benefits are, by definition, the neediest of all prepaid consumers, and thus should be entitled to the full protections of the Bureau’s final rule governing prepaid accounts.

The Bureau has considered the comments but believes that changes to the scope of the government benefit account definition are not warranted at this time. As discussed above, the Bureau did not intend its proposed changes to the definition of government benefit account to affect the scope of § 1005.15’s coverage, nor did it contemplate or seek comment on whether or how it should narrow or expand the scope of the definition in the final rule. The Bureau understands that the existing scope of the definition, which has been in place since 1997, is well-established and forms the basis of current industry, government, and consumer practices, and it is not persuaded that the policy rationales presented by the commenters warrant unsettling the

status quo with respect to the scope of coverage for government benefit accounts. The Bureau likewise declines to exempt government benefit accounts from the new requirements of this final rule, as some industry commenters requested. As detailed in the following sections, the Bureau believes that this final rule's revisions to existing government benefit account requirements, such as the requirements for pre-acquisition disclosures and enhanced access to account information, will substantially benefit consumers by providing them with a full, accurate, and timely disclosure of all of their account's terms and fees, and by helping them gain a more complete picture of their account activity. Accordingly, the Bureau is adopting the revisions to § 1005.15(a) as proposed.

#### *15(b) Issuance of Access Devices*

The Bureau did not propose to modify § 1005.15(b). Accordingly, the Bureau is finalizing that provision unchanged.

#### *15(c) Pre-Acquisition Disclosure Requirements*

##### *The Bureau's Proposal*

The Bureau proposed new disclosure requirements for government benefit accounts that would be provided before a consumer acquired a government benefit account. The requirements in proposed § 1005.15(c) would have been in addition to the initial disclosure requirements in existing § 1005.7(b) and corresponded to the requirements in proposed § 1005.18(b) for prepaid accounts generally.<sup>342</sup> EFTA section 905(a) sets forth disclosure requirements for accounts

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<sup>342</sup> The Bureau also proposed, for purposes of government benefit accounts, to expand the requirement in existing § 1005.7(b)(5) to disclose fees related to EFTs to cover all fees related to the government benefit account, as discussed in the section-by-section analysis of § 1005.15(f)(1) below. *See also* § 1005.18(f)(1) (finalizing the same requirement for prepaid accounts).

subject to the Act.<sup>343</sup> In addition to these disclosures, the Bureau proposed to use its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act to require government agencies to provide disclosures prior to the time a consumer acquires a government benefit account. As discussed in more detail in the section-by-section analysis of § 1005.18(b)(1)(i) below for prepaid accounts, the Bureau believed that adjustment of the timing requirement was necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of government benefit account consumers, because the proposed revision would have assisted consumers' understanding of the terms and conditions of their government benefit accounts.

The Bureau proposed new § 1005.15(c) to extend to government benefit accounts the same pre-acquisition disclosure requirements the Bureau proposed for prepaid accounts, as discussed in detail in the section-by-section analysis of § 1005.18(b) below. Specifically, proposed § 1005.15(c)(1) would have stated that before a consumer acquired a government benefit account, a government agency must comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in proposed § 1005.18(b), in accordance with the timing requirements of proposed § 1005.18(h).

To address issues of compulsory use (*see* existing § 1005.10(e)(2) and new comment 10(e)(2)-2)), the Bureau proposed that a notice be provided at the top of the short form disclosure to highlight for consumers that they were not required to accept the government benefit account. As it noted in the proposal, the Bureau believed it was important for consumers to realize they had the option of not accepting a government benefit account before they acquired the account,

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<sup>343</sup> Specifically, EFTA section 905(a) states that “[t]he terms and conditions of electronic fund transfers involving a consumer’s account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau.” 15 U.S.C. 1693c(a).

and that receiving such notice at the top of the short form would help to ensure consumers were aware of this right. To that end, proposed § 1005.15(c)(2) would have stated that before a consumer acquired a government benefit account, the agency must provide a statement pursuant to proposed § 1005.18(b)(2)(i)(A) that the consumer did not have to accept the government benefit account and that the consumer could ask about other ways to get their benefit payments from the agency instead of receiving them through the account, in a form substantially similar to proposed Model Form A-10(a).

Proposed comment 15(c)-1 would have explained that proposed Model Form A-10(a) contained a model form for the pre-acquisition short form disclosure requirements for government benefit accounts pursuant to proposed § 1005.15(c), and that government agencies could use Sample Form A-10(e) to comply with the pre-acquisition long form disclosure requirements of proposed § 1005.15(c)(1). Proposed comment 15(c)-2 would have reiterated that proposed § 1005.18(b)(1)(i) generally required delivery of both the short form and long form disclosures before a consumer acquired a prepaid account, and provided, in comment 15(c)-2.i, an example illustrating when a consumer received disclosures before acquisition of an account for purposes of proposed § 1005.15(c)(1). Proposed comment 15(c)-3 would have explained that the disclosures and notice required by proposed § 1005.15(c)(1) and (2) could be given in the same process or appointment during which the consumer acquired or agreed to acquire a government benefit account. When a consumer received benefits eligibility information and signed up or enrolled to receive benefits during the same process or appointment, a government agency that gave the disclosures and notice required by proposed § 1005.15(c)(1) and (2) before issuing a government benefit account would have complied with the timing requirements of proposed § 1005.15(c).

### *Comments Received*

Several industry and government commenters objected to the wholesale application of the proposed pre-acquisition disclosures to government benefit accounts. Specifically, several trade associations, a program manager for government benefit accounts, and two State government agencies urged the Bureau to exempt government benefit accounts from the proposed disclosure regime altogether, or to exempt them from the requirement to provide the short form disclosure. These commenters argued that the timing requirements proposed by the Bureau were too difficult to implement and unnecessary, since consumers could not in fact shop for alternative government benefit cards. One State government agency commenter argued that the application of the proposal to its program could necessitate revisions to its vendor contracts. In addition, commenters argued that most of the information that would be required by the proposed disclosures is already disclosed to consumers of government benefit accounts in the initial disclosures required by existing § 1005.7(b)(5) or would be disclosed via the proposed long form disclosure. Receiving duplicative information in the short form and long form disclosures, these commenters asserted, would lead to consumer confusion and information overload.

Other industry and government commenters did not object to the general application of the pre-acquisition disclosure requirements to government benefit accounts, but urged the Bureau to modify the requirements to better suit the government benefit account context. For example, several industry trade associations, a law firm writing on behalf of a coalition of prepaid issuers, a program manager for government benefit card programs, and State government agencies argued that consumers would be confused if they saw certain fees listed on the government benefit account disclosures that did not in fact apply to their government benefit account

program. These commenters urged the Bureau to allow agencies and financial institutions to omit such fees rather than disclose them with a corresponding “N/A” or “\$0,” as required under proposed § 1005.18(b)(2)(i) and comment 18(b)(2)(i)-1. Likewise, certain commenters objected to the proposed requirement that the disclosures for government benefit account programs disclose the maximum amount that could be charged for each fee, since such a disclosure would in some cases misinform consumers as to the actual fee charged in connection with their account.

The program manager commenter and a State government agency commenter argued that government benefit accounts should be exempt from the proposed incidence-based fee disclosure requirements. They argued that the calculation required by proposed § 1005.18(b)(2)(i)(B)(8) would be too difficult to complete for government benefit accounts, especially since it was unclear whether the calculation must include every distinct program the issuer offers (of which there could be dozens), or only different types of programs. Oftentimes, the commenters noted, issuers offer only one type of program, but that program is customized for individual government agency clients. The commenters argued in addition that government benefit accounts should be exempted from the segregation requirement in proposed § 1005.18(b)(4), so that the short form disclosure accompanying them can include additional information about how consumers can use their accounts with minimal fee charges.

A large number of commenters, including payment networks, issuing banks, program managers, industry trade associations, a member of Congress, and several government agencies, urged the Bureau to revise the language of the notice requirement in proposed § 1005.15(c)(2) to inform a consumer that he or she was not required to accept the government benefit account. They argued that the proposed language was overly negative in tone and would dissuade consumers from choosing prepaid accounts by giving them the impression that prepaid products

were unsafe or less preferable than other payment options. A program manager for government benefit accounts and a State government agency also urged the Bureau to remove the requirement that the banner notice for government benefit accounts include a sentence encouraging consumers to “ask about other ways to get” their payments. These commenters argued that this language would lead consumers to contact the government agency or their individual caseworkers to get information about the prepaid account program. Such outreach by consumers would place a further burden on already strained resources without aiding consumers, since agencies or caseworkers were unlikely to have the information the consumer is seeking. Consumer group commenters also asked the Bureau to revise the notice language to include information about what alternative payment methods the consumer could choose, arguing that the onus should not be on the consumer to seek out information about what other payment options are available.

The Bureau also received numerous comments, from both industry and consumer groups, regarding the timing requirements of the pre-acquisition disclosures and their application in the government benefit context. As stated above, the Bureau proposed comments 15(c)-2 and -3 to clarify when a consumer enrolling to receive government benefits via a prepaid account received the disclosures in compliance with the timing requirements of § 1005.18(b)(1)(i). An industry trade association, two issuing banks, a program manager for government benefit accounts, and a State government agency, argued that the proposed comments did not provide sufficient clarity. Specifically, they were concerned that proposed comment 15(c)-2.i suggested that “acquisition” in the government benefit context meant the consumer’s physical acquisition of the card. According to these commenters, entities charged with administering government benefit account programs often distribute inactive government benefit cards to consumers at the same time as

they distribute accompanying disclosures and other paperwork. The commenters were concerned that, as proposed, the commentary would disrupt current practices and place additional implementation burdens on government agencies. Further, they argued that the practice of providing consumers with an inactive card does not harm consumers, since consumers do not accrue any fees or undertake any obligations until the card is activated. Instead, the industry and government commenters urged the Bureau to clarify in revised commentary that acquisition for purposes of government benefit accounts was the point at which the consumer agreed or elected to be paid via a government benefit card. One trade association argued instead that the Bureau should define acquisition in this context as the point at which the consumer activates the government benefit account.

Several consumer group commenters agreed that the Bureau should provide greater clarity regarding what it meant to “acquire” a government benefit account, but argued that the point of acquisition should be defined as earlier in the enrollment process. Two consumer groups specified further that the disclosures should be provided before the consumer acquired the physical (if un-activated) card.

Finally, an industry trade association and an issuing bank argued that the Bureau should exempt government benefit accounts from the requirement in proposed § 1005.18(b)(2)(i)(B)(12) that the short form disclosure include a statement communicating to the consumer that a prepaid account must register with a financial institution or service provider in order for the funds loaded onto it to be protected. As stated in the proposal, the Bureau believed this disclosure was necessary because many consumer protections set forth in the proposal would not have taken effect until the consumer registered the account. The Bureau acknowledged, however, that the disclosure would be less useful for government benefit account recipients, since consumers have

to register with the agency in any event in order to receive their benefits. Commenters noted in addition that the notice was not necessary for government benefit accounts because, as discussed in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, government agencies are required to provide error resolution and limited liability protections to government benefit account consumers regardless of whether those consumers have registered their accounts.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing the general requirement in § 1005.15(c) that government agencies comply with the pre-acquisition disclosure requirements in final § 1005.18(b), with a number of revisions, as explained below. The Bureau is finalizing this provision pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act. The Bureau believes that extending the disclosure requirements in § 1005.18(b) is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of government benefit account consumers, by assisting consumers' understanding of the terms and conditions of their government benefit accounts.

Largely similar to proposed § 1005.15(c), final § 1005.15(c)(1) states that before a consumer acquires a government benefit account, a government agency shall comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b). As discussed in more detail below, the Bureau is adopting new § 1005.15(c)(2)(i) and (ii), which largely mirror final § 1005.18(b)(2)(i)(xiv)(A) and (B). Section 1005.15(c)(2)(i) reflects several changes to the proposed requirement to inform consumers that they are not required to accept the government benefit account, while § 1005.15(c)(2)(ii) provides that agencies may include additional information about how consumers can access their government

benefit account funds or balance information for free or for a reduced fee. The Bureau is also adopting new § 1005.15(c)(3) to address the form of the pre-acquisition disclosures required for government benefit accounts pursuant to final § 1005.15(c). Second, the Bureau is not finalizing proposed comment 15(c)-1; accordingly, it has renumbered proposed comments 15(c)-2 and -3 as final comments 15(c)-1 and -2, respectively. Third, the Bureau is adopting new comment 15(c)-3. Finally, the Bureau is finalizing certain revisions to those comments to provide further guidance on when a consumer acquires a government benefit account for purposes of the pre-acquisition disclosure requirements.

Although the Bureau understands that government benefit accounts are distinguishable from other prepaid accounts in several material respects, including the way they are distributed and marketed and the fees associated with them, the Bureau declines to exempt government benefit accounts from the general requirement to provide both a short form and long form disclosure before the consumer acquires the account. The Bureau notes that, pursuant to final § 1005.18(h) and as discussed in the section-by-section analysis thereof, agencies are not required to pull and replace prepaid account packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017.

The Bureau continues to believe that consumers who use these accounts will benefit from the ability to review a set of uniform disclosures regarding their accounts. First, the disclosures provide a clear and conspicuous disclosure of consumers' right under § 1005.10(e)(2) to receive their payment in some other form. The Bureau believes that this important disclosure may be less conspicuous, and therefore potentially less effective, if it were disclosed on the long form disclosure, since the long form disclosure contains far more information in a format that is less hierarchical than the short form disclosure. Second, the new disclosures highlight information

that, according to the Bureau's consumer testing, was the most important information consumers needed to inform their decision-making with respect to their preferred payment method.<sup>344</sup>

Third, although consumers may not be able to shop for alternative government benefit cards, the short form disclosure facilitates comparison shopping between the government benefit card and, for example, the consumer's own prepaid card or a prepaid card sold at retail. With respect to the comments that the pre-acquisition timing requirements would be particularly difficult to implement in the government benefit context, the Bureau notes that the revisions it is making to proposed comment 15(c)-2 (re-numbered as comment 15(c)-1) in the final rule, as discussed below, will provide government agencies and financial institutions with more flexibility to design efficient and practical enrollment procedures that comply with § 1005.15(c).

The Bureau likewise disagrees with industry commenters' suggestion that the statement regarding benefit payment options is negative and implies that government benefit accounts are inferior products, thereby discouraging consumers from using them. As discussed in greater detail in the section-by-section analysis of § 1005.18(b)(2)(xiv) below, the Bureau examined this issue in its post-proposal consumer testing and found that participants did not construe the language negatively, confirming the Bureau's original understanding from the proposal.<sup>345</sup> Nonetheless, the Bureau has decided to include in the final rule an alternative version of the statement language which the Bureau believes would address commenters' concerns. Moreover, unlike the proposed statement, this added alternative has the advantage of providing concrete options to consumers regarding other ways to receive their funds. The Bureau is thus finalizing § 1005.15(c)(2)(i), which mirrors final § 1005.18(b)(2)(xiv)(A), and provides that as part of its

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<sup>344</sup> See ICF Report I at 7.

<sup>345</sup> See ICF Report II at 16-17 and 27.

short form pre-acquisition disclosures, the agency must provide a statement that the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive their benefit payments from the agency instead of receiving them via the account, using the following clause or a substantially similar clause: “You do not have to accept this benefits card. Ask about other ways to receive your benefits.” Alternatively, an agency may provide a statement that the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and directing the consumer to indicate which option the consumer chooses using the following clause or a substantially similar clause: “You have several options to receive your payments: [list of options available to the consumer]; or this benefits card. Tell the benefits office which option you choose.” Final § 1005.15(c)(2)(i) also provides that this statement must be located above the information required by final § 1005.18(b)(2)(i) through (iv). This statement must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by final § 1005.18(b)(2)(i) through (iv).

To address comments arguing that agencies should be permitted to include additional information on the short form disclosure for government benefit accounts about how consumers can use their accounts with minimal fee charges, the Bureau is adopting new § 1005.15(c)(2)(ii), which states that an agency may, but is not required to, include a statement in one additional line of text in the short form disclosure directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to final § 1005.18(b)(3)(i) and (ii), or, if no such statements are disclosed, above the statement required by final § 1005.18(b)(2)(x). This

statement must appear in the same type size used to disclose variable fee information pursuant to § 1005.18(b)(3)(i) and (ii), or, if none, the same type size used for the information required by § 1005.18(b)(2)(x) through (xiii).

To provide greater clarity and additional guidance on the specific form and formatting requirements that must apply to government benefit account disclosures, the Bureau is moving the reference to Model Form A-10(a) to new § 1005.15(c)(3). New § 1005.15(c)(3) mirrors several form and formatting requirements in final § 1005.18(b). Specifically, it states that when a short form disclosure required by final § 1005.15(c) is provided in writing or electronically, the information required by final § 1005.18(b)(2)(i) through (ix) shall be provided in the form of a table. Except as provided in final § 1005.18(b)(6)(iii)(B), the short form disclosure required by final § 1005.18(b)(2) shall be provided in a form substantially similar to final Model Form A-10(a). Final Sample Form A-10(f) provides an example of the long form disclosure required by final § 1005.18(b)(4) when the agency does not offer multiple service plans.

Because the Bureau has added format requirements for government benefit account disclosures in new § 1005.15(c)(3), proposed comment 15(c)-1 is now superfluous; accordingly, the Bureau is not finalizing that comment. The Bureau has therefore renumbered proposed comments 15(c)-2 and -3 as final comments 15(c)-1 and -2, respectively.

With respect to comments regarding the timing of acquisition requirements in § 1005.15(c), the Bureau agrees that the final rule should provide greater clarity with respect to when a consumer acquires a government benefit account. The Bureau believes that, in providing such clarity, the rule should strike a balance between avoiding significant disruption of current benefit enrollment practices and ensuring that consumers receive the new disclosures early enough in the enrollment process to inform their decision of how to receive their payments,

thereby furthering the goals of the compulsory use provision in § 1005.10(e)(2). Accordingly, the Bureau declines to define acquisition as, for example, the point at which the consumer obtains physical possession of a government benefit card, or the point at which a consumer signs an enrollment form, because such a rule could be overly prescriptive and could disrupt current practices and delay benefit disbursement. On the other hand, the Bureau also declines to define acquisition as the point at which a consumer receives his or her first payment on the government benefit card, because it believes that by the time a consumer receives funds via a particular payment method, he or she is less likely to consider alternative options for how to get paid, thereby reducing the value of the pre-acquisition disclosures. Furthermore, the Bureau notes that, pursuant to the compulsory use prohibition in § 1005.10(e)(2), discussed above, consumers cannot be required to receive government benefits by direct deposit to any particular institutions, including a specific prepaid account. In other words, consumers who have the option to receive their government benefits via a government benefit account must be provided with at least one alternative payment method. The Bureau believes that, particularly in such scenarios, the proposed disclosures should be provided in time to help a consumer decide between the alternative payment methods available to him or her.

Accordingly, and in consideration of the comments above, the Bureau is finalizing revisions to proposed comments 15(c)-2 and -3 (re-numbered as comments 15(c)-1 and -2, respectively) to clarify that a consumer acquires a government benefit account when he or she *chooses* to receive benefits via the government benefit account. Specifically, final comment 15(c)-1 has been revised to state that, for purposes of final § 1005.15(c), a consumer is deemed to have received the disclosures required by § 1005.18(b) prior to acquisition when the consumer receives the disclosures before choosing to receive benefits via the government benefit account.

The Bureau recognizes that consumers may indicate their choice to be paid via a government benefit card in various ways, including, for example, by signing or filling out an enrollment form or by calling the financial institution to activate the card. The final rule does not specify what actions manifest a consumer's choice regarding how to get paid.

The Bureau is finalizing the first example in comment 15(c)-1.i generally as proposed. The second example in final comment 15(c)-1.i (which as proposed would have stated that the short form and long form disclosures are provided post-acquisition if a consumer receives them after receiving the government benefit card) has been revised to state that if the consumer does not receive the disclosures required by final § 1005.18(b) to review until the time at which the consumer received the first benefit payment deposited into the government benefit account, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with final § 1005.15(c). Under the final rule, therefore, a government agency can provide the short form and long form disclosures in the same package as the physical prepaid card and still comply with the requirement in final § 1005.15(c) that the forms be provided prior to acquisition. Likewise, a government agency can provide the pre-acquisition disclosures at the same appointment during which the consumer acquires the government benefit account so long as the disclosures are provided before the consumer actually chooses to receive payments via the account.

Final comment 15(c)-2 also reflects certain other technical revisions for clarity and consistency with the above changes. Specifically, this comment states that the disclosures and notice required by final § 1005.15(c) may be given in the same process or appointment during which the consumer receives a government benefit card. When a consumer receives benefits eligibility information and enrolls to receive benefits during the same process or appointment, a

government agency that gives the disclosures and notice required by final § 1005.15(c) before the consumer chooses to receive the first benefit payment on the card complies with the timing requirements of final § 1005.15(c).

The Bureau has added new comment 15(c)-3 to provide clarification regarding the form and formatting requirements for government benefit account disclosures. This comment explains that the requirements in § 1005.15(c) correspond to those for payroll card accounts set forth in § 1005.18(b). The comment also cross-references final comments 18(b)(2)(xiv)(A)-1 and 18(b)(2)(xiv)(B)-1 for additional guidance regarding the requirements set forth in final § 1005.15(c)(2)(i) and (ii), respectively. The Bureau has also added new comment 15(c)-4 to clarify the application of the requirement in § 1005.18(b)(5) that the name of the financial institution be disclosed outside the short form disclosure for government benefit accounts. Pursuant to new comment 15(c)-4, the financial institution whose name must be disclosed pursuant to the requirement in § 1005.18(b)(5) is the financial institution that directly holds the account or issues the account's access device. Also pursuant to comment 15(c)-4, the disclosure provided outside the short form may, but is not required to, include the name of the government agency that established the government benefit account.

Finally, the Bureau agrees with commenters that the notice regarding registration of the prepaid account that would have been required by proposed § 1005.18(b)(2)(i)(B)(12) is likely not necessary for government benefit accounts, as the registration process is typically completed before the account is opened. As discussed in the section-by-section analysis of § 1005.18(b)(2)(xi) below, the final rule does not require the statement regarding registration where customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened.

## *15(d) Access to Account Information*

### *15(d)(1) Periodic Statement Alternative*

#### *The Bureau's Proposal*

Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an EFT occurred or, if there are no such transfers, a periodic statement at least quarterly.<sup>346</sup> Existing § 1005.15(c) explains that government agencies can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the agency must make available to the consumer: (1) the account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal, or providing it, routinely or upon request, on a terminal receipt at the time of an EFT); and (2) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days.

The Bureau proposed to revise existing § 1005.15(c), renumbered as § 1005.15(d)(1), which would have allowed government agencies to instead provide access to account balance by telephone and at a terminal, 18 months of transaction history online, and 18 months written transaction history upon request. The Bureau believed that, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers (including government benefit account consumers), it was necessary and proper to exercise its authority under EFTA section 904(c) to continue the exception to the periodic statement requirements of EFTA section 906(c) for government benefit accounts and to modify

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<sup>346</sup> The periodic statement must include transaction information for each EFT, the account number, the amount of any fees assessed, the beginning and ending account balance, the financial institution's address and telephone number for inquiries, and a telephone number for preauthorized transfers. *See* § 1005.9(b).

that exception in Regulation E to more closely align it with the proposed requirements for prepaid accounts generally. See also the section-by-section analysis of § 1005.18(c)(1) below.

Proposed § 1005.15(d)(1) and (1)(i) would have stated that a government agency need not furnish periodic statements required by § 1005.9(b) if the agency made available to the consumer the consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an EFT). This language was unchanged from existing § 1005.15(c)(1). Existing § 1005.18(b)(1)(i) for payroll card accounts and proposed § 1005.18(c)(1)(i) for prepaid accounts, however, did not include the requirement to provide balance information at a terminal. As discussed in the section-by-section analysis of § 1005.18(c)(1)(i) below, the Bureau sought comment on whether a similar requirement to provide balance information at a terminal should be added to the requirements of proposed § 1005.18(c) for prepaid accounts generally, or whether, alternatively, the requirement should be eliminated from § 1005.15 given the other proposed enhancements and for parity with proposed § 1005.18.

Second, proposed § 1005.15(d)(1)(ii) would have required government agencies to provide an electronic history of the consumer's account transactions, such as through a website, that covered at least 18 months preceding the date the consumer electronically accessed the account. As noted above, the requirement to provide an electronic history of a consumer's account transactions was new for government benefit accounts. The Bureau did not believe that the proposed requirement would have imposed significant burden on government agencies, as the Bureau believed that many government benefit account programs already provided electronic access to account information.

Third, proposed § 1005.15(d)(1)(iii) would have required government agencies to provide a written history of the consumer's account transactions promptly in response to an oral or written request and that covered at least 18 months preceding the date the agency received the consumer's request. This provision was similar to existing § 1005.15(c)(2), but was modified to change the time period covered by the written history from 60 days to 18 months, and to otherwise mirror the language used in proposed § 1005.18(c)(1)(iii) for prepaid accounts generally.

#### *Comments Received*

A consumer group commenter supported the Bureau's decision to apply the requirement to provide consumers access to a longer account history period to government agencies. A think tank commenter, on the other hand, objected to the decision, arguing that it would be difficult for government agencies to manage beneficiaries' account histories for 18 months. In addition, an industry trade association and an issuing bank opposed the Bureau's decision to maintain the requirement that government agencies wishing to take advantage of the periodic statement alternative provide consumers' account balance information at a terminal, arguing that terminal access was outdated and has been replaced by text or online account access. Two consumer groups, by contrast, supported the continued requirement for balance information at a terminal for government benefit accounts and urged the Bureau to expand the requirement to all prepaid accounts. They argued that ATMs are easy to use and that all consumers have access to ATM terminals, while not all consumers may have access to online account information.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting § 1005.15(d)(1) and comment 15(d)-1 largely as proposed, with minor revisions for consistency with final § 1005.18(c). To

further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers (including government benefit account consumers), the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to continue the exception to the periodic statement requirements of EFTA section 906(c) for government benefit accounts and to modify that exception in Regulation E to more closely align it with the proposed requirements for prepaid accounts generally. As discussed in the section-by-section analysis of § 1005.18(c)(1) below, the Bureau has modified proposed § 1005.18(c)(1) to require 12 months of electronic account transaction history and 24 months of written account transaction history instead of 18 months for both as proposed. The Bureau has therefore modified § 1005.15(d)(1) accordingly. The Bureau believes that this revision strikes the appropriate balance between the burden imposed on industry overall while, in conjunction with final § 1005.18(c)(1)(iii) discussed below, ensuring that additional transaction history will be available for consumers who need it. Final comment 15(d)-1 cross-references final comments 18(c)-1 through -3 and -5 through -9 for further guidance on the access to account information requirements.

In response to the comment that the proposed 18-month access to account information requirements should not be extended to government benefit accounts, the Bureau is not convinced that there is a significant difference between the burden these requirements place on prepaid account issuers as financial institutions and the burden they place on government agencies, since, as the Bureau noted in the proposal, government benefit account programs are typically administered by financial institutions pursuant to a contract between the institution and

the agency.<sup>347</sup> With respect to the requirement that government agencies continue to provide account balances at terminal locations, the Bureau has considered the comments and is adopting § 1005.15(d)(1)(i) as proposed. The requirement is unchanged from existing § 1005.15(c)(1); recipients of government benefits may have come to rely on the ATM as a source of account information, and the Bureau does not see a need to remove this provision from the final rule. Relatedly, the Bureau notes that ATMs are still in wide use by consumers of various financial services products, and as such, it disagrees with commenters who argued that ATMs are an obsolete method of providing balance information to consumers. Furthermore, the Bureau understands that recipients of government benefits may be among the neediest consumers of prepaid accounts, and as such, may be less likely to have access to a mobile phone when they need it, such as prior to withdrawing money at the ATM. Having access to their balance at an ATM could help consumers in this scenario avoid costly fees. Finally, the Bureau notes that government agencies and financial institutions remain free under the final rule to recommend or encourage consumers to use particular modes of accessing their account balances.

#### *15(d)(2) Additional Access to Account Information Requirements*

The Bureau proposed § 1005.15(d)(2), which would have required that a government agency comply with the account information requirements as set forth in proposed § 1005.18(c)(2), (3), and (4). As discussed in more detail below, proposed § 1005.18(c)(2) would have required that the electronic and written histories in the periodic statement alternative include the information set forth in § 1005.9(b). This provision currently exists for payroll card accounts in existing § 1005.18(b)(2), but does not presently appear in § 1005.15 for government

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<sup>347</sup> 79 FR 77102, 77141 (Dec. 23, 2014). As it noted in the proposal, the Bureau has found that all the government benefit card programs included in its Study of Prepaid Account Agreements already provide online access to account information (*see* Study of Prepaid Account Agreements at 18 tbl.5), and, in most cases, electronic periodic statements as well (*see id.* at 20 tbl.7).

benefit accounts. Proposed § 1005.18(c)(3) would have required disclosure of all fees assessed against the account, in both the history of account transactions provided as periodic statement alternatives, as well as in any periodic statement. Proposed § 1005.18(c)(4) would have required disclosure, in both the history of account transactions provided as periodic statement alternatives, as well as in any periodic statement, monthly and annual summary totals of fees imposed on and the total amount of deposits and debits made to a prepaid account. Proposed comment 15(d)-1 would have referred to proposed comments 18(c)-1 through -5 for guidance on access to account information requirements.

The Bureau did not receive any comments specifically addressing § 1005.15(d)(2)'s application of the account information requirements in § 1005.18(c)(2) through (4) to government benefit accounts. Accordingly, the Bureau is finalizing § 1005.15(d)(2) as proposed with revised cross-references to reflect changes in the numbering of provisions within final § 1005.18(c). To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers (including government benefit account consumers), the Bureau believes that it is necessary and proper to exercise its authority under EFTA section 904(c) to modify the periodic statement requirements of EFTA section 906(c) to require inclusion of all fees charged and summary totals of both monthly and annual fees. The Bureau believes that these revisions will assist consumers' understanding of the account activity on their government benefit accounts. In addition, the Bureau is also using its disclosure authority pursuant to section 1032(a) of the Dodd-Frank Act because it believes that disclosure of all fees and account activity summaries will ensure that the features of government benefit accounts, over the term of the account, are fully, accurately, and effectively disclosed to

consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with government benefit accounts.

The Bureau notes, however, that it is finalizing certain revisions to proposed § 1005.18(c)(2) through (4), renumbered as final § 1005.18(c)(3) through (5). Most significantly, the Bureau has removed the requirement that financial institutions provide summary totals of all deposits to and debits from a consumer's prepaid account from the final rule. The specific revisions and their respective rationales are discussed in the section-by-section analyses of § 1005.18(c)(3) through (5) below.

#### *15(e) Modified Disclosure, Limitations on Liability, and Error Resolution Requirements*

Because the Bureau proposed to modify the periodic statement alternative for government benefit accounts in proposed § 1005.15(d)(1), the Bureau proposed to modify the requirements in existing § 1005.15(d), renumbered as § 1005.15(e), to adjust the corresponding timing provisions therein and to align with the requirements of proposed § 1005.18(d) for prepaid accounts generally. For the reasons set forth below, the Bureau is finalizing the various provisions of § 1005.15(e) as proposed. As specified in final § 1005.15(e), these requirements apply to government agencies that provide access to account information under the periodic statement alternative in final § 1005.15(d)(1). The Bureau has also revised the heading for final § 1005.15(e) to reflect that the section contains modified requirements regarding limitations on liability and error resolution, as well as disclosures.

#### *15(e)(1) Initial Disclosures*

##### *15(e)(1)(i) Access to Account Information*

Proposed § 1005.15(e)(1)(i) would have required a government agency to modify the disclosures required under § 1005.7(b) by disclosing a telephone number that the consumer could

call to obtain the account balance, the means by which the consumer could obtain an electronic account history, such as the address of a website, and a summary of the consumer's right to receive a written account history upon request (in place of the a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by proposed § 1005.15(e)(1)(i) could have been made by providing a notice substantially similar to the notice contained in proposed appendix A-5. The Bureau did not receive any comments in response to this portion of the proposal. As such, it is finalizing § 1005.15(e)(1)(i) as proposed.

*15(e)(1)(ii) Error Resolution*

Mirroring existing § 1005.15(d)(1)(iii), proposed § 1005.15(e)(1)(ii) would have required a government agency to modify the disclosures required under § 1005.7(b) by providing a notice concerning error resolution that was substantially similar to the notice contained in proposed appendix A-5, in place of the notice required by § 1005.7(b)(10). Those proposed modifications are discussed below in the section-by-section analysis of appendix A-5. The Bureau did not receive any comments on proposed § 1005.15(e)(1)(ii); accordingly, the Bureau is adopting § 1005.15(e)(1)(ii) as proposed.

*15(e)(2) Annual Error Resolution Notice*

Mirroring existing § 1005.15(d)(2), proposed § 1005.15(e)(2) would have required that an agency provide an annual notice concerning error resolution that was substantially similar to the notice contained in proposed appendix A-5, in place of the notice required by § 1005.8(b). The Bureau proposed to add that, alternatively, the agency could include on or with each electronic or written history provided in accordance with proposed § 1005.15(d)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b)

of appendix A-3, modified as necessary to reflect the error resolution provisions set forth in proposed § 1005.15. The Bureau proposed to allow each electronic and written history to include an abbreviated error resolution notice, in lieu of an annual notice, for parity with proposed § 1005.18(d)(2) for prepaid accounts generally. The Bureau sought comment, however, on whether to continue to require annual error resolution notices for government benefit accounts in certain circumstances, such as when a consumer has not accessed an electronic history or requested a written history in an entire calendar year.

One consumer group commenter urged the Bureau to maintain the requirement that government agencies send annual error resolution notices in connection with government benefit accounts in all instances, regardless of whether the consumer had recently accessed the account. Several industry commenters, including a program manager, an issuing bank, and a trade association, supported the Bureau's decision to allow government agencies to provide an abbreviated error resolution notice on each electronic or written history in lieu of the annual notice. These commenters argued that providing an annual notice is costly, that many such notices get returned to the sender without being opened, and that consumers with dormant accounts who receive these notices may be confused and led to believe that their government benefits were being affected in some way.

The Bureau has considered the above comments. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and pursuant to its authority under EFTA section 904(c) to adopt an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), the Bureau is finalizing the annual error resolution notice requirement in § 1005.15(e)(2) as proposed. As stated in the section-by-section analysis of § 1005.18(d) below, the Bureau continues to believe that its regime for error

resolution notices strikes an appropriate balance by providing consumers with enough information to know about and exercise their rights without overwhelming them with more information than they can process or put to use.

*15(e)(3) Modified Limitations on Liability Requirements*

For accounts under Regulation E generally, § 1005.6(a) provides that a consumer may be held liable for an unauthorized EFT resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met.<sup>348</sup> If the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of \$50 or the amount of unauthorized transfers made before giving notice.<sup>349</sup> If timely notice is not given, the consumer's liability is the lesser of \$500 or the sum of (1) the lesser of \$50 or the amount of unauthorized transfers occurring within two business days of learning of the loss/theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution.<sup>350</sup> Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized EFT that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

For government agencies that follow the periodic statement alternative in existing § 1005.15(c), existing § 1005.15(d)(3) provides that for purposes of § 1005.6(b)(3), the 60-day period shall begin with the transmittal of a written account history or other account information

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<sup>348</sup> The required disclosures for this purpose include a summary of the consumer's liability under § 1005.6, or under State law or other applicable law or agreement, for unauthorized EFTs; the telephone number and address of the person or office to be notified when the consumer believes an unauthorized transfer has been or may be made; and the financial institution's business days. §§ 1005.6(a) and 1005.7(b)(1) through (3).

<sup>349</sup> § 1005.6(b)(1).

<sup>350</sup> § 1005.6(b)(2).

provided to the consumer under existing § 1005.15(c). Proposed § 1005.15(e)(3) would have modified existing § 1005.15(d)(3) to adjust the timing requirements for reporting unauthorized transfers based on the proposed requirement to provide consumers with electronic account history under proposed § 1005.15(d)(1)(ii), as well as written history upon request. Specifically, proposed § 1005.15(e)(3)(i) would have provided that for purposes of existing § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer began on the earlier of the date the consumer electronically accessed the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflected the unauthorized transfer, or the date the agency sent a written history of the consumer's account transactions requested by the consumer under proposed § 1005.15(d)(1)(iii) in which the unauthorized transfer was first reflected.

Proposed § 1005.15(e)(3)(ii), which mirrored existing § 1005.18(c)(3)(ii) and proposed § 1005.18(e)(1)(ii), would have provided that an agency could comply with proposed § 1005.15(e)(3)(i) by limiting the consumer's liability for an unauthorized transfer as provided under existing § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

The Bureau did not receive any comments on this portion of the proposal. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to exercise its authority under EFTA 904(c) to modify the timing requirements of EFTA 909(a). As such, it is finalizing § 1005.15(e)(3)(i) and (ii) as proposed. The Bureau did receive comments on § 1005.18(e)(1)(ii), which are discussed in the section-by-section analysis of that provision below. The Bureau notes that nothing in this final rule

modifies the requirement to comply with existing § 1005.6(b)(4) regarding an extension of time limits if a consumer's delay in notifying the agency was due to extenuating circumstances, nor any other provisions of existing § 1005.6.

*15(e)(4) Modified Error Resolution Requirements*

Section 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an EFT from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.*, whether the transfer was unauthorized), within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days. After determining that an error occurred, the financial institution must correct an error within one business day.<sup>351</sup> Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account.

Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within 10 business days, its investigation may take up to 45 days if it provisionally credits the amount of the alleged error back to the consumer's account within 10 business days of receiving the error notice.<sup>352</sup> Provisional credit is not required if the financial institution requires but does not receive written confirmation within 10 business days of an oral notice by the

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<sup>351</sup> See § 1005.11(c)(1).

<sup>352</sup> The financial institution has 90 days (instead of 45) if the claimed unauthorized EFT was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. See § 1005.11(c)(3)(ii).

consumer.<sup>353</sup> If the investigation establishes proof that the transaction was, in fact, authorized, the financial institution may reverse any provisional credit previously extended (assuming there are still available funds in the account).<sup>354</sup>

For government agencies that follow the periodic statement alternative in existing § 1005.15(c), existing § 1005.15(d)(4) provides that an agency shall comply with the requirements of existing § 1005.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information under existing § 1005.15(c) in which the error is first reflected. The Bureau noted in the proposal that this provision only modified the 60-day period for consumers to report an error and did not alter any other provision of § 1005.11.

Proposed § 1005.15(e)(4) would have modified existing § 1005.15(d)(3) to adjust the timing requirements for reporting errors based on the proposed requirement to provide consumers with electronic account history under proposed § 1005.15(d)(1)(ii), as well as written history upon request. Specifically, proposed § 1005.15(e)(4)(i) would have provided that an agency shall comply with the requirements of existing § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of 60 days after the date the consumer electronically accessed the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflected the alleged error, or 60 days after the date the agency sent a written history of the consumer's account transactions requested by the consumer under proposed § 1005.15(d)(1)(iii) in which the alleged error was first reflected.

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<sup>353</sup> See § 1005.11(c)(2)(i)(A).

<sup>354</sup> See § 1005.11(d)(2).

Proposed § 1005.15(e)(4)(ii) would have provide that in lieu of following the procedures in proposed § 1005.15(e)(4)(i), an agency complied with the requirements for resolving errors in existing § 1005.11 if it investigated any oral or written notice of an error from the consumer that was received by the agency within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

Proposed comment 15(e)-1 would have cross-referenced proposed comments 18(d)-1 through -3 for guidance on modified limited liability and error resolution requirements.

The Bureau did not receive any comments with respect to proposed § 1005.15(e)(4) or comment 15(e)-1. Accordingly, it is finalizing those provisions as proposed. The Bureau is finalizing the proposed provisions to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and to facilitate compliance with its provisions, and because it believes it is necessary and proper to exercise its authority pursuant to EFTA section 904(c) to modify the timing requirements of EFTA section 909(a).

As explained in greater detail in the section-by-section analysis of § 1005.18(e) below, the Bureau has revised its proposed error resolution requirements for prepaid accounts generally in several key respects in the final rule. Specifically, under the final rule, financial institutions that have not completed their consumer identification and verification process with respect to a particular account will still have to investigate and resolve errors reported with respect to that account. However, pursuant to new § 1005.18(e)(3), financial institutions that have not completed the consumer identification and verification process, that completed the process but were not able to verify the account holder's identity, or that do not have a process by which consumers can register their accounts, can take up to the maximum length of time permitted

under § 1005.11(c)(2)(i) or (3)(ii), as applicable, to investigate and resolve the error without having to provisionally credit the consumer's account, as required by § 1005.11(c)(2).

The exclusion set forth in final § 1005.18(e)(3) from certain aspects of existing § 1005.11(c)(2) does not apply to government benefit accounts. This is to retain the current application of these rules to government benefit accounts. As the Bureau explained in the proposal, the Bureau understands that the consumer identifying information associated with a government benefit account is collected and verified by the government agency, another financial institution, or a service provider prior to the account's distribution. Therefore, under the final rule, and as discussed in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, government agencies and other financial institutions must provide full error resolution protections for government benefit accounts, including provisional credit for accounts when investigations of errors take longer than 10 business days, regardless of whether the government benefit account had been registered or the consumer's identity had been verified.

#### *15(f) Initial Disclosure of Fees and Other Information*

The Bureau proposed § 1005.15(f) to provide that for government benefit accounts, a government agency would have to comply with the requirements governing initial disclosure of fees and other key information applicable to prepaid accounts as set forth in proposed § 1005.18(f), in accordance with the timing requirements of proposed § 1005.18(h). EFTA section 905(a)(4), as implemented by existing § 1005.7(b)(5), requires financial institutions to disclose to consumers, as part of an account's terms and conditions, any charges for EFTs or for the right to make such transfers. The Bureau believed that for prepaid accounts (including government benefit accounts), it was important that the initial account disclosures provided to

consumers listed all fees that may be imposed in connection with the account, not just those fees related to EFTs.

Specifically, the Bureau proposed § 1005.15(f), which would have cross-referenced proposed § 1005.18(f) to require that, in addition to disclosing any fees imposed by a government agency for EFTs or the right to make such transfers, the agency would have also had to provide in its initial disclosures given pursuant to § 1005.7(b)(5) all other fees imposed by the agency in connection with a government benefit account. For each fee, an agency would have had to disclose the amount of the fee, the conditions, if any, under which the fee may have been imposed, waived, or reduced, and, to the extent known, whether any third-party fees would have been applied. These disclosures pursuant to proposed §§ 1005.15(f) and 1005.18(f) would have had to include all of the information required to be disclosed pursuant to proposed § 1005.18(b)(2)(ii)(B) and would have needed to be provided in a form substantially similar to proposed Sample Form A-10(e). Further, for consistency purposes and to facilitate consumer understanding of a government benefit account's terms, the fee disclosure provided pursuant to § 1005.7(b)(5), as modified by proposed § 1005.18(f), would have to be in the same format of the long form disclosure requirement of proposed § 1005.18(b)(2)(ii)(A).

The Bureau did not receive any comments regarding this portion of the proposal. Thus, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to finalize an adjustment of the requirement implemented in existing § 1005.7(b)(5) for government benefit accounts. Accordingly, it is adopting § 1005.15(f) largely as proposed to cross-reference the requirements set forth in final § 1005.18(f), with revisions for parity with the final text of § 1005.18(f).

The Bureau notes that it is also finalizing certain revisions to proposed § 1005.18(f). The specific revisions and their respective rationales are discussed in detail the section-by-section analyses of § 1005.18(f) and (f)(3) below. In summary, the Bureau has revised proposed § 1005.18(f), renumbered as § 1005.18(f)(1), to require that a financial institution include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to final § 1005.18(b). The Bureau has added new § 1005.18(f)(2) to make clear that a financial institution must provide a change-in-terms notice, pursuant to § 1005.8(a), for any change in a term or condition required to be disclosed under §§ 1005.7 or 1005.18(f)(1). Finally, § 1005.18(f)(3) sets forth the required disclosures that must appear on prepaid account access devices (in the proposal, these requirements would have been set forth in proposed § 1005.18(b)(7)). To clarify the application of the requirement in § 1005.18(f)(3) that the name, website URL, and telephone number of the financial institution be disclosed on the prepaid account access device to government benefit accounts, the Bureau is adding new comment 15(f)-1. Pursuant to new comment 15(f)-1, the financial institution whose name must be disclosed pursuant to the requirement in § 1005.18(f)(3) is the financial institution that directly holds the account or issues the account's access device.

*15(g) Government Benefit Accounts Accessible by Hybrid Prepaid-Credit Cards.*

The Bureau proposed § 1005.15(g), which would have required that for credit plans linked to government benefit accounts, a government agency would have to comply with prohibitions and requirements applicable to prepaid accounts as set forth in proposed § 1005.18(g). The Bureau did not receive any comments regarding this portion of the proposal, and is finalizing § 1005.15(g) largely as proposed with minor modifications to incorporate the

term hybrid prepaid-credit card that this final rule is adopting under new Regulation Z § 1026.61. The Bureau has made changes, however, to certain of the underlying requirements in proposed § 1005.18(g). See the section-by-section analysis of § 1005.18(g) below for additional information on those requirements.

### *Section 1005.17 Requirements for Overdraft Services*

#### *17(a) Definition*

##### *The Bureau's Proposal*

Existing § 1005.17 sets forth requirements that financial institutions must follow in order to provide an “overdraft service” to consumers related to consumers’ accounts. Under existing § 1005.17, financial institutions must provide consumers with a notice describing the institution’s overdraft service for ATM and one-time debit card transactions, and obtain the consumer’s affirmative consent, before fees or charges may be assessed on the consumer’s account for paying such overdrafts.

Existing § 1005.17(a) currently defines “overdraft service” to mean a service under which a financial institution assesses a fee or charge on a consumer’s account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. Existing § 1005.17(a) also provides that the term “overdraft service” does not include any payment of overdrafts pursuant to: (1) a line of credit subject to Regulation Z, including transfers from a credit card account, home equity line of credit, or overdraft line of credit; (2) a service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or (3) a line of credit or other transaction exempt from Regulation Z pursuant to existing Regulation Z § 1026.3(d). In adopting the provisions in what is now existing § 1005.17, the Board indicated that these

methods of covering overdrafts were excluded because they require the express agreement of the consumer.<sup>355</sup>

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, in the proposal, the Bureau declined to extend the current regulatory scheme governing overdraft services on checking accounts to prepaid accounts, and instead proposed to regulate these types of services generally under Regulation Z (as well as Regulation E's compulsory use provision). The proposal would have amended existing § 1005.17(a)(1) to explain that the term "overdraft service" does not include credit plans that are accessed by prepaid cards that are credit cards under Regulation Z. Specifically, the proposal would have amended existing § 1005.17(a)(1) to provide that the term "overdraft service" does not include any payments of overdrafts pursuant to a line of credit or credit plan subject to Regulation Z, including transfers from a credit card account, home equity line of credit, overdraft line of credit, or a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z. Similar to the other exemptions from the definition of "overdraft service," under proposed Regulation Z § 1026.12(a)(1) and proposed comment 12(a)(1)-7, credit card plans in connection with prepaid accounts would have required the express agreement of consumers in that, under the proposal, such plans could be added to previously issued prepaid accounts only upon a consumer's application or request. In addition, under proposed § 1005.18(g)(1) and proposed Regulation Z § 1026.12(h), a credit card account could not have been added to a previously issued prepaid account until 30 days after the prepaid account has been registered.

In the proposal, the Bureau also noted that the opt-in provision in existing § 1005.17 would not have applied to credit accessed by a prepaid card that would not have been a credit

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<sup>355</sup> 74 FR 59033, 59040 (Nov. 17, 2009).

card under the proposal because the card could have only accessed credit that is not subject to any finance charge, as defined in Regulation Z § 1026.4, or any fee described in Regulation Z § 1026.4(c), and is not payable by written agreement in more than four installments.

Specifically, existing § 1005.17(a) applies only to overdraft services where a financial institution assessed a fee or charge for the overdraft. For prepaid accounts under the proposal, any fees or charges for ATM or one-time “debit card” transactions (as that term is used in existing § 1005.17) that access an institution’s overdraft service would have been considered “finance charges” under the proposal. Thus, under the proposal, a prepaid card that is not a credit card could not be charging any fees or charges for ATM or one-time “debit card” transactions (as that term is used in existing § 1005.17) for accessing the overdraft service, such that the opt-in provision in existing § 1005.17 would apply. Under the proposal, if a prepaid card were charging any fees or charges for ATM or one-time “debit card” transactions (as that term is used in existing § 1005.17) that accessed the overdraft service, the prepaid card would have been a credit card under Regulation Z. In that case, the prepaid card would not have been subject to the opt-in requirement in existing § 1005.17, but would be subject to provisions of Regulation Z, as discussed above.

#### *Comments Received and the Final Rule*

The Bureau did not receive specific comment on the proposed changes to existing § 1005.17(a)(1), other than those related to general comments from industry not to cover overdraft plans offered on prepaid accounts under Regulation Z and instead cover these overdraft plans under Regulation E § 1005.17. See the *Overview of the Final Rule’s Amendments to Regulation Z* section for a discussion of those comments.

As discussed in more detail below, the final rule moves the language in proposed § 1005.17(a)(1) that specifically would have provided that credit plans accessed by prepaid cards that are credit cards are exempt from the definition of “overdraft service” to new § 1005.17(a)(4) and revises it to be consistent with new Regulation Z § 1026.61. New § 1005.17(a)(4) provides that a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61 is not a “overdraft service” under final § 1005.17(a).

In addition, as discussed in more detail below, consistent with the proposal, new § 1005.17(a)(4) also provides that credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of new Regulation Z § 1026.61(a)(4) is not an “overdraft service” under final § 1005.17(a). As discussed below, a prepaid card that accesses such credit is not a hybrid prepaid-credit card under new Regulation Z § 1026.61.

*Covered separate credit features accessible by a hybrid prepaid-credit card.* Consistent with the proposal, the opt-in provisions in final § 1005.17 will not apply to the payment of overdrafts pursuant to a credit feature that is accessible by a prepaid card that is a credit card. The final rule moves the language in proposed § 1005.17(a)(1) that specifically would have provided that credit plans accessed by prepaid cards that are credit cards are exempt from the definition of “overdraft service” to new § 1005.17(a)(4) and revises it to be consistent with new Regulation Z § 1026.61. New § 1005.17(a)(4) provides that a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61 is not a “overdraft service” under final § 1005.17(a). This exception is consistent with existing § 1005.17(a)(1) which exempts from the term “overdraft service” under existing § 1005.17(a) any payment of overdrafts pursuant to a line of credit subject to Regulation Z § 1026, including transfers from a credit card account, home equity line of credit, or overdraft line of credit. As

discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature. Thus, a covered separate credit feature accessible by a hybrid prepaid-credit card is a credit card account subject to Regulation Z.

*Credit features on prepaid accounts not accessible by a hybrid prepaid-credit card.* As discussed above, in the proposal, the Bureau also noted that the opt-in provision in existing § 1005.17 would not have applied to credit accessed by a prepaid card that would not have been a credit card under the proposal because the card only accesses credit that is not subject to any finance charge, as defined in Regulation Z § 1026.4, or any fee described in Regulation Z § 1026.4(c), and is not payable by written agreement in more than four installments.

As discussed in the section-by-section analysis of Regulation Z § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new Regulation Z § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new Regulation Z § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental

credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new Regulation Z § 1026.61 or a credit card under final Regulation Z § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of Regulation Z § 1026.61(a)(2) and (4) below.

Consistent with the proposal, the Bureau is adding new § 1005.17(a)(4) to provide that the term “overdraft service” does not include any payment of overdrafts pursuant to credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions set forth in new Regulation Z § 1026.61(a)(4). As discussed above, a prepaid card would not be a hybrid prepaid-card when it accesses this credit. With respect to such an overdraft credit that meets the conditions for the exception in new Regulation Z § 1026.61(a)(4), a prepaid account issuer could still qualify for this exemption if the issuer is charging a per transaction fee for paying a transaction on the prepaid account, so long as the amount of the per transaction fee is not higher based on whether the transaction only accesses asset funds in the prepaid account or also accesses credit. For example, assume a \$1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. A prepaid account issuer could still qualify for the exception under new Regulation Z § 1026.61(a)(4) even if it was charging this \$1.50 transaction fee, so long as the prepaid account issuer meets the conditions of new Regulation Z § 1026.61(a)(4).

The Bureau is adding new § 1005.17(a)(4) to provide that credit which is exempt from Regulation Z under new Regulation Z § 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17. This is true even though the prepaid account issuer may be charging a per transaction fee as described above on the prepaid account, including for transactions that access incidental credit as described above. The Bureau believes that the opt-in requirements in final § 1005.17 are not necessary for this types of overdraft credit given that the per transaction fee is the same amount regardless of whether the transaction is only accessing funds in the prepaid account or is also accessing credit.

The Bureau notes that a prepaid account issuer does not satisfy the exception in new Regulation Z § 1026.61(a)(4) from the definition of “hybrid prepaid-credit card” if it charges on a prepaid account transaction fees for credit extensions on the prepaid account where the amount of the fee is higher based on whether the transaction accesses asset funds in the prepaid account or accesses credit. For example, assume a \$15 transaction charge is imposed on the prepaid account each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset balance of the prepaid account at the time of the authorization or settlement. Also assume, a \$1.50 fee is imposed each time a transaction on the prepaid account only accesses funds in the asset balance of the prepaid account. The \$15 charge would disqualify the prepaid account issuer for the exception under new Regulation Z § 1026.61(a)(4) and the prepaid card would be a “hybrid prepaid-credit card” with respect to that prepaid account. In that case, the prepaid account issuer still would not be subject to final § 1005.17, but would be subject to Regulation Z. In that case, under final Regulation Z § 1026.61(b), the credit feature accessible by a hybrid prepaid-credit card must be structured as a “covered separate credit feature” as discussed above.

While overdraft credit described in new Regulation Z § 1026.61(a)(4) is exempt from final § 1005.17, this incidental credit generally is covered under Regulation E. For example, as discussed in more detail in the section-by-section analysis of § 1005.12(a) above, Regulation E's provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. In addition, such credit extensions would be disclosed on Regulation E periodic statements under final § 1005.18(c)(1) or, if the financial institution follows the periodic statement alternative in final § 1005.18(c)(1), on the electronic and written histories of the consumer's prepaid account transactions. This overdraft credit, however, is exempt from the compulsory use provision in final § 1005.10(e)(1). See the section-by-section analysis of § 1005.10(e)(1) above.

Non-covered separate credit features that are functioning as an overdraft credit features with respect to prepaid accounts also typically will not be subject to final § 1005.17 because these credit features typically will be lines of credit that are subject to Regulation Z, which are expressly exempt from the definition of "overdraft service" under final § 1005.17(a)(1).

#### *Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts*

Currently, § 1005.18 contains provisions specific to payroll card accounts. Because payroll card accounts would be largely subsumed into the proposed definition of prepaid account, the Bureau proposed to revise § 1005.18 by replacing it with provisions governing prepaid accounts, which the Bureau proposed to apply to payroll card accounts as well. Each of the provisions of § 1005.18 is discussed in turn below.

Regarding the Bureau's proposed approach to § 1005.18, several commenters, including industry trade associations, program managers, and issuing banks, argued that payroll card accounts should not be treated the same as other prepaid accounts, because they are already

heavily regulated by State laws, and, unlike prepaid accounts sold at retail, are not distributed or marketed to the general public. These commenters thus urged the Bureau to finalize the provisions related to payroll card accounts specifically in a separate section, rather than to subsume those provisions into proposed § 1005.18. They argued that maintaining two separate sections would ease compliance and provide regulatory clarity and certainty for issuers and employers. One issuing bank, however, took the opposite position, arguing that there was no reason to treat payroll card accounts distinctly from other prepaid accounts.

As discussed in more detail in the *Overview of the Bureau's Approach to Regulation E* section and the section-by-section analysis of § 1005.2(b)(3)(i)(A) above, the Bureau believes that there is substantial value to both consumers and financial institutions in promoting consistent treatment across products. In addition, the Bureau believes that, to the extent many GPR cards already comply with existing regulations for payroll card accounts, financial institutions already treat payroll card accounts and GPR cards similarly. Similarly, the Bureau believes that maintaining the current numbering system that financial institutions already complying with Regulation E have come to rely on—*i.e.*, keeping provisions related to government benefit accounts in § 1005.15 and provisions related to payroll card accounts in § 1005.18—will enhance compliance by preventing unnecessary confusion. Thus, although there are several provisions in final § 1005.18 that distinguish payroll card accounts (and government benefit accounts) from other types of prepaid accounts, the Bureau believes it is appropriate to subsume the requirements for payroll card accounts into the requirements for prepaid accounts generally in final § 1005.18. The Bureau is finalizing § 1005.15 separately for government benefit accounts, however, because of the unique complexities surrounding who

constitutes a financial institution for purposes of that section (and Regulation E generally) with respect to government benefit accounts.

*18(a) Coverage*

The Bureau proposed to modify § 1005.18(a) to state that a financial institution shall comply with all applicable requirements of EFTA and Regulation E with respect to prepaid accounts except as modified by proposed § 1005.18. Proposed § 1005.18(a) would have also referred to proposed § 1005.15 for rules governing government benefit accounts.

Existing comment 18(a)-1 addresses issuance of access devices under § 1005.5 and explains that a consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. The Bureau proposed to add a cross-reference to § 1005.5(b) (regarding unsolicited issuance of access devices) in comment 18(a)-1 and to add additional guidance that would have explained that a consumer was deemed to request an access device for a prepaid account when, for example, the consumer acquired a prepaid account offered for sale at a retail store or acquired a prepaid account by making a request or submitting an application by telephone or online. The Bureau also proposed to revise existing comment 18(a)-2 regarding application of Regulation E to employers and services providers to refer to prepaid accounts in addition to payroll card accounts, but otherwise the proposal would have left current comment 18(a)-2 unchanged.

One program manager commenter asked the Bureau to clarify in existing comment 18(a)-1 that the distribution of an un-activated payroll card to a new employee did not constitute unsolicited issuance of a payroll card account. A number of other industry commenters, including a trade association and two issuing banks, requested that the Bureau make the same clarification with respect to other account types, including disaster relief cards and student ID

cards that also function as prepaid accounts. With respect to the first comment, the Bureau did not intend the proposal to alter the application of § 1005.5 to payroll card accounts, nor is this final rule making such a change. As such, the Bureau declines to revise comment 18(a)-1 in the final rule to change the existing guidance with respect to when a consumer solicits a payroll card account.

With respect to the request for similar clarification regarding other types of cards, the Bureau does not believe that such a clarification is warranted.<sup>356</sup> The Bureau understands from the comments received that most issuers of student prepaid accounts already comply with most, if not all, of the requirements of existing § 1005.5(b) with respect to such cards. Specifically, the Bureau understands that, when students receive access devices they did not specifically request, the devices are inactive and need to be validated before they can be used to access a prepaid account; further, the Bureau understands the devices already come accompanied by most, if not all, of the disclosures required by § 1005.7. The Bureau believes that the remaining requirements of § 1005.5(b)—that the access devices be accompanied by an explanation that it is not validated, as well as an explanation of how the consumer may dispose of the card—should not place an additional ongoing burden on issuers of student prepaid accounts.<sup>357</sup> At the same time, the Bureau is aware of reports of students incurring “confusing” or “unreasonably high

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<sup>356</sup> See § 1005.5(b)(1), (3), and (4). As discussed in part II.B above, ED recently finalized a rule “intended to ensure that students have convenient access to their title IV, HEA program funds,<sup>11</sup> do not incur unreasonable and uncommon financial account fees on their title IV funds, and are not led to believe they must open a particular financial account to receive their Federal student aid.” 80 FR 67126 (Oct. 30, 2015). ED considered, but did not adopt, limitations on schools or financial institutions sending students ID cards that can act as access devices to a student’s account. *Id.* at 67159. In stating its decision, however, ED noted that distribution of such ID cards would constitute an unsolicited issuance under § 1005.5(b); accordingly, financial institutions must still comply with consumer protection rules regarding unsolicited access device issuance. *Id.*

<sup>357</sup> See § 1005.5(b)(2).

fees” for using their student cards.<sup>358</sup> The Bureau believes that, consistent with § 1005.5(b), students who receive ID cards with a prepaid functionality they did not request should know that they are receiving a financial product, and should be aware that they have the right to decline that product’s functionality if they so wish.

In sum, the Bureau believes there are significant consumer protection benefits in requiring student ID cards with prepaid functionality to comply with the unsolicited issuance provisions in § 1005.5(b), even in light of any the potential burden to industry. The Bureau therefore declines to add an exception to the unsolicited issuance provisions in § 1005.5(b) for student ID cards, and, likewise, is not adopting any additional guidance with respect to when a student ID card is distributed on an unsolicited basis in § 1005.18. Accordingly, student ID cards with prepaid functionality that are distributed without a consumer’s request, and not as a renewal or substitution for an existing access device, are unsolicited and must comply with the requirements of § 1005.5(b).

The Bureau did not receive any additional comments on its proposed revisions to § 1005.18(a). Accordingly, the Bureau is adopting § 1005.18(a) and related commentary as proposed, with certain technical revisions to comment 18(a)-1 for clarity and consistency with the Bureau’s changes to § 1005.18(b)(1)(ii), discussed below.

### *18(b) Pre-Acquisition Disclosure Requirements*

#### *Overview of the Final Rule’s Pre-Acquisition Disclosure Regime for Prepaid Accounts*

The final rule requires that new disclosures for prepaid accounts be provided to consumers before they acquire a prepaid account. The Bureau believes that providing these disclosures pre-acquisition will ensure that all consumers, regardless of the type of prepaid

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<sup>358</sup> See 80 FR 67126, 67128 (Oct. 30, 2015).

account they are acquiring, receive relevant information to better inform their decision before they have committed themselves to a particular account.

The new disclosure regime for prepaid accounts requires a financial institution to provide a consumer with both a “short form” and a “long form” disclosure pre-acquisition. The short form sets forth the prepaid account’s most important fees and certain other information to facilitate consumer understanding of the account’s key terms and aid comparison shopping among prepaid account programs.<sup>359</sup> The long form disclosure, on the other hand, provides the consumer with a comprehensive list of all of the fees associated with the prepaid account and detailed information on how those fees are assessed, as well as certain other information about the prepaid account program. The long form provides consumers an opportunity to review all fee information about a prepaid account before acquiring it. In sum, the short form provides a snapshot of key fees and information, while its companion disclosure, the long form, provides an unabridged, straightforward list of fees and greater detail regarding use of the prepaid account.

The Bureau understands that there are many methods through which a consumer can acquire a prepaid account, and it has designed the final rule’s disclosure regime to be adaptable to all these methods. For example, a consumer might purchase a prepaid account at retail, online through a financial institution’s website (or the website of a service provider such as a program manager), or by telephoning the financial institution (or program manager). An employee might receive a payroll card account from an employer, or a student might receive a prepaid account from his or her university in connection with the disbursement of financial aid. A government benefit recipient might receive benefit payments on a government benefit card distributed by the

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<sup>359</sup> The final rule also requires pre-acquisition disclosure of certain information outside but in close proximity to the short form disclosure. *See* final § 1005.18(b)(5).

agency responsible for administering those benefits, or an insurance company might distribute prepaid cards to consumers to disburse property or casualty insurance proceeds.

The Bureau has tailored the final rule to accommodate these varied methods while maintaining the overall integrity of the required disclosures. This tailoring includes permitting special formatting for prepaid disclosures delivered electronically; permitting disclosure of discounts and waivers for the periodic fee; permitting information within the short form disclosure for payroll card accounts (and government benefit accounts) directing consumers to sources of information regarding State-required information and other fee discounts and waivers; and accommodating disclosure of fees for optional services as well as those charged on non-traditional prepaid accounts, such as digital wallets, via a requirement to disclose certain information about additional types of fees not otherwise disclosed on the short form. The Bureau believes that creating a generally consistent and comprehensive disclosure regime that applies before the consumer's acquisition of a prepaid account will ensure that any consumer who obtains a prepaid account, regardless of the type of prepaid account or its method of acquisition, will receive relevant information at an opportune time in the acquisition sequence to better inform his or her purchase and use decisions.

The content and structure of the short form and long form disclosures set forth in the final rule largely mirror that of the proposed rule, although the Bureau has refined various elements and reorganized the disclosure provisions in the final rule to simplify the structure and aid compliance. See the individual section-by-section analyses below under this § 1005.18(b) for a more detailed discussion of each aspect of the final pre-acquisition disclosure regime. The following provides a summary of the key provisions in the final rule's pre-acquisition disclosure regime.

*The short form disclosure.* The short form disclosure, designed to provide a snapshot of key fees and information for a prepaid account, features a section for fees and a section for certain other information. The fee section must appear in the form of a table, and consists of two parts. The first part contains “static” fees, setting forth standardized fee disclosures that must be provided for all prepaid account programs, even if such fees are \$0 or if they relate to features not offered by a particular program. The second part provides information about some additional types of fees that may be charged for that prepaid account program.

Specifically, the static portion of the short form fee disclosures features a “top line” component highlighting four types of fees at the top of the form: the periodic fee, the per purchase fee, ATM withdrawal fees (parsed out for both in- and out-of-network withdrawals in the United States), and the cash reload fee. As discussed in more detail in part III.A above, the Bureau believes these fees are the most important to consumers when shopping for a prepaid account. For this reason, the top line is designed to quickly draw the attention of consumers through its dominant location and use of larger and more prominent type than that used for the remainder of the disclosures on the short form. Located just below the top line are disclosures for three other types of fees: ATM balance inquiry fees (parsed out for both in- and out-of-network balance inquiries in the United States), customer service fees (parsed out for both live and automated customer service), and the inactivity fee. While the final rule generally prohibits disclosure of third-party fees, the final rule requires that the cash reload fee disclosed in the top line include third-party fees.

The static fees are followed by a portion of the disclosure that addresses additional types of fees specific to that prepaid account program. For the final rule, the Bureau has brought together the proposed statement disclosing the number of “other fees” not listed on the short

form disclosure and the proposed disclosure of “incidence-based fees” into a common category referred to as “additional fee types” and located these disclosures together on the short form immediately following the static fee disclosures. First, the final rule requires a statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account (the proposal would have required disclosure of the total number of individual fees rather than fee types). Second, the final rule requires a statement explaining to consumers that what follows are examples of some of those additional fee types.

Next, the two additional fee types that generate the highest revenue from consumers above a de minimis threshold must be disclosed. These fee types must be calculated for the prepaid account program or across prepaid account programs that share the same fee schedule. In general, financial institutions must assess their additional fee types every 24 months and, if necessary, update their disclosures. There is an exception to this requirement, however, such that financial institutions are not required to pull and replace disclosures provided on, in, or with prepaid account packaging material if there is a change in the additional fee types required to be listed. (Under the proposal, this disclosure would have been based on incidence rather than revenue, would have been three fees rather than two, and updating would have been required every 12 rather than 24 months. The de minimis threshold and assessment across programs that share the same fee schedule are also new to the final rule.) The final rule also contains additional flexibility regarding the timing for reassessments, voluntary disclosures of additional fee types in certain circumstances, and disclosure of fee variations within additional fee types.

The final, non-fee section of the short form is comprised of a series of statements containing certain other key information regarding the prepaid account. The final rule generally requires disclosure of the highest fee when the price of a service or feature may vary and permits

use of a symbol, such as an asterisk, to indicate that those fees may vary; the statement linked to that asterisk must appear below the fee disclosures. The final rule also permits use of a different symbol, such as a dagger, to provide specific information about waivers or discounts for the periodic fee only. Next is a statement indicating whether an overdraft credit feature may be offered in connection with the prepaid account and, if so, an explanation that the feature may be offered after a certain number of days and that fees would apply. In contrast to the proposal, the final rule requires disclosure both when a prepaid account is set up to be eligible for FDIC or NCUA insurance and when it is not, and combines this statement with the call to action for the consumer to register the account, if applicable. The final rule requires disclosure of the URL for a Bureau website from which consumers can obtain general information on prepaid accounts. The short form disclosure concludes with a statement directing consumers to where they can obtain information on all fees and services for that particular prepaid account program. The Bureau has incorporated into the regulatory text of the final rule specific language for each of these statements rather than referencing the model forms for such language.

*Short form disclosures for payroll card accounts (and government benefit accounts).* The final rule contains an additional requirement and an additional accommodation for short form disclosures for payroll card accounts (and government benefit accounts). For these accounts, like in the proposal, financial institutions are required to include a statement regarding alternate wage (or benefits) payment options above the top-line fee disclosures. The final rule permits financial institutions to choose between two different statements to make this disclosure. The first statement simply informs consumers that they do not have to accept the card and directs them to ask about other ways to receive their wages. The alternative statement informs consumers that they have several options to receive their wages, followed by a list of those

options, and directs them to tell their employer which option they choose. The final rule also permits financial institutions to include an optional line in the informational statements portion of the short form disclosure for these accounts directing consumers to a particular location outside the short form for State-required information and other fee discounts and waivers.

*Short form disclosures for multiple service plans.* The final rule permits financial institutions offering prepaid account programs with multiple service plans to use a short form disclosure specifically tailored for these products. The Bureau has redesigned the multiple service plan short form to be more simple and clear, incorporating a multi-columned structure for displaying all short form fees across all plans.

*Additional disclosures outside the short form.* The final rule requires that the following information be disclosed outside but in close proximity to the short form: the name of the financial institution; the name of the prepaid account program; and the purchase price and activation fee, if any.

*The long form disclosure.* The long form disclosure is the second part of the pre-acquisition disclosure regime for prepaid accounts and complements the short form disclosure. It sets forth in a table all of the prepaid account's fees and their qualifying conditions as well as other information about the prepaid account program. Similar to the short form, the long form also contains a series of statements following the fee table containing certain other key information regarding the prepaid account. First is a statement regarding registration and FDIC or NCUA insurance eligibility that mirrors the statement required for the short form, together with an explanation of the benefit of FDIC or NCUA insurance coverage or the consequence of the lack of such coverage. Next is a statement indicating whether an overdraft credit feature may be offered in connection with the prepaid account and, if so, an explanation that the feature may

be offered after a certain number of days and that fees would apply; this statement also mirrors the one required in the short form disclosure. The final rule also requires contact information for the financial institution; the URL of a Bureau website where the consumer can obtain general information on prepaid accounts; and the Bureau website URL and telephone number to submit a complaint about a prepaid account. Finally, the long form must include certain Regulation Z disclosures if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61 may be offered in connection with the prepaid account. The final rule provides a safe harbor for financial institutions from having to reprint the long form disclosure due to changes in third-party fees or the Regulation Z disclosures.

*Form and format of the disclosures.* The final rule contains detailed provisions addressing the form and formatting of the short form and long form disclosures. These provisions reflect the changes to the multiple service plan short form design, discussed above, as well as several additional exceptions to the general retainability requirement for the pre-acquisition disclosures and clarification regarding how certain requirements apply to electronic disclosures (including how to comply with the requirement that electronic disclosures be viewable across all screen sizes). The final rule contains additional formatting requirements to address new disclosure elements added to the final rule, including several optional elements discussed above. The final rule also contains a provision requiring that fee names and other terms be used consistently within and across the short form and long form disclosures.

*Model and sample disclosure forms.* The final rule contains five model form variations for the short form disclosure: two iterations of the short form disclosures generally, one for payroll card accounts, one for government benefit accounts, and one for prepaid account programs with multiple service plans. *See* Model Forms A-10(a) through (e). The final rule also

contains a sample long form disclosure. *See* Sample Form A-10(f). The model forms provide a safe harbor to financial institutions that use them (provided that the model forms are used accurately and appropriately), unlike the sample form which serves only as an example. Whether a financial institution chooses to use a model form for its short form disclosure or design its long form disclosure based on the long form, the financial institution must of course tailor its disclosures for the specific prepaid account program in order to comply with the requirements of § 1005.18(b).

For the convenience of the prepaid industry and to help reduce development costs, the Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule. These files are available at [www.consumerfinance.gov/prepaid-disclosure-files](http://www.consumerfinance.gov/prepaid-disclosure-files).

*Timing requirements for pre-acquisition disclosures generally and the alternative timing regime for prepaid accounts acquired at retail locations and orally by telephone.* The final rule generally requires that the disclosures required by § 1005.18(b) be provided before a consumer acquires a prepaid account. Commentary to the final rule explains that a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid account, and includes several examples.

Consistent with the proposal, the final rule also provides special rules for situations in which a consumer acquires a prepaid account at retail or orally by telephone. In these situations, a financial institution must provide the short form disclosure to the consumer prior to acquisition and must provide methods for consumers to access the long form by telephone and via a website prior to acquisition. If these conditions are met, the financial institution does not need to provide the long form in writing until after acquisition. The Bureau has expanded this exception in the

final rule to cover all retail locations (rather than just retail stores) that sell prepaid accounts in person, without regard to whether the location is operated by a financial institution's agent. A financial institution selling its own prepaid accounts in its own branches does not qualify for the retail location exception with respect to those prepaid accounts.

*Prepaid accounts acquired in foreign languages.* A financial institution must provide the pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances.

Unlike the proposal, the final rule does not require a financial institution to provide pre-acquisition disclosures in a foreign language if an employee of the financial institution or a third party uses that foreign language in person with the consumer. The financial institution also must provide the long form disclosure in English upon a consumer's request and on its website.

*Background and the Bureau's Proposed Pre-Acquisition Disclosure Regime for Prepaid Accounts*

EFTA section 905(a) sets forth disclosure requirements for accounts subject to the Act. The relevant portion of EFTA section 905 states that the terms and conditions of EFTs involving a consumer's account shall be disclosed at the time the consumer contracts for an EFT service, in accordance with regulations of the Bureau. Section 905(a) further states that the disclosures must include, among other things and to the extent applicable, any charges for EFTs or for the right to make such transfers,<sup>360</sup> that a fee may be imposed for use of certain ATMs,<sup>361</sup> information regarding the type and nature of EFTs that the consumer can initiate,<sup>362</sup> and details regarding the consumer's liability for unauthorized transactions and whom to contact in the event

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<sup>360</sup> EFTA section 905(a)(4).

<sup>361</sup> EFTA section 905(a)(10).

<sup>362</sup> EFTA section 905(a)(3).

an unauthorized transaction has occurred.<sup>363</sup> The implementing regulation for this provision, § 1005.7, further elaborates that the required disclosures must be provided to a consumer at the time a consumer contracts for an EFT or before the first EFT is made involving the consumer's account. However, while EFTA section 905(a) and § 1005.7(b) mandate the inclusion of several specific items, they do not specify a particular format for the disclosures.<sup>364</sup> At various points, these general provisions in § 1005.7 have been modified for use with other types of accounts or in other contexts.<sup>365</sup>

Section 1005.18(b) of the final rule implements, in part, EFTA section 905(a) for prepaid accounts. In addition, pursuant to its authority under EFTA sections 904(a), (b), and (c) and 905(a), and section 1032(a) of the Dodd-Frank Act, the Bureau is requiring financial institutions to provide disclosures prior to the time a consumer acquires a prepaid account and for disclosures to include all fees that may be charged for the prepaid account. Also, the Bureau is requiring that in certain circumstances financial institutions provide disclosures in languages other than English.

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<sup>363</sup> EFTA section 905(a)(1) and (2).

<sup>364</sup> Specifically, section 905(a) and § 1005.7(b) generally require disclosure of details regarding the types of EFTs that the consumer may make (including limitations on the frequency and dollar amount of the transfers), any fees imposed by the financial institution for EFTs or for the right to make transfers, and a notice that a fee may be imposed by an ATM operator when the consumer initiates an EFT or makes a balance inquiry, among other requirements.

In addition, TISA contains disclosure requirements for accounts issued by depository institutions. Specifically, Regulation DD, 12 CFR part 1030, which implements TISA, requires disclosure of the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. Regulation DD § 1030.4(b)(4).

<sup>365</sup> See generally § 1005.14(b)(1) (disclosures provided by certain service providers), 61 FR 19662, 19674 (May 2, 1996); existing § 1005.15(d) (disclosures related to the EFT of government benefits), 61 FR 19662, 19670 (May 2, 1996); § 1005.16 (disclosures at ATMs), 78 FR 18221, 18224 (Mar. 26, 2013); § 1005.17(d) (overdraft disclosures), 74 FR 59033, 59053 (Nov. 17, 2009); existing § 1005.18(c)(1) (payroll card account disclosures), 71 FR 51437, 51449 (Aug. 30, 2006); and § 1005.31 (disclosures related to remittance transfers), 77 FR 50244, 50285 (Aug. 20, 2012).

The Bureau proposed a new pre-acquisition disclosure regime for prepaid accounts, separate from the general requirements under § 1005.7, for several reasons. First, the Bureau was concerned that providing core pricing and usage information at the time the contract is formed or prior to the first EFT would be too late for many consumers to make informed acquisition decisions. As the Bureau explained in the proposal, for instance, the Bureau understood based on its outreach that many financial institutions were providing only limited fee information on the outside of packaging for GPR cards, so that consumers would have to purchase the card to access comprehensive information about the card's fees and terms. Similarly, the Bureau was concerned about the acquisition process for payroll card accounts, where new employees often receive account terms and conditions documents at the same time they received large quantities of other benefits-related paperwork, and about the sequencing of account disclosures in an online environment.

Second, the Bureau believed that it was important to provide specific formatting information that would ensure substantial consistency to facilitate consumers' comparison and selection process across a range of acquisition channels and carefully balance concerns about information overload. The Bureau therefore designed and developed its proposed pre-acquisition disclosures for prepaid accounts over the course of several years through a process that included consumer testing conducted both prior to and after the publication of the proposal and feedback from stakeholders in direct meetings, comments responding to the Prepaid ANPR, and follow up to a blog post of prototype disclosure designs.<sup>366</sup>

The majority of both industry and consumer groups agreed that it was important for consumers to receive disclosures before they purchase a prepaid account. Industry and consumer

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<sup>366</sup> Eric Goldberg, *Prepaid cards: Help design a new disclosure*, CFPB Blog Post, (Mar. 18, 2014), <http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/>.

groups encouraged the Bureau to develop disclosures to accommodate the variety of distribution channels through which prepaid products are distributed and sold, while also considering how distribution may evolve in the future. The majority also strongly supported standardized disclosures, instead of a more general rule requiring only that fees be disclosed clearly and conspicuously without providing specific instructions or model forms. However, industry mostly advocated that on-package disclosures should include only the fees that a consumer would most commonly incur while using a prepaid account, in order to increase the likelihood that consumers would understand and use the disclosures. On the other hand, many consumer groups urged provision of a full disclosure to the consumer of all fees associated with a GPR card, voicing concern that consumers would not get a full understanding of a prepaid account's true costs without comprehensive fee information and that providers could subvert a limited scope disclosure by adjusting fee schedules to increase or add fees not required to be disclosed on a shorter disclosure.

To balance such concerns, the Bureau proposed to require financial institutions to provide both a short form and a long form disclosure, as generally described above, prior to the time the consumer acquires a prepaid account. The proposed short form focused on the fees charged most frequently across most types of prepaid account programs, as well as providing limited information about the three fees incurred most frequently by users of the particular program. The short form thus would have provided largely consistent information for purposes of comparison, while also providing certain unique information about other fees that were charged most frequently to consumers (so-called "incidence-based fees") and other cues encouraging the consumer to consult the long form for more detailed and comprehensive information. The

Bureau also proposed to require that financial institutions provide the disclosures in languages other than English in certain circumstances.

Specifically, proposed § 1005.18(b)(2) would have set forth the substantive requirements for the Bureau's proposed prepaid account pre-acquisition disclosure regime, with content requirements for the short form disclosures addressed by proposed § 1005.18(b)(2)(i), content requirements for the long form disclosure addressed by proposed § 1005.18(b)(2)(ii), and form and formatting requirements for both disclosures addressed by proposed § 1005.18(b)(3) and (4), respectively.<sup>367</sup>

Depending on the structure of a particular prepaid account, however, the Bureau recognized that the proposed short form may not capture all of a particular prepaid account's fees or explain the conditions under which a financial institution might impose those fees. The Bureau's pre-proposal consumer testing indicated that when participants were shown prototype short forms, most understood that they represented only a subset of fee information and that they could potentially be charged fees not shown on the form.<sup>368</sup> Further, except in certain retail stores or with respect to accounts acquired orally by telephone, under the proposed pre-acquisition disclosure regime, a consumer would have received a long form disclosure simultaneously with the short form and therefore have the opportunity to see all fees associated with a prepaid account and any relevant conditions before acquiring a prepaid account. In addition, in pre-proposal testing, most participants did not identify any additional fees that they would have wanted to see listed in a short form.<sup>369</sup> The Bureau believed that the proposed short

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<sup>367</sup> As discussed in detail below, the final rule addresses these requirements in § 1005.18(b)(2) and (4) and § 1005.18(b)(6) and (7), respectively.

<sup>368</sup> See ICF Report I at 9.

<sup>369</sup> See *id.* at 6-8.

form contained most fees that might be charged in connection with a prepaid account and the fees listed are those that are most important for a consumer to know in advance of acquiring a prepaid account.

The Bureau also recognized that disclosing even this proposed subset of fee information on the short form ran the same risk of information overload that the Bureau believed could occur if all fees were disclosed to a consumer instead of just a subset of fees. The Bureau believed, however, based on its pre-proposal consumer testing and other research, that incorporating elements of visual hierarchy would mitigate these risks. Most importantly, the fee types that would have been disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(1) through (4) in the top line of the short form would have used font size and other elements to promote readability.

#### *General Comments Received*

The Bureau sought comment on its proposed overall approach to the pre-acquisition disclosure regime. Discussed in this section are the comments provided in response as well as certain other general comments received. Comments regarding particular aspects of the proposed pre-acquisition disclosure regime are addressed in the applicable section-by-section analyses below.

Several State government agencies, a majority of consumer groups, and a substantial number of industry commenters (including trade associations, a credit union, and a program manager) expressed general support for the proposed pre-acquisition regime, although most also offered criticisms and recommendations for change of some individual elements. The credit union and industry trade associations complimented the Bureau on the proposed pre-acquisition disclosures, with some commenters calling the short form disclosure an elegant and smart solution that would give consumers a clear, simple, and consumer friendly way to review critical

data when shopping for prepaid accounts. Consumer groups and individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group also strongly supported the design and content of the proposed short form and long form disclosures as essential to protecting consumers. In particular, the consumer groups praised the short form disclosure's clear standardized form, saying it provides a good balance between simplicity and completeness.

Most industry commenters offered specific criticisms of or recommended changes to specific elements of the proposed pre-acquisition disclosure regime. Industry commenters' more general criticisms of the proposed disclosures included both that the amount of information in the short form disclosure would be overwhelming to consumers (and thus certain aspects should be eliminated, such as the disclosure of the number of additional fees, incidence-based fees, or any incidental fees that are excluded from the disclosure requirements of Regulation DD) and that the short form failed to provide certain information that the commenters believed to be meaningful to consumers' purchase decisions (such as disclosure of fee waivers and discounts instead of disclosure of the highest fee as proposed) and thus that additional information should be added.

More globally, one academic group and several industry commenters (including program managers, a credit union, and a regional credit union trade association) urged the Bureau to eliminate both the short form and long form disclosures. These commenters said variously that the proposed disclosures would overwhelm consumers, burden industry without commensurate benefits to consumers, or duplicate the initial disclosures already required by Regulation E. They also asserted that research by the Bureau and others indicated that few consumers engage in formal comparison shopping among prepaid accounts or that consumers lack the financial literacy or inclination to read disclosures (and thus, the Bureau's efforts to facilitate comparison

shopping are unnecessary). One of the program managers and the academic group asserted that the highly competitive prepaid marketplace, which in their view had already produced lower fees and simpler fee structures, was sufficient to meet the evolving needs of consumers. Industry commenters expressed concern regarding the burden they felt the proposed disclosures would impose; the program manager elaborated that the proposed disclosure regime would require expensive and time-consuming redesign of disclosures and changes in packaging, manufacturing processes, and distribution.

A number of other industry commenters and a group of members of Congress opposed one, but not both, of the proposed pre-acquisition disclosures. A few industry commenters (including an issuing credit union, a credit union association, and a program manager) recommended eliminating the short form disclosure in favor of the long form disclosure. A larger group (including trade associations, issuing banks, credit unions, program managers, a law firm writing on behalf of a coalition of prepaid issuers, and the group of members of Congress) recommended eliminating the long form disclosure in favor of the short form—or at least that the long form not be required to be provided pre-acquisition or only be required to be provided online, over the telephone, or upon request. As a whole, both groups of commenters asserted that requiring both of the proposed disclosures would result in too many disclosures (the short form and long form, prepaid account agreement containing initial disclosures, and State-required disclosures for payroll card accounts), resulting in high compliance costs and disclosure fatigue for consumers.

The industry commenters recommending elimination of the short form asserted that it was redundant of the long form, which they argued would be sufficient alone by virtue of it providing a complete disclosure of fees. The program manager recommended combining the

short form and the long form to create a single comprehensive pre-acquisition disclosure. The industry commenters critical of the long form variously asserted that it was redundant of the short form and other disclosures required by Regulation E before a consumer can use the prepaid card (*i.e.*, initial disclosures) and State-required disclosures for some payroll card accounts; inferior to the short form, which would provide the most pertinent and common fees; and would overload and confuse consumers with its comprehensive information and therefore not contribute to consumer purchase decisions. An issuing bank, a program manager, a trade association, and a group of members of Congress recommended against requiring the long form, arguing that the Bureau's pre-proposal consumer testing indicated consumers would not use it to make pre-acquisition decisions. Several industry commenters opposed required disclosure of optional incidental services that are not available at the time of purchase; rather, they suggested those fees should not have to be disclosed until such services are accepted by the consumer.

A number of industry commenters and a State government agency recommended that the Bureau eliminate the proposed short form disclosure requirement for payroll card accounts and government benefit accounts or, alternatively, treat the short form disclosure for these accounts differently from those for GPR cards. Some of these commenters said otherwise these disclosures would be burdensome for financial institutions providing payroll (and government benefit) cards for a number of reasons. They said the proposed disclosures were, in their opinion, duplicative of the initial disclosures required by § 1005.7(b) and that the differences between payroll card accounts (and government benefit accounts) and GPR cards militate against requiring a short form disclosure for the former. They said that, compared to GPR cards, these accounts have fewer fees, features, and conditions, and the statement regarding registration and many specific fees listed in the static portion of the proposed short form are inapplicable. They

also pointed to State-required disclosure of certain fee discounts and waivers for these accounts as another distinguishing factor from GPR cards. Some commenters said the proposed disclosures were inapt for payroll card accounts (and government benefit accounts) as there are not the same space constraints as there are for GPR cards sold at retail and, further, consumers cannot comparison shop for these kinds of accounts. Finally, some commenters requested that the Bureau eliminate the long form disclosure for these types of accounts as they said it would be redundant of the short form disclosure and the prepaid account agreement; they also suggested that the long form disclosure could be provided post-acquisition or at the time of registration or activation in the payroll (and government benefit) context.

Rather than eliminating the short form disclosure altogether for payroll card accounts (and government benefit accounts), some industry commenters recommended that the Bureau eliminate certain short form requirements, such as the registration statement which would be inapplicable for these products.<sup>370</sup> On the other hand, other industry commenters recommended permitting additional disclosures on the short form, such as disclosure of State-required methods to access wages without incurring fees. Some recommended requiring disclosure of all fees on the payroll card account (and government benefit account) short form disclosure as these accounts generally have fewer fees, thereby allowing room for full fee disclosure.

Similarly, some industry commenters argued that differences in other types of prepaid accounts necessitated greater flexibility in the content and delivery requirements for the short form disclosure. For example, some industry commenters, including issuing banks, program managers, and a trade association, recommended that the Bureau exclude non-reloadable prepaid products from the proposed disclosure regime, or at least from certain disclosure requirements

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<sup>370</sup> See the section-by-section analysis of § 1005.18(b)(2)(xiv) below for a discussion of elements that commenters suggested the Bureau remove from the short form disclosure in the payroll (and government benefit) context.

such as those regarding registration and eligibility for FDIC insurance. Some industry commenters suggested that requiring standardized disclosures for these products would be of limited use to consumers given how the products are meant to be used, and would come at a prohibitively high cost for issuers; several suggested the burden of complying with the proposed disclosure requirements—for example, the requirement to calculate incidence-based fees—may lead to the removal of certain of these products from market. These commenters suggested instead that the Bureau create a separate disclosure regime for non-reloadable cards, similar to the treatment of loyalty, award, and promotional gift card products under the Gift Card Rule.<sup>371</sup>

Likewise, several trade associations and a provider of digital wallets urged the Bureau not to sweep innovative financial services, such as digital wallets, into a disclosure regime they felt was designed for a specific type of product (*i.e.*, GPR cards sold at retail) based on how it functioned at a fixed point in time. Specifically, the digital wallet provider argued that disclosures cannot be standardized effectively across industries as diverse as digital wallets and GPR cards. In addition, the commenter stated that current digital wallet models do not charge any fees for general usage. As such, the proposed short form disclosure's top-line fees would all be disclosed as \$0 or N/A, which it said could potentially confuse consumers and cause them to abandon the digital wallet sign-up process. The commenter also noted that, because consumers are not likely to comparison shop between digital wallets and GPR cards, it believed the comparison shopping benefit of the short form disclosure would be inapplicable to digital wallets.

A payment network and a law firm writing on behalf of a coalition of prepaid issuers criticized the proposal for not providing a method for updating or curing outdated pricing, which

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<sup>371</sup> See § 1005.20(a)(4)(iii) (exempting loyalty, award, or promotional gift cards from general coverage of the Gift Card Rule provided that they satisfy certain specific disclosure requirements).

it said issuers may typically accomplish through disclosures and consumer consent at registration, or at a later point in the customer relationship through a Regulation E change-in-terms notice. The payment network suggested that the Bureau grant a safe harbor and allow financial institutions to keep existing physical cards stocked at retail locations and notify consumers of any changes either by sending change-in-terms notices or by obtaining consumer consent upon registration. This commenter added that this approach would both cure outdated pricing on card packaging and also allow financial institutions to introduce new features that have a fee.

While consumer groups generally supported the proposed disclosures, they also asserted some criticisms focused primarily on requesting that the Bureau prohibit certain fees, add certain information to either or both the short form and long form disclosures, and eliminate the proposed short form disclosure for multiple service plans. A few consumer groups also recommended enhancing the disclosures with visual aids, such as an image of a piggy bank to denote that an account offers a savings feature.

#### *The Bureau's General Approach to the Final Rule*

For the reasons set forth herein, the Bureau is adopting a disclosure regime in final § 1005.18(b), under which financial institutions must generally provide both a short form and a long form disclosure before consumers acquire prepaid accounts. The final rule generally retains the content, formatting, and delivery requirements of the short form and long form disclosures as proposed, but includes substantial refinements to some individual elements and numerous smaller changes in response to information received through comments received on the proposal, the interagency consultation process, further consumer testing, and other research and analysis. The Bureau believes the final rule's disclosure requirements will achieve the desired results of

providing consumers with a succinct and engaging overview of crucial information in the short form disclosure and an unabridged reference for all fees and other crucial information in the long form disclosure.

The Bureau has also made substantial organizational changes to the structure of the final rule to facilitate understanding and compliance. The Bureau also has incorporated certain burden-reducing measures to address various concerns raised by commenters about the burden on industry they asserted would result from the proposed pre-acquisition disclosure regime. The analysis of costs and benefits in part VII.E.1 as well as the section-by-section analyses below both contain discussion of provisions adopted in this final rule that are aimed at reducing burden on industry relative to the proposal. These burden-alleviating modifications include the various changes to the additional fee types disclosures, including disclosure of two fees rather than three; a de minimis threshold; and reassessment and updating required every 24 months rather than 12. Other measures in the final rule that reduce burden include permitting reference in the short form disclosure for payroll card accounts (and government benefit accounts) to State-required information and other fee discounts and waivers pursuant to final § 1005.18(b)(2)(xiv)(B); permitting disclosure of the long form within other disclosures required by Regulation E pursuant to final § 1005.18(b)(7)(iii); and flexible updating of third-party fees pursuant to § 1005.18(b)(4)(vii).

Although some industry commenters suggested that the competitive nature of the prepaid market forecloses the need for disclosure regulation, the Bureau believes both consumers and industry are better served by disclosure regulations carefully calibrated to balance the needs and concerns of all parties.

The Bureau is issuing the final rule pursuant to EFTA section 904(a), (b), and (c), and 905(a) and 913(2), and section 1032 of the Dodd-Frank Act. As discussed further below in the section-by-section analyses of § 1005.18(b)(1)(i), (b)(2)(xiv), (b)(4)(ii), and (b)(9), the Bureau believes that adjustment of the timing and fee requirements and the disclosure language is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers because the revision will assist consumers' understanding of the terms and conditions of their prepaid accounts. In addition, the Bureau believes that pre-acquisition disclosures of all fees for prepaid accounts as well as certain foreign language disclosures will, consistent with section 1032(a) of the Dodd-Frank Act, ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account.

*Short form and long form disclosures generally.* As discussed in the proposal, the Bureau believes the short form and long form disclosures both play crucial but distinct roles. Eliminating one or both would defeat the overall purpose of the pre-acquisition disclosure regime to provide consumers with comprehensible information to make reasoned purchase and use decisions with regard to their prepaid accounts. The short form discloses key fees and information to consumers in a standardized visual hierarchy that lends itself to comparison shopping prior to purchase and provides a handy summary post-purchase; the long form provides a comprehensive location for all fees and other information that a consumer may consult both prior to and after purchase. In the absence of such a disclosure regime, consumers have scant opportunity to see all fees prior to purchase or to quickly assess the relative benefits of one prepaid account over another.

Specifically, the Bureau believes that by prominently displaying key fees with limited explanatory text, the short form enhances consumers' ability to notice these key fees and enables them to use the disclosure to inform their acquisition choice. The Bureau also believes that the short form's design, and in particular the emphasized top-line portion of the disclosure, creates a visual hierarchy of information that will more effectively draw consumers' attention to a prepaid account's key terms. The Bureau also believes the general visual hierarchy as well as the relatively spare content of the short form increases the likelihood that consumers will engage with the disclosure.

The Bureau understands that, faced with the disclosures in the current marketplace, consumers may spend little time reviewing fee disclosures, particularly when shopping for prepaid accounts in person. The Bureau believes it is therefore important to provide a disclosure that quickly draws consumers' attention to the most important information regarding that particular account with minimal clutter on the form. For this reason, the Bureau designed and developed the short form as a concise snapshot of a prepaid account's key fees and features that is both easily noticeable and digestible by consumers. Relatedly, the Bureau also believes that the overall standardization of the short form disclosure will facilitate consumers' ability to comparison shop among prepaid account programs. The standardization of the static fee components of the short form disclosure ensures that consumers will be provided certain key fee information about prepaid accounts in a consistent manner regardless of how or where they shop for or obtain prepaid accounts. For example, under the final rule, a consumer who takes a package containing a prepaid account access device off of a J-hook in a retail location would see the same fee disclosures in the static portion of the short form as that consumer would see if shopping online for a prepaid account. Similarly, the standardization of the informational

statements at the bottom of the short form permits that consumer to easily compare, for example, whether the prepaid accounts are eligible for FDIC or NCUA insurance.

The Bureau believes that consumers offered payroll card accounts at their place of employment can also benefit from this standardization because, even though they cannot comparison shop among payroll card accounts, they can make meaningful comparisons with a prepaid account they may already have or with one they may choose to acquire in lieu of the payroll card account. Moreover, the straightforward standardized format of the short form can enhance consumers' comprehension of the key terms of the payroll card account if they do choose to acquire it. In sum, the Bureau believes that standardizing the short form disclosure across all possible acquisition channels will enhance consumer understanding of the terms of all prepaid accounts and make it easier for consumers to choose the prepaid account that best meets their needs.

The Bureau recognizes that providing only a subset of a prepaid account program's fee information on the short form might not provide all consumers with the information they need to make fully-informed acquisition decisions. For this reason, the new disclosure regime also requires the long form disclosure to be provided as a companion disclosure to the short form, offering a comprehensive repository of all of a prepaid account's fees and the conditions under which those fees could be imposed. The long form disclosure also provides detailed explanations to consumers about conditions that may cause fees to vary, such as the impact of crossing a threshold number of transactions or specific waivers and discounts. Such explanations are generally not permitted on the short form to preserve its simplicity, but may be relevant to some consumers' acquisition decisions.

The Bureau expects that consumers will use the long form if they want to review a comprehensive list of fees before choosing to acquire a prepaid account and learn details about the fees listed on the short form. In sum, the short form and the long form used alone or in tandem provide consumers with either or both an overview of the key information about the prepaid account and an unabridged list of fees and conditions and other important information.

The Bureau believes that providing both disclosures is more beneficial than either form standing alone, and the Bureau does not believe that providing only the long form would be satisfactory. The Bureau understands that the potential size and complexity of the long form could lead consumers to disregard the disclosure in some settings, such as in retail locations where consumers are shopping while standing up, and not use it to comparison shop across products or even to evaluate a single product. However, in the Bureau's pre-proposal testing of a simulated purchase environment, some participants indicated they would use information found only in the long form disclosure, *i.e.*, information absent from the short form disclosure, in making their purchase decisions.<sup>372</sup> Thus, insofar as the subset of fee information on the short form disclosure may be incomplete or insufficient for some consumers, the Bureau believes that providing both the short form and long form disclosures will strike the right balance between giving consumers key information about a prepaid account to aid understanding and comparison shopping, while also providing them with the opportunity to review all of a prepaid account's fee information pre-acquisition.

*Disclosures for payroll card accounts and government benefit accounts.* The Bureau declines, as requested by some commenters, to eliminate the proposed short form disclosure requirement for payroll card accounts and government benefit accounts or, alternatively, create a

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<sup>372</sup> See ICF Report I at 32-33.

short form disclosure specifically for these accounts, for several reasons. First, the short form disclosure provides an opportunity to clearly and conspicuously inform consumers of their wage and benefit payment rights under the compulsory use prohibition in EFTA section 913 and § 1005.10(e)(2), which the Bureau believes is key information for consumers. If the short form disclosure were eliminated and this statement was moved to the long form disclosure, for example, the Bureau believes it likely this information would be obscured by the relatively increased length and complexity of the long form disclosure and thereby deprive consumers of an opportunity to be informed of this crucial statutory right.

Second, the short form disclosure is important because consumers may be more likely to view it than the long form disclosure. The short form disclosure was designed to showcase information the Bureau believes is most important to consumers in their general prepaid account purchase and use decisions and such information is intended to complement the information disclosed in the more detailed long form. Pre-proposal testing indicated that consumers would prefer the short form over the long form when shopping for a prepaid card in certain environments, such as at retail while standing up.<sup>373</sup> The Bureau believes that consumers will benefit from receiving the short form disclosure for payroll card accounts and government benefit accounts in that consumers may receive multiple pieces of written information at the beginning of a new job or when applying for government benefits, that may compete for the consumer's attention. Thus, even if consumers do not look at the long form disclosure before choosing to receive wages or benefits via the account, they may at least see information about key fees and features of the account on the short form disclosure.

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<sup>373</sup> See ICF Report I at 34.

Third, while employees cannot comparison shop among payroll card accounts or government benefit accounts, the short form disclosure provides a convenient way to compare key fees and features with the consumer's own prepaid account (if they have one) and, perhaps at a later time, with other prepaid accounts. Consumers may also use the short form disclosure to quickly assess the relative advantage of receiving their wages (or benefits) via the account versus other payment methods, such as direct deposit to a bank account or by check. In sum, while the consumer may not comparison shop among payroll card accounts (or government benefit accounts), the short form disclosure nevertheless provides important comparison opportunities for consumers offered payroll card accounts (and government benefit accounts).

Finally, while the Bureau understands that some payroll card accounts (and government benefit accounts) currently charge fewer fees and offer fewer features than GPR cards, requiring the short form disclosure in this context ensures that consumers know that certain features and services are free or unavailable and further, it ensures they will be apprised of the charges for any new fees the payroll (or government benefit) industry may impose on such accounts in the future.

*Disclosures for non-reloadable cards and digital wallets.* The Bureau also considered the comments requesting exemption from the short form disclosure requirements for non-reloadable cards and digital wallets, but declines such exemption in the final rule. The Bureau believes consumers who buy these product types will benefit from the short form disclosure. As discussed above with respect to payroll card accounts and government benefit accounts, the short form disclosure was designed to showcase information participants identified in the Bureau's pre-proposal consumer testing as key to their general prepaid account purchase and use decision-making; such information is intended to complement the information disclosed in the more detailed long form. In addition, the Bureau is concerned that creating an individualized

disclosure regime for different types of prepaid accounts could create a patchwork regulatory regime, which is one of the results this rule seeks to prevent.

With respect to the request to exempt digital wallets from the pre-acquisition disclosure requirements (particularly the short form), the Bureau believes consumers of digital wallets should have the same opportunity to review fees (or lack thereof) in the short form disclosure as consumers of other prepaid accounts. While the majority of digital wallet models currently on the market may not charge usage fees, as one commenter asserted, this may not hold true in the future, especially if these products become more widely used and the features and services offered broaden. The Bureau is also not persuaded that there are sufficient factors distinguishing digital wallets from other types of prepaid accounts that are marketed or available for acquisition electronically. The Bureau is skeptical that the technical and other constraints suggested by commenters would impact the ability of digital wallets to provide pre-acquisition disclosures. The Bureau is not persuaded, therefore, that a convincing policy rationale exists for treating digital wallets differently than other prepaid accounts with regard to pre-acquisition disclosures.

*Changes in terms and addition of new EFT services.* The Bureau understands financial institutions do not change the fee schedules for most prepaid accounts often, especially for prepaid products distributed in person, such as GPR cards and similar products sold at retail, because a financial institution may need to pull and replace outdated card packaging when making changes to those programs' disclosed fee structures. Financial institutions' reasons for pulling and replacing may include compliance with legal requirements under operative State consumer protection and contract laws, difficulties that may arise in attempting to provide notice of changed terms to consumers, as well as financial institutions' concerns about being accused of deceptive advertising practices by selling products with inaccurate disclosures. The Bureau

encourages the practice of pulling and replacing when making significant changes to prepaid account programs, as it believes that doing so will facilitate consumer understanding of the products they are purchasing and reduce risk to the financial institution of litigation or regulatory claims of deception.

Two industry commenters, however, stated that financial institutions also sometimes make changes either through disclosures and consumer consent at registration, or at a later point in the customer relationship through a Regulation E change-in-terms notice. The Bureau recognizes that Regulation E provides a system for notifying existing customers of changes in terms to existing accounts, set forth in § 1005.8(a). The Bureau believes that in some circumstances, such procedures may also provide an appropriate means to notify new customers of changes to recently acquired prepaid accounts.

The Bureau also notes that Regulation E also provides a means, separate from a change-in-terms notice, for financial institutions to notify consumers of terms associated with a new EFT service that is added to a consumer's account, in § 1005.7(c).<sup>374</sup> The Bureau believes that such procedures are appropriate in circumstances where a financial institution is, for example, making available a new optional service for all prepaid accounts in a particular prepaid account program. In such a circumstance, financial institutions do not need to pull and replace card packaging that does not disclose that new optional feature, even though a long form disclosure that may be provided inside the card packaging pursuant to § 1005.18(b)(1)(ii)(A), the number of additional fee types pursuant to § 1005.18(b)(2)(viii), and the listing of additional fee types pursuant to § 1005.18(b)(2)(ix) may be incomplete or inaccurate due to the addition of that service. Instead, a financial institution may provide to new customers disclosures for the addition of the new

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<sup>374</sup> See also final § 1005.18(f)(1), which extends the requirements of § 1005.7 to all fees, not just fees for EFTs or the right to make EFTs.

service in accordance with § 1005.7(c) post-acquisition. The Bureau expects, however, that financial institutions will keep their other disclosures up to date (including those provided electronically and orally, as well as disclosures provided in writing that are not a part of pre-printed packaging materials, such as those printed by a financial institution upon a consumer's request).

*Other requests by commenters.* In response to the consumer groups requesting the addition of visual aids to the disclosures, the Bureau believes that there is insufficient space in the short form to accommodate such visuals and that the length and detail of the information in the long form disclosure obviate the need for such additional requirements there.

With regard to comments from some consumer group commenters and the office of a State Attorney General recommending prohibition of certain fees, such requests are outside of the scope of this rulemaking. However, the Bureau intends to monitor compliance with this rule as well as developments in the prepaid market in general, and will consider additional action in future rulemakings if necessary.

#### *Alternative Approaches Considered by the Bureau*

Before proposing the pre-acquisition disclosure regime that the Bureau is adopting in this final rule, the Bureau considered and rejected two alternative approaches. As discussed in the proposal, an “all-in” approach would have disclosed a single monthly cost for using a particular prepaid account.<sup>375</sup> Proponents of this approach said it would provide a quick and understandable reference point and, as compared to a disclosure listing several different numbers with line items for each fee type, could also allow for easier comparisons among prepaid account programs. The Bureau also considered the “category heading” approach which would have

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<sup>375</sup> See 79 FR 77102, 77150-51 (Dec. 23, 2014).

featured a short form disclosure with category headings based on the function for which a consumer would use the service associated with each fee, a format that many prepaid account providers have already adopted, in lieu of the top-line fee type format the Bureau is adopting in this final rule.<sup>376</sup> The proposal included a discussion of the justification for the Bureau’s rejection of these two alternative approaches in favor of the pre-acquisition disclosure regime that the Bureau proposed and is now adopting in this final rule.

The Bureau received few comments regarding these rejected alternatives. Two program managers expressed their support for the Bureau’s decision to reject both the “all-in” and “category heading” approaches for the reasons the Bureau set forth in the proposal and an issuing bank supported the Bureau’s reasoning for avoiding the all-in approach. One of the program managers noted that use of payroll cards varies significantly both by individual consumer and the specific employer’s payroll card account program. On the other hand, two consumer group commenters recommended that the Bureau reconsider the feasibility of the “all-in” approach. While acknowledging the Bureau’s valid concerns about determining typical usage costs given the wide variety of consumer use, they said that providing through the short form disclosure the estimated cost of typical use of a specific prepaid account would help the minority of consumers who are “intensive users” of prepaid accounts and use them essentially as a substitute for checking accounts. They recommended that the Bureau require financial institutions to analyze the distribution of accountholders’ actual total expenses and identify total expenses at the 25th and 75th percentiles of distribution. They said this analysis would show that consumers who use

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<sup>376</sup> See ICF Report I at app. C, 2A. As listed in that prototype short form disclosure, an “Add and withdraw money” category, for example, would list the various ways the consumer could withdraw money from a prepaid account, such as through a withdrawal from an ATM.

a specific prepaid account product frequently for routine financial transactions would be likely to incur costs within a concrete range.

For the reasons the Bureau declined to embrace the “all-in” and “category heading” approaches in the proposal, the Bureau also has rejected these approaches in the final rule in favor of the pre-acquisition disclosure regime described above and throughout this final rule. As discussed in more detail in the proposal<sup>377</sup> and acknowledged by the consumer groups recommending the “all-in” approach, the Bureau continues to question the viability of developing a single formula that accurately reflects typical consumer use of a particular prepaid account program, including how to decide which fee types to include in such a formula and in view of studies indicating there are numerous use cases for prepaid accounts, particularly GPR cards.<sup>378</sup> Moreover, a prepaid account that might have a higher cost under such a formula adopted by the Bureau may actually be less costly for certain consumers, depending on how they use the prepaid account. For example, a formula that included ATM withdrawal fees would disclose an “all-in” fee not germane to consumers who do not withdraw cash via an ATM. The Bureau is concerned that such a result may be confusing to consumers. The Bureau also believes that an explanation of the methodology used to calculate the “all-in” disclosure would disturb the balance in the short form of the most important information for consumers and the brevity and clarity necessary for optimal consumer comprehension. Thus, the Bureau has concluded that an “all-in” disclosure would be of limited utility and could even mislead consumers, and declines to adopt such a disclosure in this final rule.

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<sup>377</sup> See 79 FR 77102, 77150 (Dec. 23, 2014).

<sup>378</sup> See, e.g., 2014 Pew Study at 13.

The Bureau also continues to believe the use of the “category heading” approach would not be appropriate because the headings would take up valuable space in the short form disclosure that would limit disclosure of other, more important information, particularly for headings under which there would only be disclosed one fee. Also, as discussed above, the Bureau’s pre-proposal consumer testing indicated that the top-line approach embraced in the proposed and final rules proved effective with consumers and the Bureau does not believe that the short form disclosure could effectively accommodate both approaches together. Finally, pre-proposal testing revealed that participant comprehension of fees and their purposes did not improve with the use of category headings. The Bureau also notes that the less space-restricted long form disclosure, pursuant to § 1005.18(b)(7)(i)(B), requires the use of subheadings by the categories of function for which a financial institution may impose fees, as illustrated by Sample Form A-10(e). The Bureau thus declines to adopt a “category heading” approach for the short form disclosure in this final rule.

*18(b) Pre-Acquisition Disclosure Requirements—Commentary*

The Bureau is adopting two comments to accompany § 1005.18(b), as described below.

*Written and electronic pre-acquisition disclosures.* The final rule includes certain specific requirements for pre-acquisition disclosures depending on whether they are provided in written, electronic, or oral form. *See, e.g.,* § 1005.18(b)(1)(iii) and (6). The Bureau is adding new comment 18(b)-1 to provide additional guidance as to the interaction of these § 1005.18(b) disclosure requirements with the E-Sign Act and with other existing provisions within Regulation E. Specifically, comment 18(b)-1 explains that existing § 1005.4(a)(1) generally requires that disclosures be made in writing; written disclosures may be provided in electronic form in accordance with the E-Sign Act. The comment goes on to say that, because final

§ 1005.18(b)(6)(i)(B) provides that electronic disclosures required by final § 1005.18(b) need not meet the consumer consent or other applicable provisions of the E-Sign Act, § 1005.18(b) addresses certain requirements for written and electronic pre-acquisition disclosures separately. Final § 1005.18(b) also addresses specific requirements for pre-acquisition disclosures provided orally.

*Disclosures in foreign currencies.* A payment network commenter recommended that the Bureau permit disclosure of fees in a foreign currency for prepaid cards denominated in that currency. The commenter gave the example of permitting disclosures in pound sterling for prepaid accounts sold in U.S. airports for intended use in England. The Bureau is adding comment 18(b)-2 to clarify that such disclosures are permitted. Specifically, comment 18(b)-2 explains that fee amounts required to be disclosed by § 1005.18(b) may be disclosed in a foreign currency for a prepaid account denominated in that foreign currency, other than the fee for the purchase price required by § 1005.18(b)(5). The comment gives an example that a prepaid account sold in a U.S. airport intended for use in England may disclose in pound sterling (£) the fees required to be disclosed in the short form and long form disclosures and outside the short form disclosure, except for the purchase price.

#### *18(b)(1) Timing of Disclosures*

##### *18(b)(1)(i) General*

##### *The Bureau's Proposal*

As discussed above, § 1005.7(b) currently requires financial institutions to provide certain initial disclosures when a consumer contracts for an EFT service or before the first EFT is made involving a consumer's account. The Bureau proposed in revised § 1005.18(b)(1)(i) that, in addition to the initial disclosures that are usually provided in an account's terms and

conditions document pursuant to existing § 1005.7(b), a financial institution would also have to provide a consumer with certain fee-related disclosures before a consumer acquired a prepaid account. In the proposal, the Bureau explained its concerns as noted above that while some financial institutions were already providing limited disclosures to consumers prior to acquisition, consumers across a range of acquisition channels did not always have access to consistent and comprehensive information before selecting a prepaid account.

Based on its outreach and research, the Bureau explained in the proposal its understanding that some financial institutions were not disclosing the fees that consumers may find relevant to their acquisition decision until the account was purchased (or otherwise acquired), the packaging material was opened, and the consumer reviewed the enclosed account agreement document. To take just one example, one prepaid product the Bureau looked at imposed an inactivity fee after 90 days of no transactions, but this fee was not disclosed on an outward-facing external surface of the prepaid account access device's packaging material that was visible before purchase. Further, the Bureau expressed concern that new employees might have been receiving terms and conditions documents regarding payroll card accounts at the same time they received substantial other benefits-related paperwork, making the fees difficult for employees to comprehend while sorting through other important and time-sensitive documents. Similarly, certain providers of prepaid accounts online may have been presenting disclosures on their websites in a way that made it difficult for consumers to have the chance to review them prior to acquisition.

In the proposal, the Bureau stated its belief that, for several reasons, consumers in all acquisition scenarios would benefit from receiving these new pre-acquisition disclosures prior to

contracting for an EFT service or before the first EFT was made involving the account, at which point they would receive the initial disclosures that § 1005.7(b) already requires.

First, the Bureau believed that pre-acquisition disclosures could limit the ability of financial institutions to obscure key fees. For example, many participants in the Bureau's consumer pre-proposal consumer testing reported incurring fees that they did not become aware of until after they purchased their prepaid account.<sup>379</sup> Several participants also admitted to having difficulty understanding the disclosures they received with their current prepaid accounts and were very unsure as to whether key fees had been disclosed before they acquired the accounts.<sup>380</sup> The Bureau believes that its pre-acquisition disclosure regime will reduce the likelihood that these problems recur.

Second, the Bureau believed that, in order to comparison shop among products, it is helpful for consumers to be able to review disclosures setting forth key terms in like ways before choosing a product. The Bureau recognized that consumers offered prepaid products by third parties like employers or educational institutions may be unable to easily comparison shop. For example, at the time students are offered a student card from their university, such as when registering for school, they might be unable to compare that card with other products. The Bureau believed, however, that even in this scenario, students benefit from receiving the short form and the long form disclosure so that they can better understand the product's terms before deciding to accept it. Additionally, the Bureau believed that both the short and long form disclosures could inform the way in which these consumers decide to use the product once they acquired it.

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<sup>379</sup> See ICF Report I at 7.

<sup>380</sup> See *id.*

Third, the Bureau believed that consumers could use their prepaid account for an extended period of time and potentially incur substantial fees over that time. For example, the Bureau noted that, during its pre-proposal consumer testing, participants indicated that they tend to use a given prepaid account, even one they do not like, at least until they spend the entirety of the initial load amount, which could be as much as \$500, paying whatever fees are incurred in the course of doing so. Other research is consistent. Specifically, the Bureau cited to one study that indicated that prepaid accounts receiving direct deposit of government benefits might have life spans of as long as three years, and consumers who receive non-government direct deposit on their accounts use them on average for longer than one year.<sup>381</sup> Thus, the Bureau believed that whatever disclosure information a consumer used when selecting a prepaid account could have a significant and potentially long-term impact, especially if a consumer chooses to receive direct deposit into a prepaid account.

Regulation E, however, currently only provides for initial disclosures to be delivered at the time a consumer contracts for an EFT service or before the first EFT is made involving a consumer's account. The Bureau was concerned that, in the prepaid account context, this might sometimes be too late. With prepaid accounts, consumers often contract for an EFT service when acquiring the prepaid account and completing an initial load. The Bureau was concerned that, under the timing requirements for initial disclosures in § 1005.7, consumers were receiving fee-related disclosures too late to use them in their decision-making and comparison-shopping. The Bureau therefore proposed § 1005.18(b)(1)(i), which would have required a financial institution, in most cases, to provide the short form and long form disclosures before a consumer acquired a prepaid account.

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<sup>381</sup> 2012 FRB Kansas City Study at 40.

The Bureau also proposed to add comment 18(b)(1)(i)-1, which would have provided examples of what would and would not qualify as providing disclosures pre-acquisition in the bank branch and payroll contexts. Proposed comment 18(b)(1)(i)-2 would have provided further explanation regarding circumstances when short form and long form disclosures would have been considered to have been delivered after a consumer acquires a prepaid account, and thus in violation of the timing requirement in proposed § 1005.18(b)(1)(i).

#### *Comments Received*

As with the timing of acquisition of a government benefit account, discussed in the section-by-section analysis of § 1005.15(c) above, the Bureau received numerous comments requesting that it provide further clarification on the meaning of the term acquisition in the payroll card context.

A number of commenters urged that, as with government benefit accounts, acquisition in the payroll card account context should be defined as the point at which the consumer chooses to receive wages via a payroll card account. These commenters included issuers, program managers, employers that use payroll card accounts, a think tank, and trade associations representing the prepaid industry and payroll and human resource professionals. The commenters argued in support of defining acquisition as the point of consumer choice because it has already been adopted in several states' wage and hour laws, emphasizing that those laws have the same purpose as this rule: to ensure that employees are aware that they have options with regard to how they get paid. The commenters argued that alternative approaches—for example, defining acquisition as the point at which an employee takes physical possession of a payroll card—could cause significant disruption to current industry practice. Under current practice, they asserted, an employee may arrive on the first day of work and receive a package

containing an inactive payroll card account, disclosures related to that account, and additional information regarding payroll, benefits, and other work-related issues. According to commenters, this practice is beneficial to employees, as an employee is more likely to be engaged in the on-boarding process and to ask questions about the payroll card on that first day than at some later time, so distributing the card and disclosures together in that circumstance maximizes the chances that the employee will review the disclosures and ask related questions. Further, these commenters asserted, an employee who possesses a physical payroll card has at least one way of receiving his pay. If he chooses the payroll card, they argued, he will be paid quickly and without much hassle, in contrast to paper checks, which can take time to clear and cost money to cash or deposit, or direct deposit, which requires the employee to submit additional information to the employer in order to set up.

One employer that uses payroll card accounts to distribute wages to its employees argued that acquisition should mean either the point at which a consumer affirmatively chooses to receive wages via a payroll card account, or the point at which a consumer fails to make a choice from among a previously-presented list of available payment options. According to this commenter, some employers provide payroll cards as the default payment option if an employee fails to affirmatively elect a payment option. This practice, the commenter maintained, should be allowed to continue so long as the employee is notified (and where permitted by State law).

On the other hand, a number of consumer groups stated that under current payroll card disbursement processes, there have been continuing reports of employers steering employees to select payroll card accounts as their payment method. Such reports, they maintained, show that current methods for distributing payroll cards or disclosures do not sufficiently ensure that employees have the time and information they need to evaluate or choose an alternative payment

method. Relatedly, two consumer groups also argued that employees should be given a minimum number of days (seven, according to one commenter, and 30, according to the other) before they are required to select a method of payment. Other commenters did not suggest a specific point in time for defining acquisition. Rather, they urged the Bureau to define acquisition in a way that ensures employees receive the pre-acquisition disclosures earlier than they currently receive the initial account opening disclosures pursuant to § 1005.7.

With respect to online acquisition, a digital wallet provider argued that the point of acquisition for a digital wallet should be the point at which the consumer's account first holds a balance, not the point at which the consumer sets up or opens the account. Prior to the point at which the account holds a balance, the commenter argued, the pre-acquisition disclosures are irrelevant and may confuse consumers and cause them to abandon the online sign-up process. In addition, the commenter urged the Bureau to revise proposed comment 18(b)(1)(i)-2 to allow digital wallet providers to collect personally identifiable information before providing the disclosures. The commenter noted that these providers have to collect certain information in order to open the account. In a similar vein, a program manager asked the Bureau to clarify that the collection of certain personally identifiable information from a consumer does not by itself constitute "acquisition." The commenter provided the example of an individual who goes online and submits her name and address in order to receive more information about a prepaid product by mail. The commenter was concerned that proposed comment 18(b)(1)(i)-2 could be read to require the financial institution to provide the short and long form disclosures before the consumer submitted this information, even if the consumer was providing the information on a third-party website while seeking information about multiple prepaid account products.

Also with respect to online acquisition of accounts, a consumer group commenter asked the Bureau to clarify that consumers must be shown both the short form and long form prior to acquiring the account, not just provided a link to them. The commenter argued that there was a lack of clarity in proposed comment 18(b)(1)(i)-2 around this point, since the comment both states that the consumer should not be able to easily bypass the disclosures, and that the financial institution can include a link to the long form on the same webpage as it discloses the short form.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting § 1005.18(b)(1)(i) largely as proposed, with a technical revision. The Bureau is also adopting proposed comments 18(b)(1)(i)-1 and -2 with several revisions. First, the Bureau has added guidance in comment 18(b)(1)(i)-1 to clarify that for purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid card. Second, the Bureau has added clarification to comment 18(b)(1)(i)-1.ii to explain that, in the context of payroll card accounts, short form and long form disclosures are provided pre-acquisition if they were provided before a consumer chose to receive wages via a payroll card. Third, the Bureau has revised comment 18(b)(1)(i)-2 to clarify that a consumer who goes online to obtain more information about a prepaid account does not acquire a prepaid account by providing personally identifiable information in the process. The comment also provides additional examples of when a consumer who acquires a prepaid account electronically receives the short form and long comments for clarity and consistency.

The Bureau is adopting § 1005.18(b)(1)(i), as well as § 1005.18(b)(1)(ii) and (iii) discussed below, pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act. As discussed above, the Bureau believes that adjustment

of the timing and fee requirements and the disclosure language is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users because the revision will assist consumers' understanding of the terms and conditions of their prepaid accounts.

Specifically, the Bureau has added language to comment 18(b)(1)(i)-1 stating that a consumer acquires a prepaid account by purchasing, opening, or choosing to be paid via a prepaid account. The Bureau agrees with commenters that additional clarity was needed around the use of the term acquisition in circumstances where the consumer does not *purchase* the prepaid account. Accordingly, the Bureau has included such terms as “opening” or “choosing to be paid” in the commentary to clarify the point in time at which consumers acquire a prepaid account in circumstances other than the retail scenario. The Bureau is finalizing comment 18(b)(1)(i)-1.i, which includes an example of the acquisition timing requirements in the context of a bank branch, largely as proposed, with minor revisions for conformity with changes elsewhere in § 1005.18(b).

For similar reasons, the Bureau has revised comment 18(b)(1)(i)-1.ii to clarify that, in the payroll card account context, a consumer who is provided with a payroll card and the disclosures required by § 1005.18(b) at the time he or she learns that he or she can receive wages via a payroll card account, but before the consumer chooses to receive wages via a payroll card account, is provided with the disclosures prior to acquisition. The final comment explains that, if a consumer receives the disclosures after the consumer receives the first payroll payment on the payroll card, those disclosures were provided post-acquisition, in violation of § 1005.18(b)(1)(i).

As above with respect to the timing of acquisition of a government benefit card, the Bureau has attempted to strike a balance that ensures that employees receive the new disclosures

early enough to inform their payment choices, thereby furthering the goals of the compulsory use prohibition in § 1005.10(e)(2), while minimizing the potential disruption to current employer practices. Further, as discussed in the section-by-section analysis of § 1005.10(e)(2) above, the Bureau believes it is important that consumers have a choice with respect to how they receive their wages or salary. Accordingly, the Bureau believes it is appropriate to adopt a rule requiring financial institutions to provide their new disclosures before the consumer chooses a method of payment. Under the final rule, therefore, consumers must receive both the short form and long form disclosures (which include on the short form disclosure a notice informing consumers they have other options besides the payroll card account to receive their wages) before they choose the payment method that is best for them.

The Bureau declines to require a mandatory waiting period between the time consumers receive the disclosures and the time they are required to elect a payment method, for the reasons set forth in the section-by-section analyses of §§ 1005.10(e)(2) and 1005.15(c) above. Specifically, the Bureau does not believe that it is necessary at this time to specify a single time period that would apply in all enrollment scenarios.

Further, the Bureau is aware that, as noted by an employer commenter and as discussed in the section-by-section analysis of § 1005.10(e)(2) above, consumers are sometimes given a choice between two or more payment alternatives, but may fail to indicate their preference. Depending on the facts and circumstances—for example, the date by which the consumer has to be paid her wages under State law—it may be reasonable for a financial institution or other person in this scenario to employ a reasonable default enrollment method. However, the Bureau is concerned about reports from consumer group commenters of employees being coerced to accept payroll card accounts as their default method of receiving wages and intends to monitor

the payroll card account market for compliance with the compulsory use prohibition and will consider further action in a future rulemaking if necessary. As stated above, the Bureau also believes that by requiring the disclosures to be provided before a consumer acquires a prepaid account, the final rule will help ensure that all prepaid consumers, including employees receiving payroll card accounts, have the information they need to evaluate the prepaid account option (or options) available to them.

With respect to proposed comment 18(b)(1)(i)-2, regarding the timing for delivery of disclosures provided electronically, the Bureau understands that the digital wallet acquisition process may in some respects be different than the acquisition process for other prepaid accounts. However, the Bureau does not believe that this warrants different treatment for purposes of the timing requirement for delivery of pre-acquisition disclosures. In particular, the Bureau notes that the fact that a digital wallet consumer could receive the disclosures before the wallet holds any funds is not unique to digital wallets. Indeed, to qualify as a prepaid account, an account must be issued on a prepaid basis *or* be capable of being loaded with funds after acquisition.<sup>382</sup> The Bureau believes that it is important that consumers are informed of the fees and other key terms that will apply to their prepaid account before they open or purchase that account, whether that account is accessed by a physical prepaid card, a digital wallet, or through some other means. Furthermore, the Bureau understands that digital wallet providers presently provide some disclosures (for instance, user agreements and privacy policies) prior to a consumer opening an account. Thus, the Bureau does not believe that requiring digital wallet providers to provide the short form and long form disclosures before the consumer opens the account should be problematic for financial institutions or confusing to consumers.

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<sup>382</sup> See final § 1005.2(b)(3)(i)(D)(I).

Next, the Bureau has removed the reference in proposed comment 18(b)(1)(i)-2 to a consumer's provision of personally identifiable information. The Bureau understands that there may be scenarios in which a consumer provides personal information, such as name or address, in order to obtain more information about a particular product. Likewise, there could be instances where a consumer provides personal information for one purpose online, and that information is then used for other purposes, such as to market a prepaid account to the consumer. In either scenario, the consumer did not provide the personal information in order to acquire the prepaid account. Final comment 18(b)(1)(i)-2, therefore, no longer states that a consumer who receives the disclosures after the consumer provides personally identifiable information has received the disclosures post-acquisition. Instead, the comment states that the disclosures required by § 1005.18(b) may be provided before or after a consumer has initiated the acquisition process. If the disclosures are presented after a consumer initiates the acquisition process such disclosures are made pre-acquisition if the consumer receives them before choosing to accept the prepaid account.

Finally, with respect to consumer groups' requests that the Bureau clarify that a consumer must be shown both the short form and long form disclosures prior to a consumer's acquisition of a prepaid account through electronic means, the Bureau has added several examples in final comment 18(b)(1)(i)-2 to illustrate disclosure methods that would comply with final § 1005.18(b)(1)(i). In the first example, set forth in new paragraph i, the financial institution presents the short form, long form, and § 1005.18(b)(5) disclosures on the same webpage, which the consumer must view before choosing to accept the prepaid account. In the second example, set forth in new paragraph ii, the financial institution presents the short form and § 1005.18(b)(5) disclosures on one webpage, together with a link that directs the consumer to a separate webpage

containing the long form disclosure, which the consumer must also view before choosing to accept the prepaid account. Finally, in the third example, set forth in new paragraph iii, the financial institution presents on a webpage the short form and § 1005.18(b)(5) disclosures, followed by the initial disclosures required by § 1005.7(b) containing the long form disclosure in accordance with final § 1005.18(f)(1), on the same webpage. The financial institution includes a link, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), that directs the consumer to the section of the initial disclosures containing the long form disclosure. The consumer must view this webpage containing the two disclosures prior to choosing to accept the prepaid account.

These comments are intended to clarify that a consumer does not receive electronic disclosures prior to acquisition if the consumer is able to bypass some or all of the § 1005.18(b) disclosures before choosing to accept the prepaid account. The Bureau agrees with the consumer group commenter that language in the proposed comment regarding whether or not the consumer could review unrelated information before reviewing the long form disclosure on a separate webpage potentially contradicted this general principle. Accordingly, the Bureau has removed that language from the commentary to the final rule.

In addition to the revisions discussed above, the Bureau is finalizing certain other minor changes to comments 18(b)(1)(i)-1 and -2 for clarity and consistency.

#### *18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations*

##### *The Bureau's Proposal*

The Bureau proposed an adjustment to the general pre-acquisition timing requirement where consumers acquired prepaid accounts in retail stores. Proposed § 1005.18(b)(1)(ii) would have permitted financial institutions to employ an alternative method of delivering the long form

disclosure. Under this alternative timing regime, a financial institution would have been permitted to provide the long form disclosure in writing after the consumer acquired a prepaid account as long as three conditions were met, as discussed below.

In the proposal, the Bureau stated its belief that in many cases it was not feasible for financial institutions that offered prepaid accounts in retail stores to provide printed long form disclosures prior to acquisition. For example, due to size and space limitations on standard J-hook display racks, the Bureau believed that many financial institutions would not have been able to present both the short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) on the packaging without overhauling the packaging's design or otherwise adjusting the relevant retail space.

Nevertheless, the Bureau believed it was important that consumers be provided an opportunity to review both the short form and long form disclosures before acquisition. Thus, proposed § 1005.18(b)(1)(ii) would have permitted a financial institution to provide the long form disclosure after a consumer acquired a prepaid account in person in a retail store, as long as three conditions were met. Proposed § 1005.18(b)(1)(ii)(A) would have set forth the first condition: that the access device for the prepaid account available for sale in a retail store had to be inside of a packaging material. This condition would have applied even if the product, when sold, was only a temporary access device. Proposed § 1005.18(b)(1)(ii)(B) would have set forth the second condition: that the short form disclosures required by proposed § 1005.18(b)(2)(i) had to be provided on or be visible through an outward-facing, external surface of a prepaid account access device's packaging material in the tabular format described in proposed § 1005.18(b)(3)(iii). The Bureau believed that financial institutions offering the majority of

current prepaid accounts at retail would be able to satisfy this condition without altering the structure of the existing packaging.

The third condition, set forth in proposed § 1005.18(b)(1)(ii)(C), would have required that a financial institution include the telephone number and URL a consumer could use to access the long form disclosure while in a retail store on the short form disclosure, as required by proposed § 1005.18(b)(2)(i)(B)(II). The Bureau believed that consumers should at least be able to access the long form disclosure by telephone or via a website, should they want to obtain comprehensive fee information. The Bureau believed that many consumers had the ability to access a website through the URL that would be listed on the short form disclosure when shopping for a prepaid account, but nonetheless also proposed that when a financial institution did not disclose the long form disclosure before a consumer acquired a prepaid account, the financial institution had to also make the long form disclosure available to a consumer by telephone. The Bureau acknowledged that it might be complicated for financial institutions to provide the long form disclosure by telephone. Further, the Bureau acknowledged that it may be harder for a consumer to understand the information in the long form disclosure when delivered orally. Nevertheless, the Bureau believed that if a consumer took the affirmative step to request additional information about a prepaid account by telephone when shopping in a retail store, it may have been more likely that the consumer was seeking out specific information not included on the short form disclosure, and that such a consumer would therefore be less likely to suffer from information overload.

Proposed comment 18(b)(1)(ii)-1 would have provided guidance on the definition of retail store. Specifically, proposed comment 18(b)(1)(ii)-1 would have explained that, for purposes of the proposed requirements of § 1005.18(b)(1)(ii), a retail store was a location where

a consumer could obtain a prepaid account in person and that was operated by an entity other than a financial institution or an agent of the financial institution. Proposed comment 18(b)(1)(ii)-1 would have further clarified that a bank or credit union branch was not a retail store, but that drug stores and grocery stores at which a consumer can acquire a prepaid account could be retail stores. Proposed comment 18(b)(1)(ii)-1 would have also clarified that a retail store that offered one financial institution's prepaid account products exclusively would be considered an agent of the financial institution, and, thus, both the short form and the long form disclosure would need to be provided pre-acquisition pursuant to proposed § 1005.18(b)(1)(i) in such settings.

The Bureau believed that if a financial institution was the sole provider of prepaid accounts in a given retail store, or was otherwise an agent of the financial institution, then it would be easier for the financial institution to manage the distribution of disclosures to consumers. The Bureau believed that financial institutions with such exclusive relationships should have fewer hurdles to providing both the short form and long form disclosures to a consumer before acquisition. Nevertheless, the Bureau sought comment on whether agents of the financial institution faced space constraints in retail stores that would have made it difficult to provide the short form and long form disclosures pre-acquisition.

Proposed comment 18(b)(1)(ii)-2 would have explained that disclosures were considered to have been provided post-acquisition if they were inside the packaging material accompanying a prepaid account access device that a consumer could not see or access before acquiring the prepaid account, or if it was not readily apparent to a consumer that he or she had the ability to access the disclosures inside of the packaging material. Proposed comment 18(b)(1)(ii)-2 would also provide the example that if the packaging material is presented in a way that consumers

would assume they must purchase the prepaid account before they can open the packaging material, the financial institution would be deemed to have provided disclosures post-acquisition.

Proposed comment 18(b)(1)(ii)-3 would have explained that a payroll card account offered to and accepted by consumers working in retail stores would not have been considered a prepaid account acquired in a retail store for purposes of proposed § 1005.18(b)(1)(ii), and thus, a consumer would have had to receive the short form and long form disclosures pre-acquisition pursuant to the timing requirement set forth in proposed § 1005.18(b)(1)(i). The Bureau explained that it did not believe that there were space constraints involved in offering payroll card accounts to retail store employees. Finally, proposed comment 18(b)(1)(ii)-4 would have clarified that pursuant to proposed § 1005.18(b)(1)(ii)(C), a financial institution could make the long form accessible to a consumer by telephone and by a website by, for example, providing the long form disclosure by telephone using an interactive voice response system or by using a customer service agent.

#### *Comments Received*

Industry commenters overwhelmingly supported the proposed retail store exception. Despite this general support, however, a large number of industry commenters, including issuing banks, program managers, trade associations, a payment network, and an advocacy organization advocating on behalf of business interests, generally opposed the proposition that neither financial institutions nor their agents could qualify for the proposed retail store exception. These commenters argued that the exclusion of financial institutions and their agents was unnecessary and did not reflect compliance and market realities. Specifically, the commenters asserted that the location of acquisition should not dictate the type of disclosure the consumer receive since, they said, the constraints of providing the long form disclosure in any in-person environment are

the same. Thus, they argued, there is no basis for distinguishing between large retailers that carry multiple prepaid account programs and small retailers, who may have no choice but to carry only one financial institution's products, nor between retail stores and bank and credit union branches who may also sell prepaid accounts on J-hooks or in J-hook-style packaging. One program manager argued that the Bureau's failure to distinguish in this context between banks that issue prepaid accounts and smaller financial institutions, like credit unions or smaller banks, that only sell prepaid accounts issued by others, is inequitable in that it places a greater compliance burden on smaller institutions than comparable retailers would face. These commenters urged the Bureau to expand the application of the retail store exception to more or all in-person sales of prepaid accounts.

A subset of these commenters objected specifically to the proposed commentary stating that an entity is an agent of the financial institution for purposes of proposed § 1005.18(b)(1)(ii) if it exclusively sells one financial institution's prepaid account products. These commenters argued that agency status should be an issue determined under State law. They explained that, under several States' laws, a financial institution must appoint any store that sells its products as its agent, which would make such store ineligible for the retail store exception as proposed. Commenters also argued that the exclusive retailer exclusion would be difficult to enforce. For example, they noted that retailers may not be aware that they were selling prepaid accounts from only one financial institution, especially as retailers often deal with a program manager rather than directly with the financial institution itself. The commenters also listed several circumstances under which a retail store could unwittingly become disqualified from the proposed retail store exception by inadvertently offering only that financial institution's prepaid

accounts, including, for example, if a retail store offers two financial institutions' prepaid accounts, but the supply of one financial institution's products runs out.

Few consumer groups commented on this issue, but those that did, along with the office of a State Attorney General, opposed the retail store exception generally. They urged the Bureau to instead require that the long form disclosure be provided prior to acquisition in all scenarios because, they argued, consumers are more likely to pay attention to information disclosed on a physical form than on a website. They further noted that financial institutions could develop viable alternative disclosure methods that would allow them to disclose physical copies of both the short form and the long form prior to acquisition as part of the prepaid card package—for example, the long form could be disclosed under a flap that could be secured to the package with a Velcro tab. These commenters did not comment, however, on the types of entities that should qualify for the retail store exception if the Bureau were to adopt such a regime in the final rule.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting § 1005.18(b)(1)(ii) with modifications to the situations that qualify for the alternative timing regime for delivery of the long form disclosure for prepaid accounts sold at retail. In general, under the final rule, the alternative timing regime applies when a consumer acquires a prepaid account in person at a retail *location*, without regard to whether the location is operated by an agent of the financial institution. The final rule also clarifies, however, that financial institutions selling prepaid accounts in their own branches qualify for the exception only with respect to prepaid accounts that they do not themselves issue. Finally, the Bureau has made several minor revisions to § 1005.18(b)(1)(ii) and its commentary for clarity and consistency.

The Bureau has considered whether, as some consumer group commenters suggested, it might be more beneficial for consumers to see all of a prepaid account's fees pre-acquisition for prepaid accounts in all acquisition scenarios including at retail to avoid putting the burden on consumers to seek out additional information. The Bureau declines, however, to revise the proposed alternative timing regime for prepaid accounts sold at retail in this way, for the reasons discussed below. The Bureau also declines to permit post-acquisition disclosure of the long form in all in-person acquisition scenarios, as some industry commenters requested.

The Bureau continues to believe that consumers benefit from receiving both the short form and the long form disclosures in writing prior to acquisition, because the disclosures serve different but complementary goals. See the section-by-section analysis of § 1005.18(b) above for a detailed discussion of the reasons the Bureau is generally requiring that financial institutions provide both the short form and the long form disclosures pre-acquisition.

However, the Bureau is cognizant of the potentially significant cost to industry of providing the long form disclosure prior to acquisition at retail and the packaging adjustments that including such a disclosure would likely require based on the space constraints for products sold at retail. Specifically, commenters have confirmed the Bureau's understanding that, if it were to finalize a requirement that the long form disclosure be provided in writing prior to acquisition of a prepaid account in a retail environment, financial institutions would have to undertake a significant overhaul of current packaging designs.<sup>383</sup> As such, the Bureau continues to believe that such packaging adjustments would result in significant expense to industry and would likely increase the cost of prepaid accounts and limit the diversity of options available to

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<sup>383</sup> As some consumer group commenters recognized, the only way a printed long form could be incorporated into the current packaging design is by adding additional material and functionality to the package. As the Bureau noted in the proposal, adding material to prepaid card packaging could limit the number of packages retailers could sell on J-hook displays. *See* 79 FR 77102, 77153 (Dec. 23, 2014).

consumers shopping for prepaid accounts at retail (assuming retailers maintain the same overall space for the display and sale of all prepaid accounts that they have now).

To balance these considerations, the Bureau has revised § 1005.18(b)(1)(ii) and its commentary to broaden in certain respects the type of entity that qualifies for the retail location exception set forth in § 1005.18(b)(1)(ii). Under final § 1005.18(b)(1)(ii), therefore, a financial institution is not required to provide the long form disclosures before a consumer acquires a prepaid account in person at a retail location; provided the following conditions are met: (A) the prepaid account access device is contained inside the packaging material; (B) the short form disclosures are provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material; (C) the short form disclosures include the information set forth in final § 1005.18(b)(2)(xiii) that allows a consumer to access the long form disclosure by telephone and via a website; and (D) the long form disclosures are provided after the consumer acquires the prepaid account.

The Bureau is persuaded that, in certain cases, the constraints that apply in retail stores—limited space, distribution of disclosures by someone other than the financial institution that issues the prepaid account—could also apply in the context of other in-person acquisition scenarios, such as in the branches of banks and credit unions that sell another financial institution's prepaid accounts. Accordingly, the Bureau is revising § 1005.18(b)(1)(ii) and its commentary to broaden the scope of the retail exception by referring to a retail *location* rather than a retail *store*. The Bureau does not believe that this shift in approach undermines the consumer protections offered by the Bureau's pre-acquisition disclosure regime generally. Rather, the Bureau continues to believe that its alternative timing regime, with certain modifications described below, strikes an appropriate balance by providing consumers with—or

with access to—important disclosures before acquiring a prepaid account while recognizing the packaging and other constraints faced by financial institutions when selling prepaid accounts at retail. Further, the Bureau notes that the conditions placed on a financial institution’s ability to use the exemption—including that the short form disclosure appear on the outside of the packaging containing the card and list a telephone number and website URL the consumer can use to access the long form disclosure<sup>384</sup>—should ensure that most consumers have access to comprehensive fee information while they shop.

The Bureau has revised comment 18(b)(1)(ii)-1 to remove the commentary stating that a retail store must be operated by an entity other than a financial institution or a financial institution’s agent, and giving specific examples of what type of entities would or would not qualify as retail stores. Instead, final comment 18(b)(1)(ii)-1 states that, for purposes of final § 1005.18(b)(1)(ii), a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account.

The Bureau continues to believe, however, that a financial institution selling its own prepaid accounts does not face the same challenges as in other retail locations, and in particular that it is far less difficult for such a financial institution to manage the distribution of disclosures to consumers. In addition, the Bureau believes it is unlikely that any financial institution selling its own prepaid accounts in its own branches also offers prepaid accounts issued by other financial institutions. The Bureau also understands, as stated in the proposal, that financial institutions selling their own prepaid accounts may be less dependent on the J-hook infrastructure to market their products to consumers. Thus, the Bureau believes it is still

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<sup>384</sup> See final § 1005.18(b)(1)(ii)(A) through (D).

appropriate to exclude from the retail location exception financial institutions that sell their own prepaid accounts. Accordingly, the Bureau has revised comment 18(b)(1)(ii)-1 to clarify that a branch of a financial institution that offers its own prepaid accounts is not a retail location with respect to those accounts and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to the timing requirements set forth in final § 1005.18(b)(1)(i).

Next, the Bureau is adopting new § 1005.18(b)(1)(ii)(D) to make clear that, to qualify for the retail location exception, the financial institution must provide the long form disclosure after the consumer acquires the prepaid account. Proposed § 1005.18(b)(1)(ii) would have permitted a financial institution, under certain conditions, to provide the long form disclosure after acquisition, but left open a possible interpretation that the financial institution could forego delivering the long form disclosure altogether, which was not the Bureau's intent. For clarity, therefore, the Bureau is adopting § 1005.18(b)(1)(ii)(D) to make delivery of the long form disclosure after acquisition an explicit requirement in § 1005.18(b)(1)(ii). The new provision does not set forth a specific time by which the long form disclosure must be provided after acquisition. In practice, however, the Bureau expects that compliance with final § 1005.18(b)(1)(ii)(D) will typically be accomplished in conjunction with compliance with final § 1005.18(f)(1), which provides that a financial institution must include, as part of the initial disclosures given pursuant to § 1005.7, all of the disclosures required by § 1005.18(b)(4). The initial disclosures required by § 1005.7 must be provided prior to a consumer contracting for an EFT service or before the first EFT involving the account.

Relatedly, the Bureau has removed the portion of proposed comment 18(b)(1)(ii)-2 that would have provided an example of when prepaid disclosures provided inside packaging material are provided post-acquisition, because it believes the other provisions of the rule make

clear that, other than as set forth in the retail location exception in § 1005.18(b)(1)(ii), the short form and long form disclosures must both be provided to a consumer prior to acquiring the prepaid account. The Bureau is otherwise finalizing comment 18(b)(1)(ii)-2, as well as comments 18(b)(1)(ii)-3 and -4, generally as proposed with minor modifications for clarity and consistency, as well as conforming changes to reflect the numbering changes elsewhere in § 1005.18(b).

*18(b)(1)(iii) Disclosures for Prepaid Accounts Acquired Orally by Telephone*

Similar to the proposed alternative for retail stores, the Bureau proposed § 1005.18(b)(1)(iii) to provide that before a consumer acquired a prepaid account orally by telephone, a financial institution would have to disclose orally the short form information that would have been required by proposed § 1005.18(b)(2)(i). Proposed § 1005.18(b)(1)(iii) would have further stated that a financial institution could provide a written or electronic long form disclosure required by proposed § 1005.18(b)(2)(ii) after a consumer acquired a prepaid account orally by telephone if the financial institution communicated to a consumer orally, before a consumer acquired the prepaid account, that the information required to be disclosed by § 1005.18(b)(2)(ii) was available orally by telephone and on a website. The Bureau believed that as long as consumers were made aware of their ability to access the information contained in the long form disclosure, they would be able to get enough information to make an informed acquisition decision. Those who wished to learn more about the prepaid account could do so, and financial institutions would not be unduly burdened by having to provide the long form disclosure orally to all consumers who acquire prepaid accounts by telephone. A version of the long form disclosure, however, would have still been required to be provided after acquisition in the prepaid account's initial disclosures, pursuant to proposed § 1005.18(f).

Proposed comment 18(b)(1)(iii)-1 would have explained that, for purposes of proposed § 1005.18(b)(1)(iii), a prepaid account was considered to have been acquired orally by telephone when a consumer spoke to a customer service agent or communicated with an automated system, such as an interactive voice response system, to provide personally identifiable payment information to acquire a prepaid account, but would have clarified that prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system were not considered to have been acquired orally by telephone. The Bureau believed that, if a consumer used a smartphone to access a mobile application to acquire a prepaid account, and did not receive disclosures about the prepaid account orally, the disclosures could be provided electronically pursuant to proposed § 1005.18(b)(3)(i)(B). The Bureau believed that in such a scenario the logistical challenges justifying an alternative timing requirement for accounts acquired orally by telephone were not present.

Proposed comment 18(b)(1)(iii)-2 would have explained how disclosures provided orally could comply with the pre-acquisition timing requirement in proposed § 1005.18(b)(2)(i). Specifically, proposed comment 18(b)(1)(iii)-2 would have clarified that to comply with the pre-acquisition requirement set forth in proposed § 1005.18(b)(1)(i) for prepaid accounts acquired orally by telephone, a financial institution may, for example, read the disclosures required under proposed § 1005.18(b)(2)(i) over the telephone after a consumer had initiated the purchase of a prepaid account by calling the financial institution, but before a consumer agreed to acquire the prepaid account. Proposed comment 18(b)(1)(iii)-2 would have also explained that although the disclosure required by proposed § 1005.18(b)(2)(ii) was not required to be given pre-acquisition when a consumer acquired a prepaid account orally by telephone, a financial institution would still have to communicate to a consumer that the long form disclosure was available upon

request, either orally by telephone or on a website. Finally, the proposed comment would have clarified that a financial institution must provide information on all fees in the terms and conditions as required by existing § 1005.7(b)(5), as modified by proposed § 1005.18(f), before the first EFT was made from a consumer's prepaid account.

One consumer group commenter urged the Bureau to provide consumers who acquire a prepaid account by telephone or electronically the option of receiving written disclosures by mail upon request. The Bureau notes that consumers acquiring prepaid accounts through these methods must still receive the initial disclosures required by § 1005.7, which, as modified by final § 1005.18(f)(1), must include all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4). Accordingly, the Bureau does not believe it is necessary to separately provide consumers the right to request a written copy of information they are already required to receive under existing § 1005.7 and final § 1005.18(f)(1).

The Bureau is therefore adopting § 1005.18(b)(1)(iii) and its related commentary largely as proposed, with a few minor revisions. Under final § 1005.18(b)(1)(iii), a financial institution is not required to provide the long form disclosure required by § 1005.18(b)(4) before a consumer acquires a prepaid account orally by telephone if the following conditions are met: (A) the financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the long form disclosure is available both by telephone and on a website; (B) the financial institution makes the long form disclosure available both by telephone and on a website; and (C) the long form disclosures are provided after the consumer acquires the prepaid account.

The Bureau continues to believe that it is appropriate to modify the proposed general pre-acquisition disclosure requirements when a consumer acquires a prepaid account orally by telephone, and that requiring disclosure of only limited information by telephone will increase the likelihood that a consumer will understand any information about the prepaid account when acquiring it orally by telephone. The Bureau believes that, since the final rule mandates that consumers be made aware of their ability to access the information contained in the long form disclosure, consumers will have access to enough information to make an informed acquisition decision.

As stated above, the Bureau is finalizing several modifications to § 1005.18(b)(1)(iii) and its commentary. First, the Bureau has added language to comment 18(b)(1)(iii)-2 to clarify that a financial institution can meet the requirements of final § 1005.18(b)(1)(iii) by providing the required disclosures over the telephone using an interactive voice response or similar system. Second, for the same reason the Bureau is adopting new § 1005.18(b)(1)(ii)(D) above, the Bureau is adopting new § 1005.18(b)(1)(iii)(C) to clarify that, to qualify for the telephone exception, the financial institution would have to provide the long form disclosure after the consumer acquires the prepaid account. Again, while this new provision does not set forth a specific time by which the long form disclosure must be provided after acquisition, the Bureau expects that compliance with § 1005.18(b)(1)(iii)(C) will typically be accomplished through delivery of the long form disclosure as part of the initial disclosures required by § 1005.7, in accordance with final § 1005.18(f)(1). Finally, the Bureau has made certain other revisions to § 1005.18(b)(1)(iii) and its commentary to streamline and clarify the language therein.

### *18(b)(2) Short Form Disclosure Content*

Proposed § 1005.18(b)(2) would have consisted solely of a heading, with the substantive content requirements for the Bureau’s proposed prepaid account pre-acquisition disclosure regime located under proposed § 1005.18(b)(2)(i) for the short form disclosure and proposed § 1005.18(b)(2)(ii) for the long form disclosure. The regulatory text of proposed § 1005.18(b)(2)(i) would have consisted of a general statement that would have required that the fees, information, and notices that would have been set forth in the regulatory provisions under proposed § 1005.18(b)(2)(i) be provided in the short form disclosure.

The Bureau has relocated the regulatory text and commentary from proposed § 1005.18(b)(2)(i) to the final rule in § 1005.18(b)(2) (with certain modifications as discussed below).<sup>385</sup> In keeping with this relocation, the discussion of the Bureau’s proposal and comments received regarding the regulatory text and comments of proposed § 1005.18(b)(2)(i) are incorporated into this section-by-section analysis of § 1005.18(b)(2) (except the overall description of the proposed short form disclosure, which can be found in the section-by-section analysis of § 1005.18(b) above).

### *The Bureau’s Proposal*

Proposed § 1005.18(b)(2)(i) would have required that, before a consumer acquires a prepaid account, a financial institution provide a short form disclosure containing specific information about the prepaid account, including certain notices, fees, and other information, as applicable.

Proposed comment 18(b)(2)(i)-1 would have explained what a provider should disclose on the short form when fees are inapplicable to a particular prepaid account product or are \$0.

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<sup>385</sup> See the section-by-section analysis of § 1005.18(b) above for a general discussion of the reorganization of the final rule.

Specifically, the proposed comment would have said that the disclosures required by proposed § 1005.18(b)(2)(i) must always be provided prior to prepaid account acquisition, even when a particular disclosure is not applicable to a specific prepaid account. The proposed comment would have also provided an example that if a financial institution does not charge a fee to a consumer for withdrawing money at an ATM in the financial institution's network or an affiliated network, which is a type of fee that would have been required to be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(3), the financial institution should list "ATM withdrawal (in network)" on the short form disclosure and list "\$0" as the fee. Proposed comment 18(b)(2)(i)-1 would have further clarified, however, that if the financial institution does not allow a consumer to withdraw money from ATMs that are in the financial institution's network or from those in an affiliated network, it should still list "ATM withdrawal (in-network)" and "ATM withdrawal (out-of-network)" on the short form disclosure and state "not offered" or "N/A." The Bureau believed it important that the static portion of the short form disclosure list identical account features and fee types across all prepaid account products, to create standardization in order to enable consumers to quickly determine and compare the potential cost of certain offered features.

The Bureau also proposed comment 18(b)(2)(i)-2 to further explain how to disclose fees and features on the short form disclosure. Specifically, the proposed comment would have explained that no more than two fees may be disclosed for each fee type required to be listed by proposed § 1005.18(b)(2)(i)(B)(2), (3), and (5) in the short form disclosure (that is, the per purchase fee, the ATM withdrawal fee, and the ATM balance inquiry fee), and that only one fee may be disclosed for each fee type required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(1), (4), (6), (7), and (8) (that is, the periodic fee, the cash reload fee, the customer service fee, the inactivity fee, and the incidence-based fees). The proposed comment

would have clarified, however, that proposed § 1005.18(b)(2)(i)(B)(8) would have required the disclosure of up to three additional fee types. Finally, the proposed comment would have provided the example that, if a financial institution offers more than one method for loading cash into a prepaid account, only the fee for the method that will charge the highest fee should be disclosed, and the financial institution may use an asterisk or other symbol next to the cash reload fee disclosed to indicate that the fee may be lower. Finally, the proposed comment would have provided a cross-reference to proposed comment 18(b)(2)(i)(C)-1.

As the Bureau explained in the proposal, the Bureau believed that simplicity and clarity are important goals for the short form disclosure, particularly in light of the space constraints imposed in retail settings. Insofar as allowing complicated explanations and multiple different fees to be disclosed for a particular feature could disrupt those goals, the Bureau thus proposed that for most fees on the short form, a financial institution only be permitted to list one fee—the highest fee a consumer could incur for a particular activity. The Bureau noted that these limitations would only apply to the short form disclosure; the financial institution could use any other portion of the packaging material or website to disclose other relevant fees at its discretion, and would be required to disclose the other variations on the long form.

The Bureau also believed there was particular value in maintaining simplicity on the short form by limiting the top-line portion of the form in order to encourage consumer engagement with the disclosure. Thus, the Bureau proposed to require only four fee types in the top line. For two of those fee types—per purchase fees and ATM withdrawal fees—the Bureau also proposed to require disclosure of two fee values. The Bureau believed that it is important to include two per purchase fees—a per purchase fee when a consumer uses a signature and a per purchase fee when a consumer uses a PIN—because consumers could potentially incur these fees

every time they use their prepaid accounts, and the fee could vary depending on how a consumer completes the transaction. The Bureau believed including two per purchase fees would highlight for consumers that the fees for completing a transaction using a PIN versus the fee for using a signature could differ. Similarly, the Bureau believed that it is important to include two ATM withdrawal fees in order to highlight that fees for in-network and out-of-network transactions may differ and to signal to consumers that the product's ATM network may have an impact on the fee incurred, which could lead a consumer to seek out more information about the relevant network. The Bureau noted that in its pre-proposal consumer testing, some participants were confused about the meaning of an ATM network.

By contrast, the Bureau proposed to allow only one periodic fee and one cash reload fee to be listed in the top line of the short form. The Bureau acknowledged that both of these fees might also vary based, for example, on how often a consumer uses a prepaid account or the method used to reload cash into a prepaid account. Despite this possibility for variation, however, the Bureau believed consumers would benefit more from immediately seeing the two ways the per purchase and ATM withdrawal fees may vary.

#### *Comments Received*

Comments received regarding the Bureau's proposed pre-acquisition disclosing regime generally, including those regarding the short form disclosure as a whole, are addressed in the section-by-section analysis of § 1005.18(b) above. Comments received that address specific disclosure requirements in the short form disclosure are addressed in the section-by-section analysis that corresponds to each specific disclosure requirement. Comments received regarding proposed comment 18(b)(2)(i)-1 (regarding how to disclose features that are inapplicable or free) are discussed below.

Several industry commenters, including program managers, an issuing credit union, a payment network, and an industry trade association, recommended against requiring disclosure of inapplicable fees. They said such disclosures would take up valuable space on the short form and it would confuse consumers to inform them about fees and services that are not offered, especially for non-reloadable prepaid products and government benefits prepaid cards which, the commenters said, do not charge monthly, per purchase, or cash reload fees. Conversely, two consumer groups, a program manager, and an issuing bank supported the disclosure of inapplicable fees as providing a quick and accurate basis for comparison across prepaid accounts. Another program manager and issuing bank both supported the disclosure of inapplicable fees but recommended requiring “not applicable” instead of “N/A” to clarify to consumers that the service itself, not the fee, is inapplicable. One of the consumer groups said “N/A” was confusing and recommended disclosing “not offered” instead.

One issuing bank and an industry trade association recommended against disclosing when no fee is charged. The bank recommended this specifically for the fees that do not appear in the top line because it said they are not commonly charged and the space in the short form could be used for more commonly-charged fees. The bank recommended listing the required fees if there is a charge but, if there is no charge, permitting the issuer to decide what fee to display. A program manager recommended eliminating the “\$0” fee requirement for government benefit accounts for fees that do not apply to such accounts.<sup>386</sup>

### *The Final Rule*

As noted above, to simplify the structure of the final rule, the Bureau has modified proposed § 1005.18(b)(2) and (2)(i), to locate the content requirements for the short form

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<sup>386</sup> The Bureau notes that for fees for features that are not available for such accounts, the disclosure made in the short form would be “N/A” not “\$0.”

disclosure in the final rule under § 1005.18(b)(2). Also, for reasons set forth below, the Bureau is adopting revisions to proposed comment 18(b)(2)(i)-1, renumbered as comment 18(b)(2)-1. Second, the Bureau is not finalizing proposed comment 18(b)(2)(i)-2 regarding the number of fees to disclose, as this comment would have repeated information found elsewhere in the final regulatory text and commentary. Finally, the Bureau is adopting new comment 18(b)(2)-2 regarding the prohibition on disclosure of finance charges in the short form.

The Bureau has made both substantive and technical modifications to comment 18(b)(2)-1 to clarify the explanation and examples in the proposed comment that required fees must always be disclosed in the short form—even when the financial institution does not charge a fee or does not offer the feature, in which case the financial institution would disclose “\$0” or “N/A,” respectively, as applicable. Although some commenters opposed a requirement to disclose a fee when there is no charge or the feature is not offered, the Bureau is adopting this requirement in the final rule to preserve standardization among short forms such that consumers can see when a feature is offered for free or is not offered at all to better compare prepaid accounts and inform consumer purchase and use decisions. The Bureau recognizes that many payroll card accounts and government benefit accounts do not currently charge certain fees or offer certain features required to be disclosed in the short form, but is finalizing the rule as proposed to allow consumers to compare payroll card accounts or government benefit accounts with their own prepaid accounts or prepaid accounts they may acquire to receive their benefits or wages.

The Bureau’s post-proposal consumer testing revealed that nearly all participants understood both “N/A” and “not offered” when disclosed in place of a required fee for features

not offered by a financial institution.<sup>387</sup> However, in order to achieve a greater degree of standardization across short form disclosures, the Bureau is finalizing the rule to require disclosure of “N/A,” but not “not offered,” when a financial institution does not offer a feature for which a fee is required to be disclosed in the short form. The Bureau believes this single standardized approach is shorter, simpler, and clearer for consumers to use to compare fees and information in the short form across prepaid accounts. Thus, final comment 18(b)(2)-1 clarifies that “N/A” is the required disclosure when a financial institution does not offer a feature for which a fee is required to be disclosed in the short form.

The Bureau is adopting new comment 18(b)(2)-2, which clarifies that pursuant to new § 1005.18(b)(3)(vi), a financial institution may not include in the short form disclosure finance charges as described in Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. The comment also cross-references new comment 18(b)(3)(vi)-1.

#### *18(b)(2)(i) Periodic Fee*

##### *The Bureau’s Proposal*

Proposed § 1005.18(b)(2)(i)(B)(I) would have required disclosure of a periodic fee charged for holding a prepaid account, assessed on a monthly or other periodic basis, using the term “Monthly fee,” “Annual fee,” or a substantially similar term. The proposal stated the provision was intended to capture regular maintenance fees that a financial institution levies on a consumer solely for having a prepaid account for a period of time, whether the fee is charged monthly, annually, or for some other period of time. A financial institution could choose a label for this fee that accurately reflects the relevant periodic interval. Pursuant to the formatting

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<sup>387</sup> See ICF Report II at 17 and 27.

requirements in proposed § 1005.18(b)(4), a financial institution would have been required to disclose this fee in the top line of the short form disclosure.

The proposal set forth the following reasons for the Bureau's proposed requirement that financial institutions disclose the presence or absence of a periodic fee as the first item in the short form. First, the Bureau's analysis of fee data indicated that many prepaid accounts charge a recurring fee, typically on a monthly basis. Second, the Bureau believed a periodic fee is one that consumers will likely pay no matter what other fees they incur because it is imposed for maintaining the prepaid account, unless a financial institution offers a way for a consumer to avoid that fee (*e.g.*, through the receipt of a regular direct deposit or maintaining a certain average daily account balance). Those prepaid accounts that do not assess a periodic fee often charge other fees instead, typically per purchase fees.<sup>388</sup> The Bureau therefore believed that the lack of a periodic fee is also an important feature of a prepaid account that should be included in the top line to allow consumers to more easily identify this trade-off between periodic fees and per purchase fees. Third, the Bureau believed that the existence of a monthly fee (or lack thereof) is typically a key factor in a consumer's decision about whether to acquire a particular prepaid account. Additionally, the Bureau's pre-proposal consumer testing showed that participants frequently cited periodic fees as one of the most important factors influencing their decision about which prepaid account to acquire.

#### *Comments Received*

No commenter opposed disclosure of the periodic fee, though an issuing bank requested that the Bureau permit disclosure in the short form of the conditions under which a financial

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<sup>388</sup> The Bureau also proposed to require the disclosure of per purchase fees on the top line of the short form. As discussed in greater detail below, the Bureau is finalizing the per purchase fee disclosure mostly as proposed, including locating it in the top line of the short form. See the section-by-section analysis of § 1005.18(b)(2)(ii) below.

institution may waive the periodic fee and many other commenters urged more generally to provide latitude to financial institutions to disclose conditions for waiver or reduction of all listed fees.<sup>389</sup> An office of a State Attorney General recommended that the Bureau ban periodic fees for payroll card accounts, but otherwise supported the disclosure required by proposed § 1005.18(b)(2)(i)(B)(I).

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(I), renumbered as § 1005.18(b)(2)(i), with minor technical modifications for conformity and clarity. Also, for the reasons set forth below, the Bureau is adopting comment 18(b)(2)(i)-1.

The Bureau is finalizing the requirement that financial institutions disclose the periodic fee as the first fee on the short form disclosure because it is a virtually universal charge and, even if a per purchase fee is incurred instead of the periodic fee, the Bureau continues to believe that consumers should be apprised of the trade-off between the two pricing schemes.

The Bureau agrees that it may be particularly important for consumers to be aware of waivers and discounts of the periodic fee, and thus is adopting a new provision in the final rule that permits financial institutions to disclose, in addition to the highest fee, conditions under which the periodic fee may vary. While final § 1005.18(b)(3)(i) requires disclosure of the highest fee when a fee can vary, final § 1005.18(b)(3)(ii) permits a financial institution to disclose a waiver of or reduction in the fee amount for the periodic fee in language lower down in the short form disclosure. See the section-by-section analysis of § 1005.18(b)(3) below for a

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<sup>389</sup> These comments are addressed in the section-by-section analysis of § 1005.18(b)(3) below.

discussion of the comments received and analysis leading to the adoption of this alternative for the periodic fee.

To clarify the specific applicability of final § 1005.18(b)(3)(i) and (ii) to the periodic fee disclosure required by final § 1005.18(b)(2)(i), the Bureau is adopting new comment 18(b)(2)(i)-1. Comment 18(b)(2)(i)-1 states that, if the amount of a fee disclosed on the short form could vary, the financial institution must disclose in the short form the information required by final § 1005.18(b)(3)(i). If the amount of the periodic fee could vary, the financial institution may opt instead to use an alternative disclosure pursuant to final § 1005.18(b)(3)(ii). The Bureau is adopting this comment to direct attention to the alternative disclosure of the periodic fee in the short form permitted by § 1005.18(b)(3)(ii).

With regard to the comment recommending that the Bureau ban the periodic fee for payroll card accounts, such a request is outside the scope of this rulemaking.

#### *18(b)(2)(ii) Per Purchase Fee*

Proposed § 1005.18(b)(2)(i)(B)(2) would have required disclosure of two fees for making a purchase using a prepaid account, both for when a consumer uses a PIN and when a consumer provides a signature, including at point-of-sale terminals, by telephone, on a website, or by any other means, using the term “Per purchase fee” or a substantially similar term, and “with PIN” or “with sig.,” or substantially similar terms.

The proposal explained that, although the Bureau understands that most prepaid accounts do not charge per transaction fees for purchases of goods or services from a merchant, some do. The Bureau said that the impact of these fees could be substantial for consumers who make multiple purchases. Often these fees are charged when periodic fees are not, and thus a consumer may be choosing between a prepaid account that has no monthly fee but charges for

each purchase and a prepaid account that has a monthly fee but no per purchase charge.

Therefore, the Bureau believed it appropriate for all prepaid accounts to disclose on the short form both whether there is a per purchase fee and, if so, the fee for making those purchases.

Proposed Model Forms A-10(a) through (d) would have disclosed the per purchase fees on the top line of the short form.

The Bureau's proposed rule further recognized that a handful of prepaid accounts charge a different per purchase fee depending on whether the purchase is processed as a signature or PIN transaction. While PIN debit transactions require input of the accountholder's PIN code at the time of authorization of the transaction, for a signature transaction, the accountholder may sign for the transaction but does not need to enter his or her PIN code. The Bureau therefore proposed model forms for prepaid accounts that disclose both fees for these two authorization methods.

No commenters objected to inclusion of per purchase fees generally in the short form disclosure. An industry trade association, an issuing bank, and a program manager commented on the relevance of requiring the separate disclosure of per purchase fees for PIN and signature. These commenters said that such methods may become obsolete with the evolution of new cardholder verification methods (CVMs) and that many current transactions do not technically require either PIN or signature, such as online purchases. These commenters, plus another industry trade association and the office of a State Attorney General, suggested permitting disclosure of one per purchase fee if the PIN and signature fees are the same. The office of a State Attorney General also urged the Bureau to ban per purchase fees for payroll card accounts.

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(2), renumbered as § 1005.18(b)(2)(ii), with certain modifications as

described below. Because a per purchase fee could be significant for consumers who make multiple purchases with their prepaid card, the Bureau continues to believe it appropriate for all prepaid accounts to disclose on the short form whether there is a per purchase fee and, if so, the fee for making a purchase. However, the Bureau understands that most prepaid accounts do not charge fees for each purchase transaction and, for those that do, the Bureau believes that distinguishing between PIN and signature when other methods of cardholder verification may now or in the future be available may be confusing to consumers. The Bureau further understands that new cardholder verification methods are rapidly evolving. For these reasons, the Bureau believes disclosure of the breakdown of specific per purchase fees has less consumer benefit than disclosure of one per purchase fee, *i.e.*, the highest fee charged for making a purchase as required pursuant to final § 1005.18(b)(3)(i), which is discussed in detail below. Thus, the Bureau is finalizing this provision as proposed, except it is requiring disclosure of only a single fee for making a purchase using the prepaid account instead of requiring disclosure of two fees (both for when a consumer uses a PIN and when a consumer uses a signature to verify the purchase). The Bureau has also made other technical revisions to this provision for clarity.

With regard to the comment recommending that the Bureau ban per purchase fees for payroll card accounts, such a request is outside the scope of this rulemaking.

#### *18(b)(2)(iii) ATM Withdrawal Fees*

##### *The Bureau's Proposal*

Proposed § 1005.18(b)(2)(i)(B)(3) would have addressed disclosure on the short form of ATM fees for withdrawing cash. Specifically, proposed § 1005.18(b)(2)(i)(B)(3) would have required disclosure of two fees for using an ATM to initiate a withdrawal of cash in the United States from a prepaid account, both within and outside of the financial institution's network or a

network affiliated with the financial institution, using the term “ATM withdrawal fee” or a substantially similar term, and “in-network” or “out-of-network,” or substantially similar terms. Proposed Model Forms A-10(a) through (d) would have disclosed these ATM withdrawal fees on the top line of the short form.

The Bureau understood that the ATM fees for most prepaid accounts differ depending on whether the ATM is in a network of which the financial institution that issued the card is a member or an affiliate. Insofar as accessing ATM networks of which the issuing financial institution is not a member or an affiliate often costs the financial institution more, it typically charges a higher fee to a consumer for using that out-of-network ATM. Given that such potential variances are common, the Bureau believed that disclosure of fees for both in- and out-of-network ATMs withdrawals is important. Although the Bureau noted in the proposal that many participants during its pre-proposal consumer testing were unfamiliar with the difference between “in-network” and “out-of-network” ATMs, the Bureau believed the inclusion of these two fees on the top line of the proposed short form would highlight for consumers that such fee variations can occur and the importance of understanding the ATM network associated with a particular prepaid account program.

Proposed comment 18(b)(2)(i)(B)(3)-1 would have clarified that, if the fee imposed on the consumer for using an ATM in a foreign country to initiate a withdrawal of cash is different from the fee charged for using an ATM in the United States within or outside the financial institution’s network or a network affiliated with the financial institution, a financial institution must not disclose the foreign ATM fee pursuant to proposed § 1005.18(b)(2)(i)(B)(3), but may be required to do so pursuant to proposed § 1005.18(b)(2)(i)(B)(8) as part of the proposed incidence-based fee disclosure.

### *Comments Received*

Several industry and consumer group commenters and one office of a State Attorney General commented on the Bureau's proposed ATM withdrawal fee disclosure. In response to the Bureau's question regarding whether additional information is needed on the short form to explain the distinction between in-network versus out-of-network ATMs, a prepaid program manager, an issuing bank, and an industry trade association commented that it was unnecessary to require such an explanation, asserting that consumers generally understand the terminology and if not, consumers could direct their questions to the prepaid issuer or to the Bureau. The program manager also suggested permitting disclosure of a single ATM fee if the fees for both in- and out-of-network withdrawals are the same, as well as disclosing when ATM withdrawals are not available.

The office of a State Attorney General and an industry trade association specifically addressed payroll card accounts. The office of the State Attorney General said that its research revealed that ATMs were the most common way for payroll card accountholders in its State to access their wages and that accountholders regularly incurred fees for ATM transactions. It recommended that all payroll card account programs be required to provide free and unlimited withdrawal of wages via ATMs with no third-party fees. The trade association recommended permitting disclosure in the short form of the number of free ATM withdrawals available to payroll card accountholders.

Two consumer groups and the office of the State Attorney General recommended additional ATM-related disclosures, such as the name of the ATM network and whether the prepaid account is affiliated with the network, the full extent of the network, whether third-party

fees apply, whether there are limits on in-network ATM withdrawals, and the cost of international ATM transactions.

No commenters objected to the inclusion of ATM withdrawal fees in the short form, or generally regarding distinguishing between in- and out-of-network ATM withdrawal fees.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting § 1005.18(b)(2)(i)(B)(3), renumbered as § 1005.18(b)(2)(iii), as proposed with minor technical modifications for clarity. The Bureau continues to believe it is important for consumers to know how much they will be charged to withdraw funds at an ATM and to know the difference, if any, for conducting the withdrawal at an in-network versus out-of-network ATM. The Bureau is also adopting proposed comment 18(b)(2)(i)(B)(3)-1, renumbered as comment 18(b)(2)(iii)-1, explaining that a financial institution may not disclose its fee (if any) for using an ATM to initiate a withdrawal of cash in a foreign country in the disclosure required by final § 1005.18(b)(2)(iii), although it may be required to disclose that fee as an additional fee type pursuant to final § 1005.18(b)(2)(ix). In response to comments requesting that additional information be added to the disclosure of ATM withdrawal fees, the Bureau declines to require disclosure of such additional information in final § 1005.18(b)(2)(iii). The Bureau believes the short form disclosure balances the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension. Moreover, much of the additional information recommended by commenters, such as third-party fees and the name and extent of the ATM network, must or may be provided in the long form disclosure. *See, e.g.*, final § 1005.18(b)(4)(ii) and Sample Form A-10(f).

To address the comments recommending that the Bureau require more fulsome disclosure of the details regarding ATM fees for payroll card accounts (and similar comments made

elsewhere recommending disclosure of other information in addition to ATM fees), the Bureau is finalizing new § 1005.18(b)(2)(xiv)(B), which permits inclusion of a statement in the short form disclosure for payroll card accounts directing consumers to a location outside the short form for information on how to access funds and balance information for free or for a reduced fee. Final § 1005.15(c)(2)(ii) contains a similar provision for government benefit accounts. To address the comment recommending disclosure of a single ATM fee if the fees for both in- and out-of-network withdrawals are the same (and similar comments made elsewhere regarding two-tier fee disclosures), the Bureau is finalizing new § 1005.18(b)(3)(iii), which permits a single disclosure for like fees. Regarding the comment recommending disclosure of when ATM withdrawals are not available, both proposed and final § 1005.18(b)(2) require such disclosure through use of “N/A” as discussed above. *See also* final comment 18(b)(2)-1. Regarding the comment requesting that the Bureau ban fees for ATM transactions on payroll card accounts, such request is outside the scope of this rulemaking.

#### *18(b)(2)(iv) Cash Reload Fee*

##### *The Bureau’s Proposal*

Proposed § 1005.18(b)(2)(i)(B)(4) would have required disclosure of a fee for loading cash into a prepaid account using the term “Cash reload” or a substantially similar term. Cash reloads are one of the primary ways for a consumer to add funds to a prepaid account. As such, the Bureau believed that the existence of a cash reload service and the fee for using such a service, if any, is important for consumers to know insofar as this is a key feature of many prepaid accounts. Proposed Model Forms A-10(a) through (d) would have disclosed the cash reload fee on the top line of the short form disclosure.

The Bureau also proposed to adopt comment 18(b)(2)(i)(B)(4)-1, which would have provided guidance on what would be considered a cash reload fee. Specifically, the proposed comment explained that the cash reload fee, for example, would include the cost of adding cash at a point-of-sale terminal, the cost of purchasing an additional card or other device on which cash is loaded and then transferred into a prepaid account, or any other method a consumer may use to load cash into a prepaid account. This proposed comment would have also clarified that if a financial institution offers more than one method for a consumer to load cash into the prepaid account, proposed § 1005.18(b)(2)(i)(C) would have required that it only disclose the highest fee on the short form. The Bureau noted that consumers may incur additional third-party fees when loading cash onto a card or other access device; these expenses are typically not controlled by the financial institution or program manager and instead are charged by the entity selling the cash reload product. Such fees would not be disclosed on the proposed short form pursuant to proposed comment 18(b)(2)(i)(C)-2. The Bureau noted, however, that, pursuant to proposed comment 18(b)(2)(ii)(A)-3, fees imposed by third parties acting as an agent of the financial institution would always have to be disclosed in the long form.

As described in the proposal, the Bureau considered requiring financial institutions to list on the short form disclosure both cash reload methods discussed in proposed comment 18(b)(2)(i)(B)(4)-1: loads via a point-of-sale terminal and loads via an additional card or other device. The Bureau, however, believed it was important to limit the amount of information on the short form disclosure to maintain its simplicity in order to facilitate consumer understanding of the information that is included. Further, in its pre-proposal consumer testing, the Bureau found that participants consistently understood a disclosure containing a single cash reload fee,

and therefore the Bureau did not believe it was as important to include two fees for this fee type.<sup>390</sup>

### *Comments Received*

One issuing bank and a number of consumer groups expressed concern that failing to reflect third-party fees in connection with the proposed disclosure of the cash reload fee in the short form might create consumer confusion given that it is a standard industry practice for reload network providers or third-party retailers, not the financial institutions that issue prepaid accounts, to provide and charge for the reloading of cash into prepaid accounts. In such circumstances, due to the prohibition on inclusion of third-party fees in the short form pursuant to proposed § 1005.18(b)(2)(i)(C), a financial institution that does not offer proprietary cash reloading capabilities would typically disclose the cash reload fee as “\$0,” while a financial institution that offers proprietary cash reloading capabilities would have to disclose the cost for the cash reload. In addition to confusing consumers, commenters suggested this outcome would result in a competitive disadvantage for financial institutions that offer proprietary systems, which are usually less expensive than third-party systems, and thereby dissuade financial institutions from offering this service. A trade association recommended eliminating the term “cash reload” fee in favor of “deposit” fee for consistency and clarity. An issuing bank recommended disclosure of a range of fees for cash reloads and a statement explaining where to find reload locations as well as allowing disclosure of the conditions under which the cash reload fee could be waived instead of the asterisk and linked statement for variable fees pursuant to proposed § 1005.18(b)(2)(C). A program manager commenter recommended permitting disclosure of a disclaimer for third-party charges for cash reloads. An office of a State Attorney

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<sup>390</sup> See ICF Report I at 20, 29, and 30.

General recommended prohibiting cash reload fees, particularly for payroll card accounts, but otherwise supported the disclosure.

*The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(4), renumbered as § 1005.18(b)(2)(iv), with certain modifications as described below. As in the proposal, the Bureau is requiring in the final rule disclosure of the cash reload fee in the top line of the short form because it is one of the primary ways consumers fund their prepaid accounts. The Bureau believes the disclosure in the short form of a single cash reload fee balances the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension and therefore declines to require disclosure of additional content in final § 1005.18(b)(2)(iv) as requested by commenters.

The Bureau is adopting the final rule with a notable change from the proposal. The final rule requires disclosure of the cash reload fee as the total of all charges from the financial institution and any third parties for a cash reload. *See also* final § 1005.18(b)(3)(iv) and (v). The Bureau had intended the proposed rule to require disclosure of the complete cost of reloading cash. While the Bureau believes that a general prohibition on the disclosure of third-party fees in the short form is appropriate, the Bureau also believes that it is important to reflect the cost of a cash reload via a non-proprietary cash reload network and to avoid disfavoring particular prepaid market participants in connection with reload systems, which is a concern raised by several commenters. By requiring inclusion of the full cost of cash reloads, including third-party fees, consumers will receive full information about the amount of this key fee as well as ensuring standardized disclosure requirements among market participants. Final § 1005.18(b)(2)(iv) also reflects minor technical modifications for clarity.

The Bureau is adopting proposed comment 18(b)(2)(i)(B)(4)-1, renumbered as comment 18(b)(2)(iv)-1, with modifications to reflect the above-referenced modification to the regulatory text. The comment provides several examples illustrating how financial institutions must disclose cash reload fees.

The Bureau is persuaded that labeling this fee as “cash deposits,” rather than “cash reloads,” may be more meaningful to consumers in certain circumstances. Final comment 18(b)(2)(iv)-2 thus allows a financial institution that does not permit cash reloads via a third-party reload network but instead permits cash deposits, for example, in a bank branch, to use the term “cash deposit” instead of “cash reload.” Regarding the comment requesting that the Bureau ban fees for cash reloads, such request is outside the scope of this rulemaking.

The disclosure and updating of third-party cash reload fees is discussed in further detail in the section-by-section analysis of § 1005.18(b)(3) below.

#### *18(b)(2)(v) ATM Balance Inquiry Fees*

##### *The Bureau’s Proposal*

Directly below the top line in the short form disclosure, the Bureau proposed to include balance inquiry fees charged by a financial institution for inquiring into the prepaid account’s balance at an ATM. Specifically, proposed § 1005.18(b)(2)(i)(B)(5) would have required disclosure of two fees for using an ATM to check the balance of a consumer’s prepaid account, both within and outside of the financial institution’s network or a network affiliated with the financial institution, using the term “ATM balance inquiry” or a substantially similar term, and “in-network” or “out-of-network,” or substantially similar terms. Proposed comment 18(b)(2)(i)(B)(5)-1 would have clarified that if the fee imposed on a consumer for using an ATM in a foreign country to check the balance of a consumer’s prepaid account is different from the

fee charged for using an ATM within or outside the financial institution's network or a network affiliated with the financial institution in the United States, a financial institution would not disclose the foreign ATM balance inquiry fee pursuant to proposed § 1005.18(b)(2)(i)(B)(5), but could be required to do so as part of the proposed incidence-based fee disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(8).

The Bureau believed that, just as it is important for consumers to know that different fees could be imposed for ATM withdrawals depending on whether the ATM is in-network or out-of-network, it is also important for consumers to know that different fees could be imposed when requesting balance inquiries at an ATM in a financial institution's network or outside of the network. However, the Bureau did not propose to include balance inquiry fees in the top line of the short form disclosure, because it believed that it is less common for consumers to initiate ATM balance inquiry transactions compared to withdrawals at ATMs.

#### *Comments Received*

The Bureau received comments about the proposed ATM balance inquiry fees disclosure from several industry and consumer group commenters, and an office of a State Attorney General. In response to the Bureau's question regarding placement of ATM balance inquiry fees on the short form disclosure, a program manager stated that placing these fees below the top line of the short form disclosure is sufficient, because consumers are not assessed this fee frequently enough to justify its inclusion in the top line. According to this commenter, as well as a trade association and issuing bank, an ATM is one of the most expensive ways for consumers to check their balance on a prepaid card. The program manager added that consumers generally use free and more convenient methods to obtain balance information such as via interactive voice response, the internet, email, and text message.

A consumer group suggested that the Bureau either eliminate the disclosure to save space or require financial institutions to disclose all methods a consumer may use to check the consumer's prepaid account balance to make consumers aware of free balance inquiry methods. Another consumer group recommended that the Bureau replace the "or" in the text of the ATM balance inquiry fee disclosure in the proposed model short form disclosure with a slash ("/") to distinguish between in- and out-of-network fees. If there are two fees listed, the commenter stated that the use of "or," as opposed to "/", may create uncertainty with respect to which fee is the in-network fee, and which fee is the out-of-network fee.

An office of a State Attorney General supported the Bureau's proposal as an alternative to its primary recommendation that the Bureau ban ATM balance inquiry fees for payroll card accounts. The commenter further suggested that the Bureau require financial institutions to list the in-network and out-of-network ATM balance inquiry fee on separate lines of the short form to enhance consumer comprehension.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(5), renumbered as § 1005.18(b)(2)(v), with minor technical modifications for clarity. The Bureau continues to believe consumers should know the different fees they could be charged for in-network versus out-of-network ATM balance inquiries but that these fees are not incurred frequently enough to merit disclosure in the top line of the short form. The Bureau is also adopting proposed comment 18(b)(2)(i)(B)(5)-1, renumbered as comment 18(b)(2)(v)-1, with several revisions. Final comment 18(b)(2)(v)-1 explains that a financial institution may not disclose its fee (if any) for using an ATM to check the balance of the prepaid account in a foreign country in the disclosure required by final § 1005.18(b)(2)(v), although it

may be required to disclose that fee as an additional fee type pursuant to final § 1005.18(b)(2)(ix).

The Bureau believes the final rule's ATM balance inquiry fee disclosure requirement balances the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension and therefore declines to require disclosure of additional content in final § 1005.18(b)(2)(v) as requested by one of the commenters. Regarding the recommendation that the Bureau use a slash ("/") instead of "or" to distinguish between in- and out-of-network fees, the Bureau notes that in post-proposal consumer testing of prototype short forms nearly all participants were able to correctly identify the ATM balance inquiry fee when using "or" and showed no indication of misunderstanding the distinction between in- and out-of-network fees, confirming the Bureau's understanding from pre-proposal testing.<sup>391</sup> Thus, the Bureau declines to make this change. Regarding the request that the Bureau ban fees for balance inquiries for payroll card accounts, such request is outside the scope of this rulemaking.

#### *18(b)(2)(vi) Customer Service Fees*

Proposed § 1005.18(b)(2)(i)(B)(6) would have required disclosure on the short form of any fee for calling the financial institution or its service provider, including an interactive voice response system, about a consumer's prepaid accounts using the term "Customer service fee" or a substantially similar term. The Bureau believed that many consumers regularly have issues with their prepaid accounts that require talking to a customer service agent by telephone. The Bureau also believed that some providers impose fees for making such a call. Additionally, several participants in the Bureau's pre-proposal consumer testing reported having incurred such customer service fees. For these reasons, the Bureau believed that the short form disclosure

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<sup>391</sup> See ICF Report II at 10 and 21.

should include this fee, and thus proposed to include it. The Bureau noted that this disclosure would have been required even if the financial institution did not charge such a fee pursuant to proposed comment 18(b)(2)(i)-1.

No commenters opposed inclusion of customer service fees in the short form disclosure. Instead of disclosing the single highest customer service fee, an issuing bank and several consumer groups recommended disclosing either the fee for both live agent and interactive voice response (IVR) customer service or just the IVR fee. They said otherwise customers may be misled into thinking the disclosed fee includes the cost of a call to an IVR customer service, which generally is free. An office of a State Attorney General recommended that the Bureau ban customer service fees for payroll card accounts because such fees chill inquiry into fraudulent or erroneous charges, but it otherwise supported the disclosure.

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(6), renumbered as § 1005.18(b)(2)(vi), with certain modifications as described below. The Bureau continues to believe that it is important to require disclosure of this fee because consumers regularly have issues or questions that require contact with the financial institution's customer service department, but the fee is not so common as to merit disclosure in the top line of the short form.

The Bureau is adopting the final rule with a notable change from the proposal. The Bureau agrees with commenters that it is beneficial for consumers to specifically be alerted to the generally free or less expensive IVR method of customer service, and thus is finalizing § 1005.18(b)(2)(vi) requiring disclosure in the short form of fees for both automated and live agent customer service. The Bureau's post-proposal consumer testing revealed that, consistent with several commenters' observations, disclosure of a general customer service fee resulted in

many participants incorrectly assuming the fee would remain the same whether the service was live or automated, while all participants understood the distinction when both automated and live agent customer service fees were disclosed.<sup>392</sup> Similarly, when a short form disclosed a fee for “live customer service,” all participants understood that the fee would apply if they spoke to a live customer service agent and that the fee would not be charged if they used the automated customer service system to get information about their accounts.<sup>393</sup> However, because the structure of the multiple service plan short form permitted pursuant to final § 1005.18(b)(6)(iii)(B)(2) does not have sufficient room to disclose both automated and live customer service fees on separate lines, final § 1005.18(b)(2)(vi) states that a financial institution using the multiple service plan short form pursuant to final § 1005.18(b)(6)(iii)(B)(2) must disclose only the fee for live customer service. The Bureau believes that disclosing the live customer service fee is preferable to disclosing the automated fee because of the potential cost to the consumer, as the Bureau understands that automated customer service is typically provided at no cost to the consumer. Finally, the Bureau has made other technical modifications to this provision for clarity. Regarding the request that the Bureau ban customer service fees for payroll card accounts, such a request is outside the scope of this rulemaking.

#### *18(b)(2)(vii) Inactivity Fee*

##### *The Bureau’s Proposal*

Proposed § 1005.18(b)(2)(i)(B)(7) would have required disclosure of a fee for non-use, dormancy, or inactivity on a prepaid account, using the term “Inactivity fee” or a substantially similar term, as well as the duration of inactivity that triggers a financial institution to impose

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<sup>392</sup> See ICF Report II at 12-13.

<sup>393</sup> *Id.* at 23.

such an inactivity fee. The Bureau believed that many financial institutions charge consumers fees when they do not use their prepaid accounts for a specified period of time. The Bureau believed disclosure of these fees is important insofar as consumers sometimes acquire a prepaid account for occasional use; such consumers may want to know that a particular prepaid account program charges fees for inactivity.<sup>394</sup> Thus, the Bureau proposed that financial institutions disclose the existence, duration, and amount of inactivity fees, or that no such fee will be charged, as part the short form disclosure. The Bureau also noted in the proposal, however, that, as with all the disclosures in the short form, the requirement to disclose a particular fee type was not an endorsement of such a fee.<sup>395</sup>

Proposed comment 18(b)(2)(i)(B)(7)-1 would have clarified that when disclosing the inactivity fee pursuant to proposed § 1005.18(b)(2)(ii)(A) as part of the long form disclosure, a financial institution should specify whether this inactivity fee was imposed in lieu of or in addition to the periodic fee disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(1). The Bureau believed that a lower inactivity fee may correlate with a prepaid account product imposing a higher monthly periodic fee on a consumer. Thus, consumers using a prepaid account only sporadically, but often enough to not reach the dormancy period that would trigger the inactivity fee, might actually incur higher fees if they shop based on the inactivity fee instead of the monthly periodic fee. In preparing the proposal, the Bureau considered whether the risk of potential confusion to a consumer outweighed the benefit of including the inactivity fee on the short form disclosure, but believed that providing consumers with the inactivity fee amount and

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<sup>394</sup> In the Bureau's pre-proposal consumer testing, several participants mentioned only using their prepaid cards occasionally.

<sup>395</sup> The Bureau understands that some States bar or limit inactivity fees, and nothing in this final rule is meant to preempt any such State laws.

the relevant duration of dormancy would allow consumers to make an informed choice about which prepaid account product is best for their usage patterns.

*Comments Received*

The Bureau received comments from a program manager, an issuing bank, an industry trade association, a consumer group, and an office of a State Attorney General about the proposed inactivity fee disclosure. In response to the Bureau's solicitation of comments as to whether inactivity fees should be included in the short form disclosure, the program manager responded that disclosure of both the monthly fee and the inactivity fee would not confuse consumers, as most prepaid products either charge a monthly fee or an inactivity fee, but not both. Even if both fees are charged, it said, consumers can get more information about the fees from the long form disclosure or on the website associated with the prepaid program disclosed on the short form. In contrast, the trade association and the issuing bank urged the Bureau not to require disclosure of inactivity fees because, they said, both studies of prepaid cards that they reviewed and information provided to the trade association by its members indicate that inactivity fees are not commonly charged. Additionally, the commenters said there are better means than the short form through which consumers can learn about inactivity fees, such as the Bureau's website, the prepaid issuer's website or its customer service, and that contact information for those sources is included in the short form disclosure. The consumer group and the office of a State Attorney General recommended primarily that the Bureau ban inactivity fees, but otherwise generally supported the disclosure.

The consumer group also asserted that the portion of proposed comment 18(b)(2)(i)(B)(7)-1 directing financial institutions to include in the long form disclosure whether an inactivity fee is charged in lieu of or in addition to the periodic fee disclosure implied the

Bureau's implicit endorsement of charging of both a periodic fee and an inactivity fee—a practice the consumer group opposed. The consumer group also stated that the inactivity fee can be known as “dormancy” or “maintenance” fees, and that the Bureau should require standardized terminology to avoid confusion.

The office of the State Attorney General also recommended that the Bureau require a minimum 10-day notice prior to imposition of an inactivity fee on a payroll card account. The commenter stated that the notice should include the amount of the inactivity fee, the date the fee will be assessed, and a description of how to avoid the fee. The commenter asserted that the notice should be provided through the employee's preferred method of receiving communications from the payroll card account vendor.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(7) and comment 18(b)(2)(i)(B)(7)-1, renumbered as § 1005.18(b)(2)(vii) and comment 18(b)(2)(vii)-1, with certain modifications as described below. Because some consumers use prepaid cards on an infrequent or occasional basis, the Bureau continues to believe that disclosure of the inactivity fee is important to provide specific information to consumers regarding the consequences of their prepaid account use patterns, even though not all financial institutions may charge this fee. The Bureau understands the concerns of those commenters seeking to have the fee removed from the short form, but believes that other means of communicating this potentially significant fee are insufficient.

In the final rule, in place of the proposed disclosure of the “duration of inactivity,” the Bureau is requiring the broader disclosure of the “conditions” that trigger the financial institution

to impose the inactivity fee.<sup>396</sup> This change is intended to ensure that more relevant information is disclosed, including what the consumer must do to avoid imposition of the inactivity fee (such as engaging in at least one transaction during a specified time period), the time period after which the fee is imposed, and how often the fee is assessed. The Bureau has made corresponding changes to comment 18(b)(2)(vii)-1, and also removed the direction to financial institutions to specify in the long form whether the inactivity fee is imposed in lieu of or in addition to the periodic fee, having relocated this portion of the comment to final comment 18(b)(4)(ii)-2, which addresses disclosure in the long form of any conditions under which a fee may be imposed, waived, or reduced. Final comment 18(b)(2)(vii)-1 also contains an illustrative example of an inactivity fee disclosure. Finally, the Bureau made other technical modifications to final § 1005.18(b)(2)(vii) and comment 18(b)(2)(vii)-1 for conformity and clarity.

In response to the comment from a consumer group that proposed comment 18(b)(2)(i)(B)(7)-1 implicitly endorses the simultaneous charge of both a periodic fee and an inactivity fee, the Bureau reiterates that it does not endorse such a practice nor is it aware of any financial institution that imposes both fees at the same time. However, the Bureau believes it is important that consumers be clearly apprised if their prepaid account charges a periodic fee and an inactivity fee in tandem and for this reason it is included in the commentary for the final rule's long form disclosure requirements. In response to the consumer group recommending that the Bureau require standardized terminology for the inactivity fee disclosure to avoid consumer confusion, because the final rule requires financial institutions to make this disclosure using the term "inactivity fee" or a substantially similar term, the Bureau expects that financial institutions will not use substantially different terminology that would confuse consumers. The Bureau also

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<sup>396</sup> Of course, if there is no inactivity fee, no disclosure of conditions is required.

notes that final § 1005.18(b)(8), discussed below, requires financial institutions to use fee names and other terms consistently within and across the short form and long form disclosures.

Regarding the comment requesting that the Bureau ban inactivity fees either generally or for payroll card accounts, such a request is outside the scope of this rulemaking.

*18(b)(2)(viii) Statements Regarding Additional Fee Types*

The proposal would have required two distinct disclosures in the short form designed to alert consumers to other fees financial institutions may charge in addition to the standardized static fees disclosed at the top of the short form. First, following the static fee disclosures, pursuant to proposed § 1005.18(b)(2)(i)(B)(8), the proposed short form would have disclosed up to three fees incurred most frequently by consumers of that particular prepaid card program that were not otherwise disclosed on the short form (referred to as incidence-based fees). Second, pursuant to proposed § 1005.18(b)(2)(i)(B)(10), the short form would have included a statement in bold-faced type near the bottom of the disclosure stating: “We charge [X] other fees not listed here.” As described further below, the Bureau believed that these two elements would help emphasize to consumers that the short form disclosure was not a comprehensive list of all fees, provide consumers with specific information about the additional fees that they were most likely to encounter, and encourage consumers to review the long form disclosure or otherwise seek additional information about the prepaid account’s features and costs.

As discussed further below in connection with both final § 1005.18(b)(2)(viii) and (ix), the Bureau is adopting both proposed disclosures with substantial revisions and is placing them together on the short form to provide greater clarity to consumers and enhance the impact of each disclosure relative to the proposed version. Other adjustments to the final rule to improve consumer comprehension and reduce implementation burdens for financial institutions include,

for example, requiring disclosure of the number of additional types of fees charged in connection with the prepaid account program, rather than counting each variation in fees toward the total as proposed, and requiring disclosure of specific fee types on the short form based on revenue, rather than frequency, and only if in excess of a de minimis threshold. The Bureau believes that these and other changes will make the disclosures easier for financial institutions to prepare and more meaningful for consumers.

### *The Bureau's Proposal*

In proposed § 1005.18(b)(2)(i)(B)(10), the Bureau proposed to require financial institutions to disclose on the short form a statement regarding the number of fees that could be imposed upon a consumer, in a form substantially similar to the clause set forth in proposed Model Forms A-10(a) through (d). The number of fees would have been derived from those listed on the comprehensive long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A), other than those listed in the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(1) through (8).

The Bureau sought comment on whether the proposed disclosure would be useful to consumers or whether listing the total number of additional fees without any other information would actually interfere with consumers' ability to make an informed choice between prepaid account programs. The Bureau acknowledged that there was some risk that consumers might assume that the additional fees were punitive, rather than covering the cost of optional services or product features that the consumer might find advantageous. However, the Bureau also noted that some participants in the Bureau's pre-proposal consumer testing reported finding out about fees only after purchasing their card, and sometimes only after incurring them.<sup>397</sup> On balance,

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<sup>397</sup> See ICF Report I at 7.

the Bureau believed that disclosing in the short form a statement indicating exactly how many additional fees could apply would encourage consumers to seek out more information about a prepaid account before acquisition.

Unlike the proposed incidence-based fees, the Bureau did not believe it was necessary to propose provisions about updating this statement regarding other fees. Pursuant to proposed § 1005.18(f), a financial institution would have been required to include the long form disclosure in a prepaid account's § 1005.7(b)(5) initial disclosures. Any updates made to the fees disclosed in the long form would have required an overhaul of all of the disclosures for a given prepaid account product, which the Bureau believed was unlikely to occur. Proposed comment 18(b)(2)(i)(B)(10)-1 would have provided examples of how to comply with proposed § 1005.18(b)(2)(i)(B)(10). Proposed comment 18(b)(2)(i)(B)(10)-2 would have provided guidance about how to count the total number of fees to disclose pursuant to proposed § 1005.18(b)(2)(i)(B)(10). Specifically, the proposed comment would have clarified that, if the fee a financial institution imposes might vary, even if the variation is based on a consumer's choice of how to utilize a particular service, the financial institution must count each variation of the fee that might be imposed as a separate fee. The proposed comment also would have provided an example illustrating this concept. Finally, the proposed comment would have explained that, even if a fee could be waived under certain conditions, it would still be counted in order to comply with proposed § 1005.18(b)(2)(i)(B)(10).

#### *Comments Received*

Several consumer groups generally supported this portion of the proposed short form disclosure as beneficial to alert consumers to fees not disclosed in the short form and to encourage financial institutions to simplify their fee schedules, although some groups also

advocated providing a paper long-form disclosure in all settings to ensure that consumers could immediately review more detailed information about any additional fees.<sup>398</sup>

A number of industry commenters, including trade associations, issuing banks, and program managers, recommended eliminating the proposed disclosure of the number of additional fees charged. In its place, many of these commenters favored a general statement that other fees are charged, generally with reference to the cardholder agreement for more information about these other fees. One trade association and an issuing bank stated that they found the proposed disclosure rational and reasonable, as it provided useful data to consumers without overwhelming them with information and without overcrowding the short form disclosure, though they also preferred a requirement simply to state that additional fees could apply.

Many of these industry commenters expressed concern that presenting the number of fees would tend to mislead and confuse consumers and thus interfere with consumers' ability to make an informed choice among prepaid account programs. Several industry commenters said that the statement would mislead consumers into believing that these other fees are common fees they are likely to incur when in fact the commenters asserted that the fees may only be charged in connection with optional specialized services. Other industry commenters said that the number of other fees could mislead and confuse consumers into thinking that a product with a higher number of available functions—and fees for those functions—is more expensive or otherwise inferior to a product with fewer other fees, when in fact the opposite may be true. Some industry commenters warned that this stigmatized perception of a higher number of other fees and

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<sup>398</sup> For a discussion of the reasons the Bureau is requiring both a short form and a long form disclosure but is not requiring a written disclosure of all fees in all acquisition settings, see the section-by-section analyses of § 1005.18(b) and (b)(1)(ii) and (iii) respectively.

commensurate costs to update the disclosures may undermine innovation and flexibility, as financial institutions may either discontinue or cease developing new and flexible services that may be advantageous to consumers.

Similarly, one of the consumer groups that recommended disclosure of all fees in all acquisition settings noted that an account that has many more other fees may actually charge fewer fees for the services it has in common with another account, but the proposed short form would make it seem as though it was potentially a more costly product. The consumer group recommended that the Bureau monitor the effect of requiring only the listing of the number of “other” fees on market innovation and the cost and types of fees that are charged.

An issuing bank agreed that the disclosure of the number of additional fees charged can be a factor for consumers in comparing prepaid account terms, but also challenged the methodology of counting each fee variation as a separate fee. It said this methodology could be misleading to consumers as it will lead to an artificial overstatement of the total number of fees. It said that services like bill payment, which may have standard and expedited delivery and are designed to be flexible and offer the most choice and control to consumers, will make the product appear undesirable, as the number of additional fees will be inflated. Instead, it recommended counting fee types rather than individual fee variations within fee types. Two trade associations and two other issuing banks also recommended against counting each fee variation as a separate fee, agreeing that it might unnecessarily increase the number of other fees without commensurate benefit for consumers.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(10), renumbered as § 1005.18(b)(2)(viii), with substantial modifications,

largely in response to comments received. First, the Bureau is locating together both disclosures dealing with fees not otherwise disclosed in the short form: the number of such fees required pursuant to final § 1005.18(b)(2)(viii) and the disclosure of certain such fees (referred to in the proposal as incidence-based fees) pursuant to final § 1005.18(b)(2)(ix). Second, instead of requiring disclosure of the number of additional *fees*, including all fee variations, the Bureau is requiring disclosure of the number of additional *fee types*.<sup>399</sup> Third, instead of requiring the number of additional fees that could be imposed on a consumer in general, the Bureau is limiting this disclosure to the number of additional fee types that the financial institution may charge consumers with respect to the prepaid account. Fourth, the Bureau is requiring disclosure of an additional statement if a financial institution discloses additional fee types pursuant to final § 1005.18(b)(2)(ix) that directs consumers to the disclosure of those additional fee types that follows. Fifth, the Bureau has relocated the statement regarding the number of additional fee types from the bottom portion of the proposed short form disclosure to a more clearly delineated “additional fee types” portion that follows the static fees.

Finally, the Bureau is not adopting any of the proposed commentary, but rather is adopting new comments 18(b)(2)(viii)(A)-1 through -4 and 18(b)(2)(viii)(B)-1 to clarify various issues regarding application of the final rule.

*Statement Regarding the Number of Additional Fee Types Charged Required by  
§ 1005.18(b)(2)(viii)(A)*

Final § 1005.18(b)(2)(viii)(A) requires a statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: “We charge [x] other types of fees.”

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<sup>399</sup> See final comment 18(b)(2)(viii)(A)-2 for an explanation of the term “fee type” and a list of examples of fee types and fee variations within those fee types.

The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding fees required to be disclosed pursuant to final § 1005.18(b)(2)(i) through (vii) and (5) and any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61.

The Bureau is finalizing § 1005.18(b)(2)(viii) because it continues to believe, as explained in the proposal, that it is crucial to inform consumers that there may be a cost for features not otherwise captured in the short form disclosure. Disclosure of this information will help both alert consumers that the short form is not a comprehensive fee disclosure and encourage consumers to seek out more information about the prepaid account from the long form disclosure and other sources. As noted in the proposal, the Bureau's pre-proposal consumer testing revealed that participants often did not know all the fees that might be assessed prior to their purchase of a prepaid account. In addition, the Bureau's post-proposal consumer testing revealed that, while not all participants understood the significance of the disclosure of the number of additional fee types, participants were keenly interested in this disclosure, which the Bureau believes will motivate consumers to seek more information about these additional fee types.<sup>400</sup>

The Bureau declines to use a more general statement to alert consumers that there may be additional fees, as requested by some industry commenters. The Bureau believes that disclosure of the specific number of additional fee types, as opposed to a general statement regarding other fees charged, provides consumers with concrete information and stronger motivation to both better inform themselves and to direct their searches for additional information. Moreover, as

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<sup>400</sup> ICF Report II at 11-12 and 22.

discussed below, the Bureau believes that focusing the disclosure on tallying the *types* of fees rather than counting each variation in fees toward the total directly addresses industry’s concerns that disclosing a specific number of other fees would prompt consumers to assign undue negative weight to the fact that a product may have many fee variations. The change to fee types also helps reduce compliance burden across the two related disclosures of the number of additional fee types required by this provision and the disclosure of additional fee types required by final § 1005.18(b)(2)(ix).

The Bureau disagrees with commenters that the comprehensive disclosure of all fees in another disclosure, such as the long form or the cardholder agreement, negates the rationale for disclosing the number of additional fee types in the short form. The Bureau believes that consumers generally would rely solely on the short form disclosure in making their acquisition decisions if they do not see language that specifically emphasizes the value of consulting the long form. The Bureau thus believes that listing the total number of fee types that are not otherwise listed on the short form will complement and enhance the statement in final § 1005.18(b)(2)(xiii) directing consumers to the long form, providing a concrete incentive to consult the longer disclosure for products that are more complex.<sup>401</sup> Specifically, the Bureau’s post-proposal consumer testing revealed that, when asked how they could learn more about “other fees” not shown on the short form, practically all participants referred to the financial institution’s telephone number and website disclosed on the prototype short form disclosure (*i.e.*, the information sources required by final § 1005.18(b)(2)(xiii)).<sup>402</sup> In sum, the Bureau believes that the disclosure of the number of additional fee types in the short form pursuant to

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<sup>401</sup> See ICF Report II at 12 and 22.

<sup>402</sup> *Id.*

§ 1005.18(b)(2)(viii) will directly inform consumers of important information and serve to spur them to further inquiry in other more detailed disclosures.

The Bureau acknowledges commenters' concerns that some consumers may tend to assume that a prepaid account with a relatively high number of additional fees is more expensive or less desirable than other accounts, even when the opposite may be true. In part to address this concern, the Bureau is finalizing the rule requiring financial institutions to disclose the total number of *fee types*, rather than the total number of all *fees* (including all fee variations within a fee type) that would have been required under the proposal. Requiring disclosure of the number of fee types instead of the number of discrete fees likely will reduce the number required to be disclosed for a typical prepaid account program. The Bureau believes that this modification for the final rule should help ameliorate the risk raised by some commenters that consumers will reject prepaid accounts with a high number of additional fees out of hand without seeking more detailed fee information to determine whether the products meet their needs. Moreover, the requirements for both final § 1005.18(b)(2)(viii) and (ix) are based on fee types (as opposed to one being based on discrete fees and the other on fee types), thereby reducing the burden of developing and maintaining two separate counts to determine and disclose the elements under their respective rules. The Bureau is also providing a list of fee types and fee variations in final comment 18(b)(2)(viii)(A)-2, discussed below—which are based on fees that the Bureau is aware exist in the current prepaid marketplace—that a financial institution may use when determining both the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). The Bureau believes that these provisions will reduce the risks and burdens raised by commenters concerning the proposed disclosure of the total number of fees not

otherwise listed, while still providing the consumer with an important signal and incentive to investigate prepaid accounts that have more complex pricing structures.

In addition, the Bureau believes that this modification addresses commenters' concerns, at least in part, regarding a potential chill to innovation of new features because such fee variations within a fee type will not be required to be separately counted for purposes of this disclosure. The Bureau intends to monitor compliance with this rule, including financial institutions' disclosures of the number of additional fee types charged, as well as market innovations in the prepaid industry more generally, and will consider additional action in future rulemakings if necessary.

Modifying the final rule to require disclosure of the number of fee types also addresses concerns raised by some commenters that the proposed disclosure would have included many fees that are not commonly incurred by consumers—including fees for discretionary features that require specific consumer action before they are incurred. For example, under the final rule, a financial institution would count bill payment as an additional fee type if it offered this feature, but, unlike the rule as proposed, would not count each of the discrete fee variations within bill payment such as ACH bill payment, paper check bill payment, check cancellation, and regular or expedited delivery of a paper check. Thus, in addition to a reduction in the overall number of additional fees required to be disclosed under the final rule, a financial institution would similarly not be required to disclose many of the less common fees and fees triggered by affirmative consumer action. While some of the additional fee types required to be disclosed in the final rule may still be less common or triggered only when a consumer elects to use an optional service, the Bureau reiterates that the primary objective of this provision is to alert consumers to fee information absent from the short form and to spur consumers to take action to

gain a more fulsome understanding of the terms of a prospective prepaid account; this disclosure fulfils this objective.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(ix) below, the Bureau is adopting a de minimis threshold with respect to the disclosure of specific additional fee types. The Bureau does not believe a de minimis threshold would be appropriate for the disclosure required by § 1005.18(b)(2)(viii)(A) regarding the total number of additional fee types. The Bureau notes, however, that with the de minimis threshold in § 1005.18(b)(2)(ix), disclosure of such fee types under final § 1005.18(b)(2)(ix) would not be required, although such fee types would be counted in the total number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii).

Finally, the Bureau continues to believe it is not necessary to include in the final rule specific requirements for updating the statement regarding the number of additional fee types charged required by final § 1005.18(b)(2)(viii)(A). As discussed in the section-by-section analysis of § 1005.18(b) above, the Bureau does not believe that financial institutions change the fee schedules for prepaid accounts often, particularly those sold at retail. If a financial institution is making available a new optional service for all prepaid accounts in a particular prepaid account program, Regulation E provides a means for financial institutions to notify consumers of terms associated with a new EFT service that is added to a consumer's account, in § 1005.7(c). A financial institution may provide new consumer disclosures in accordance with § 1005.7(c) post-acquisition, without needing to pull and replace card packaging that does not reflect that new optional feature in the disclosure of the number of additional fee types pursuant to § 1005.18(b)(2)(viii)(A). The Bureau does expect, however, that financial institutions will keep their other disclosures up to date (including those provided electronically and orally, as well as

disclosures provided in writing that are not a part of pre-printed packaging materials, such as those printed by a financial institution upon a consumer's request). The Bureau intends to monitor financial institutions' practices in this area, however, and may consider additional requirements in a future rulemaking if necessary.

Final comment 18(b)(2)(viii)(A)-1 clarifies what fee types to count in the total number of additional fee types, specifically excluding fees otherwise required to be disclosed in and outside the short form pursuant to final § 1005.18(b)(2)(i) through (vii) and (5) and any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61. Excluding the static fees and fees required to be disclosed outside the short form avoids the duplicative counting of fees already disclosed to the consumer. As discussed in more detail below, the Bureau has made a strategic decision to focus the bulk of the short form disclosure on usage of the prepaid account itself rather than any charges related to overdraft credit features. The possibility that consumers may be offered an overdraft credit feature for use in connection with the prepaid account is addressed in the short form pursuant to § 1005.18(b)(2)(x), which requires the following statement if such a feature may be offered: "You may be offered overdraft/credit after [x] days. Fees would apply." Consistent with this overall decision, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit feature that may be offered at a later date to some prepaid consumers from the disclosures regarding additional fees under both final § 1005.18(b)(2)(viii) and (ix). If consumers are interested in such a feature, they can look to the Regulation Z disclosures in the long form pursuant to final § 1005.18(b)(4)(vii), discussed below, for more details.

Final comment 18(b)(2)(viii)(A)-1.i explains that the number of additional fee types includes only fee types under which the financial institution may charge fees; accordingly, third-party fees are not included unless they are imposed for services performed on behalf of the financial institution. The comment additionally clarifies that the number of additional fee types includes only fee types the financial institution may charge consumers with respect to the prepaid account; accordingly, additional fee types does not include other revenue sources such as interchange fees or fees paid by employers for payroll card programs, government agencies for government benefit programs, or other entities sponsoring prepaid account programs for financial disbursements.

Final comment 18(b)(2)(viii)(A)-1.ii explains that fee types that bear a relationship to, but are separate from, the static fees disclosed in the short form must be counted as additional fee types for purposes of final § 1005.18(b)(2)(viii). The comment also provides a detailed explanation regarding the treatment of international ATM fees and fees for reloading funds into a prepaid account in a form other than cash (such as electronic reload and check reload). In addition, the comment explains that additional fee types disclosed in the short form pursuant to final § 1005.18(b)(2)(ix) must be counted in the total number of additional fee types. This is because the exclusions in final § 1005.18(b)(2)(ix)(A)(1) and (2) are only for fees required to be disclosed pursuant to final § 1005.18(b)(2)(i) through (vii) and (5) and any finance charges imposed on the prepaid account as described in Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61. Further, the statement required by final § 1005.18(b)(2)(viii)(B) explains that the additional fee types disclosed are some of the total number of additional fee types.

The Bureau is adopting new comment 18(b)(2)(viii)(A)-2 to provide guidance regarding the calculation of the number of additional fee types pursuant to final § 1005.18(b)(2)(viii) as well as to address concerns raised by an industry commenter regarding how to categorize fees in determining the additional fee types to disclose under final § 1005.18(b)(2)(ix). The comment explains that the term fee type, as used in final § 1005.18(b)(2)(viii) and (ix), is a general category under which a financial institution charges fees to consumers. A financial institution may charge only one fee within a particular fee type, or may charge two or more variations of fees within the same fee type. (The Bureau notes that an additional fee type for which a financial institution does not charge any fee to the consumer, including for any variations of the additional fee type, is not counted in the total number of additional fee types under final § 1005.18(b)(2)(viii) nor required to be disclosed on the short form under final § 1005.18(b)(2)(ix).) The comment goes on to provide a list of examples of fee types a financial institution may use when determining both the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). The comment also explains that a financial institution may create an appropriate name for other additional fee types.

The Bureau compiled the list of examples of fee types in new comment 18(b)(2)(viii)(A)-2 to provide guidance to financial institutions and to help facilitate their categorization of additional fee types for satisfying the requirements in final § 1005.18(b)(2)(viii)(A) and (ix). The list also may encourage standardization of this portion of the short form in that, although additional fee types disclosed will vary across short forms for different prepaid account programs, the Bureau believes financial institutions will generally use consistent nomenclature for additional fee types identified on the list. The Bureau compiled this list of examples of fee

types based on particular fee types referenced in comments received on the proposal and by reviewing the packaging of and disclosures for scores of prepaid account programs.<sup>403</sup> The Bureau balanced multiple considerations in compiling the list in final comment 18(b)(2)(viii)(A)-2 for purposes of both final § 1005.18(b)(2)(viii) and (ix), including existing industry practices with regard to fee types, the accounting burdens associated with relatively narrower or broader definitions of fee types, and the potential benefits to both industry and consumers in using narrower definitions of fee types to communicate information about specific account features and fees. The Bureau believes the resulting list strikes an appropriate balance by capturing categories and terms employed by the prepaid industry itself that will be useful to financial institutions and consumers in determining and understanding additional fee types. The Bureau is providing flexibility to financial institutions to fashion appropriate names for other fee types, including fee types for services that do not yet exist in the prepaid marketplace.

Final comment 18(b)(2)(viii)(A)-3 clarifies that, pursuant to final § 1005.18(b)(2)(vi), a financial institution using the multiple service plan short form disclosure pursuant to final § 1005.18(b)(6)(iii)(B)(2) must disclose only the fee for calling customer service via a live agent. Thus, pursuant to final § 1005.18(b)(2)(viii), any charge for calling customer service via an interactive voice response system must be counted in the total number of additional fee types.

Final comment 18(b)(2)(viii)(A)-4 clarifies that a financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). The Bureau is including this comment on consistency to make clear

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<sup>403</sup> As part of the Bureau's Study of Prepaid Account Agreements, Bureau staff found fee tables or other explanations of at least some of the fees charged for 278 of the 325 agreements reviewed. *See* Study of Prepaid Account Agreements at 29 and note 49.

that a financial institution is not permitted to, for example, shorten its list of fee types into a few broad categories (in order to minimize the number of additional fee types required to be disclosed pursuant to final § 1005.18(b)(2)(viii)) but use a more detailed list of fee types broken out into a greater number of categories when assessing its obligations under final § 1005.18(b)(2)(ix) (in order to maximize the number of fee types that may fall below the de minimis threshold pursuant to final § 1005.18(b)(2)(ix)(A)(2)).

*Statement Directing Consumers to Disclosure of Additional Fee Types Required by § 1005.18(b)(2)(viii)(B)*

Final § 1005.18(b)(2)(viii)(B) requires that, if a financial institution makes a disclosure of specific additional fee types pursuant to final § 1005.18(b)(2)(ix), the financial institution must include a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by final § 1005.18(b)(2)(viii)(A), using the following clause or a substantially similar clause: “Here are some of them:”.

The disclosure required by final § 1005.18(b)(2)(viii)(A) indicating the number of additional fee types will generally be followed by the specific disclosure of two additional fee types pursuant to final § 1005.18(b)(2)(ix). The Bureau believes that a brief transition statement linking these two disclosures will enhance consumer understanding of both disclosures and dispel potential consumer misunderstanding that features are not offered if they are not disclosed on the short form.<sup>404</sup> Thus, the line in the short form disclosure following the static fees would

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<sup>404</sup> See the section-by-section analysis of § 1005.18(b)(2)(ix) below discussing industry commenters’ concern that disclosure of the proposed incidence-based fees would mislead consumers into thinking that features are not offered if they are not disclosed as incidence-based fees.

disclose the following or substantially similar clauses: “We charge X other types of fees. Here are some of them.”.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(ix) below, the Bureau believes that the brevity and clarity of the short form disclosure necessary for optimal consumer comprehension and engagement cannot support a detailed explanation of what additional fee types are or the criteria the financial institution used in determining which additional fee types to disclose. The Bureau’s pre-proposal consumer testing of such explanations support this conclusion.<sup>405</sup> Pre-proposal testing of a statement intended to inform consumers that the fees listed were those that generated significant revenue for the financial institution resulted in minimal participant comprehension or notice.<sup>406</sup> Post-proposal testing of a similar disclosure that, in addition to including an explanation of the criteria for disclosing such fees (*i.e.*, that the two fees listed were the most commonly charged), also directed consumers where to find detail about all fees, similarly did not increase participant comprehension.<sup>407</sup>

Thus, to make the connection for consumers that the additional fee types disclosed pursuant to final § 1005.18(b)(2)(ix) are a subset of the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii)(A), and that absence of any feature on the short form does not necessarily mean the prepaid account program does not offer that feature, the Bureau is including in the final rule the transition statement set forth above.

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<sup>405</sup> See ICF Report I at 35 and ICF Report II at 22-23.

<sup>406</sup> See ICF Report I at 35. (Certain prototype short form disclosures tested included the statement: “The fees below generate significant revenue for this company.”)

<sup>407</sup> See ICF Report II at 22-23. (Certain prototype short form disclosures tested included the statement: “We charge [x] additional fees. Details on fees inside the package, at 800-234-5678 or at [bit.ly/XYZprepaids](http://bit.ly/XYZprepaids). These are our most common.”.)

Final comment 18(b)(2)(viii)(B)-1 provides guidance regarding the statement required by final § 1005.18(b)(2)(viii)(B) directing consumers to the disclosure of additional fee types pursuant final § 1005.18(b)(2)(ix). The comment explains that a financial institution that makes no disclosure pursuant to final § 1005.18(b)(2)(ix) may not include a disclosure pursuant to final § 1005.18(b)(2)(viii)(B). The comment also provides examples regarding substantially similar clauses a financial institution may use in certain circumstances to make its disclosures under final § 1005.18(b)(2)(viii)(A) and (B), such as when a financial institution has several additional fee types but is only required to disclose one of them pursuant to final § 1005.18(b)(2)(ix).

*18(b)(2)(ix) Disclosure of Additional Fee Types*

As explained at the beginning of the section-by-section analysis of § 1005.18(b)(2)(viii) above, the proposal would have required two distinct disclosures in the short form designed to alert consumers to other fees financial institutions may charge in addition to the standardized static fees disclosed at the top of the short form. First, following the static fee disclosures, pursuant to proposed § 1005.18(b)(2)(i)(B)(8), the proposed short form would have disclosed up to three fees incurred most frequently by consumers of that particular prepaid card program that were not otherwise disclosed on the short form (referred to as incidence-based fees). Second, pursuant to proposed § 1005.18(b)(2)(i)(B)(10), the short form would have disclosed a statement in bold-faced type near the bottom of the disclosure stating: “We charge [X] other fees not listed here.” As described herein, the Bureau believed that these two elements would help emphasize to consumers that the short form disclosure was not a comprehensive list of all fees, provide consumers with specific information about the additional fees that they were most likely to encounter, and encourage consumers to review the long form or otherwise seek additional information about the prepaid account’s features and costs.

As discussed in connection with both final § 1005.18(b)(2)(viii) and (ix), the Bureau is adopting both proposed disclosures with substantial revisions and is placing them together on the short form to provide greater clarity to consumers and enhance the impact of each disclosure relative to the proposed version. Other adjustments made to the final rule to improve consumer comprehension and reduce implementation burdens for financial institutions include, for example, requiring disclosure of the number of additional types of fees charged in connection with the prepaid account program, rather than counting each variation in fees toward the total as proposed and requiring disclosure of specific fee types on the short form based on revenue, rather than frequency, and only if in excess of a de minimis threshold. The Bureau believes that these and other changes will make the disclosures easier for financial institutions to prepare and more meaningful for consumers.

#### *The Bureau's Proposal*

In addition to the fees that all financial institutions would have had to disclose in the static portion of the short form disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(1) through (7), the Bureau also proposed that financial institutions disclose up to three additional “incidence-based” fees not already disclosed elsewhere on the short form that are incurred most frequently for that particular prepaid account product. If a financial institution offered several prepaid account products, the incidence-based fees analysis would have had to be conducted separately for each product, based on usage patterns in the prior 12-month period, and updated annually. Thus, the incidence-based fees that would have been disclosed to a consumer on the short form could have varied from one product to the next depending on which fees consumers incurred most frequently for each product.

The Bureau proposed this disclosure because it was concerned that, while the fee disclosures in the static portion of the short form under the proposed rule would have included the key fees on most prepaid accounts, that list is not comprehensive and there could be other fees that consumers might incur with some frequency. The Bureau also had concerns that, absent this incidence-based disclosure, there was a risk of evasion whereby a financial institution trying to gain an advantage relative to its competitors could restructure its fee schedule to make the fees disclosed in the static portion of the short form lower, while structuring its pricing to make up or even increase overall revenue by imposing fees that would not otherwise be disclosed on the short form. The Bureau believed that requiring financial institutions to disclose other fees that are frequently paid by consumers would limit the ability of financial institutions to avoid having to disclose relevant fee information up front on the short form disclosure.

Additionally, the Bureau believed that the incidence-based portion of the short form, though it would have mandated a specific metric to determine which additional fees may be listed, would have provided some flexibility to industry participants to disclose up to three more fees on the short form particular to each prepaid account product and that may be imposed for features that could be appealing to consumers.

*Proposed § 1005.18(b)(2)(i)(B)(8)(I).* Accordingly, proposed § 1005.18(b)(2)(i)(B)(8)(I) would generally have required disclosure of up to three fees, other than any of those fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(1) through (7), that were incurred most frequently in the prior 12-month period by consumers of that particular prepaid account product.

For existing prepaid account products, proposed § 1005.18(b)(2)(i)(B)(8)(I) would have required that, at the same time each year, a financial institution assess whether the incidence-based fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(8)(I) were the most frequently

incurred fees in the prior 12-month period by consumers of that particular prepaid account product. In accordance with the timing requirements of proposed § 1005.18(h), a financial institution would have had to execute any updates required by the rules within 90 days for disclosures provided in written, electronic, or oral form pursuant to proposed § 1005.18(b)(1)(i). Disclosures provided on the packaging material of prepaid account access devices, for example, in retail stores pursuant to proposed § 1005.18(b)(1)(ii), or in other locations, would have had to be revised when the financial institution printed new packaging material for its prepaid account access devices, in accordance with the timing requirements in proposed § 1005.18(h). All disclosures provided pursuant to proposed § 1005.18(b)(2)(i)(B)(8)(I) and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary would have had to include such changes, in accordance with the timing requirements in proposed § 1005.18(h).

The Bureau believed that it was important for the incidence-based fee disclosure to list a prepaid account product's most commonly incurred fees. The Bureau, however, recognized that financial institutions would need time to update disclosures upon assessing whether any changes to the incidence-based fee disclosure are needed, although the Bureau expected such changes would be infrequent. The Bureau believed such updates would be easier for disclosures provided in electronic form or in written form outside of a retail setting. Thus, the Bureau proposed that financial institutions would have had to make updates to written, electronic, and oral disclosures within 90 days to ensure that consumers receive up-to-date incidence-based fee disclosures. The Bureau, however, recognized that it could be more complicated and time-consuming for financial institutions to make updates to packages used to market prepaid accounts in retail stores, and therefore proposed that financial institutions would have been able to implement updates on

packaging material whenever they are printing new stock during normal inventory cycles. The Bureau acknowledged that the proposal could result in some disclosures for the same prepaid account product (*i.e.*, electronic disclosures provided online or printed disclosures provided in person without the use of packaging) having different incidence-based fee disclosures on the short forms provided on retail store packaging material. The Bureau, however, did not believe that this discrepancy would significantly impact a consumer's decision regarding which prepaid account product to acquire since consumers would most likely be comparing the disclosures for two distinct products, and not reviewing disclosures side-by-side for the same prepaid account product found in different acquisition channels.

The Bureau also recognized that allowing financial institutions to continue to use packaging with out-of-date incidence-based fee disclosure in retail stores could reduce the effectiveness of this disclosure. The Bureau, however, believed that imposing a cut-off date after which sale or distribution of out-of-date retail packages would be prohibited could be overly burdensome.

The Bureau also proposed to adopt several comments to provide additional guidance on incidence-based fee disclosures. Proposed comment 18(b)(2)(i)(B)(8)-1 would have provided guidance regarding the number of incidence-based fees to disclose in the short form, including when no fees, more than three, or less than three fees meet the criteria in the definition of incidence-based fees. Proposed comment 18(b)(2)(i)(B)(8)-2 would have set forth how to determine which fees were incurred most frequently in the prior 12-month period and would have also clarified that the price for purchasing or activating a prepaid account could qualify as an incidence-based fee. Proposed comment 18(b)(2)(i)(B)(8)(I)-3 would have provided guidance regarding the disclosure of incidence-based fees in accordance with the proposed effective date

regime in proposed § 1005.18(h). Proposed comment 18(b)(2)(i)(B)(8)(I)-4 would have explained how to disclose incidence-based fees when disclosing multiple service plans on a short form disclosure that would have been permitted by proposed § 1005.18(b)(3)(iii)(B). Proposed comment 18(b)(2)(i)(B)(8)(I)-5 would have explained that proposed § 1005.18(b)(2)(i)(B)(8)(I) would have permitted a reprint exception that would not have required that financial institutions immediately destroy existing inventory in retail stores or elsewhere in the distribution channel, to the extent the disclosures on such packaging materials were otherwise accurate, but would have required that, if a financial institution determines that an incidence-based fee listed on a short form disclosure in a retail store no longer qualified as one of the most commonly incurred fees and made the appropriate change when printing new disclosures, any packages in retail stores that contained the previous incidence-based fee disclosure could still be sold in compliance with proposed § 1005.18(b)(2)(i)(B)(8)(I).

*Proposed § 1005.18(b)(2)(i)(B)(8)(II).* Recognizing that new prepaid products have no prior fee data history, the Bureau also proposed additional requirements to address such circumstances. Proposed § 1005.18(b)(2)(i)(B)(8)(II) would have required that, if a particular prepaid account product was not offered by the financial institution during the prior 12-month period, the financial institution would have to disclose up to three fees other than any of those fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(I) through (7) that it reasonably anticipates will be incurred by consumers most frequently during the next 12-month period. The incidence-based fee disclosures for newly-created prepaid account products would have to be included on all disclosures created for the prepaid account product, whether the disclosure is written, electronic, or on the packaging material of a prepaid account product sold in a retail store, in accordance with the timing requirements in proposed § 1005.18(h). Although financial

institutions do not have actual fee data for new prepaid account products, the Bureau believed that they nonetheless would have a reasonable expectation as to which fees would be incurred most frequently. Thus, financial institutions would have been required, for those prepaid account products without prior fee data, to estimate in advance the fees that should be disclosed in the incidence-based portion of the short form disclosure. Proposed comment 18(b)(2)(i)(B)(8)(II)-1 would have explained that the financial institution should use available data to reasonably anticipate what fees should be disclosed and provided an example to illustrate.

*Proposed § 1005.18(b)(2)(i)(8)(III).* The Bureau also proposed additional requirements for when a particular prepaid account product's fee schedule changes. Specifically, proposed § 1005.18(b)(2)(i)(B)(8)(III) would have required that, if a financial institution changes an existing prepaid account product's fee schedule at any point after assessing its incidence-based fee disclosure for the prior 12-month period pursuant to proposed § 1005.18(b)(2)(i)(B)(8)(I), it would have had to determine whether, after making such changes, it reasonably anticipates that the existing incidence-based fee disclosure would represent the most commonly incurred fees for the remainder of the current 12-month period. If the financial institution reasonably anticipates that the current incidence-based fee disclosure would not have represented the most commonly incurred fees for the remainder of the current 12-month period, it would have had to update the incidence-based fee disclosure within 90 days for disclosures provided in written or electronic form, in accordance with the timing requirements in proposed § 1005.18(h).

Proposed § 1005.18(b)(2)(i)(B)(8)(III) also would have required that disclosures provided on a prepaid account product's packaging material, for example, in retail stores pursuant to proposed § 1005.18(b)(1)(ii), or in other locations, must be revised when the financial institution is printing new packaging material, in accordance with the timing requirements of proposed

§ 1005.18(h). All disclosures provided pursuant to proposed § 1005.18(b)(2)(i)(B)(8)(III) and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary must include such changes, in accordance with the timing requirements of proposed § 1005.18(h). Proposed comment 18(b)(2)(i)(B)(8)(III)-1 would have provided an example demonstrating the impact of a fee change on an existing prepaid account product's incidence-based fee disclosure.

The Bureau noted in the proposal that its proposed model forms did not isolate or identify these incidence-based fees in a way that would have distinguished them from the other fees, outside the top-line, disclosed under proposed § 1005.18(b)(2)(i)(B)(5) through (7). Thus, the Bureau explained, a consumer comparing two different prepaid account products may see some types of fees that are the same (the seven standardized fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(1) through (7)) and may see some that differ (the three incidence-based fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(8)). During its pre-proposal consumer testing, the Bureau tested language identifying the incidence-based fees as such, but this language was often ignored or misunderstood by participants.<sup>408</sup> Nevertheless, the Bureau recognized that some variation on the short form fee disclosure could lead to confusion, and thus the Bureau sought comment on whether the model forms should more clearly indicate to a consumer the meaning of the incidence-based fees.

The Bureau also recognized that the proposed procedure for determining and disclosing incidence-based fees could be complicated in some instances, particularly for new prepaid accounts or those with revised fee schedules. Further, the Bureau acknowledged that basing the incidence-based fees determination on fee incidence might not make sense for all prepaid

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<sup>408</sup> See ICF Report I at 35.

products. Thus, the Bureau sought comment on all aspects of this incidence-based fees proposal. Among other things, the Bureau specifically solicited feedback on whether other measures, such as fee revenue, would be better measures of the most important remaining fees to disclose to consumers considering a prepaid account, and whether there should be a de minimis threshold below which changes to the incidence ranking would not require form revisions, and if so, what that threshold should be.

### *Comments Received*

Numerous industry commenters spanning a panoply of interests in the prepaid industry including trade associations, issuing banks, credit unions, program managers, a law firm commenting on behalf of a coalition of prepaid issuers, and other parties involved in the prepaid industry, as well as several employers, addressed the proposed requirement to disclose incidence-based fees, with the vast majority recommending the Bureau eliminate this aspect of the short form disclosure. Their specific concerns and criticisms are discussed in detail below. Industry commenters, however, generally supported the proposed reprint exception. That exception would have excused financial institutions from annually updating the incidence-based fees for disclosures provided on a prepaid account product's packaging material, for example, in retail stores, until the financial institution prints new packaging material.

Industry commenters offered myriad reasons in support of their recommendation that the Bureau not finalize the requirement to disclose incidence-based fees. Industry commenters' concerns, summarized here, are discussed in more detail in the paragraphs that follow. Some said that the disclosure would heavily burden industry with what they viewed to be little, if any, benefits to consumers and, if finalized as proposed, would likely cause some prepaid providers to exit the market. Many said that this disclosure defeats the uniformity in the short form and thus

could inhibit consumers' ability to comparison shop. Many others asserted that the disclosure would create a discrepancy between fees disclosed online and those disclosed on packaging for financial institutions taking advantage of the reprint exception. Some industry commenters suggested that the incidence-based fees disclosed may not be germane to all consumers. Some also asserted the disclosure would be redundant because the incidence-based fees can be found elsewhere, such as on the long form disclosure.

Specifically, some industry commenters voiced concern regarding consumer comprehension of the significance of incidence-based fees. They said that the disclosure defeats uniformity within and comparison shopping among short form disclosures because incidence-based fees would vary among different prepaid account programs and over time even for the same program, which they contended would mislead consumers into thinking that absence of a certain fee on the short form may mean the feature is not offered. A few commenters said that because of differences in customer usage, some of the disclosed incidence-based fees would not be germane to some consumers. Some industry commenters contended that the Bureau's pre-proposal consumer testing showed that consumers did not understand if they would incur incidence-based fees, that frequency of incidence determined disclosure of one feature over another, or how the information was relevant to them in selecting a prepaid account. One industry commenter said that addressing this confusion with an explanation of these topics in the short form disclosure would take up valuable space and create its own confusion, but that eliminating the requirement to disclose incidence-based fees would solve this problem while reducing the overwhelming amount and complexity of the information required in the short form disclosure.

Some industry commenters questioned the Bureau's rationale for the disclosure of incidence-based fees in the proposed rule, saying that the risk of fee evasion by industry is unwarranted in the current competitive prepaid marketplace.

Some industry commenters questioned the validity of the data upon which incidence-based fees would be calculated, saying incidence-based fees were unlikely to change significantly absent structural changes to the program and that, because prepaid accounts are typically short-lived, annual assessment would not provide a sufficient basis from which to extrapolate meaningful information.

Some industry commenters, including issuing banks, credit unions, and industry trade associations, asserted that requiring disclosure of incidence-based fees for products distributed in bank branch settings is unnecessary as availability of the long form disclosure prior to acquisition and bank personnel to answer questions both encourage more thoughtful consumer review. Some of these industry commenters claimed incidence-based disclosures would disproportionately burden community banks and credit unions because they use outside vendors to handle disclosures, creating higher costs and unfair due diligence demands on banks to oversee the vendors. Some said that, without an exemption for small issuers, compliance costs may force these providers out of the market. A program manager for government benefit account programs recommended an exemption for accounts arranged for or issued by government agencies, saying agencies usually each offer only one prepaid account program and consequently, consumers do not need disclosures to be provided in a format designed to facilitate comparison of multiple prepaid accounts offered by the agency. Alternatively, the commenter recommended permitting government agencies to aggregate their data for incidence-based fees rather than analyzing each program separately.

Many industry commenters focused on the perceived burden of this proposed requirement, saying the disclosure would be complex, costly, and difficult to implement. One industry commenter said the fear that any changes to incidence-based fees will require changes to packaging and marketing materials would stifle innovation and development of new services or new prepaid products. Another recommended the Bureau commission a study to confirm that the benefits of the incidence-based disclosure outweigh the burden. Many industry commenters said it would be a major undertaking to identify and calculate incidence-based fees, with some saying the proposed annual update alone would necessitate a massive amount of new procedures, controls, system updates, and packaging design changes.

Some questioned the meaning in the proposed rule of the term “separate prepaid account program,” saying initial and ongoing identification and calculation of incidence-based fees would be particularly cost prohibitive for entities with hundreds or thousands of separate prepaid account programs, as they said is the case with certain companies that issue or manage payroll card account programs. Some commenters involved in payroll card account programs queried whether the proposed rule would require them to calculate incidence-based fees for each individual program negotiated separately with an employer or whether they could aggregate data across programs. For example, one payroll card account program manager with 4,000 individual employer programs said every annual printing would cost \$1 per cardholder such that annual printing costs alone would be a multimillion dollar undertaking.

Some industry commenters questioned specific aspects of the proposed incidence-based fee disclosure. A few commenters questioned the proposed 90-day period for updates, saying it was unclear whether both assessing and updating incidence-based fees would be required in that time frame and recommended various extensions of the period, for example, to 120 days for both

assessment and updating, 12 months after analysis to update, or within a reasonable time after a change. A trade association commenter said the requirement to disclose additional fee types would pose a “compliance trap” because financial institutions could be second-guessed on how they categorized them.<sup>409</sup> Another industry commenter said financial institutions would have to justify their categorization and tracking of fees to examiners, even when vendors perform that service (as, they said, is the case with many small banks). Another commenter said the “reasonable” standard for estimating incidence for new products would be complicated and inexact, with no guarantee of accuracy but would function as a de facto strict liability standard.

Many industry commenters responded to the Bureau’s solicitation of comments regarding alternatives to the proposed incidence-based fee disclosure. They variously recommended the following in the short form disclosure: a general statement that other fees may apply, disclosing all fees, or adding to the static fees already disclosed on the short form up to three more common fees chosen by the financial institution or determined by the Bureau on the basis of research. Some industry commenters recommended modifying the proposed update schedule by requiring the update every two years, or requiring it only when there is a fee change which would require the financial institution to update the prepaid account terms, packaging, and disclosures in any case.

A few industry commenters addressed the Bureau’s queries regarding whether the disclosure should be based on assessment of fee frequency, as proposed, or fee revenue. A trade association and an issuing bank said they had no preference, as long as the criteria are clear, easy to determine, and not subject to annual updating. A program manager also said it had no

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<sup>409</sup> While proposed § 1005.18(b)(2)(i)(8)(I) would have required disclosure of up to three *fees*, proposed comment 18(b)(2)(i)(B)(8)(I)-2 would have explained that, in determining incidence-based fees, financial institutions would have had to total the incidence for each *fee type* incurred during the prescribed period.

preference as it has the data necessary for either calculation, and the cost and compliance burden would be the same either way.

The proposal sought comment on a de minimis threshold below which changes to the incidence ranking would not require form revisions. While some industry commenters supported this idea, others went further and advocated for a general de minimis threshold that would not require disclosure of additional fee types below a threshold set by the Bureau. A trade association, a payment network, an issuing bank, and several program managers urged the Bureau to adopt a general de minimis exclusion from the incidence-based fee requirement. The issuing bank said this would help to ensure that consumers are provided with information on the short form disclosure that is most likely to be relevant to their actual use of the prepaid account. Other commenters explained that, in general, very little revenue is generated from fees paid by consumers that are not already reflected on the proposed short form, other than from the purchase price and activation fees (when charged), though there are outliers in certain circumstances. One commenter expressed concern that because so few consumers use the services associated with these other fees, the incidence-based fees required to be disclosed would likely change every year due to small shifts in consumer usage.

A trade association recommended the Bureau adopt a safe harbor to the proposed incidence-based fee requirement that allows financial institutions to disclose all fees on the short form, with a de minimis exception for fees that are imposed on fewer than 25 percent of accounts. A credit union similarly recommended that the Bureau give financial institutions the option of listing all fees on the short form, which it said would be more transparent to consumers and more beneficial particularly for issuers who charge a limited number of fees on their prepaid accounts.

Several consumer group commenters, on the other hand, supported the proposed disclosure of incidence-based fees. These commenters said that requiring disclosure of incidence-based fees would prevent financial institutions from designing their fee schedules to minimize fees required to be disclosed on the short form and to maximize those that are only listed on the long form disclosure, where consumers are less likely to see them. They also said the disclosure of incidence-based fees would help consumers evaluate and avoid the most-commonly charged fees.

The consumer group commenters also recommended some changes to the proposed requirement. They all recommended requiring calculation of the fees based on revenue, rather than frequency of incidence, saying it is more important to warn consumers about high fees that impact small numbers of consumers rather than small fees charged often. They warned that placing more importance on a commonly incurred but inexpensive fee, rather than a rare expensive fee, could result in consumers paying more for fees that are not prominently displayed. They said the rule could incent some providers to bring down cost of the most common fees in favor of higher fees on those incurred less often, thus hiding potential costly charges.

One consumer group commenter recommended eliminating the 12-month lookback period for assessment of incidence-based fees because an expensive fee, such as a legal process fee, may be charged sporadically but could devastate a consumer. That commenter also argued against a de minimis exception, saying any fee so small or so rarely incurred should be eliminated. Moreover, it said, a de minimis threshold would likely eliminate disclosure of infrequent but costly fees, such as legal fees for garnishment. The consumer group also suggested requiring standardized use of the term “bill payment” for incidence-based fees. Another consumer group recommended permitting a financial institution that charges a total of

four other fees to disclose all four of those fees in lieu of disclosing three of those fees and the statement regarding other fees.

Regarding purchase price, one consumer group commenter agreed that, as the Bureau had proposed, the purchase price for a prepaid account should be a potential incidence-based fee and not be required as a static fee because of the limited space in the short form and other parts of the packaging can disclose this information. Moreover, the commenter said, it is a one-time fee and consumers will take notice of the price they have to pay for the prepaid account. On the other hand, another consumer group commenter recommended that the purchase price be required to be disclosed as a static fee on the short form or, alternatively, as an incidence-based fee. It said disclosure of this fee was important because almost half of regular GPR card users buy a new card when their funds are exhausted, so the purchase price is a frequent expense. Further, it stated that simply because the purchase price is deducted from the amount of cash loaded onto a prepaid card does not mean that consumers understand this fee.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(8), renumbered as § 1005.18(b)(2)(ix), with substantial modifications, largely in response to comments received. First, as discussed above, the Bureau is moving the disclosure's location on the short form so that it appears immediately after the statement regarding the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A). The Bureau believes that locating these disclosures together will help consumers see their connection and increase understanding of why the fee information specified under final § 1005.18(b)(2)(ix) may vary among prepaid account programs, and thus enhance the use of short form disclosures for comparison shopping. The Bureau believes this will also make the

disclosure of the total number of additional fee types under final § 1005.18(b)(2)(viii) more valuable to consumers by providing some additional specific information.

Second, the Bureau is finalizing several changes to the nature of the disclosure. In particular, the Bureau is requiring disclosure of two fee types<sup>410</sup> instead of three, and has renamed this requirement the “disclosure of additional fee types.” In addition, the Bureau is requiring that the criteria for determining fee types be based on which categories generate the highest revenue from consumers, rather than highest incidence of consumer use as proposed. As discussed above, the Bureau compiled a list of fee type examples to provide guidance to financial institutions and to help facilitate their categorization of additional fee types for satisfying the requirements in final § 1005.18(b)(2)(viii)(A) and (ix).

Third, the Bureau has made a number of other adjustments intended to reduce compliance burden relative to the proposal regarding the tracking and reporting of the additional fee types. These adjustments are in addition to proposed burden-reducing measures that the Bureau is adopting in the final rule, such as the exemption from having to update the listing of additional fee types on previously printed packaging materials, pursuant to the update printing exception in final § 1005.18(b)(2)(ix)(E)(4). Additional burden-reducing measures in the final rule include a 24-month (rather than annual) cycle for assessing and updating the disclosures and permitting financial institutions to track revenue on a consolidated basis across multiple prepaid account programs that share the same fee schedule. The final rule also permits issuers not to provide

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<sup>410</sup> See comment 18(b)(2)(viii)(A)-2 for an explanation of the term “fee type” and a list of examples of fee types and fee variations within those fee types that a financial institution may use when determining both the number of additional fee types pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). Final comment 18(b)(2)(viii)(A)-4 also clarifies that a financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix).

disclosures for any fee categories that fall below 5 percent of consumer-generated revenues, as well as excluding certain other fee categories. Finally, the Bureau has replaced the proposed commentary with a number of new comments to provide additional clarification and guidance on the requirements set forth in final § 1005.18(b)(2)(ix).

The Bureau has considered the industry comments objecting to the proposed disclosure of incidence-based fees<sup>411</sup> and recommending their elimination from the final rule. It has also considered the alternatives recommended by some industry commenters and suggestions for improvement by consumer group commenters. The Bureau has made extensive refinements to the proposed framework based in substantial part on this feedback but continues to believe that there is value to maintaining a dynamic element on the short form and that disclosing specific additional fee information that is updated on a periodic basis is the best way to provide such dynamic information, as discussed further below.

As discussed in detail in the next few paragraphs, the Bureau continues to believe it is important that financial institutions disclose to consumers certain fee types not otherwise listed on the short form. The Bureau believes that this may be particularly important for certain virtual wallets and other products covered by this final rule that may have pricing structures that do not mirror those of GPR cards or other more traditional prepaid products, as well as for capturing potential major evolutions in pricing structures on traditional products that may occur in the future. Further, the final rule provides some flexibility to financial institutions that have fewer than two fee types required to be disclosed pursuant to final § 1005.18(b)(2)(ix)(B) to disclose additional fee types of their choice, such as those particular to their prepaid account program and imposed for features that could be appealing to consumers. It also provides additional flexibility

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<sup>411</sup> Hereinafter, the Bureau uses the final rule term “additional fee types” in place of “incidence-based fees,” unless the discussion calls for specific reference to the term from the proposed rule.

for financial institutions to disclose the names and fee amounts of the discrete fee variations for additional fee types with two or fewer fee variations pursuant to final § 1005.18(b)(2)(ix)(C).

First, as pointed out by some consumer group commenters, the requirement to disclose additional fee types in the short form disclosure creates a dynamic disclosure designed to reduce incentives for manipulating fee structures to reduce the cost of the most common fee types in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. The Bureau is not convinced, as asserted by some industry commenters, that market forces alone would adequately control for potential fee manipulation. Requiring disclosure of additional fee types in the short form will help prevent financial institutions from minimizing the cost of the fees required to be disclosed in and outside the short form by final § 1005.18(b)(2)(i) through (vii) and (5) in favor of higher fees for fee types that would only be required to be disclosed in the comprehensive long form disclosure, where the Bureau believes consumers are much less likely to see them before acquiring a prepaid account. In particular for prepaid accounts sold at retail, consumers may not see the additional fee types disclosed only in the long form and, thus, could be more likely to incur such fees unknowingly. Putting consumers on notice of additional fee types that, outside of those excluded from disclosure pursuant to final § 1005.18(b)(2)(ix)(A)(1) through (3), generate the highest revenue from consumers for the particular prepaid account or across prepaid account programs that share the same fee schedule will alert consumers to account features for which they may end up incurring a significant cost.

Second, eschewing full standardization in a static short form disclosure in favor of the dynamic disclosure of additional fee types enables the disclosure to capture market changes and innovations. In this way, the short form is capable of reflecting over time significant changes in consumer use patterns that affect the amount of revenue generated for new features. Disclosing

additional fee types in the short form allows the disclosure to reflect the advent of new fee types that consumers may come to incur frequently and for significant cost that, without this requirement, otherwise would be prohibited from disclosure in the short form and thus could render it outdated and of diminished value to consumers over time. This same dynamism also permits disclosure of fees for certain types of prepaid accounts, such as mobile wallets, whose currently scant fee structures may not otherwise be represented in the short form. Further, requiring disclosure of additional fee types allows the short form to capture future fee types charged by new products and under new pricing models that emerge over time. Without this mechanism, the information provided to consumers in the short form disclosure may become ossified and anachronistic over time absent additional rulemakings by the Bureau to update the required elements of the short form.

The Bureau recognizes that there are some tradeoffs for consumers and for industry in providing the disclosures, but believes those disadvantages are outweighed by the benefits of these disclosures to consumers. Moreover, the Bureau believes that the changes it has made in the final rule address many of the concerns raised by industry commenters and also substantially reduce the burden on financial institutions related to providing these disclosures relative to the proposal.

One objection raised by industry commenters is that, because the additional fee types disclosures will be the only non-standardized elements of the short form, the lack of uniformity will cause consumer confusion and prevent comparison shopping. As discussed in the section-by-section analysis of § 1005.18(b)(2)(viii) above, the Bureau had consumer tested language to explain how the incidence-based fees were selected for disclosure on the short form but found that the information did not track well with consumers. The Bureau believes that the final rule

substantially reduces this problem by linking the disclosures in final § 1005.18(b)(2)(viii) and (ix) by using a transition statement between the two (“Here are some of them.”) as discussed above, making clear that the specific additional fee types listed are examples of additional types of fees not otherwise disclosed on the short form. While the short form will not specifically explain why those two particular fee types were selected for disclosure, consumers will be able to understand that this portion of the form is variable across prepaid account programs, evaluate the specific information provided for potential applicability to their expected prepaid account use, and seek more information. The Bureau does not believe it necessary for consumers to understand the calculations behind and the specific purpose of the additional fee types to benefit from their disclosure.

Some commenters said the proposed reprint exemption would create discrepancies among short form disclosures for the same prepaid account program depending on where a consumer views the form (for example, at retail versus online). However, in addition to the modifications to the final rule discussed above adding an explanatory heading above the listing of additional fee types, the Bureau believes it unlikely most consumers will be comparing short form disclosures for the same prepaid account program in different mediums. Moreover, a large majority of industry commenters favored the reprint exemption, as it reduces burden, and the Bureau believes it is preferable to retain this exemption in the final rule as opposed to removing it. The Bureau does not believe that the additional fee type disclosures required by the final rule will stifle innovation, as suggested by industry commenters, particularly given the reprint exemption and the additional explanation the Bureau has provided in the supplementary information for this final rule regarding use of change-in-terms notices pursuant to § 1005.8(a)

and notice of new EFT services pursuant to § 1005.7(c). See, *e.g.*, the section-by-section analysis of § 1005.18(b)(2)(ix)(E)(4) below.

With regard to comparison shopping, the Bureau believes that having the same disclosures in the bulk of the short form, including the static fees and informational statements, will create more than sufficient consistency to facilitate consumer comparison shopping based on key fees in the marketplace, despite some variance introduced by the disclosure of two additional fee types. At the same time, the disclosure of additional fee types will ensure that consumers are made aware of significant fee types relating to each particular prepaid account program. Also, the transition statement linking the statement regarding the number of additional fee types and the disclosure of additional fee types provides sufficient information to orient consumers to these disclosures and will help dispel the consumer confusion that concerned industry commenters, particularly in light of consumer testing of explanations of the criteria for selection of additional fee types that proved ineffective.

To preserve standardization and consistency across short form disclosures, the Bureau declines to exempt prepaid accounts distributed in branches, particularly those of community banks and credit unions, and by government agencies from the requirement to disclose additional fee types. In addition to preserving standardization across short form disclosures, the Bureau is concerned that creating an individualized disclosure regime for different acquisition settings would create a patchwork regulatory regime, which is what this rule seeks to eliminate. The Bureau believes it is important to make the short form disclosure as informative as possible considering its space constraints; the disclosures regarding additional fee types will encourage consumers to review the long form for more detailed information in a way that simply providing the long form disclosure will not do.

In finalizing this provision, the Bureau attempted to maximize the usefulness of the disclosure for consumers while exacting the minimum burden on industry. As discussed above and below, the final rule incorporates many burden-reducing measures relative to the proposal, such as excluding certain fees from potential disclosure as additional fee types altogether (final § 1005.18(b)(2)(ix)(A)(1) and (3)), allowing for a consolidated calculation of additional fee types to occur across all prepaid account programs that share the same fee schedule (final § 1005.18(b)(2)(ix)(A)), increasing the timeframe for data collection and assessment/update from one year to 24 months (final § 1005.18(b)(2)(ix)(D) and (E)), and incorporating a de minimis revenue threshold to exclude from potential disclosure fee types that fall below this threshold (final § 1005.18(b)(2)(ix)(A)(2)). The Bureau is skeptical that this disclosure requirement will prompt financial institutions to exit the prepaid market as suggested by some commenters. Rather, the Bureau believes that the burden imposed on financial institutions by final § 1005.18(b)(2)(ix) is manageable. Also, with regard to comments that the disclosure of additional fee types in the short form is redundant of information found in the long form disclosure, the Bureau believes these fees merit disclosure in the short form as it is the disclosure most likely to be reviewed pre-acquisition by consumers.

Each aspect of final § 1005.18(b)(2)(ix) is addressed in turn below, together with other specific comments from both industry and consumer groups.

*Determination of Which Additional Fee Types to Disclose Pursuant to § 1005.18(b)(2)(ix)(A)*

Final § 1005.18(b)(2)(ix)(A) requires disclosure of the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in final § 1005.18(b)(2)(ix)(D) and (E), excluding (1) fees required to be disclosed pursuant to final

§ 1005.18(b)(2)(i) through (vii) and (5); (2) any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the relevant time period; and (3) any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61.

Specific aspects of this provision, and related commentary, are discussed in turn below.

*Two additional fee types.* Final § 1005.18(b)(2)(ix) requires the disclosure of fee types, rather than individual fees. Requiring financial institutions to disclose additional fee types for both final § 1005.18(b)(2)(viii) and (ix) should further reduce burden on industry relative to the proposal.<sup>412</sup> First, final § 1005.18(b)(2)(viii) and (ix) are coordinated such that both provisions require disclosure of additional fee types; therefore industry will use the same criteria to formulate the disclosures for both provisions thus avoiding the cost of maintaining separate rubrics.<sup>413</sup> Second, organizing the disclosures around fee types rather than discrete fees simplifies the organizational process by reducing the number of distinct fee categories financial institutions must track and analyze in determining the disclosure of additional fee types. Third, in response to industry commenters' concerns about how to categorize fee types, final comment 18(b)(2)(viii)(A)-2 lists examples of fee types and the breakdowns of discrete fee variations within fee types that a financial institution may use when determining the disclosures required by both final § 1005.18(b)(2)(viii) and (ix). The Bureau balanced multiple considerations in compiling this list of examples, including existing industry practices with regard to fee types, the

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<sup>412</sup> As discussed in the section-by-section analysis of § 1005.18(b)(2)(viii)(A), the Bureau believes this approach addresses a number of the concerns raised by commenters regarding the proposed disclosure of the total number of additional fees.

<sup>413</sup> See final comment 18(b)(2)(viii)(A)-4.

accounting burdens associated with relatively narrower or broader definitions of fee types, and the potential benefits to both industry and consumers in using narrower definitions of fee types to communicate information about specific account features and fees. The Bureau believes the resulting list strikes an appropriate balance by capturing categories and terms employed by the prepaid industry itself that will be most useful to financial institutions and consumers in determining and understanding additional fee types. The Bureau is providing flexibility to financial institutions to fashion appropriate names for other fee types, including fee types for services that do not yet exist in the prepaid marketplace.

The Bureau does not believe the use of fee types will compromise the benefit to consumers of the disclosure required by final § 1005.18(b)(2)(ix), as suggested by some commenters. While it is true that the additional fee types disclosed will constitute broader categories than disclosure of individual fee types, such as the disclosure of fees for bill payment generally versus a specific fee for regular or expedited delivery of a bill payment, there are benefits and detriments to either approach for both consumers and financial institutions and as discussed above, the Bureau believes the approach in the final rule strikes an appropriate balance. To allow financial institutions flexibility to disclose discrete fee variations, pursuant to final § 1005.18(b)(2)(ix)(C), financial institutions with additional fee types with two or fewer fee variations may disclose those fee variations by name and fee amount. Similarly, final § 1005.18(b)(2)(ix)(B) permits financial institutions to disclose fee types of their choice if they have fewer than two fee types that require disclosure under final § 1005.18(b)(2)(ix), thereby creating opportunities for more transparent disclosure to consumers and greater flexibility and control for financial institutions, including the option of highlighting innovative and unique

product features or features that financial institutions project may require disclosure by the next reassessment and update deadline.

Also in the final rule, the Bureau is requiring disclosure of two additional fee types pursuant to final § 1005.18(b)(2)(ix)(A), rather than three as proposed. The Bureau has made this modification, in part, to create additional space on the short form for other disclosures required by the final rule, such as the statement associated with the alternate disclosure of a variable periodic fee pursuant to final § 1005.18(b)(3)(ii). The Bureau also believes some financial institutions will find that this modification will impose less burden on an ongoing basis with respect to recalculation and updates than the rule as proposed would have done. The Bureau does not believe that the disclosure of two additional fee types rather than three will reduce the effectiveness of the short form disclosure for consumers, especially when balanced with other measures the Bureau has taken in the final rule to inform consumers of other fee types, such as the requirement under final § 1005.18(b)(2)(vi) to generally disclose two customer service fees (for interactive voice response and live customer service) instead of the highest fee that would have been required under the proposed rule.

Final comment 18(b)(2)(ix)(A)-1 clarifies that a prepaid account program that has two fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A) must disclose both fees. If a prepaid account program has three or more fee types that potentially satisfy the criteria in final § 1005.18(b)(2)(ix)(A), the financial institution must disclose only the two fee types that generate the highest revenue from consumers. This comment cross-references final comment 18(b)(2)(ix)(B)-1 for guidance regarding the disclosure of additional fee types for a prepaid account with fewer than two fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A).

Final comment 18(b)(2)(ix)(A)-1 also cross-references final comment 18(b)(2)(viii)(A)-2 for guidance on and examples of fee types. To address an industry commenter's concerns regarding categorization of fee types, comment 18(b)(2)(viii)(A)-2 provides concrete guidance on how to categorize fee types. The comment provides an explanation of the term "fee type" and examples of more than a dozen fee types, along with fee variations within those fee types, that a financial institution may use when determining both the number of additional fee types charged pursuant to final § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to final § 1005.18(b)(2)(ix). In response to the recommendation of one consumer group commenter, this comment provides standardized terms for many fee types, including bill payment. Final comment 18(b)(2)(ix)(A)-2 explains that commonly accepted or readily understandable abbreviations may be used as needed for additional fee types and fee variations disclosed pursuant to final § 1005.18(b)(2)(ix), and offers several example to illustrate this concept.

*Highest revenue.* Upon consideration of the comments and additional analysis, the Bureau has concluded that determining the disclosure of additional fee types on the basis of revenue is superior to an incidence-based system. The Bureau agrees with consumer group commenters that there may be more merit in alerting consumers to fees from which the financial institution makes the highest revenue, even if those fees impact fewer consumers, rather than lower fees incurred by consumers more frequently. Also, as raised by consumer group commenters, the rule as proposed could incent some financial institutions to reduce the cost of the most common fee types in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. Moreover, all industry commenters who responded to the issue were neutral as to whether the disclosure should be based on incidence or revenue because they

tracked both. To the extent that some financial institutions do not track both, the Bureau believes that it is more likely they track revenue and, regardless, that it will be simpler and more straightforward for financial institutions to calculate fee revenues rather than fee incidence.

The Bureau also believes that there is additional information conveyed in using revenue; namely that a fee type's revenue is a measure of the impact of that fee type on consumers—it is the amount, in dollars, of the cost of that feature to consumers. In contrast, an incidence-based approach could have led to disclosure of fee types that were commonly incurred but had a low impact because the fee amount was low.

*Revenue from consumers.* The Bureau has included specific reference in the final rule to “revenue from consumers” to assure clarity that the revenue required for calculation for the disclosure of additional fee types required by final § 1005.18(b)(2)(ix) is based on fee types that the financial institution may charge consumers. Final comment 18(b)(2)(ix)(A)-3 clarifies that the calculation excludes other revenue sources such as revenue generated from interchange fees and fees paid by entities that sponsor prepaid account programs for financial disbursements (*e.g.*, government agencies and employers). The comment also explains that the calculation excludes third-party fees, unless they are imposed for services performed on behalf of the financial institution.

*Assessing revenue within and across prepaid account programs to determine disclosure of additional fee types.* Some industry commenters said the proposed requirement to calculate incidence-based fees on a program-by-program basis would pose significant cost and burden to them. They explained that some financial institutions administer hundreds or more prepaid account programs, particularly in the payroll and government benefit space, and recommended that financial institutions be permitted to aggregate data rather than analyze the data of each

prepaid account program separately. The Bureau continues to believe it is crucial that the additional fee types disclosed to consumers in the short form reflect consumer usage and cost for a particular prepaid account program. However, the Bureau also recognizes that many payroll card account and government benefit account programs may be considered separate programs but share fee schedules and other terms. Because of the potential burden for determining the additional fee disclosures based on fee revenue data separately for programs that all share the same fee schedule, particularly in the context of payroll card accounts and government benefits accounts, the final rule permits financial institutions to make their additional fee types determination based on the fee types that generate the highest revenue from consumers for a particular prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in final § 1005.18(b)(2)(ix)(D) and (E).

Final comment 18(b)(2)(ix)(A)-4 explains that, if a financial institution offers more than one prepaid account program, unless the programs share the same fee schedule, the financial institution must consider the fee revenue data separately for each prepaid account program and not consolidate the fee revenue data across prepaid account programs. The comment explains that prepaid account programs are deemed to have the same fee schedules if they charge the same fee amounts, including offering the same fee waivers and fee reductions for the same features. The comment also provides examples of how to assess revenue within and across prepaid account programs to determine the disclosure of additional fee types. In addition, the comment explains that, for multiple service plans disclosed pursuant to final § 1005.18(b)(6)(iii)(B)(2), a financial institution must consider revenue across all of those plans in determining the disclosure of additional fee types for that program.

The Bureau notes that, financial institutions disclosing only the default service plan for a prepaid account program offering multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(1) are not required to evaluate revenues or disclose additional fee types under § 1005.18(b)(2)(ix) for service plans other than the default service plan.

*Exclusions pursuant to § 1005.18(b)(2)(ix)(A)(1) through (3).* As clarified in final comment 18(b)(2)(ix)(A)-5, once the financial institution has calculated the fee revenue data for the prepaid account program or across prepaid account programs that share the same fee schedule during the appropriate time period, it must remove from consideration the categories excluded pursuant to final § 1005.18(b)(2)(ix)(A)(1) through (3) before determining the fee types, if any, that generated the highest revenue.

*Exclusion of fee types required to be disclosed elsewhere pursuant to § 1005.18(b)(2)(ix)(A)(1).* Like the proposed rule, the final rule requires financial institutions to exclude from the additional fee types required to be disclosed (and from the number of additional fee types required to be disclosed pursuant to final § 1005.18(b)(2)(viii)(A)) the static fees required to be disclosed in the short form pursuant to final § 1005.18(b)(2)(i) through (vii). A new provision in the final rule, § 1005.18(b)(5), requires the disclosure of certain information, including any purchase price or activation fee for a prepaid account, outside the short form disclosure. Because purchase price and activation fees will thus always be disclosed for prepaid accounts under the final rule, the Bureau does not believe it is necessary or appropriate for such fees to be potentially disclosed as additional fee types under final § 1005.18(b)(2)(ix), as was proposed, and thus has added an exclusion for those fees as well. Final comment 18(b)(2)(ix)(A)-5.i provides further clarification regarding the exclusion for fees required to be disclosed elsewhere, including clarification that fee types such as those for international ATM

withdrawals and international ATM balance inquiries are not excluded as potential additional fee types.

*De minimis exclusion pursuant to § 1005.18(b)(2)(ix)(A)(2).* In the final rule, the Bureau is adopting a de minimis threshold permitting exclusion from the additional fee types required to be disclosed of any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in final § 1005.18(b)(2)(ix)(D) and (E). Final comment 18(b)(2)(ix)(A)-5.ii provides two examples illustrating the de minimis exclusion; the second example also cross-references final comment 18(b)(2)(ix)(B)-1. While the Bureau solicited comments on whether the final rule should establish a de minimis threshold for updating the proposed incidence-based fees, some industry commenters recommended a de minimis threshold for the disclosure of such fees in general, which is what the Bureau is adopting in this final rule.

The Bureau understands from some industry commenters that many fees that would have qualified under the proposal as additional fee types neither generate significant revenue nor are charged very frequently, though they often relate to services that certain consumers find valuable. With the de minimis threshold, disclosure of such fee types under final § 1005.18(b)(2)(ix) would not be required, although such fee types would be counted in the total number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii). Even with a de minimis exclusion, the Bureau believes that this disclosure requirement removes the potential incentive for financial institutions to restructure their fee schedules to avoid disclosure on the short form of certain fees from which they garner significant revenue. The short form disclosure likewise still remains dynamic such that it can reflect significant changes in the marketplace and

in consumer use patterns over time. The Bureau believes the dynamic disclosures may also be useful to reflect the fees of certain types of prepaid accounts, such as mobile wallets, that are less likely to charge the types of fees that are represented in the static portion of the short form.

Moreover, with a de minimis threshold, this disclosure requirement will impose less burden relative to the proposal on financial institutions whose potential additional fee types fall below the de minimis threshold, as they may but are not required to disclose or update those fee types under final § 1005.18(b)(2)(ix). The Bureau acknowledges, as pointed out by industry commenters, that some fee types may not be germane to all consumers. The Bureau believes that by applying a de minimis threshold, additional fee types that will not be germane to most consumers are not likely to be required to be disclosed. In response to the consumer group commenter that urged prohibiting any fee so small as to fall below a de minimis threshold, the Bureau states that such request is outside the scope of this rulemaking. The Bureau acknowledges the consumer group commenter's concerns regarding high fees with low incidence, but believes that the de minimis exception, in combination with the disclosure of additional fee types based on revenue, as opposed to incidence, strikes the appropriate balance for the final rule.

After determining that a de minimis exclusion from the requirement to disclose additional fee types would be appropriate, the Bureau considered recent studies as well as information provided by commenters to determine an appropriate threshold. A 2012 study offered statistics on the aggregate fees paid by cardholders to the prepaid issuer, using data from more than 3 million prepaid cards across 15 programs from one issuing bank.<sup>414</sup> For the payroll card

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<sup>414</sup> See 2012 FRB Philadelphia Study at 4, 11, and 26. This study used transactions covering a six-year cycle, but most occurred during the last two years of the data set (2009 and 2010). Programs included three web GPR

programs, approximately 89 percent of the fees (by value) paid by cardholders were from fees that appear to align with those required to be disclosed on the static portion of the short form under the final rule.<sup>415</sup> The remaining fees ranged between 1 and 7 percent.<sup>416</sup> The study's fee analysis for the various types of GPR card programs were less instructive, having been evaluated across only three general categories (ATM withdrawal fees, maintenance and origination fees, and transaction and other fees).<sup>417</sup>

A 2014 study evaluated transactions on more than 3 million GPR cards from one program manager over a one-year period in 2011-2012.<sup>418</sup> Approximately 96 percent of the fees (by value) paid by cardholders in these programs were from fees that appear to align with those required to be disclosed on the static portion of the short form or outside the short form pursuant to § 1005.18(b)(5) under the final rule.<sup>419</sup> The remaining fees were 1.5 and 2.5 percent.<sup>420</sup> The Bureau notes that the data used in these studies is at least four years old, while fee structures on

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programs, six GPR programs sold at retail, one GPR program offered in bank branches, and three payroll card programs. *See id.* at 11.

<sup>415</sup> These fees were ATM withdrawal (54 percent), PIN POS purchase (14 percent), balance inquiry (11 percent), maintenance (10 percent). *See id.* at 59 fig. 5.1(B).

<sup>416</sup> These fees were ATM decline (7 percent), PIN POS decline (1 percent), and other/unidentified (3 percent). *See id.*

<sup>417</sup> In the web GPR programs, these fees were ATM withdrawal (26 percent), maintenance and origination (52 percent), and transaction and other (22 percent). *See id.* at 60 fig. 5.2(B). In the retail GPR programs, these fees were ATM withdrawal (17 percent), maintenance and origination (28 percent), and transaction and other (55 percent). *See id.* at 61 fig. 5.3(B). In the FI GPR program, these fees were ATM withdrawal (19 percent), maintenance and origination (68 percent), and transaction and other (13 percent). *See id.* at 62 fig. 5.4(B). The category of transaction and other fees here were calculated as the residual of all fees less origination, maintenance, and ATM withdrawal fees, which include, for example, fees for point-of-sale transactions, balance inquires, paper statements, and calls to a live customer service agent. *See, e.g., id.* at 60 note 2.

<sup>418</sup> *See* 2012 FRB Kansas City Study at 4.

<sup>419</sup> These fees were signature transaction (36.7 percent), PIN transaction (19.5 percent), ATM withdrawal (15.9 percent), monthly fee (8.7 percent), account maintenance (8.5 percent), IVR balance inquiry (5.6 percent), and ATM balance inquiry (1.2 percent). *See id.* at 67 fig. 5.1.

<sup>420</sup> These fees were decline (1.5 percent) and other (2.5 percent). *See id.*

prepaid accounts have generally been shifting to be both lower and more simplified in recent years.<sup>421</sup>

The Bureau also received information from several commenters regarding fee revenue for a number of prepaid account programs. These commenters provided data mainly for GPR programs, but the Bureau received some information regarding corporate disbursement cards and non-reloadable cards sold at retail as well. Based on this information, across all of these programs except one, fee revenue from consumers amounted to 97 to 99 percent of fee revenue from fees required to be disclosed on the static portion of the short form or outside the short form pursuant to § 1005.18(b)(5) under the final rule. Of the remaining fees, fee revenue ranged from 3 percent to a fraction of 1 percent. In the one other program, 79 percent of fee revenue was from fees required to be disclosed on the static portion of the short form. Of the remaining fees, one comprised approximately 18 percent of fee revenue, while the others ranged between 1 and 2 percent each.

After considering the requests from commenters for a de minimis exclusion and the information available in studies and provided by commenters, the Bureau believes that a 5 percent threshold is appropriate and offers a clear dividing line between fee types that generate only a small amount of revenue from consumers and those that generate significant revenue and thus are most important to be disclosed to consumers prior to acquisition of a prepaid account. Based on this information, the Bureau believes that this threshold level would facilitate compliance and reduce burden, as requested by industry commenters, because a 5 percent de

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<sup>421</sup> See, e.g., Fed. Reserve Bank of St. Louis, *Cards, Cards and More Cards: The Evolution to Prepaid Cards*, Inside the Vault, at 1, 2 (Fall 2011), available at <http://www.stlouisfed.org/publications/itv/articles/?id=2168> (“Competition among prepaid card issuers and increased volume have helped lower card fees and simplify card terms”); 2014 Pew Study at 2 (“[O]ur research finds that the providers are competing for business by lowering some fees and are facing pressure from new entrants in the market”).

minimis threshold would exclude a majority of the applicable fees (other than the fees disclosed on the static portion of the short form disclosure or outside the short form disclosure pursuant to § 1005.18(b)(5)) that generate a small amount of revenue and would be less germane to consumers. At the same time, the Bureau believes that the 5 percent threshold appropriately tailors the additional fee type disclosure requirement to ensure consumers are alerted to fees that would potentially impose significant costs. In addition, the Bureau believes that the 5 percent threshold helps effectuate the intent of the dynamic portion of the short form disclosure to reflect significant changes in the marketplace and in consumer use patterns over time. The Bureau intends to monitor developments in the market in this area.

*Exclusion for certain credit-related fees pursuant to § 1005.18(b)(2)(ix)(A)(3).* The final rule requires financial institutions to exclude from disclosure as additional fee types any finance charges as described in final Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61. Final comment 18(b)(2)(ix)(A)-5.iii clarifies that, pursuant to final § 1005.18(b)(2)(viii)(A)(2), such finance charges are also excluded from the number of additional fee types disclosed.

As discussed in more detail below, the Bureau has made a strategic decision to focus the bulk of the short form disclosure on usage of the prepaid account itself (*i.e.*, the asset feature of the prepaid account). The possibility that consumers may be offered an overdraft credit feature for use in connection with the prepaid account is addressed in the short form pursuant to § 1005.18(b)(2)(x), which requires the following statement if such a feature may be offered: “You may be offered overdraft/credit after [x] days. Fees would apply.” Consistent with this overall decision, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit feature that may be offered at a later date to some prepaid consumers from

the disclosures regarding additional fees under both final § 1005.18(b)(2)(viii) and (ix). If consumers are interested in such a feature, they can look to the Regulation Z disclosures in the long form pursuant to final § 1005.18(b)(4)(vii), discussed below, for more details.

The Bureau notes that the calculation for the disclosure of additional fee types does not include fees that are not imposed with respect to the prepaid account program. For example, any finance charges imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card, where such finance charges are imposed on the separate credit account (not on the prepaid account) would not be included as part of the denominator used in calculating whether the two additional fee types that generated the highest revenue from consumers of a particular prepaid account program qualify for the de minimis exclusion in final § 1005.18(b)(2)(ix)(A)(2).

*Disclosure of Fewer Than Two Additional Fee Types Pursuant to § 1005.18(b)(2)(ix)(B)*

Final § 1005.18(b)(2)(ix)(B) provides that a financial institution that has only one additional fee type that satisfies the criteria in final § 1005.18(b)(2)(ix)(A) must disclose that one additional fee type; it may, but is not required to, also disclose another additional fee type of its choice. A financial institution that has no additional fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A) is not required to make a disclosure under final § 1005.18(b)(2)(ix); it may, but is not required to, disclose one or two fee types of its choice. Final comment 18(b)(2)(ix)(B)-1 contains several examples to provide guidance on the additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(B) for a prepaid account with fewer than two fee types that satisfy the criteria in final § 1005.18(b)(2)(ix)(A). Final comment 18(b)(2)(ix)(B)-2 clarifies that, pursuant to final § 1005.18(b)(3)(vi), a financial institution may not disclose any finance charges as a voluntary additional fee disclosure under final § 1005.18(b)(2)(ix)(B).

The Bureau has included this provision in the final rule to clarify the disclosure requirements for a financial institution that has fewer than two additional fee types that neither exceed the de minimis threshold nor otherwise satisfy the criteria in final § 1005.18(b)(2)(ix)(A), given that some financial institutions may have additional fee types that are not required to be disclosed on the short form pursuant to the de minimis exclusion in final § 1005.18(b)(2)(ix)(A)(2). The Bureau declines to permit disclosure of more than two additional fee types or disclosure of all fee types, as was suggested respectively by one consumer group commenter and two industry commenters, because the Bureau believes adding more information will upset the balance between providing the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension. However this final rule provision permitting voluntary disclosure of fee types when a financial institution has less than two additional fee types that satisfy the criteria of § 1005.18(b)(2)(ix)(A) does provide flexibility for some financial institutions with regard to their disclosure of additional fee types. A financial institution that chooses to disclose fee types under this provision will be able to more fully inform consumers of the features of a particular prepaid account. Moreover, under this provision, a financial institution that is not currently required to disclose any additional fees, but anticipating that in the future one or two of its fee types may exceed the de minimis exception in final § 1005.18(b)(2)(ix)(A)(2) has the option to voluntarily disclose those fee types in order to avoid the future need to update its short form disclosures pursuant to final § 1005.18(b)(2)(ix).

*Fee Variations in Additional Fee Types Required by § 1005.18(b)(2)(ix)(C)*

Final § 1005.18(b)(2)(ix)(C) provides that, if an additional fee type required to be disclosed pursuant to § 1005.18(b)(2)(ix)(A) has more than two fee variations, or when providing a short form disclosure for multiple service plans pursuant to

§ 1005.18(b)(6)(iii)(B)(2), the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with § 1005.18(b)(3)(i). It goes on to say that, except when providing a short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(2), if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by final § 1005.18(b)(2)(v) and (vi) and in accordance with final § 1005.18(b)(7)(ii)(B)(1). Finally, it states that, if a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation, if any, for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) and (vi), except that the financial institution would disclose only the one fee variation name and fee amount instead of two.

Final comment 18(b)(2)(ix)(C)-1 provides examples to illustrate disclosures when a financial institution charges two or more fee variations under a particular fee type, including how to disclose two fee variations with different fee amounts, two fee variations with like fee amounts, more than two variations, and multiple service plans with two fee variations. Final comment 18(b)(2)(ix)(C)-2 provides an example illustrating the options for disclosing a fee type with only one fee variation.

The Bureau has included § 1005.18(b)(2)(ix)(C) in the final rule to create consistency in the short form disclosure by conforming the requirements for disclosure of fee variations for additional fee types with the requirements for disclosure of fee variations for the static fees

disclosed pursuant to final § 1005.18(b)(2)(i) through (vii). In addition, this provision will give consumers the opportunity to see more detailed information about fee variations and their respective costs as well as to allow financial institutions flexibility to disclose more details about discrete fee variations. This provision, together with final § 1005.18(b)(2)(ix)(B) which permits financial institutions to disclose fee types of their choice if they have fewer than two fee types that are required to be disclosed under final § 1005.18(b)(2)(ix)(A), creates opportunities for more transparent disclosure to consumers and greater flexibility and control for financial institutions.

*Assessment and Update of Additional Fee Types Pursuant to § 1005.18(b)(2)(ix)(D) and (E)*

Many industry commenters recommended that the Bureau eliminate the proposed requirement to disclose incidence-based fees based on the burden those commenters said the disclosure would place on industry, particularly with regard to assessing and updating the additional fee types disclosure. As discussed above, however, the Bureau is finalizing the requirement to disclose additional fee types because it believes it will bring significant benefit to consumers. Moreover, the Bureau recognizes that certain industry practices already in place as well as modifications the Bureau is making in the final rule serve to ameliorate some of the burden financial institutions face in complying with final § 1005.18(b)(2)(ix). For example, the Bureau notes that industry commenters have confirmed that prepaid issuers and program managers already generally track and tag all fees imposed on consumers, typically analyzing both frequency and revenue, thereby collecting similar metrics in their normal course of business as those necessary for assessing and updating the disclosure of additional fee types. In addition, the Bureau has attempted to minimize burden on industry by basing the detailed list of examples

of fee types and fee variations in final comment 18(b)(2)(ix)(A)-2 on fee classifications used in the current prepaid marketplace.

The Bureau also notes that, as discussed above, the final rule permits calculation of additional fee types across prepaid account programs with like fee schedules, such that entities that have multiple programs with identical fee schedules, as may be the case particularly with payroll card account and government benefit account programs, may perform a single assessment for all of the programs sharing the same fee schedule.

The specific elements of final § 1005.18(b)(2)(ix)(D) and (E) are discussed in turn below.

*Timing of initial assessment of additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(D).* Final § 1005.18(b)(2)(ix)(D)(I) provides that, for a prepaid account program in effect as of October 1, 2017, the financial institution must disclose the additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014. Final comment 18(b)(2)(ix)(D)(I)-1 explains that a prepaid account program that was in existence as of October 1, 2017 must assess its additional fee types disclosure from data collected during a consecutive 24-month period that took place between October 1, 2014 and October 1, 2017. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on October 1, 2017. The earliest 24-month period from which that financial institution could calculate its first additional fee types disclosure would be from October 1, 2014 to September 30, 2016.

Final § 1005.18(b)(2)(ix)(D)(2) provides that, if a financial institution does not have 24 months of fee revenue data for a particular prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account

program will generate over the 24-month period that begins on October 1, 2017. Final comment 18(b)(2)(ix)(D)(2)-1 provides the example of a financial institution that begins offering to consumers a prepaid account program six months before October 1, 2017. Because the prepaid account program will not have 24 months of fee revenue data prior to October 1, 2017, the financial institution must disclose the additional fee types it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. The financial institution would take into account the data it had accumulated at the time of its calculation to arrive at the reasonably anticipated additional fee types for the prepaid account program.

Final § 1005.18(b)(2)(ix)(D)(3) provides that, for a prepaid account program created on or after October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the first 24 months of the program. The Bureau has included these provision in the final rule to set forth detailed requirements for financial institutions regarding the time frame within which and the data from which to calculate the first assessment of additional fee types required to be disclosed in the short form pursuant to final § 1005.18(b)(2)(ix). As illustrated in the example in final comment 18(b)(2)(ix)(D)(1)-1, for prepaid account programs in existence as of the October 1, 2017 effective date of the final rule, the Bureau has built in the additional flexibility of giving financial institutions up to one year, after the 24-month time period from which to draw the data used to calculate the additional fee types, for the financial institution to perform the assessment and prepare its initial short form disclosure. Similar to the proposed rule, the final rule provides flexibility for the financial institution with prepaid account programs in existence prior to the effective date with unavailable data by requiring the financial institution to disclose the

additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period beginning on October 1, 2017. Similarly, for new prepaid account programs created on or after October 1, 2017, the final rule provides flexibility for the financial institution to disclose the additional fee types based on revenue it reasonably anticipates the prepaid account will generate over the first 24 months of the program.

In response to the industry commenter recommending against the reasonableness standard under which a financial institution must project revenues for prepaid account programs in certain circumstances (in final § 1005.18(b)(2)(ix)(D)(2) and (3) as well as in final § 1005.18(b)(2)(ix)(E)(3) discussed below), the Bureau believes that, although financial institutions will not have actual fee revenue data for such products, they nonetheless will have a reasonable expectation as to which fee types will generate the highest revenue. Moreover, the reasonableness standard is a commonly-accepted legal standard employed across diverse areas of law<sup>422</sup> and the Bureau believes it is appropriate to apply here, in lieu of prescribing a complex formula upon which to base additional fee types disclosures for situations such as those set forth above when the a financial institution simply does not have 24 months of data from which to calculate additional fee types.

In response to the industry commenters questioning the validity of data collected over the proposed one-year period and recommending that the Bureau expand the proposed time frame from which to calculate data, the Bureau agrees that 24 months of data, rather than the proposed one year, will improve the data set from which financial institutions calculate the additional fee types and thus is modifying the final rule as set forth above. In response to industry commenters recommending elimination of this disclosure entirely due to the burden of calculating the

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<sup>422</sup> For example, this standard already is employed in Regulation E in §§ 1005.33(h)(5) and 1005.17(b)(1).

additional fee types, the Bureau notes that industry commenters have confirmed that prepaid issuers and program managers currently track and tag all fees imposed on consumers, typically analyzing both frequency and revenue, thereby collecting similar metrics in their normal course of business as those necessary for assessing and updating the disclosure of additional fee types and thus, the Bureau does not believe compliance with this requirement will be particularly challenging or burdensome for most financial institutions.

In addition, the Bureau expects that both the de minimis threshold and the change in the reassessment and update timeframes from one year to 24 months will reduce variation over time in the additional fee types that must be disclosed pursuant to final § 1005.18(b)(2)(ix) for each prepaid account or across prepaid account programs that share the same fee schedule, resulting in fewer instances that financial institutions will be required to make changes to the disclosure of additional fee types on their short form disclosures.

*Timing of periodic reassessment and update of additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(E).* Final § 1005.18(b)(2)(ix)(E)(1) provides a general framework for the requirements to reassess and update the additional fee types disclosures required by final § 1005.18(b)(2)(ix). Specifically, it states that a financial institution must reassess its additional fee types disclosure periodically as described in final § 1005.18(b)(2)(ix)(E)(2) and upon a fee schedule change as described in final § 1005(b)(2)(ix)(E)(3). The financial institution must update its additional fee types disclosure if the previous disclosure no longer complies with the requirements of final § 1005.18(b)(2)(ix).

Final § 1005.18(b)(2)(ix)(E)(2) sets forth the requirements for the periodic reassessment of the additional fee types disclosures required by final § 1005.18(b)(2)(ix). Specifically, it provides that a financial institution must reassess whether its previously disclosed additional fee

types continue to comply with the requirements of final § 1005.18(b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(4).<sup>423</sup> A financial institution may, but is not required to, carry out this reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences.

Final comment 18(b)(2)(ix)(E)(2)-1 provides guidance regarding the periodic assessment and, if applicable, update of the disclosure of additional fee types pursuant to final § 1005.18(b)(2)(ix), including examples addressing reassessment when there is no change in the additional fee types disclosed, when there has been a change in the additional fee types disclosed, and when a voluntarily-disclosed additional fee type later qualifies as an additional fee type required to be disclosed pursuant to final § 1005.18(b)(2)(ix). Final comment 18(b)(2)(ix)(E)(2)-2 provides guidance regarding a voluntary reassessment that occurs more frequently than every 24 months, including an example illustrating the concept.

Final § 1005.18(b)(2)(ix)(E)(3) sets forth the requirements for the reassessment and update of additional fee types disclosures required by final § 1005.18(b)(2)(ix) when there is a change in the fee schedule of a prepaid account program. Specifically, it provides that if a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of final § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change. If the financial institution reasonably anticipates that

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<sup>423</sup> Pursuant to this provision, under certain circumstances, a financial institution is not required to update the listing of additional fee types within the timeframes provided under final § 1005.18(b)(2)(ix)(E).

the previously disclosed additional fee types will not comply with the requirements of final § 1005.18(b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(4). In this case, the stale forms would therefore be accurate except for the fact that the disclosure of additional fee types would not reflect the expectations of the financial institution going forward for which fee types will garner the highest revenue from consumers. The Bureau is thus adopting the update printing exception in final § 1005.18(b)(2)(ix)(E)(4) to make clear that a financial institution will not be liable for such a result.

At the same time, as discussed in more detail in the section-by-section analysis of § 1005.18(b) above, the Bureau does not believe that financial institutions change the fee schedules for prepaid accounts often, and that financial institutions may need to pull and replace card packaging in some circumstances anyway.

Final § 1005.18(b)(2)(ix)(E)(3) also addresses situations in which an immediate change in terms and conditions is necessary to maintain or restore the security of an account or an EFT system as described in § 1005.8(a)(2) and that change affects the prepaid account program's fee schedule. In that case, the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the change permanent, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(4). Final comment 18(b)(2)(ix)(E)(3)-1 provides guidance regarding how to handle the disclosure of additional fee types if a financial institution revises the fee schedule for a prepaid account program, including examples addressing when the financial institution reasonably anticipates that the previously disclosed additional fee types will continue to comply with final § 1005.18(b)(2)(ix) and when it

reasonably anticipates that they will not. The comment also clarifies that a fee schedule change resets the 24-month period for assessment; a financial institution must comply with the requirements of final § 1005.18(b)(2)(ix)(E)(2) at the end of the 24-month period following implementation of the fee schedule change.

Final § 1005.18(b)(2)(ix)(E)(4) provides an exception to the update requirements of final § 1005.18(b)(2)(ix)(E). Specifically, it states that, notwithstanding the requirements to update additional fee types disclosures in final § 1005.18(b)(2)(ix)(E), a financial institution is not required to update the listing of additional fee types disclosed that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to final § 1005.(b)(2)(ix)(E)(2) or prior to a fee schedule change pursuant to final § 1005.18(b)(2)(ix)(E)(3). Final comment 18(b)(2)(ix)(E)(4)-1 clarifies application of the update printing exception to prepaid accounts sold in retail locations and provides an example illustrating the timing of the exception.

The Bureau agrees with industry and consumer group commenters recommending longer time periods between periodic assessments and updates (if applicable) that the change from one year to two may improve the data set from which to calculate additional fee types because, absent structural changes to the prepaid account program, revenue garnered from additional fee types above the de minimis threshold in final § 1005.18(b)(2)(ix)(A)(2) is unlikely to change in a one-year period. Moreover, the Bureau believes changes in the additional fee types disclosed will occur relatively infrequently because the Bureau understands that financial institutions typically do not revise prepaid account fees often. The Bureau also believes this modification will impose a lower ongoing burden on financial institutions with respect to recalculating and

updating additional fee types disclosures in addition to smoothing variations in the additional fee types required to be disclosed.

In response to industry commenters' requests for clarification of the time period within which financial institutions must reassess and update (if applicable) the additional fee types disclosure, the final rule explicitly states that both the reassessment and the update must take place within three months of the end of the 24-month period, except as provided in the update printing exception in final § 1005.18(b)(2)(ix)(E)(4). The Bureau declines to extend this time period, as recommended by a few industry commenters, as it believes a quarter of a year is sufficient time to perform these tasks, especially in conjunction with the update printing exception in final § 1005.18(b)(2)(ix)(E)(4).

The Bureau also added additional flexibility to the final rule by expressly permitting financial institutions to carry out the required reassessment and update (if applicable) more frequently than every 24 months. As clarified in final comment 18(b)(2)(ix)(E)(2)-2, a financial institution may choose to do this, for example, to sync its assessment process for additional fee types with its financial reporting schedule or other financial analysis it performs regarding the particular prepaid account program. The comment also explains that if a financial institution chooses to reassess its additional fee types disclosure more frequently than every 24 months, it is still required to use 24 months of fee revenue data to conduct the reassessment, and provides an example illustrating this concept.

With regard to the provisions regarding fee schedule changes in final § 1005.18(b)(2)(ix)(E)(3), as discussed above, the Bureau is using a 24-month timeframe to correspond to both the initial additional fee types calculation in final § 1005.18(b)(2)(ix)(D)(2) and (3) as well as the periodic reassessment in final § 1005.18(b)(2)(ix)(E)(2). In response to the

industry commenter recommending against the “reasonable” standard under which a financial institution must project revenues for prepaid account programs in certain circumstances (in final § 1005.18(b)(2)(ix)(E)(3), as well as in final § 1005.18(b)(2)(ix)(D)(2) and (3) discussed above), the Bureau believes that, although financial institutions will not have actual fee revenue data for such products, they nonetheless will have a reasonable expectation as to which fee types will generate the highest revenue. Moreover, as discussed earlier, the reasonableness standard is a commonly-accepted legal standard employed across diverse areas of law and the Bureau believes it is appropriate to apply here, in lieu of prescribing a complex formula upon which to base additional fee types disclosures for situations such as those set forth above when a financial institution simply does not have 24 months of data from which to calculate additional fee types.

Final § 1005.18(b)(2)(ix)(E)(3) also addresses the circumstance of a fee schedule change necessary to maintain or restore the security of any account or an EFT system as described in § 1005.8(a)(2). The Bureau believes it is appropriate to include an accommodation in the final rule to address situations where, for example, a financial institution may have to cease offering a particular service for a period of time because of security concerns. The Bureau does not wish such a change due to temporary or exigent circumstances to have negative consequences for financial institutions with respect to their disclosure of additional fee types. Due to the nature of this provision in § 1005.8(a)(2), the Bureau does not expect evasion risk with this accommodation because the Bureau does not foresee any circumstances where it would be appropriate for a financial institution to rely on § 1005.18(b)(2)(ix)(E)(3) to increase a fee amount, add a new fee, or change an existing fee to any amount other than \$0.

Similar to the proposed rule, final § 1005.18(b)(2)(ix)(E)(4) provides an update printing exception. The Bureau notes that, despite opposition to the additional fee types disclosure

generally by industry commenters these same commenters supported the proposed update printing exception. As stated in the proposed rule, the Bureau recognizes that it could be more complicated and time-consuming for financial institutions to make updates to packages used to sell prepaid accounts at retail. Thus, in the final rule, the Bureau is permitting financial institutions to implement updates on packaging material whenever they are printing new stock during normal inventory cycles. With regard to the possibility raised by some commenters that disclosures for the same prepaid account program may have different additional fee types disclosures depending on the medium of the disclosure (*i.e.*, electronic disclosures versus disclosures printed on packaging materials for prepaid accounts sold at retail), the Bureau continues to believe that this discrepancy will not significantly impact a consumer's decision regarding which prepaid account to acquire since consumers will most likely be comparing the disclosures for two distinct products, and not reviewing disclosures side-by-side for the same prepaid account found in different acquisition channels.

While there is a chance that allowing financial institutions to continue to use packaging with significantly out-of-date additional fee types disclosures in retail locations could reduce the effectiveness of the short form disclosure, the Bureau believes that imposing a cut-off date after which sale or distribution of out-of-date retail packages would be prohibited could be complex and would be an overly burdensome requirement to impose on financial institutions on an ongoing basis.

While the Bureau is finalizing an update printing exception for the additional fee types disclosure on prepaid account packaging materials, it did not propose, nor is it finalizing, any other specific update requirements with respect to disclosures generally. The Bureau notes that financial institutions generally must ensure all other aspects of pre-acquisition disclosures,

whether on packaging materials, online, or provided through other means, are accurate at the time such disclosures are provided to consumers. In this final rule, as in the proposal, the Bureau does not believe that a general disclosure update requirement is necessary for other elements of the short form or long form disclosures provided before a consumer acquires a prepaid account, as a financial institution must continue to honor the fees and terms it discloses to the consumer, at least until such time as it satisfies the change-in-terms requirements as set forth in § 1005.8(a) and final § 1005.18(f)(2). See the section-by-section analysis of § 1005.8(b) above for a more detailed discussion of the Bureau's expectations regarding changes in terms and the addition of new EFT services.

*18(b)(2)(x) Statement Regarding Overdraft Credit Features*

*The Bureau's Proposal*

The Bureau proposed to include in the short form disclosure a statement indicating whether a consumer might be offered certain types of credit features in connection with a prepaid account. Specifically, proposed § 1005.18(b)(2)(i)(B)(9) would have required a statement on the short form disclosure directly below the top-line fees that credit-related fees may apply, in a form substantially similar to the clause set forth in proposed Model Form A-10(c), if, at any point, a credit plan that would be a credit card account under Regulation Z (12 CFR part 1026) may be offered in connection with the prepaid account.

Proposed § 1005.18(b)(2)(i)(B)(9) would have explained that a credit plan that would be a credit card account under Regulation Z § 1026.2(a)(15)(i) could be structured either as a credit plan that could be accessed through the same device that accesses the prepaid account, or through an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan. Proposed

§ 1005.18(b)(2)(i)(B)(9) further provided that if neither of these two types of credit plans would be offered in connection with the prepaid account at any point, a financial institution would have to disclose on the short form a statement that no overdraft or credit-related fees will be charged, in a form substantially similar to the clause set forth in proposed Model Form A-10(d). The proposed model forms showed this disclosure as “This card may charge credit-related fees” or “No overdraft or credit-related fees.”

As discussed in the proposal, in the Bureau’s pre-proposal consumer testing, many participants expressed a desire to avoid using any financial products that offer overdraft. Further, other research indicates that many consumers turn to prepaid cards specifically to avoid incurring any overdraft charges.<sup>424</sup> The Bureau therefore believed that if a financial institution may offer a credit feature, then a consumer should be on notice of this possibility before acquiring the prepaid account. The Bureau believed that placing such notice on the short form disclosure would allow consumers to decide whether they want to acquire a prepaid account that may offer credit, or whether they would prefer an account that would not offer credit. Without such a notice, the Bureau believed that consumers may not have adequate information to decide which prepaid account is best for them. The Bureau recognized that there might be some risk of confusion from providing a relatively terse statement about credit because the Bureau also proposed in § 1005.18(g) and in Regulation Z § 1026.12(h) to require financial institutions to wait at least 30 days before offering prepaid account holders credit, and not all account holders may qualify for such credit features in any event. The Bureau noted, however, that additional information would be provided on the long form about credit availability and believed that the

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<sup>424</sup> See 2014 Pew Study at 1.

importance of alerting all consumers as to whether credit features could be offered in connection with a prepaid account warranted including a brief statement on the short form.

Proposed comment 18(b)(2)(i)(B)(9)-1 would have explained that the statement required by proposed § 1005.18(b)(2)(i)(B)(9) would have to be provided on all short form disclosures, regardless of whether some consumers would be solicited to enroll in such a plan, if such a credit plan could be offered.

### *Comments Received*

While the Bureau received many comments regarding its proposed approach to regulating overdraft and certain other credit features on prepaid accounts generally, few commenters addressed the Bureau's proposal regarding how to disclose these features in the short form and long form disclosures.<sup>425</sup> With regard to the short form disclosure, two issuing banks and an industry trade association recommended eliminating the disclosure for products that could offer associated credit features, saying it would be confusing to consumers given that the proposed rules would require financial institutions to wait 30 days after registration of a prepaid account to offer credit features and to obtain separate consumer consent. Another industry trade association and a program manager recommended substituting the word "feature" for "fee" in the proposed disclosure of "No overdraft or credit-related fees," suggesting this change would avoid the potentially erroneous impression that a credit feature might be offered for free.

Two consumer groups recommended including the disclosure in the short form only when overdraft or credit are offered and not when such features are not offered. They said that disclosure when such features are not offered would confuse consumers, as most prepaid account

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<sup>425</sup> For an overview of the Bureau's overall approach to regulating overdraft credit features for prepaid accounts, see the *Overview of the Final Rule's Amendments to Regulation Z* section below. For a discussion of disclosure of overdraft and credit features in the long form disclosure, see the section-by-section analyses of § 1005.18(b)(4)(iv) and (vii) below.

programs do not offer overdraft or credit. They also said the absence of the negative disclosure would offer a starker contrast to the affirmative disclosure required when such features are offered. These consumer groups also recommended more fulsome disclosure in the short form regarding offered overdraft and credit features, such as requiring disclosure of fees for transfers, loads, negative balances, and insufficient funds. These groups also recommended that this disclosure should be made more prominent, such as by requiring a larger-size font. One consumer group recommended that the disclosure distinguish between prepaid account programs that offer overdraft and those that offer credit features so that financial institutions that offer prepaid accounts with low cost lines of credit (with consumer consent) can be distinguished from those that offer overdraft. Finally, two consumer groups recommended that the Bureau require the word “overdraft” in the disclosure because, they said, consumers know this term and it is crucial information for them. These consumer groups also opposed using the term “credit-related fees,” as they believed it would be opaque and incomprehensible to consumers.

#### *Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(9) and comment 18(b)(2)(i)(B)(9)-1, renumbered as § 1005.18(b)(2)(x) and comment 18(b)(2)(x)-1, as proposed with certain modifications as described below. As discussed below in connection with Regulation Z, the final rule makes some revisions as to the proposal’s scope of coverage regarding covered overdraft and other credit features and final § 1005.18(b)(2)(x) mirrors these revisions. The final rule also revises the proposed content of the disclosure for clarity and completeness. The Bureau also made technical modifications to the rule and final comment 18(b)(2)(x)-1 for conformity and clarity.

Specifically, if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61 may be offered at any point to a consumer in connection with the prepaid account, the final rule requires the financial institution to disclose a statement that overdraft/credit may be offered, the time period after which it may be offered, and that fees would apply, using the following clause or a substantially similar clause: “You may be offered overdraft/credit after [x] days. Fees would apply.” If no such credit feature will be offered at any point to a consumer in connection with the prepaid account, the financial institution must disclose a statement that no overdraft/credit feature is offered, using the following clause or a substantially similar clause: “No overdraft/credit feature.” Comment 18(b)(2)(x)-1, adopted largely as proposed, clarifies that this statement must be provided on the short form disclosures for all prepaid accounts that may offer such a feature, regardless of whether some consumers may never be solicited or qualify to enroll in such a feature.

As discussed in the proposal, the Bureau is adopting the requirement to disclose in the short form whether an overdraft credit feature as defined by the final rule may be offered in connection with a prepaid account because it believes this is key information consumers should know to better inform their prepaid account purchase and use decisions, particularly for those consumers seeking to use prepaid accounts to avoid overdraft or credit-related charges and those seeking out prepaid accounts with such features.<sup>426</sup> In keeping with the overall goal of the short form disclosure to provide consumers with a snapshot of key information, the disclosure required in the final rule is designed to alert consumers to whether an overdraft credit feature may be

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<sup>426</sup> See ICF Report II at 25. (In the Bureau’s post-proposal consumer testing, participants were nearly evenly split as to whether knowing a prepaid card offering overdraft or credit made them feel more positively or negatively toward the card.)

offered to them and, if so, two other key pieces of information—that there is a waiting period, and that fees will apply.

The Bureau does not believe it is possible to give consumers the detailed information needed to make a decision about an overdraft credit feature on the short form, and that attempting to do so would substantially undermine the value of the form—that is, succinctly providing consumers with the most important information needed to make a decision about whether to acquire the prepaid account. Moreover, the Bureau is concerned that devoting scarce space to overdraft credit features would distract consumers from this decision-making process, resulting in less space to address the core functionalities of the prepaid account. In addition, given that some consumers may not satisfy creditors’ underwriting requirements or other eligibility criteria, the Bureau believes that a limited disclosure strikes the best practicable balance between competing considerations.

Accordingly, the Bureau has made a strategic decision to limit information on the short form disclosure about overdraft credit features to this one statement, and to refer consumers to the long form for more detailed information about all fees and conditions, including information about any overdraft credit feature. The Bureau recognizes that the short form disclosure will not provide consumers with a detailed definition of the term “overdraft/credit” or the details about a particular overdraft credit feature, but believes that the disclosure strikes a reasonable balance given the goals of the form, its performance in testing, and its space constraints. In short, the Bureau believes that the form will give consumers the most critical information about any overdraft credit features with a strong incentive to seek additional details in the long form disclosure or elsewhere if they are interested. Relatedly, consistent with this overall decision, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit

feature from the additional fee type disclosures required in the short form pursuant to final § 1005.18(b)(2)(viii) and (ix), as discussed above.

Participants in the Bureau's post-proposal consumer testing generally understood that an affirmative statement about the availability of overdraft or credit in a prototype short form disclosure indicated the feature was offered while a negative statement indicated it was not offered. All participants given a short form indicating a prepaid card did not offer overdraft or credit correctly understood that no such program would be offered or that a transaction would not go through if the consumer tried to make a purchase for more money than the amount loaded on the card. Conversely, all participants given a short form indicating a prepaid card offered overdraft or credit who noticed the statement correctly understood that a transaction might be allowed in some cases if they tried to make a purchase for more money than the amount loaded on the card.<sup>427</sup> Thus, post-proposal testing results confirm consumer understanding of disclosures both when an overdraft credit feature is offered and when no such feature is offered—as would have been required by the proposed rule.

Moreover, the long form disclosure will provide additional information about overdraft credit features for consumers who are interested in such programs including, as referenced by a consumer group commenter, programs under which prepaid accounts with low lines of credit are offered. As discussed in detail below, final § 1005.18(b)(4)(iv) requires that the long form disclosure contain a statement that mirrors the overdraft credit statement required in the short form by final § 1005.18(b)(2)(x). In addition, for prepaid account programs offering an overdraft credit feature as defined by the final rule, the long form disclosure must include the actual fees consumers may incur for using that feature that are imposed in connection with the

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<sup>427</sup> See ICF Report II at 14.

prepaid account (pursuant to final § 1005.18(b)(4)(ii)<sup>428</sup>), as well as the disclosures described in Regulation Z § 1026.60(e)(1) (pursuant to final § 1005.18(b)(4)(vii)).

The Bureau also believes that the final rule’s refinements to the language and placement of the short form statement about overdraft credit features will reduce the risk of consumer confusion about the nature and timing of any credit offers. To emphasize its importance, pursuant to final § 1005.18(b)(7)(ii)(B)(I), the statement about overdraft credit features must be in bold-faced type. The proposed rule would have required the statement to be located within the fee section of the short form disclosure, just below the top-line fees, to emphasize its relative importance among all the disclosures on the short form. In the final rule, the Bureau has relocated the statement to the section below the fee disclosures together with other statements required in the short form disclosure, as upon further consideration, the Bureau is concerned locating it amidst the fee disclosures could be confusing to consumers.

The Bureau’s consumer testing and other considerations, such as commenters’ concerns that consumers may be confused by the proposed short form’s lack of information regarding availability of the feature and the Bureau’s proposed 30-day waiting period, after which consumers may be solicited for or may link credit to a prepaid account, led the Bureau to require disclosure that a consumer “*may be offered overdraft/credit after [x] days*” (emphasis added). In response to the concern that the proposed disclosure could intimate that prepaid account programs offer overdraft or credit programs for free, the final rule requires explicit disclosure that “[f]ees would apply.” Where no overdraft credit feature will be offered, the final rule requires disclosure of “[n]o overdraft/credit *feature*” (emphasis added), replacing the proposed term “fee.” The Bureau’s post-proposal consumer testing revealed, consistent with the Bureau’s

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<sup>428</sup> See comment 18(b)(7)(i)(B)-1 for guidance regarding disclosure of finance charges in the long form.

proposed rule, that the statements required in the final rule effectively provide the information that the Bureau intends to be imparted in that most participants understood that overdraft or credit may or may not be offered (as applicable), that obtaining the service is not guaranteed, that there is a 30-day waiting period, and that they may pay fees for the service.<sup>429</sup>

The disclosures required under the final rule use the term “overdraft/credit” instead of the proposed “credit-related [fees]” and “overdraft or credit-related [fees]” because the Bureau agrees with commenters that use of the term “overdraft” in both versions of the disclosure may be more meaningful to consumers. The Bureau is concerned that, while the term “overdraft credit” (without a slash) is more technically accurate, it may not have particular meaning to consumers. The Bureau also believes that use of the same term in both the short form and long form disclosures will facilitate consumers’ ability to comparison shop.

For all of these reasons, the Bureau believes that the refined and relatively short statement regarding whether overdraft credit features may be offered in connection with the prepaid account strikes the best balance for the short form disclosure. The Bureau therefore declines to add additional details about the terms of such overdraft credit features to the short form disclosure.

*18(b)(2)(xi) Statement Regarding Registration and FDIC or NCUA Insurance*

As described in detail below, the proposed rule would have required a statement in the short form disclosure communicating to consumers that a prepaid account must be registered in order for the funds to be protected. On the following line, the proposed rule would have required disclosure of a lack of FDIC or NCUSIF insurance. In the final rule, the Bureau has combined

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<sup>429</sup> See ICF Report II at 14 and 24-25.

the registration and insurance disclosures and is requiring the financial institution to disclose whether or not the prepaid account program is eligible for FDIC or NCUA insurance.

*The Bureau's Proposal Requiring a Statement Regarding Registration of the Prepaid Account*

The Bureau proposed that a statement regarding the importance of registering the prepaid account with the financial institution be included on the short form disclosure. Specifically, proposed § 1005.18(b)(2)(i)(B)(12) would have required a statement that communicates to a consumer that a prepaid account must be registered with a financial institution or service provider in order for the funds loaded onto the account to be protected, in a form substantially similar to the clauses set forth in proposed Model Forms A-10(a) through (d).

As discussed in part II.B above, registration typically means that a consumer provides identifying information such as name, address, date of birth, and Social Security Number or other government-issued identification number so that the financial institution can identify the cardholder and verify the cardholder's identity. The Bureau proposed to add this statement because many consumer protections set forth in the proposed rule would not take effect until a consumer registers an account. For example, under proposed § 1005.18(e)(3), a consumer would not have been entitled to error resolution rights or protection from unauthorized transactions until after registering the prepaid account. The Bureau believed that this is an important protection insofar as unregistered prepaid accounts are like cash—once lost, funds may be difficult or impossible to protect or replace because the financial institution may not know who the rightful cardholder is.

The Bureau, however, recognized that in some acquisition scenarios, for example, government benefit accounts, payroll card accounts, or cards used to disburse financial aid to students, this type of statement might be less useful because consumers must register with the

government agency, employer, or institution of higher education, in order to acquire the account. The Bureau therefore specifically solicited comment on whether the short form disclosure provided to consumers pre-acquisition should always include this statement regarding registering the prepaid account.

*The Bureau's Proposal Requiring a Statement Regarding FDIC or NCUA Insurance*

The Bureau also proposed to address pass-through deposit (and share) insurance in proposed § 1005.18(b)(2)(i)(B)(13). Specifically, proposed § 1005.18(b)(2)(i)(B)(13) would have required that if a prepaid account product is not set up to be eligible for FDIC deposit or NCUA share insurance, a financial institution would have to include a statement on the short form disclosure that FDIC deposit insurance or NCUA share insurance, as appropriate, does not protect funds loaded into the prepaid account, in a form substantially similar to the clause set forth in proposed Model Forms A-10(c) and (d).

As discussed in part II.B above, the FDIC, among other things, protects funds placed by depositors in insured banks and savings associations; the NCUA provides a similar role for funds placed in credit unions. As explained in the FDIC's 2008 General Counsel Opinion No. 8, the FDIC's deposit insurance coverage will "pass through" the custodian to the actual underlying owners of the deposits in the event of failure of an insured institution, provided certain specific criteria are met.<sup>430</sup>

In response to the Prepaid ANPR, many consumer advocacy group commenters suggested that the Bureau require that pass-through deposit (or share) insurance cover all funds loaded into prepaid accounts, while many industry group commenters suggested that the Bureau propose clear disclosure of whether a prepaid product carries FDIC insurance or not. The

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<sup>430</sup> 73 FR 67155, 67157 (Nov. 13, 2008).

Bureau believed it is not always easy to determine or explain whether FDIC or NCUSIF pass-through deposit or share insurance would apply to a particular prepaid account. Thus, the Bureau proposed that disclosure be made regarding FDIC or NCUSIF insurance in only limited situations.

In the Bureau's Study of Prepaid Account Agreements, the Bureau found that about two thirds of all account agreements reviewed stated that cardholder funds were protected by FDIC deposit (or NCUSIF share) insurance (this includes agreements that explained insurance coverage depends on card registration, or explained that it only applies to funds held by a bank or credit union in a pooled account associated with the program). The Bureau found that only about 11 percent of agreements explicitly stated that the program was not insured.<sup>431</sup>

In its pre-proposal consumer testing, the Bureau observed that some participants misunderstood the scope of the protections FDIC pass-through deposit insurance actually provides for prepaid accounts. During the consumer focus groups, for example, nearly all participants said they had heard of FDIC deposit insurance, and many consumers believed the funds on their GPR cards were FDIC-insured.<sup>432</sup> When consumers were asked to explain what it meant that their GPR card had FDIC deposit insurance, most made vague references to their funds being "protected." Upon further probing, however, the majority of participants incorrectly

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<sup>431</sup> Of the remaining agreements, about 17 percent implied that the program was FDIC or NCUSIF insured by stating that the issuer is an FDIC- or NCUA-insured institution, but that did not address FDIC or NCUSIF insurance coverage for the program. A small number of agreements, 6 percent of those reviewed, did not address FDIC or NCUA insurance coverage for the program. For the latter two categories of programs, it is possible that such programs are in fact set up to be eligible for pass-through deposit (or share) insurance, but it was not possible to tell from reviewing the program's account agreement. *See* Study of Prepaid Account Agreements at 27-28 and tbl.13. In addition, the Bureau has observed that some GPR card providers disclose the existence of pass-through deposit insurance coverage or that the issuing bank is an FDIC-insured institution on their retail packaging, often quite prominently. The Bureau's Study of Prepaid Account Agreements, however, did not examine pass-through insurance statements made on GPR cards' retail packaging. Likewise, the Study did not examine pass-through insurance statements made on prepaid programs' other marketing materials or on their websites. *See id.*

<sup>432</sup> *See* ICF Report I at 10.

thought FDIC deposit insurance would protect their funds in the event of fraudulent charges or a stolen card.<sup>433</sup> Very few participants understood FDIC insurance correctly in that it applies to the insolvency of the bank that holds the underlying funds and not to the funds on a prepaid card itself in the case of an unauthorized transaction on the account.

In light of the results of the Bureau’s Study of Prepaid Account Agreements indicating that many products meeting the proposed definition of prepaid account already provide pass-through deposit insurance coverage and consumers’ misunderstandings about what protections pass-through deposit insurance actually affords, the Bureau decided not to propose any requirements related to the affirmative existence of pass-through deposit insurance. The Bureau did propose, however, that financial institutions would have to disclose a statement on the short form if a prepaid account is not set up to be eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance.

#### *Comments Received Regarding the Statement Regarding Registration*

Industry commenters, including an industry trade association, an issuing bank, a program manager, and the office of a State Attorney General generally supported the proposed statement regarding registration. The industry commenters also expressed concern, however, that the disclosure could mislead consumers because the statement implies that registration alone protects against fraud, rather than just providing a step toward FDIC insurance coverage and protections under Regulation E. The program manager recommended modifying the disclosure by combining the registration and insurance disclosures into one disclosure because, it said, registration is necessary for FDIC insurance coverage and a combined disclosure would be more

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<sup>433</sup> The Bureau notes, however, that despite believing that FDIC insurance could “protect” funds held in a prepaid account, in its pre-proposal consumer testing no participants mentioned FDIC insurance when asked to interpret the statement “Register your card to protect your money,” which would have been disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(12). See ICF Report I at 5.

accurate and less confusing to consumers. It also recommended stating that registration protects the consumer’s “rights” rather than “money,” as a more accurate statement. The program manager recommended the following statement: “Register your card to be eligible for [FDIC/NCUSIF] insurance and to protect your rights.” The trade association and issuing bank recommended the following statement: “Register your card to protect your money.”<sup>434</sup>

Several industry commenters, including a trade association, a program manager, and two issuing banks also recommended eliminating the registration disclosure for certain types of prepaid account programs, including non-reloadable prepaid products, payroll card accounts, and government benefit accounts. One of the issuing banks and the program manager said the statement was not relevant for non-reloadable products because there is no customer identification or account registration process for such programs and, thus, the statement would be confusing to consumers. The remaining commenters said the registration requirement was not relevant for payroll card accounts and/or government benefit accounts because registration occurs prior to card issuance and because such accounts would be required to provide error resolution and limited liability protections regardless of registration. The program manager suggested that the space could be better used to disclose other information, such as how to access full wages without fees for payroll card accounts.

#### *Comments Received Regarding the Statement Regarding FDIC or NCUA Insurance*

A number of industry commenters, including industry trade associations, issuing banks, and a credit union, and as well as several consumer groups commented on the proposed

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<sup>434</sup> The trade association and the issuing bank also expressed concern that the proposed rule would have required disclosure of the name of the financial institution, when a vendor, such as a program manager, might actually carry out registration. The Bureau notes that the proposal would have permitted the name of whatever party carried out registration to be listed here, as the proposed rule would have required a statement that communicates to a consumer that a prepaid account must register with a financial institution *or servicer provider*. The final rule does not require disclosure of this information, as discussed below.

insurance disclosure (which, as discussed above, would have required disclosure only of the lack of insurance). Several industry trade associations and a credit union supported the Bureau's proposed disclosure requirement; one commenter noted that it is essential for consumers to know that they could lose their money if the financial institution were to fail. Most industry commenters, however, recommended that the Bureau require disclosure of both when pass-through deposit insurance is available and when it is not. One industry trade association and an issuing bank recommended requiring disclosure when a prepaid account program is not eligible for insurance coverage and permitting the issuer to decide whether to disclose when the program is eligible for insurance coverage. The credit union commenter recommended disclosure only when the program is eligible for insurance coverage.

Two consumer groups recommended more fulsome disclosure of insurance coverage. One recommended disclosure in the short form of the risks of uninsured deposits and, when the program is eligible for insurance coverage, the need to register for insurance to attach. The other consumer group recommended that the Bureau include a section in the long form disclosure which would provide fuller disclosure regarding the lack of insurance. (See a detailed discussion of this issue in the section-by-section analysis of § 1005.18(b)(4)(iii) below.) One of the consumer groups recommended requiring providers to inform consumers that registration of the prepaid account is required for deposit insurance to attach and protect funds.

Although the Bureau had not proposed to require financial institutions affirmatively to obtain deposit or share insurance, some commenters urged such a requirement. In particular, many consumer groups, individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group, and the offices of two State Attorneys General argued that disclosures are insufficient in this instance and requested

that the Bureau require that prepaid account funds be held in custodial accounts that carry deposit insurance. Several commenters requested FDIC insurance for specific accounts, such as payroll card accounts and registered prepaid accounts. A few commenters argued that virtual payment accounts that offer the same features as prepaid cards should also be FDIC insured because the non-bank entities that offer such accounts might attempt to avoid the cost of insurance and the oversight of regulators by not storing funds at a depository institution.

These commenters primarily argued that prepaid accounts increasingly serve as bank alternatives and therefore should have the same benefits as checking and savings accounts, especially because consumers expect this type of protection. Several commenters argued that accepting a consumer's core income and holding it in an uninsured account would be an unfair, deceptive or abusive act or practice; requiring FDIC insurance would not be unexpected or onerous and would eliminate unscrupulous providers that do not deposit funds with legitimate financial institutions; and not requiring FDIC insurance would cause prepaid accounts to be viewed as subpar financial products.

Conversely, one industry trade association advocated against requiring pass-through insurance for prepaid accounts, arguing that such a measure would put credit unions at a competitive disadvantage because of their field of membership restrictions.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(12) and (13), combined into renumbered § 1005.18(b)(2)(xi), with several substantial modifications as described below. First, the Bureau has combined the registration and insurance disclosures into a single line. Second, the Bureau is requiring disclosure both when a prepaid account program is eligible for FDIC or NCUA insurance coverage and when it

is not. Third, the Bureau has added to the regulatory text the specific language that should be used to make this combined disclosure in five distinct circumstances. The Bureau is also adopting new comments 18(b)(2)(xi)-1 and -2 to provide additional guidance regarding this disclosure requirement. Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

The Bureau continues to believe it is important that financial institutions disclose to consumers purchasing prepaid accounts both that registration and insurance coverage provide protection. Because certain protections do not attach until registration, such that unregistered prepaid accounts are akin in some ways to carrying cash, the Bureau believes it is important for consumers to be aware that they should register their accounts. As discussed below, the final rule links the act of registration with insurance coverage and other protections. The Bureau believes that, even absent a consumer's full understanding of the protections afforded by registration, linking registration to insurance coverage and other protections will help motivate consumers to register their prepaid accounts.

Similarly, the Bureau believes it is important to disclose to consumers information about insurance coverage. While the Bureau's post-proposal consumer testing confirmed that some consumers erroneously equate FDIC coverage with fraud or theft protection, a number of participants understood that the insurance protects consumers' funds in the case of bank insolvency.<sup>435</sup> Regardless of their understanding of what FDIC insurance actually protects against, most participants identified insurance coverage as positive and wanted to know whether the prepaid card they were considering buying in the testing scenario offered this protection. The

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<sup>435</sup> See ICF Report II at 15 and 26. In the first round of the Bureau's post-proposal consumer testing, two out of nine participants understood that FDIC insurance is meant to protect their money in case of a bank failure; in the second round, approximately half of the 11 participants understood this.

Bureau understands that the attachment of pass-through FDIC deposit or NCUA share insurance can be a complex matter determined by many factors, including how the financial institution has structured the program and the accuracy of its recordkeeping. The Bureau believes that, even absent a full understanding of the attachment requirements and the protections afforded by insurance coverage, disclosing whether a prepaid account program provides insurance coverage will educate consumers and a combined insurance and registration disclosure will help motivate consumers to register their prepaid accounts, when applicable.

The Bureau is persuaded by commenters, the results of its post-proposal consumer testing, and information received during the interagency consultation process that the registration and insurance disclosures should be combined, and that both the existence as well as the lack of insurance eligibility should be disclosed. First, registration is a prerequisite to insurance protection; the two processes are conceptually linked and the Bureau believes that disclosing them together will help consumers appreciate this cause and effect. Also, while under the proposed rule registration would have been a prerequisite to certain Regulation E protections, the final rule expands error resolution and limited liability protections for unregistered consumers, thereby reducing the urgency to emphasize registration in its own dedicated line in the short form disclosure. *See* final § 1005.18(e). Moreover, the additional space in the short form created by combining these disclosures has allowed the Bureau to permit the addition of other information to the form while remaining in keeping with the size constraints of existing J-hook packaging. *See, e.g.,* final § 1005.18(b)(2)(xiv)(B) and (3)(ii). The Bureau believes that melding these two disclosures into a single line will provide more rational and efficient information to consumers.

Second, the Bureau believes that disclosure of both the existence or lack of insurance eligibility will be more beneficial to consumers than disclosing only when insurance is not

available. Consistent with the position of many commenters, the Bureau found in its post-proposal consumer testing that, while participants understood the meaning of statements regarding coverage and non-coverage, when the prototype short form was silent (as it would be under the proposed rule if the prepaid account program was eligible for insurance coverage) most participants did not understand that to mean insurance was offered.<sup>436</sup> The Bureau was thus concerned that the proposed model forms' silence when a program is eligible for insurance coverage would not be effective in communicating to consumers that a prepaid account program is eligible for insurance coverage.

The final rule refers to NCUA, rather than NCUSIF, insurance for credit unions. After further consideration and based on information received during the interagency consultation process, the Bureau believes the term "NCUA" may be more meaningful to consumers than "NCUSIF" and has revised the disclosures accordingly in both final § 1005.18(b)(2)(xi) and (4)(iii).

In response to concerns raised by commenters, the Bureau has tailored the final rule to take into account the existence and timing of a financial institution's consumer identification and verification process. For some types of prepaid account programs, such as payroll card accounts and government benefit accounts, financial institutions conduct customer identification and verification before the card is distributed or activated, while others, such as certain non-reloadable cards, may have no customer identification and verification process at all. As noted above, the Bureau has added to the regulatory text of the final rule specific language that financial institutions should use to make the disclosure for clarity. The tailored language required under the final rule accounts for these distinctions.

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<sup>436</sup> See ICF Report II at 15 and 25-26.

Specifically, the final rule covers five different scenarios:

- Final § 1005.18(b)(2)(xi)(A) requires that, if a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, the financial institution make this disclosure using the following clause or a substantially similar clause: “Register your card for [FDIC insurance eligibility] [NCUA insurance, if eligible] and other protections.”
- Final § 1005.18(b)(2)(xi)(B) requires that, if a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, the financial institution make this disclosure using the following clause or a substantially similar clause: “Not [FDIC] [NCUA] insured. Register your card for other protections.”
- Final § 1005.18(b)(2)(xi)(C) requires that, if a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened, the financial institution make this disclosure using the following clause or a substantially similar clause: “Your funds are [eligible for FDIC insurance] [NCUA insured, if eligible].”
- Final § 1005.18(b)(2)(xi)(D) requires that, if a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid account program before the account is opened, the financial institution make this

disclosure using the following clause or a substantially similar clause: “Your funds are not [FDIC] [NCUA] insured.”

- Finally, final § 1005.18(b)(2)(xi)(E) requires that, if a prepaid account program is set up such that there is no customer identification and verification process for any prepaid accounts within the prepaid account program, the financial institution make this disclosure using the following clause or a substantially similar clause: “Treat this card like cash. Not [FDIC] [NCUA] insured.”

The Bureau had specifically requested comment as to whether non-banks that issue prepaid accounts could apply the proposed statement regarding FDIC or NCUA insurance to their products, or whether the Bureau should propose an alternative requirement regarding the disclosure of the availability of FDIC or NCUA insurance for non-banks that issue prepaid accounts. The Bureau did not receive any comments in response to this request. The Bureau believes that it nonetheless would be useful to provide additional guidance as to when the disclosure should refer to NCUA insurance coverage and when it should instead refer to FDIC insurance coverage. Thus, new comment 18(b)(2)(xi)-1 clarifies when to use the term “FDIC” and when to use “NCUA.” Specifically, the comment explains that if the consumer’s prepaid account funds are held at a credit union, the disclosure must indicate NCUA insurance eligibility. The comment goes on to say that if the consumer’s prepaid account funds are held at a financial institution other than a credit union, the disclosure must indicate FDIC insurance eligibility. As a result of requests received during the interagency consultation process, the disclosures of both FDIC and NCUA insurance pursuant to § 1005.18(b)(2)(xi) expressly reflect eligibility in the statement, to put consumers acquiring prepaid accounts on notice that insurance protections may

not attach in all cases. This includes, for example, when the consumer is not a member of the issuing credit union with respect to NCUA.

New comment 18(b)(2)(xi)-2 addresses certain aspects of customer identification and verification. Specifically, the comment cross-references final § 1005.18(e)(3) and comments 18(e)-4 and -5 for additional guidance on the timing of customer identification and verification processes, and on prepaid account programs for which there is no customer identification and verification process for any prepaid accounts within the prepaid account program.

The Bureau considered adding additional information to the registration and insurance disclosure in the short form, as requested by one commenter, such as an explanation of what protections in addition to insurance eligibility registration provides or more fulsome information about the implications of insurance coverage. However, in light of overall space constraints and the multiple goals for the short form, the Bureau ultimately decided against adding any more information to the registration/insurance disclosure. The Bureau believes this disclosure balances the most important information for consumers with the brevity and clarity necessary for optimal consumer comprehension of the short form disclosure. The Bureau is, however, requiring financial institutions to provide more detailed information about insurance coverage in the long form disclosure. *See* final § 1005.18(b)(4)(iii).

In light of the results of the Bureau's Study of Prepaid Account Agreements indicating that many products meeting the proposed definition of prepaid account already provide pass-through deposit insurance coverage, consumers' misunderstandings about what protections pass-through deposit insurance actually affords, and the complexities inherent in ensuring pass-through insurance coverage, the Bureau is not including a requirement mandating FDIC or NCUA insurance coverage at this time.

*18(b)(2)(xii) Statement Regarding CFPB Website*

The proposed rule would have required financial institutions to disclose in proposed § 1005.18(b)(2)(i)(B)(14) the URL of the website of the Consumer Financial Protection Bureau, in a form substantially similar to the clauses set forth in proposed Model Forms A-10(a) through (d) and (f). In the proposal, the Bureau indicated that it intended to develop resources on its website that would, among other things, provide basic information to consumers about prepaid accounts, the benefits and risks of using them, how to use the final rule's prepaid account disclosures, and a URL to the Bureau's website where they can submit a complaint about a prepaid account.

The Bureau received comments from the office of a State Attorney General, an industry trade association, and a group advocating on behalf of business interests about this portion of the proposal. The office of the State Attorney General generally supported the disclosure while the trade association and business group recommended that the Bureau eliminate the disclosure. The industry trade association suggested that eliminating the disclosure would make room in the short form for information more valuable to consumers and reduce consumer confusion. It first asserted that the disclosure would not be necessary in bank branches because Bureau contact information was included in the proposed long form, which would be provided to consumers at the same time as the short form in a bank branch. Second, it said that the Bureau's pre-proposal consumer testing suggested consumers are unlikely to access the Bureau's website when reviewing the short form disclosure. Third, the commenter expressed concern about consumer confusion, stating that the Bureau's pre-proposal consumer testing suggested consumers would more likely access a financial institution's website for additional information about a prepaid account rather than obtaining more general information from the Bureau's website. Finally, it

argued that listing both the financial institution’s website and the Bureau’s website on the short form disclosure would misdirect consumers, because in one of the rounds of the Bureau’s pre-proposal consumer testing, half of the participants stated that they would go to the Bureau’s website to get additional information about a particular prepaid card product.

The business group opposed including a link to the Bureau’s website in both the short form and long form disclosures. It stated that the link to the website in the model short form disclosure was not yet an operating website, and therefore the commenter said it could not comment on the wisdom of directing consumers to this particular Bureau webpage. The commenter further suggested that requiring financial institutions to disclose the Bureau’s website URL on the short form disclosure constituted Bureau interference with the purchasing process and would instill doubt in the consumer’s mind about the safety of the prepaid account. It said it believed questions about prepaid accounts should be directed to the financial institution in the first instance, not to a regulatory agency.

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(14), renumbered as § 1005.18(b)(2)(xii), with minor modifications. The Bureau has moved the required language for this disclosure into the regulatory text, and has modified that language to specify that the disclosed website URL would provide consumers with general information about prepaid accounts. Finally, the Bureau has made technical modifications to the rule for conformity and clarity. Accordingly, final § 1005.18(b)(2)(xii) requires that financial institutions include in the short form a statement directing the consumer to a website URL of the Bureau ([cfpb.gov/prepaid](https://cfpb.gov/prepaid)) for general information about prepaid accounts, using the following clause or a substantially similar clause: “For general information about prepaid accounts, visit *cfpb.gov/prepaid*.”

The Bureau is not persuaded by industry commenters' objections that this disclosure is unnecessary, inappropriate, or confusing. In the Bureau's post-proposal consumer testing of the short form disclosure, most participants understood that the website in this disclosure was administered by a government agency, not the financial institution, and that it would contain general information about prepaid accounts.<sup>437</sup> The Bureau continues to believe that it is important to provide consumers with a non-commercial alternative source of information about prepaid accounts to enhance consumers' ability to learn about prepaid accounts in general in order to better inform their purchase and use decisions.

*18(b)(2)(xiii) Statement Regarding Information on All Fees and Services*

*The Bureau's Proposal*

Proposed § 1005.18(b)(2)(i)(B)(II) would have required disclosure of a telephone number and the unique URL of a website that a consumer may use to access the long form disclosure that would have been required under proposed § 1005.18(b)(2)(ii) in a form substantially similar to the clauses set forth in proposed Model Forms A-10(c) and (d). Proposed § 1005.18(b)(2)(i)(B)(II) would have required this disclosure only when a financial institution chose not to provide a written form of the long form disclosure that would have been required by proposed § 1005.18(b)(2)(ii) before a consumer acquires a prepaid account at a retail store as described in proposed § 1005.18(b)(1)(ii). (Proposed Model Forms A-10(a) and (b) also included this language for government benefit accounts and payroll card accounts.) The Bureau believed that using either the telephone number or the website, a consumer would be able to access information about the fees listed in the long form disclosure, and any conditions on the applicability of those fees. As discussed in the proposal, the Bureau believed that if consumers

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<sup>437</sup> See ICF Report II at 12 and 22.

do not receive the long form disclosure in writing or by email before acquisition in a retail store, it is important that they are still able to access the information. The Bureau also believed it is important that the website URL be unique to ensure that a consumer can directly access the same type of stand-alone long form disclosure that would otherwise be provided pursuant to proposed § 1005.18(b)(1)(i) in written or electronic form before a consumer acquires a prepaid account.

Proposed comment 18(b)(2)(i)(B)(11)-1 would have provided further details about the telephone number that would have been required to be included on the short form disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(11) when a financial institution does not provide the long form disclosure before a consumer acquires a prepaid account. The proposed comment would have clarified that, for example, a financial institution could use a customer service agent or an interactive voice response system, to provide this disclosure. Proposed comment 18(b)(2)(i)(B)(11)-1 would have also explained that a consumer must not incur a fee to call this telephone number before acquiring a prepaid account. The telephone number disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(11) could be the same as the customer service number for which a financial institution may impose a fee on a consumer to use for other purposes, but a consumer could not incur any customer service or other transaction fees when calling this number to access the information set forth in proposed § 1005.18(b)(2)(ii) before acquiring a prepaid account in retail store.

The Bureau considered requiring that this number be toll-free, but ultimately decided that having a toll-free number is less important to consumers, most of whom use mobile phones and do not incur additional fees for making long distance calls, and such a requirement could impose a burden on smaller financial institutions because they would perhaps have to maintain a separate toll-free line just for their prepaid account products. The Bureau noted that some card networks

may require financial institutions to maintain toll-free lines, and therefore believed that telephone numbers disclosed in such cases would likely be toll-free.

Proposed comment 18(b)(2)(i)(B)(11)-2 would have provided further details about the website that would have been required to be included on the short form disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(11) when a financial institution does not provide the long form disclosure before a consumer acquires a prepaid account. The proposed comment would have clarified that an entered URL that requires a consumer to navigate various other webpages before viewing the long form disclosure would not comply with proposed § 1005.18(b)(2)(i)(B)(11). The Bureau believed that consumers make acquisition decisions in retail stores relatively quickly—often while standing—and should not have to navigate different links to access the webpage that contains the long form disclosure.

Relatedly, proposed § 1005.18(b)(4)(i)(A) would have required, among other things, that the URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(11) must not exceed 22 characters and must be meaningfully named. The Bureau explained that by meaningfully named, it meant a website URL that uses real words or phrases, particularly those related to the actual prepaid account product. The Bureau believed 22 characters is the maximum length of a website URL that can fit legibly on a short form disclosure on most existing retail packaging material. The Bureau further believed these parameters would ensure that a consumer can easily enter the website URL listed on the short form into a mobile device when shopping in a retail store in order to access the long form disclosure. Using a meaningfully named website URL would also ensure that it is easy for a consumer to understand, which the Bureau believed would increase the likelihood that a consumer would use the URL to seek out more information about a prepaid account product.

The Bureau also considered whether to require financial institutions to disclose an SMS short code, which might be easier to type than a website URL, that consumers could text to receive the website URL that links directly to the long form disclosure.<sup>438</sup> The Bureau decided against including this method because sending a text message using an SMS short code would still require a mobile phone capable of sending text messages, could incur costs for the consumer, and would require adequate reception in the retail location. The Bureau also considered, but did not propose, requiring that a quick response (QR) code be included in the short form but decided against it because a QR code would require a substantial amount of space on the small short form disclosure and QR code adoption remains low. The Bureau did, however, request comment on including SMS and QR codes in the short form disclosure.

#### *Comments Received*

The Bureau received few but varied comments regarding the requirement in proposed § 1005.18(b)(2)(i)(B)(II) to disclose a telephone number and website URL in the short form disclosure in retail settings so that consumers could access the long form disclosure pre-acquisition. An industry trade association supported the disclosure and recommended it for all short forms, not just those in retail settings, but arguing that inclusion of this information generally would render unnecessary pre-acquisition disclosure of the written long form. A member of a trade association for State government officials generally expressed concern about consumer confusion, positing that a consumer picking up the short form may not realize there is also a long form disclosure. A program manager requested clarification that the telephone number disclosed need not be the same number for all the financial institution's prepaid account programs but rather could correspond to a particular prepaid account program. Two consumer

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<sup>438</sup> An SMS short code is a group of numbers one can send as a text message using a mobile phone and receive a text message in response.

groups and a program manager recommended allowing, but not requiring, disclosure of an SMS or QR code to provide an additional easy method to access the long form disclosure for consumers who have smart phones. An office of a State Attorney General said the Bureau should require that the long form disclosure be provided in written form in all payroll settings as employees may have limited telephone and internet access. (The proposed and final rules, in fact, do require that a long form disclosure be provided pre-acquisition for payroll card accounts.)

Several industry commenters recommended eliminating the character limit and the “meaningfully named” standard from the website URL. Specifically, an industry trade association and an issuing bank said that the limited space of the short form already requires brevity and a program manager said that use of real words and phrases does not mean web addresses will be easier to remember and that many recognizable trademarks and product names do not qualify as real words and phrases.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(B)(II), renumbered as § 1005.18(b)(2)(xiii), with certain modifications. The Bureau is requiring that all short forms contain a statement directing consumers to the location of the long form disclosure to find details and conditions for all fees and services. For prepaid accounts offered at retail locations, this statement must include a telephone number and a website URL, as proposed. For clarity, the Bureau has added to the regulatory text the specific language for this statement. The requirements in proposed § 1005.18(b)(4)(i)(A) that the website URL be no more than 22 characters and must be meaningfully named has been relocated to final § 1005.18(b)(2)(xiii). Also, this provision permits financial institutions to include an SMS code

as part of the disclosure. In addition, comments 18(b)(2)(i)(B)(11)-1 and -2, renumbered as 18(b)(2)(xiii)-1 and -2, provide further clarification regarding disclosure of the telephone number and website URL. The Bureau has also made technical modifications to the rule and commentary for conformity and clarity.

The final rule requires a statement in the short form disclosure directing the consumer to the location of the long form disclosure required by final § 1005.18(b)(4) to find details and conditions for all fees and services. For financial institutions offering prepaid accounts pursuant to the retail location exception in final § 1005.18(b)(1)(ii), this statement must also include a telephone number and website URL that a consumer may use to directly, respectively, access an oral and an electronic version of the long form disclosure required under final § 1005.18(b)(4). The Bureau proposed this exception from the requirement to provide the long form disclosure pre-acquisition at retail in recognition of the space limitations inherent in selling prepaid accounts at retail. However, the Bureau continues to believe it is important for consumers to be able to access the long form disclosure through other modes prior to purchasing a prepaid account at retail. The Bureau's post-proposal consumer testing of the short form disclosure confirmed that nearly all participants understood they could find information about additional fees not disclosed on the prototype short form by visiting the website or calling the telephone number on the form.<sup>439</sup> Thus, in final § 1005.18(b)(2)(xiii), the Bureau has retained the proposed requirement to include in the short form disclosure a telephone number and website URL that a consumer may use to access oral and electronic versions of the long form disclosure required by final § 1005.18(b)(4) when the financial institution is offering prepaid accounts at a retail location pursuant to final § 1005.18(b)(1)(ii).

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<sup>439</sup> See ICF Report II at 12 and 22.

As stated above, the Bureau is finalizing § 1005.18(b)(2)(xiii) to require disclosure in all short forms of a statement directing the consumer to the location of the long form to find details and conditions for all fees and services. Pursuant to the final rule, short form disclosures provided in locations other than retail locations are not required to disclose the additional information of a telephone number or website URL. Thus, the proposed disclosure remains the same in the final rule for financial institutions offering prepaid accounts pursuant to the retail location exception in final § 1005.18(b)(1)(ii). The Bureau is adopting the additional requirement that all short form disclosures contain a similar statement directing consumers to the location of the long form disclosure to alert consumers that there is a comprehensive list of fees and information available to them and where to find it in order to help them make prepaid account purchase and use decisions. The location included in the statement required in a non-retail location might be, for example, the cardholder agreement or the website URL, or any other location where the consumer can locate the long form disclosure. While the long form disclosure may be readily accessible to consumers along with the short form in certain settings, the amount of information often provided to consumers prior to acquiring a prepaid account in some settings may obfuscate the existence of the more complete long form disclosure. The short form disclosure was designed to be a snapshot of key fees and information; thus it is an optimal place to alert consumers to its companion disclosure, the comprehensive long form. Finally, this change to the proposal helps standardize the short form disclosures, including those provided outside of retail locations, by requiring a parallel disclosure in all short forms directing consumers to the location of the long form disclosure.

Final § 1005.18(b)(2)(xiii) provides that this disclosure must be made using the following clause or a substantially similar clause: “Find details and conditions for all fees and services in

[location]” or, for prepaid accounts offered at retail locations pursuant to final § 1005.18(b)(1)(ii), made using the following clause or a substantially similar clause: “Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [website].”

The Bureau declines to follow the recommendation of the commenter that all short forms, not just those provided in retail settings, disclose a telephone number and website URL through which to access the long form in lieu of requiring the written long form disclosure be provided pre-acquisition. For a full discussion of the Bureau’s rationale for requiring disclosure of both a short form and a long form, see the section-by-section analysis of § 1005.18(b) above. Also, the Bureau believes that providing consumers with written versions of required disclosures that they can keep, without requiring them to have access to the internet and a printer (or a telephone), is superior to limiting consumer access to such disclosures solely through a website or telephone number.

The Bureau has removed the requirement that the website URL provided be “unique,” and instead is requiring that both the telephone number and website URL provide the consumer with direct access, respectively, to an oral and an electronic version of the long form disclosure. This modification makes explicit the reasoning set forth in the proposed rule that a consumer must not be required to go through excessive steps or have to pay to access the electronic and oral disclosures required under this section. In addition, comments 18(b)(2)(xiii)-1 and -2 provide further clarification of the direct access requirement for telephone number and website URL.

In the final rule, the Bureau has also relocated to § 1005.18(b)(2)(xiii) the requirements that the website URL not exceed 22 characters and be meaningfully named from its location in

proposed § 1005.18(b)(4)(i)(A), to consolidate the requirements regarding this website URL in a single place. As discussed above, several industry commenters recommended eliminating the character limit and the “meaningfully named” standard from the website URL. The Bureau continues to believe that the character limit and the requirement that website URLs be meaningfully named is important for consumer comprehension and ease of use in a retail setting; for these reasons the Bureau is adopting these requirements in the final rule. The Bureau notes that the character limit and the meaningfully named standard are not meant to make the website URLs easier for consumers to remember later, but rather are meant to enable consumers to more easily and accurately enter them into a web browser on their mobile phones while in a retail location. The Bureau does not believe that a website URL containing a long string of meaningless letters and numbers would facilitate consumer access to the long form disclosure at a retail location. The Bureau is providing clarification in final comment 18(b)(2)(xiii)-2, as discussed below, that trademark and product names and their commonly accepted or readily understandable abbreviations are deemed to comply with the requirement of final § 1005.18(b)(2)(xiii) that the website URL be meaningfully named.

Finally, the Bureau is adopting the final rule with the added provision that a financial institution may, but is not required to, disclose an SMS code at the end of the statement disclosing the telephone number and website URL, if the SMS code can be accommodated on the same line of text as the statement required by final § 1005.18(b)(2)(xiii). The Bureau agrees with industry and consumer group commenters that consumers could benefit from allowing financial institutions to provide an additional easy method to access the long form disclosure at retail locations. The Bureau believes that an SMS code can fit within the short form disclosure without sacrificing consumer engagement and comprehension. The Bureau is not permitting a

QR code to be disclosed in the short form, however, because although potentially useful, a QR code would require a substantial amount of space on the small short form disclosure and, the Bureau believes, QR code adoption continues to remain low.

Final comment 18(b)(2)(xiii)-1 clarifies that, to provide the long form disclosure by telephone, a financial institution could use a live customer service agent or an interactive voice response system. In response to the commenter referenced above, the comment goes on to clarify that a financial institution could use a telephone number specifically dedicated to providing the long form disclosure or a more general customer service telephone number for the prepaid account program. It also provides an example of a financial institution that would be deemed to provide direct access pursuant to § 1005.18(b)(2)(xiii) if a consumer navigates one or two prompts to reach the oral long form disclosure via a live customer service agent or an interactive voice response system using either a specifically dedicated telephone number or a more general customer service telephone number.

Final comment 18(b)(2)(xiii)-2 provides an example of a financial institution that requires a consumer to navigate various other webpages before viewing the long form as one that would not be deemed to provide direct access pursuant to final § 1005.18(b)(2)(xiii). The comment also clarifies that trademark and product names and their commonly accepted or readily understandable abbreviations comply with the requirements of final § 1005.18(b)(2)(xiii) that the website URL be meaningfully named and provides an example.

#### *18(b)(2)(xiv) Additional Content for Payroll Card Accounts*

##### *The Bureau's Proposal*

As discussed in the section-by-section analysis of § 1005.18(b) above, the Bureau proposed to require the same short form and long form disclosures for payroll card accounts (and

government benefit accounts) as for prepaid accounts generally. However, as discussed in detail below, the Bureau also proposed in § 1005.18(b)(2)(i)(A) to require that the short form disclosure for payroll card accounts include a statement at the top of the short form indicating that a consumer does not have to accept the payroll card account and instructing the consumer to ask the employer about other ways to receive his or her wages instead of receiving them via the payroll card account, in a form substantially similar to proposed Model Form A-10(b). Proposed § 1005.15(c)(2) would have included a similar requirement for government benefit accounts, reflected in proposed Model Form A-10(a).

Pursuant to the existing compulsory use prohibition in § 1005.10(e)(2), no financial institution or other person may require a consumer to establish an account for receipt of EFTs with a particular institution as a condition of employment or receipt of a government benefit. *See also* existing comment 10(e)(2)-1 and final comment 10(e)(2)-2. The Bureau believed it is important for consumers to realize they have the option of not receiving payment of wages via a payroll card account, and that receiving such notice at the top of the short form disclosure will help to ensure consumers are aware of this right. For this reason, the Bureau proposed that a notice be provided at the top of the short form for a payroll card account to highlight for consumers that they are not required to accept a particular payroll card account.

Specifically, proposed § 1005.18(b)(2)(i)(A) would have required that, when offering a payroll card account, a financial institution must include a statement on the short form disclosure that a consumer does not have to accept the payroll card account, and that a consumer can ask about other ways to get wages or salary from the employer instead of receiving them via the payroll card account, in a form substantially similar to the language set forth in Model Form A-10(b). Proposed § 1005.18(b)(2)(i)(A) would have also cross-referenced proposed

§ 1005.15(c)(2) for requirements regarding what notice to give a consumer when offering a government benefit account.

*Comments Received*

Many industry commenters, including industry trade associations (including several that focus on payroll and employment issues), issuing banks, program managers, payment networks, as well as several employers, several State government agencies, and a think tank commented on this aspect of the proposal. Specifically, they expressed concern that the proposed compulsory use statement was negative and implies that the payroll or government benefit card is an inferior product, thereby discouraging its use. One commenter said the negative statement would, in effect, “warn away” consumers from choosing a payroll card account or government benefit card. A number of industry commenters suggested alternative disclosure language that they said would render more neutral the statement proposed by the Bureau.

Several industry commenters also asserted out that many States allow employee wages paid only via electronic means; because there is no paper check option for receiving wages, the commenters concluded that unless the employee has a bank account that can receive direct deposits, the payroll card account would be the sole way to receive wages. Others noted that most State wage and hour laws already require disclosure of information about all wage payment options before an employee decides how to receive wages. One trade association stated that the Bureau should not require financial institutions to list all available wage payment options as part of the banner notice in the final rule, as it would be difficult for employers operating in multiple states who would need to have different forms for different states, but also stated that it would support such a disclosure if it were available as an alternative to the version the Bureau proposed.

Relatedly, as discussed in more detail in the section-by-section analysis of § 1005.18(b) above, some industry commenters generally objected to the proposed short form disclosure requirement for payroll card accounts (and government benefit accounts) citing, among other things, State-required disclosure of certain fee discounts and waivers as a factor distinguishing these accounts from GPR cards. Other industry commenters recommended that the Bureau permit additional disclosures on the short form for these products, such as disclosure of State-required methods to access wages without incurring fees.

Conversely, a number of consumer group commenters supported the proposed disclosure requirements for payroll card accounts and government benefit accounts generally. Their comments underscored the importance of the notice regarding payment options at the top of the short form disclosure, with some recommending an even more conspicuous disclosure, or an expanded disclosure explaining the benefit of direct deposit to a bank account as generally cheaper and more advantageous to the consumer than receiving funds via a payroll card account (or government benefit account). Some consumer groups recommended that the Bureau extend the banner notice requirement to other types of prepaid accounts that are not subject to Regulation E's compulsory use prohibition, such as those used to disburse students' financial aid, insurance proceeds, tax refunds, and needs-tested government benefits that are excluded from coverage under Regulation E generally. Some consumer groups also urged disclosure of additional information, such as alerting the consumer when payments stop (for example when the consumer leaves the job or no longer qualifies for benefits), instructing the consumer how to un-enroll from the prepaid program, and explicitly stating that the employer cannot require acceptance of the payroll card account as a condition of employment and cannot retaliate against an employee that does not accept a payroll card account.

A nonprofit organization representing the interests of restaurant workers submitted information gathered from a survey it conducted of 200 people employed by a company that compensates nearly half of its 140,000 hourly employees via payroll card. Survey results showed that, among other problems, 63 percent of employees surveyed reported that they were not told about all of the fees associated with the payroll card before it was issued to them and 26 percent reported not being allowed to choose an alternative method of payment.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(iii) above, the office of a State Attorney General recommended free and unlimited withdrawal of wages via ATMs, stating that its research in its State revealed that ATMs were the most common way for payroll card accountholders to access their wages and that accountholders regularly incurred fees for ATM transactions.

#### *The Final Rule*

For the reasons set forth in the proposal and herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(A), renumbered as § 1005.18(b)(2)(xiv)(A), with certain modifications. First, the Bureau has modified the proposed regulatory text to permit financial institutions to choose between two statements regarding wage payment options for payroll cards. Second, the Bureau has added, in new § 1005.18(b)(2)(xiv)(B), a provision to the final rule permitting financial institutions to include in the short form disclosure for payroll card accounts a statement directing consumers to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. In addition, for the reasons set forth below, the Bureau is adopting four new comments to further explain and clarify the requirements in final § 1005.18(b)(2)(xiv)(A) and (B). Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

The Bureau is adopting this provision pursuant to its authority under EFTA sections 904(a) and (c), and 913(2), and section 1032(a) of the Dodd-Frank Act, as discussed above. EFTA section 913(2) prohibits a person from requiring a consumer to establish an account for receipt of EFTs with a particular financial institution as a condition of employment or receipt of a government benefit. The Bureau believes it is important for consumers to realize they have the option of not receiving payment of wages or government benefits via a payroll card account or government benefit account, and that receiving such notice at the top of the short form disclosure will help to ensure consumers are aware of this right and can thus exercise their right. Further, the Bureau believes that requiring this disclosure is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users because the revision will assist consumers' understanding of the terms and conditions of their prepaid accounts—namely, that consumers have a choice regarding whether to accept the specific account. In addition, the Bureau believes that this disclosure will, consistent with section 1032(a) of the Dodd-Frank Act, ensure that the features of the prepaid accounts—again, that consumers have a choice regarding whether to accept the specific account—are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account.

*Statement Regarding Wage Payment Options Required by § 1005.18(b)(2)(xiv)(A)*

The Bureau disagrees with industry commenters' suggestion that the statement regarding wage (or benefit) payment options is negative and implies that payroll card accounts (and government benefit accounts) are inferior products, thereby discouraging consumers from using them. The Bureau examined this issue in its post-proposal consumer testing and found that participants did not construe the language negatively, confirming the Bureau's original

understanding from the proposal.<sup>440</sup> Participants were provided a prototype short form disclosure with the statement language from the proposed rule (version one) or a disclosure with the following language (version two):<sup>441</sup> “You have several options to receive your wages [benefits]: direct deposit to your bank account; direct deposit to your own prepaid card, or using this payroll [benefits] card. Tell your employer [the government agency/office] which option you want.”

All testing participants understood both versions of the statement language as saying that they did not have to accept their wages/government benefits via that prepaid card. Also, while participants understood from both versions that there were other ways to receive their payments, those that received version two were able to identify the specific options available to them. Finally, most participants expressed essentially neutral feelings about both versions of the statement and appeared to be drawing on past experiences, rather than the language in the statement, to decide whether or not they would want to use the payroll card account or the government benefit account.<sup>442</sup>

Even though the Bureau’s post-proposal consumer testing confirmed that the proposed version of the statement regarding wage or benefit payment options would not be perceived as negative by consumers and that participants understood the statement, the Bureau has decided to include in the final rule an alternative version of the statement language which the Bureau believes would address commenters’ concerns and have the added advantage of providing concrete options to consumer of how they can receive their funds.

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<sup>440</sup> See ICF Report at II 16-17 and 27.

<sup>441</sup> *Id.* A version of the unbracketed language was used on a prototype short form disclosure for a payroll card account; a version of the bracketed language was used on a prototype short form disclosure for a government benefit account; the wording and punctuation in version two was also changed slightly for government benefit accounts.

<sup>442</sup> *Id.*

The Bureau is thus finalizing § 1005.18(b)(2)(xiv)(A), which provides that for payroll card accounts, a financial institution must disclose a statement that the consumer does not have to accept the payroll card account and directing the consumer to ask about other ways to receive wages or salary from the employer instead of receiving them via the payroll card account using the following clause or a substantially similar clause: “You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.” Alternatively, a financial institution may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the consumer chooses using the following clause or a substantially similar clause: “You have several options to receive your wages: [list of options available to the consumer]; or this payroll card. Tell your employer which option you choose.” This statement must be located above the information required by final § 1005.18(b)(2)(i) through (iv), which are located in the top line of the short form.

The statements regarding wage payment options in the final rule do not incorporate much of the additional information recommended by some consumer group commenters, such as explaining the benefit of direct deposit and providing information on how to un-enroll from the payroll card account. The Bureau declines to add such information because the design of the short form disclosure seeks a balance between the disclosure of key information necessary for consumer acquisition and use decisions and the brevity and clarity necessary for optimal consumer comprehension and engagement. While space constraints are less severe in the context of payroll card accounts and government benefit accounts than in retail locations, the Bureau is still concerned that adding this information would affect this balance and risk information overload. In response to recommendations to make the statement more conspicuous, the Bureau

believes that its relative length and position at the top of the short form disclosure already provide heightened conspicuousness.

New comment 18(b)(2)(xiv)(A)-1 makes clear that financial institutions offering payroll card accounts may choose which of the two statements required by final § 1005.18(b)(2)(xiv)(A) to use in the short form disclosure. The list of options required in the second statement might include the following, as applicable: direct deposit to the consumer's bank account, direct deposit to the consumer's own prepaid account, paper check, or cash. The comment also clarifies that a financial institution may, but is not required to, provide more specificity as to whom consumers must ask or inform of their choice of wage payment method, such as specifying the employer's Human Resources Department. The Bureau notes that, based on comments received, direct deposit to the consumer's own prepaid account is often not recognized as an option to receiving wages via the payroll card account for consumers. The Bureau believes that this is an important option of which consumers should be apprised, and has thus included it in comment 18(b)(2)(xiv)(A)-1 in the list of enumerated wage payment options when using the second version of the required statement.

New comment 18(b)(2)(xiv)(A)-2 cross-references § 1005.15(c)(2)(i) for statement options for government benefit accounts. In response to commenter recommendation that the Bureau extend the notice requirement to other types of prepaid accounts, the Bureau declines to require such a statement for other types of prepaid accounts as it does not believe that to be necessary at this time. However, new comment 18(b)(2)(xiv)(A)-3 clarifies that a financial institution offering a prepaid account other than a payroll card account or a government benefit account may, but is not required to, include a statement in the short form disclosure regarding payment options that is similar to either of the statements required for payroll card accounts

pursuant to final § 1005.18(b)(2)(xiv)(A) or government benefit accounts pursuant to final § 1005.15(c)(2)(i). For example, a financial institution issuing a prepaid account to disburse student financial aid proceeds may disclose a statement such as the following: “You have several options to receive your financial aid payments: direct deposit to your bank account, direct deposit to your own prepaid card, paper check, or this prepaid card. Tell your school which option you choose.” The Bureau believes consumers would benefit from knowing their options and thus is clarifying that this disclosure may be provided by financial institutions for other types of prepaid accounts, but declines to require such a statement for other types of prepaid accounts as requested by some consumer group commenters.

*Statement Regarding State-Required Information or Other Fee Discounts and Waivers Permitted by § 1005.18(b)(2)(xiv)(B)*

Some industry commenters voiced concern regarding the interplay between the short form disclosure required for payroll card accounts (and government benefit accounts) and disclosure of information required by State law and other fee discounts and waivers for these products.<sup>443</sup> In response to these concerns, the Bureau is adopting new § 1005.18(b)(2)(xiv)(B) which states that, for payroll card accounts, a financial institution may, but is not required to, include a statement in one additional line of text directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to final § 1005.18(b)(3)(i) and (ii) (regarding variable fees), or, if no such statements are disclosed, above the statement required by final § 1005.18(b)(2)(x) (regarding overdraft credit features). In addition, for the reasons set

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<sup>443</sup> See, e.g., the section-by-section analysis of § 1005.18(b)(2)(iii) above regarding ATM withdrawal fees.

forth below, the Bureau is adopting new comment 18(b)(2)(xiv)(B)-1. The Bureau is also adopting a similar provision for government benefit accounts in final § 1005.15(c)(2)(ii).

The Bureau believes that some commenters may have misunderstood the proposed short form disclosure as prohibiting inclusion *near* the short form disclosure of State-required information regarding the payroll card account (or government benefit account), particularly State-mandated methods to access the full amount of wages for free each pay period. However, neither the proposed rule nor this final rule's segregation requirements prohibit such disclosures near, but outside, of the short form. Final § 1005.18(b)(7)(iii), as discussed in detail below, provides that the short form and long form disclosures must be segregated from other information and must contain only information that is required or permitted for those disclosures by final § 1005.18(b). Thus, while additional information may not be added to the short form, there is no prohibition in the proposed or final rule against including other information, such as the State-required disclosures or other fee discounts and waivers, on the same page as the short form. Moreover, because payroll card accounts and government benefit accounts are not subject to the same space constraints as prepaid accounts sold in retail locations, the short form disclosure for such accounts likely can accommodate additional information on the same page as the short form disclosure.

The Bureau examined the potential feasibility of the optional statement in final § 1005.18(b)(2)(xiv)(B) during its post-proposal consumer testing. Specifically, testing was conducted to ascertain whether consumers understood the relationship between specific information provided on the same page as (but outside) the short form to the information inside

the short form.<sup>444</sup> The discounts/waivers listed below the short form were generally related to a fee that was asterisked in the prototype short form to indicate the fee can be lower.<sup>445</sup> To help direct participants' attention to these additional disclosures, the short form included the following statement below the asterisk statement: "See below for free ways to access your funds and balance information." In addition, in one round of testing, participants were provided with both a prototype short form and a long form to see if they could locate information about specific fees that were not included within the short form. In post-proposal consumer testing, the majority of participants understood and could use this information.<sup>446</sup> Based on this testing, the Bureau believes that consumers will be able to understand the connection between information in the short form and other information that financial institutions may include on the same page as, but outside, the short form disclosure. The Bureau believes that permitting such a statement in the short form for payroll card accounts (and government benefit accounts) will not disrupt consumer engagement and comprehension and would help industry accommodate for any potential discrepancies between Federal and State disclosure requirements.

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<sup>444</sup> See ICF Report II at apps. B and C for the forms shown to participants during the Bureau's post-proposal consumer testing. The tested information included: first three out-of-network ATM withdrawals per month free; one free bank teller cash withdrawal per month; and balance information available for free online, via mobile app, and by calling automated customer service.

<sup>445</sup> *Id.* The tested information included: first three out-of-network ATM withdrawals per month free; one free bank teller cash withdrawal per month; and balance information available for free online, via mobile app, and by calling automated customer service.

<sup>446</sup> In the first round of post-proposal testing, four of nine participants understood how the information in the short form disclosure related to the additional disclosures appearing below the short form. *Id.* at 17. The Bureau believes more participants would have made the link to this information if the prototype payroll card account short form had not been tested last; the Bureau believes participants stopped reading the content of the asterisk disclosure because they assumed they already knew what it said from the previous versions they had reviewed. In the second round, all 11 participants were able to use the information below the short form or the information in the long form to correctly respond to queries as to whether certain fees could be lower than the fees cited within the short form. *Id.* at 28-29. In the second round of the Bureau's post-proposal consumer testing, the prototype government benefit short form was the first form shown to participants. *Id.* at 20-21.

New comment 18(b)(2)(xiv)(B)-1 provides several examples of how a financial institution might disclose in the short form for payroll card accounts a statement directing consumers to outside the short form to find information on conditions for a consumer to access funds and balance information for free or for a reduced fee in accordance with § 1005.18(b)(2)(xiv)(B). Specifically, the comment states that, for example, a financial institution might include the following line of text in the short form disclosure: “See below for free ways to access your funds and balance information” and then list below, but on the same page as, the short form disclosure several ways consumers can access their payroll card account funds and balance information for free. Alternatively, the financial institution might direct the consumer to another location for that information, such as by stating “See the cardholder agreement for free ways to access your funds and balance information.” The comment also notes that a similar statement is permitted for government benefit accounts pursuant to final § 1005.15(c)(2)(ii).

*18(b)(3) Short Form Disclosure of Variable Fees and Third-Party Fees and Prohibition on Disclosure of Finance Charges*

*The Bureau’s Proposal*

Proposed § 1005.18(b)(2)(i)(C) would have set forth how, within the confines of the proposed short form disclosure, financial institutions could disclose fees that may vary. As noted in the proposal and above, in many instances, prepaid accounts may have certain fees that vary depending on how a consumer uses the account. The proposal gave the example of monthly periodic fees that are, for some prepaid account programs, waived when a consumer receives direct deposit or when the monthly balance exceeds a certain amount. The Bureau was concerned that in some instances, these conditional situations could become complicated and

difficult to explain on a short form disclosure, particularly for multiple fees. The Bureau believed that allowing multiple, complex disclaimers on a single form would be complicated and make comprehension and comparisons more difficult.

Thus, the Bureau proposed § 1005.18(b)(2)(i)(C), which would have provided that if the amount of the fee that a financial institution imposes for each of the fee types disclosed pursuant to proposed § 1005.18(b)(2)(i)(B) could vary, a financial institution must disclose the highest fee it could impose on a consumer for utilizing the service associated with the fee, along with a symbol, such as an asterisk, to indicate that a lower fee might apply, and text explaining that the fee could be lower, in a form substantially similar to the clause set forth in the proposed Model Forms A-10(a) through (d). Proposed § 1005.18(b)(2)(i)(C) would have also stated that a financial institution must use the same symbol and text for all fees that could be lower, but may use any other part of the prepaid account product's packaging material or its website to provide more detail about how a specific fee type may be lower. Proposed § 1005.18(b)(2)(i)(C) would have further stated that a financial institution must not disclose any additional third-party fees imposed in connection with any of the fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(1) through (8).

Proposed comment 18(b)(2)(i)(C)-1 would have provided examples of how to disclose variable fees on the short form disclosure in accordance with proposed § 1005.18(b)(2)(i)(C). The proposed comment would have also clarified that proposed § 1005.18(b)(2)(i)(C) does not permit a financial institution to explain the conditions under which a fee may be lower, but a financial institution could use any other part of the prepaid account product's packaging material or may use its website to disclose that information. That information would also have been required to be disclosed in the long form pursuant to proposed § 1005.18(b)(2)(ii)(A). Proposed

comment 18(b)(2)(i)(C)-2 would have explained that third parties could include service providers and other entities, regardless of whether the entity is an agent of the financial institution. The Bureau believed that, regardless of whether a third party has a relationship with the financial institution, no additional fees should be disclosed on the short form.

The Bureau recognized that its proposed approach to the disclosure of variable fees on the short form could potentially obscure some complexity in a prepaid account's fee structure. The Bureau, however, proposed to require that this information be disclosed on the long form, pursuant to proposed § 1005.18(b)(2)(ii)(A) and to permit its disclosure outside the confines of the short form to mitigate any risk of confusion. The Bureau believed that the proposed short form disclosure—and the requirement to disclose the highest fee with an indication that the fee may be lower in certain circumstances—would allow consumers to know the maximum they will pay for that fee type while indicating to consumers when they could qualify for a lower fee.

#### *Comments Received*

*Comments regarding disclosure of variable fees.* A number of industry commenters, including industry trade associations, program managers, issuing banks, a payment network, and a law firm writing on behalf of a coalition of prepaid issuers, as well as several State government agencies and a think tank, recommended that the Bureau eliminate the requirement to disclose the highest fee for a fee that varies in favor of more fulsome disclosure of the price variations for that fee. They said disclosing the highest fee, with a symbol linked to a statement explaining that the fee may be lower depending on how and where the prepaid account is used, would mislead consumers by failing to provide them with information critical to making meaningful decisions, such as more detailed information within the short form on how they can take advantage of fee waivers and discounts. Some industry commenters said it would be counterintuitive for

consumers to check other areas of the packaging for such discounts and pointed to confusion over the asterisk in the Bureau's pre-proposal consumer testing as indicating the Bureau's proposed system would not work. One trade association added that required disclosure of the highest fee would restrict fee models and limit innovation.

Many of these industry commenters recommended alternatives to disclosure of the highest fee, such as permitting disclosure in the short form of the full variation of fees or requiring disclosure of the highest fee only if the issuer chooses not to disclose the fee variations. Others recommended disclosing the most common, highest and lowest, lower end, median, or a range of fees. Some recommended disclosing a graphic showing the proportion of consumers paying the highest fee or permitting a de minimis exception allowing disclosure of a lower fee if that lower price is within a close range of the highest fee. Two consumer groups specifically addressed this portion of the proposal, praising the Bureau for the short form disclosure's balance between simplicity and completeness, and saying that too much information reduces consumer understanding. One of the commenters stated that it is important for the consumer to know the highest fee, that financial institutions have alternative places to highlight how to avoid a higher fee, and that disclosing the highest fee also encourages consumers to turn to the long form disclosure to find out about fee waivers and discounts. The other consumer group commenter stated that the required disclosure of the highest fee may encourage lowering fees but could also mislead consumers regarding the actual cost of a feature, particularly with regard to the cash reload fee, suggesting that the required disclosure of the highest fee may provide an incentive to industry to eliminate discounts, such as waiver of the periodic fee with direct deposit. This commenter suggested that the Bureau monitor and assess the impact of requiring disclosure of the highest fee.

Several industry commenters, including an issuing bank and a trade association specifically recommended permitting inclusion in the short form disclosure of the conditions under which the monthly fee could be waived, citing the importance of this fee and the prevalence of discounts and waivers applicable to this fee as crucial to consumer decisions in choosing a prepaid card. A consumer group said its research showed that 14 of 66 prepaid cards disclose that the monthly fee can be waived entirely if the consumer takes certain actions.

*Comments regarding single disclosure of like fees.* Some commenters recommended permitting a single disclosure in the short form in place of required two-tier fees, *i.e.*, those provisions requiring disclosure of two fee variations under a single fee or fee type, when the fee amount is the same for both fees. As noted above, two trade associations, an issuing bank, and the office of a State Attorney General made this recommendation specifically for the per purchase fee disclosure that would have been required under proposed § 1005.18(b)(2)(i)(B)(2) (final § 1005.18(b)(2)(ii) requires disclosure of a single per purchase fee) and a program manager made this recommendation for the ATM withdrawal fees under proposed § 1005.18(b)(2)(i)(B)(3).

*Comments regarding disclosure of third-party fees.* Several industry commenters, including issuing banks and an industry trade association commented on the Bureau's proposal to prohibit the disclosure of third-party fees in the short form. The trade association and two issuing banks generally recommended against mandating disclosure of third-party fees as impractical because, they said, the amount of the fees and the timing and frequency of changes to the fees is often outside the control of the financial institution. Specifically regarding the short form, they recommended permitting a general disclaimer regarding third-party fees or an example to show when such a fee may occur. Another issuing bank recommended that third-

party fees should be permitted, but not required, to be disclosed in the short form. Comments related to disclosure of third-party fees in the short form specifically for cash reloads are addressed in more detail in the section-by-section analysis of § 1005.18(b)(2)(iv) above. In that particular circumstance, some commenters expressed concern that failing to reflect third-party fees in connection with the proposed disclosure of the cash reload fee in the short form might create consumer confusion given that it is a standard industry practice for reload network providers or third-party retailers, not the financial institutions that issue prepaid accounts, to provide and charge for the reloading of cash into prepaid accounts. In addition to confusing consumers, commenters suggested this outcome would result in a competitive disadvantage for financial institutions that offer proprietary systems, which are usually less expensive than third-party systems, and thereby dissuade financial institutions from offering this service.

*Comments regarding disclosure of finance charges.* Although the Bureau did not specifically solicit comment on disclosure in the short form of finance charges, several consumer group commenters addressed this issue in their comments regarding the proposed statement on overdraft credit features. As discussed above, these consumer groups recommended that the Bureau require disclosure in the short form of the actual fees charged for overdraft credit features, which one consumer group said would otherwise permit the issuer to hide the ball by calling such fees by other names. The Bureau received no comments from industry specifically about disclosure of finance charges in the short form disclosure.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(i)(C), renumbered as § 1005.18(b)(3), with certain modifications. While the Bureau is adopting the proposed requirement to disclose the highest fee when the amount of a fee can vary in final

§ 1005.18(b)(3)(i), it is also adopting new § 1005.18(b)(3)(ii) to give financial institutions the option to disclose more detailed fee waiver or discount information specifically for the periodic fee required to be disclosed by final § 1005.18(b)(2)(i).<sup>447</sup> In addition, the Bureau is adopting new § 1005.18(b)(3)(iii) permitting, as an alternative to certain two-tier fee disclosures, disclosure of a single fee amount when the amount is the same for both fees. With regard to third-party fees, the Bureau is adopting in new § 1005.18(b)(3)(iv) a more explicit general prohibition on inclusion of third-party fees in the short form disclosure, while also providing more detail in new § 1005.18(b)(3)(v) with regard to the special provision in final § 1005.18(b)(2)(iv) to include third-party cash reload fees. Final § 1005.18(b)(3)(vi) prohibits disclosure in the short form of finance charges as described in Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61.

Finally, the Bureau has made technical modifications to the rule and related commentary for conformity and clarity and, for the reasons set forth below, the Bureau has revised proposed comments 18(b)(2)(i)(C)-1 and 2, renumbered as 18(b)(3)(i)-1 and 18(b)(3)(iv)-1, respectively, and has added new comments 18(b)(3)(ii)-1, 18(b)(3)(iii)-1, 18(b)(3)(v)-1, and 18(b)(3)(vi)-1 to provide additional clarification and guidance regarding the requirements set forth in final § 1005.18(b)(3).

#### *Disclosure of Variable Fees Generally and for the Periodic Fee*

Final § 1005.18(b)(3)(i) generally provides that if the amount of any fee that is required to be disclosed in the short form disclosure could vary, a financial institution shall disclose the highest amount it may impose for that fee, followed by a symbol, such as an asterisk, linked to a

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<sup>447</sup> See final comment 18(b)(2)(ix)(C)-1 for specific guidance regarding disclosure of fee variations in additional fee types.

statement explaining that the fee could be lower depending on how and where the prepaid account is used, using the following clause or a substantially similar clause: “This fee can be lower depending on how and where this card is used.” Except as provided in final § 1005.18(b)(3)(ii), a financial institution must use the same symbol and statement for all fees that could vary. The linked statement must be located above the statement required by final § 1005.18(b)(2)(x). As discussed in more detail below, final rule § 1005.18(b)(3)(ii) provides an alternative for periodic fees disclosed pursuant to § 1005.18(b)(2)(i) where a financial institution can disclose either the asterisk statement pursuant to § 1005.18(b)(3)(i) or can disclose specific information about fee waiver or reduction for the periodic fee.

As discussed above in connection with the periodic fee disclosure under § 1005.18(b)(2)(i), the Bureau acknowledges the concerns expressed by commenters regarding the need to provide more information about how such fees can vary. However, for the reasons discussed below, the Bureau believes that providing the same level of tailoring and detail with regard to all other fees on the short form would substantially increase the complexity of the form and decrease its usefulness to consumers as an introductory overview of account pricing. Accordingly, the Bureau believes that the best balance is to allow more flexibility with regard to periodic fees while maintaining the proposal’s approach to variations in other fees. The Bureau continues to believe that information on fee variations for all other fees could not be disclosed in a manner that is both engaging and comprehensible to consumers. The design of the short form disclosure seeks a balance between the disclosure of key information necessary for consumer purchase and use decisions and the brevity and clarity necessary for optimal consumer comprehension and engagement. Incorporating into the short form disclosure multiple complex disclaimers, often featuring a variety of conditions under which consumers may receive fee

waivers or discounts or obtain fee waivers or discounts for a certain time period, would disrupt this balance.

Further, many of the alternatives recommended by commenters, such as disclosing a range of fees or using a graphic to show the proportion of consumers paying the highest fees, posed a degree of complexity the Bureau also believes would disrupt this balance. In addition, as opposed to alternatives recommended by commenters such as disclosing the median, lowest, or most common fee, the Bureau believes, as stated in the proposal, it is paramount for consumers to know the maximum they could pay for a particular fee. In this way, consumers will not be surprised by being charged fees higher than they expected and, as pointed out by a consumer group commenter, the linked statement can incent consumers to turn to other sources to learn about available discounts and waivers. As the Bureau explained in the proposal, financial institutions have the alternative of explaining these fee variations elsewhere, such as on other parts of the packaging or on their websites. In addition, financial institutions must disclose these details in the long form disclosure pursuant to final § 1005.18(b)(4)(ii), discussed below. The Bureau believes that once the standardized short form disclosure is used by all prepaid account programs, it will not be counterintuitive, as asserted by some industry commenters, to look outside of its contours for additional information like fee waivers and discounts.

In response to the consumer group commenter raising concerns and recommending that the Bureau monitor and assess the impact of requiring disclosure of the highest fee, the Bureau notes that the commenters' concerns regarding disclosure of periodic fees and fees for cash reloads are specifically addressed in the final rule, respectively, by § 1005.18(b)(3)(ii) and (v). Also, the Bureau intends to continue to monitor the issues addressed in this rule, including disclosure of the highest fee.

In response to the industry commenter citing to the Bureau's pre-proposal consumer testing as indicating that the proposed system for disclosing fee variation with an asterisk linked to a generic statement that fees could be lower would confuse consumers, the cited testing actually revealed the opposite: participants were confused by multiple asterisks linked to the details of fee variations for specific fees. The Bureau's post-proposal consumer testing supports adoption of the proposed system in that, although some misconceptions persisted, most participants understood the significance of the presence or absence of the asterisk when linked to fees other than the monthly fee.<sup>448</sup>

As discussed above, some commenters recommended that the Bureau permit fuller fee disclosure in the short form for waivers and discounts of the monthly fee. The Bureau recognizes that the monthly fee is a key fee and is one of the most commonly waived or discounted prepaid account fees. The Bureau understands such waivers and discounts are based on the consumer meeting one or a combination of the following conditions: having direct deposit into the prepaid account, making a set number of transactions per month, or loading a minimum amount of money per month into the prepaid account.

The Bureau followed up on this issue in its post-proposal consumer testing. In addition to an asterisk linking the highest fees to a statement indicating the fee can be lower depending on how and where the card is used, the Bureau also tested adding a dagger symbol (†) after the highest fee disclosed for the periodic fee, linked to an additional line of text located above the asterisked statement, describing variations in the monthly fee due to waivers and discounts when certain conditions are met.<sup>449</sup> The Bureau's post-proposal consumer testing examined participant

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<sup>448</sup> See ICF Report II at 10-11 and 21.

<sup>449</sup> See ICF Report II at apps. B and C for copies of the prototype short form disclosures tested.

comprehension of various versions of the language and in various scenarios.<sup>450</sup> Most participants who saw the form with the dagger language correctly linked the dagger to the associated text and understood that the circumstances under which the monthly fee could be waived and most participants who saw the form with only the generic asterisk language linked to the monthly fee correctly linked the asterisk to the associated text and understood the monthly fee could be lower in some situations.<sup>451</sup> Thus, regardless of the version shown, all participants understood that the monthly fee could be waived in some situations, and all were able to correctly identify those situations.

The primacy of the periodic fee, prevalence of fee variations associated with the periodic fee, successful consumer testing of disclosure of fee variation for the monthly fee, and both industry and consumer group comments suggesting particular consideration regarding disclosure of the periodic fee have led the Bureau to adopt new § 1005.18(b)(3)(ii), which permits financial institutions an alternative disclosure for a periodic fee that may vary. Specifically, if the amount of the periodic fee disclosed in the short form disclosure pursuant to final § 1005.18(b)(2)(i) could vary, as an alternative to the disclosure required by final § 1005.18(b)(3)(i), the financial institution may disclose the highest amount it may impose for the periodic fee, followed by a symbol, such as a dagger, that is different from the symbol the financial institution uses pursuant to final § 1005.18(b)(3)(i), to indicate that a waiver of the fee or a lower fee might apply, linked to a statement in one additional line of text disclosing the waiver or reduced fee amount and

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<sup>450</sup> Participants variously examined a single prototype short form in isolation, compared two prototype short forms with differing versions of the dagger language, and compared one prototype short form that included dagger language to a short form that did not include dagger language (but which did link the monthly fee to the more generic asterisk statement). *See* ICF Report II at 11 and 21-22.

<sup>451</sup> *Id.* In addition to successfully following the dagger symbol to the appropriate text, some participants also linked the monthly fee to the text associated with the more generic asterisk language which, while applicable, was not intended.

explaining the circumstances under which the fee waiver or reduction may occur. The linked statement must be located directly above or in place of the linked statement required by final § 1005.18(b)(3)(i), as applicable.

The Bureau believes that this optional addition to the short form disclosure will help consumers better understand nuances regarding this important fee without serious compromise to the overall integrity of the short form design, especially in light of the reduction of information disclosed in the short form pursuant to the final rule. *See, e.g.*, removal of two-tiered fees from § 1005.18(b)(2)(ii), reduction of three incidence-based fees to two additional fee types disclosed pursuant to § 1005.18(b)(2)(ix), and permitted single disclosure for like fees pursuant to § 1005.18(b)(3)(iii).

Final comment 18(b)(3)(i)-1 provides an example illustrating the general disclosure requirements of variable fees pursuant to final § 1005.18(b)(3)(i). The comment also explains that, except as described in final § 1005.18(b)(3)(ii), final § 1005.18(b)(3)(i) does not permit a financial institution to describe in the short form disclosure the specific conditions under which a fee may be reduced or waived, but the financial institution could use, for example, any other part of the prepaid account's packaging or other printed materials to disclose that information. The comment also explains that the conditions under which a fee may be lower are required to be disclosed in the long form disclosure pursuant to § 1005.18(b)(4)(ii).

New comment 18(b)(3)(ii)-1 explains that, if the amount of the periodic fee disclosed in the short form pursuant to final § 1005.18(b)(2)(i) could vary, a financial institution has two alternatives for disclosing the variation, as set forth in final § 1005.18(b)(3)(i) and (ii), and provides an illustrative example of both alternatives.

### *Single Disclosure of Like Fees*

In new § 1005.18(b)(3)(iii), the final rule provides that, as an alternative to the two-tier fee disclosures required by final § 1005.18(b)(2)(iii), (v), and (vi) and any two-tier fee required by § 1005.18(b)(2)(ix), a financial institution may disclose a single fee amount when the amount is the same for both fees. New comment 18(b)(3)(iii)-1 provides examples illustrating how to provide a single disclosure for like fees on both the short form disclosure and the multiple service plan short form disclosure. The Bureau believes that permitting disclosure of a single fee amount for a two-tier fee disclosure where the same fee is charged for both variations creates efficiency by simplifying and shortening the short form disclosure without sacrificing consumer comprehension. The Bureau's post-proposal consumer testing confirmed that, for example, participants shown a short form with a single ATM withdrawal fee seemed to understand that the company providing the prepaid account would not charge different fees depending on what network the cardholder used.<sup>452</sup>

### *Disclosure of Third-Party Fees*

For the reasons set forth in herein, the Bureau is adopting the proposed general prohibition on inclusion of third-party fees in the short form explicitly in its own provision of the final rule in § 1005.18(b)(3)(iv). Specifically, final § 1005.18(b)(3)(iv) states that, except as provided in final § 1005.18(b)(3)(v) with regard to cash reload fees, a financial institution may not include any third-party fees in a disclosure made pursuant to final § 1005.18(b)(2). New comment 18(b)(3)(iv)-1 explains that fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed pursuant to final § 1005.18(b)(3)(iv). For example, if a program manager

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<sup>452</sup> See ICF Report II at 13-14.

performs customer service functions for a financial institution's prepaid account program, and charges a fee for live agent customer service, that fee must be disclosed pursuant to final § 1005.18(b)(3)(iv).

As discussed above, the Bureau received several comments in support of the Bureau's proposed exclusion of third-party fees from the short form disclosure. In response to the comments recommending that additional information or disclaimers be provided in the short form with regard to third-party fees, the Bureau believes that the abridged nature of the short form disclosure cannot accommodate disclosing all variable and third-party fees and that the comprehensive design of the long form disclosure is better suited to inform consumers about the details of fee variations and third-party fees. See the section-by-section analysis of § 1005.18(b)(4)(ii) below.

For the reasons set forth in the section-by-section analysis of § 1005.18(b)(2)(iv) above, the Bureau is requiring disclosure in the short form of third-party fees for cash reloads. This requirement is principally set forth in final § 1005.18(b)(2)(iv), and is supplemented by new § 1005.18(b)(3)(v). Final § 1005.18(b)(3)(v) provides that any third-party fee included in the cash reload fee disclosed in the short form pursuant to final § 1005.18(b)(2)(iv) must be the highest fee known by the financial institution at the time it prints, or otherwise prepares, the short form disclosure required by final § 1005.18(b)(2). A financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure. Thus, whether for a prepaid account program with packaging material or for one with only online or oral disclosures, the financial institution must update the short form to disclose a third-party cash reload fee change

when it otherwise updates its short form disclosure. New comment 18(b)(3)(v)-1 provides several examples illustrating when a financial institution must update its short form disclosure to reflect a change in a third-party cash reload fee.

As explained in the section-by-section analysis of § 1005.18(b)(2)(iv) above, the Bureau believes it is important to disclose cash reload fees for proprietary and non-proprietary cash reload systems alike. However, the Bureau does not believe it would be appropriate to require financial institutions to reprint or otherwise reissue their short form disclosures whenever a third party changes its fees for cash reloads, as the financial institution may not always have control over when a third party changes its fees. Rather, the Bureau believes it is appropriate to require financial institutions to update the disclosure of these third-party fees when the financial institution manufactures, prints, or otherwise produces new packaging materials or until such time that the financial institution otherwise updates the short form disclosure.

#### *Prohibition on Disclosure of Finance Charges*

In new § 1005.18(b)(3)(vi), the final rule provides that a financial institution may not include in a disclosure made pursuant to § 1005.18(b)(2)(i) through (ix) any finance charges as described in Regulation Z § 1026.4(b)(11) imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. New comment 18(b)(3)(vi)-1 explains that if a financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature, it must disclose on the short form for purposes of § 1005.18(b)(2)(i) through (vii) and (ix) the amount of

the comparable fee rather than the higher fee. This comment also cross-references final § 1005.18(g)(2) and related commentary.

As discussed in more detail above, the Bureau has made a strategic decision to focus the bulk of the short form disclosure on usage of the prepaid account itself (*i.e.*, the asset feature of the prepaid account). The possibility that consumers may be offered an overdraft credit feature for use in connection with the prepaid account is addressed in the short form pursuant to final § 1005.18(b)(2)(x), which requires the following statement if such a feature may be offered: “You may be offered overdraft/credit after [x] days. Fees would apply.” The Bureau believes this statement, informing consumers whether an overdraft credit feature is offered for the particular prepaid account and, if so, the conditionality of the feature, the duration of the mandatory waiting period, and that fees would apply, is sufficient information for consumers for the purposes of the short form. The Bureau believes inclusion of finance charges in the short form fee disclosures would confuse consumers, obfuscating information about the fees that the Bureau believes are most important to consumers when shopping for a prepaid account.

Thus, the Bureau believes that it is appropriate to exclude any finance charges related to an overdraft credit feature that may be offered at a later date to some prepaid consumers from general disclosure on the short form, including in the disclosures regarding additional fee types under both final § 1005.18(b)(2)(viii) and (ix). If consumers are interested in such a feature, they can look to the Regulation Z disclosures in the long form pursuant to final § 1005.18(b)(4)(vii) (as well as the main fee disclosure pursuant to final § 1005.18(b)(4)(ii) for finance charges imposed on the asset features of the prepaid account), discussed below, for more details.

#### *18(b)(4) Long Form Disclosure Content*

In addition to the short form, the proposed rule would have required financial institutions to provide a long form disclosure providing all fees and certain other specified information prior to the consumer's acquisition of a prepaid account. Proposed § 1005.18(b)(2)(ii) would have provided that, in accordance with proposed § 1005.18(b)(1), a financial institution shall provide the disclosures listed in proposed § 1005.18(b)(2)(ii)(A) through (E). In contrast to the short form, where the Bureau proposed very specific formatting requirements and model forms that would provide a safe harbor for compliance, the Bureau did not specify as detailed formatting requirements with regard to the long form in the proposal. It included proposed Sample Form A-10(e) as one possible way to organize the detailed fee information, but noted that long forms might vary more widely depending on the number of fees and conditions and therefore solicited comment on whether to provide a model form.

The Bureau did not receive any comments specifically regarding whether to provide a long form as a sample form or a model form. More general comments received regarding the Bureau's proposal to require financial institutions to provide long form disclosures pre-acquisition, and the Bureau's reasons for finalizing that requirement overall, are discussed in the section-by-section analysis of § 1005.18(b) above.

The Bureau is adopting proposed § 1005.18(b)(2)(ii), renumbered as § 1005.18(b)(4), with minor modifications for clarity. The final rule requires that, in accordance with final § 1005.18(b)(1), a financial institution shall provide a disclosure setting forth the fees and information listed in final § 1005.18(b)(4)(i) through (vii) for a prepaid account, as applicable. Specific revisions and additions to the enumerated list of fees and information required in the

long form disclosure are discussed in the section-by-section analyses of § 1005.18(b)(4)(i) through (vii) below.

The Bureau is finalizing Sample Form A-10(f) rather than providing a specific model long form (which would have provided safe harbor). In light of the variation in long forms that may occur where financial institutions have different fee structures and conditions, the Bureau has also revised the text of the final rule from the proposed version to remove language that would have required the long form to be in substantially similar format to the sample form. The Bureau believes this change will further underscore the fact that financial institutions are afforded discretion in formatting the long form in a way that will best convey the amount and nature of the information that is required to be provided under the rule. Thus, Sample Form A-10(f) is provided as an example that financial institutions may, but are not required to, incorporate or emulate in their own long form disclosures.

*18(b)(4)(i) Title for Long Form Disclosure*

Upon further consideration, the Bureau is adopting the final rule with an additional requirement in new § 1005.18(b)(4)(i) to include in the first line of the long form a heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid account program. *See also* final § 1005.18(b)(7)(i)(B). The Bureau understands that financial institutions typically include such a heading on fee disclosures contained in prepaid account agreements now. The Bureau believes that providing a title or heading to the long form, such as the one shown as an example in Sample Form A-10(f) (“List of all fees for XYZ Prepaid Card”), will help orient consumers to the long form disclosure as a comprehensive repository for fees and other key information about the particular prepaid

account, particularly in contrast to the short form which provides an abridged list of fees and information.

*18(b)(4)(ii) Fees*

*The Bureau's Proposal*

Proposed § 1005.18(b)(2)(ii)(A) would have required the financial institution to disclose in the long form all fees that may be imposed by the financial institution in connection with a prepaid account. For each fee type, the financial institution would have had to disclose the amount of the fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. This would include, to the extent known, any third-party fee amounts that may apply. Proposed § 1005.18(b)(2)(ii)(A) would also have required that if such third-party fees may apply but the amount of those fees are not known, a financial institution would have had to instead include a statement indicating that third-party fees may apply without specifying the fee amount. Under the proposal, a fee imposed by a third party that acts as an agent of the financial institution for purposes of the prepaid account always would have had to be disclosed.

Proposed § 1005.18(b)(2)(ii)(A) would have also stated that a financial institution may not utilize any symbols, such as asterisks, to explain the conditions under which any fee may be imposed. The Bureau believed it is important that consumers be able to easily follow the information in the long form, and that, when financial institutions do not face space constraints like on the short form, text should be used to explain any information about fees, instead of relying on a consumer first to notice symbols and then associate them with text in a footnote.

The Bureau also proposed to add commentary to explain the format of the long form disclosure. Specifically, proposed comment 18(b)(2)(ii)(A)-1 would have explained that, for example, if a financial institution charges a cash reload fee, the financial institution must list the

amount of the cash reload fee and also specify any circumstances under which a consumer can qualify for a lower fee. The proposed comment would have further explained that relevant conditions to disclose could also include, for example, if there is a limit on the amount of cash a consumer may load into the prepaid account in a transaction or during a particular time period.

Proposed comment 18(b)(2)(ii)(A)-2 would have explained that a financial institution may, at its option, choose to disclose pursuant to proposed § 1005.18(b)(2)(ii)(A), any service or feature it provides or offers even if it does not charge a fee for that service or feature. The proposed comment would have clarified that, for example, a financial institution may choose to list “online bill pay service” and indicate that the fee is “\$0” or “free” when the financial institution does not charge consumers a fee for that service or feature. By contrast, where a service or feature is available without a fee for an introductory period, but where a fee may be imposed at the conclusion of the introductory period for that service or feature, the financial institution could not indicate that the fee is “\$0.” The proposed comment would have clarified that the financial institution should instead list the main fee and explain in the separate explanatory column how the fee could be lower during the introductory period, what that alternative fee would be, and when it will be imposed. Similarly, if a consumer must enroll in an additional service to avoid incurring a fee for another service, neither of those services should disclose a fee of “\$0,” but should instead list each fee amount imposed if a consumer does not enroll. The proposed comment also would have provided an example that if the monthly fee is waived once a consumer receives direct deposit payments into the prepaid account, the monthly fee imposed upon a consumer if they do not receive direct deposit would be disclosed in the long form, and an explanation regarding how receiving direct deposit might lower the fee should be included in the explanatory column in the long form.

Proposed comment 18(b)(2)(ii)(A)-3 would have provided guidance on the disclosure of third-party fees in the long form disclosure. Specifically, the proposed comment would have explained that, for example, a financial institution that offers balance updates to a consumer via text message would disclose that mobile carrier data charges may apply for each text message a consumer receives. Regarding the requirement in proposed § 1005.18(b)(2)(ii)(A), a financial institution must always disclose in the long form any fees imposed by a third party who is acting as an agent of the financial institution for purposes of the prepaid account product, the proposed comment would have provided an example that any fees that the provider of a cash reload service who has a relationship with the financial institution may impose would have had to be disclosed in the long form.

#### *Comments Received*

In the context of recommending against requiring the long form disclosure altogether, a number of industry commenters—including an industry trade association, program managers, and issuing banks—asserted that the amount and complexity of the information proposed to be included in the long form disclosure would overwhelm consumers. See the section-by-section analysis § 1005.18(b) above for discussion of such comments and the Bureau’s reasoning for finalizing the overall requirement to disclose the long form.

With regard to recommendations for the specific content of the long form disclosure, two issuing banks requested that the Bureau limit the proposed requirement to disclose on the long form all fees that may be imposed in connection with a prepaid account by eliminating disclosure of optional, incidental services. The commenters said such features generally are not available at the time of purchase and are disclosed in a prepaid account program’s terms and conditions at the time the consumer elects such services. The commenter asserted that mandating disclosure of

fees connected with such services would add complexity to the long form disclosure and discourage financial institutions from creating new features and enhanced functionality due to the burden of having to update the disclosure and distribute new packaging.

Two consumer group commenters and individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group generally supported the long form disclosures' proposed scope and urged the Bureau to add additional content requirements, such as disclosure of when funds become available after consumer deposits via ATM, teller, and remote deposit capture; free ways to get cash such as cash back at point of sale when making a purchase; and the number of surcharge-free ATM withdrawals available to the consumer. One consumer group commenter suggested that the Bureau's proposed sample long form disclosure was ambiguous in certain places regarding fees disclosure, particularly with respect to payroll card account fees.

An industry trade association recommended that free services and features be disclosed as "\$0" in the long form instead of the two options in proposed comment 18(b)(2)(ii)(A)-2 of "\$0" or "free."

Several industry commenters, including trade associations, issuing banks, program managers, and a payment network recommended eliminating the requirement to disclose third-party fees in the long form disclosure. They said it is not practical to disclose third-party fees because the amount, timing, and frequency of such fees are outside of the control of the financial institution and because any changes in such fees would require updates to the long form disclosure and change-in-fee notices. Some industry commenters urged the Bureau to require instead a general disclosure that third-party fees may apply or a more specific disclosure that third-party fees apply with information on how to obtain the specific fee information. A

consumer group supported the disclosure of third-party fees in the long form as a method of creating a fair comparison among financial institutions that use third parties to load cash into prepaid accounts and those with proprietary cash reload systems.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(A), renumbered as § 1005.18(b)(4)(ii), with certain modifications. Most significantly, as explained below, the final rule contains several additional accommodations regarding disclosure of third-party fees in the long form. The Bureau is also adopting proposed comments 18(b)(2)(ii)(A)-1 through -4, renumbered as 18(b)(4)(ii)-1 through -4, with certain revisions as discussed below. Finally, the Bureau has made technical modifications to the rule and commentary for conformity and clarity.

The Bureau is adopting this provision pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act. The Bureau believes that pre-acquisition disclosures of all fees for prepaid accounts will, consistent with EFTA section 902 and section 1032(a) of the Dodd-Frank Act, assist consumers' understanding of the terms and conditions of their prepaid accounts, and ensure that the features of prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account. The Bureau also believes that the long form disclosure will, in many ways, be similar to what many financial institutions currently disclose regarding prepaid accounts' fee structures in their prepaid account agreements, although pursuant to final § 1005.18(b) the long form disclosure will be provided to consumers

as a stand-alone document before they acquire a prepaid account (unless the exception in final § 1005.18(b)(1)(ii) or (iii) applies).<sup>453</sup>

*Disclosure of all fees and conditions and disclosure of features without a charge.* Final § 1005.18(b)(4)(ii) requires disclosure in the long form of all fees that may be imposed in connection with a prepaid account, including fees that may be imposed by a third party, if known by the financial institution. The Bureau is finalizing as proposed the requirement that the financial institution disclose the amount of each fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. The final rule also requires that a financial institution may not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed. The final rule further states that a financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer.

As discussed above, some industry commenters urged the Bureau not to require disclosure of *all* fees on the long form. The Bureau believes that this requirement is necessary to help consumers understand, both prior to and after purchase, the terms and conditions of their prepaid accounts and ensure that account features are fully, accurately, and effectively disclosed in a manner that permits consumer understanding of the costs, benefits, and risks associated with the prepaid account. Furthermore, because the short form discloses a limited number of fees and few conditions, this requirement is necessary so that the long form disclosure can provide the full amount of information unabridged.

As discussed in the section-by-section analysis of § 1005.18(b) above, the Bureau believes there should be a comprehensive disclosure to which a consumer can turn prior to

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<sup>453</sup> See also final § 1005.18(f)(1) regarding requirements for initial disclosures.

purchasing a prepaid account for straightforward information on all fees and the circumstances under which they may be imposed. The Bureau is not requiring disclosure in the long form of additional information related to fees as requested by some commenters because the Bureau believes disclosing fee amounts and the conditions under which they may be imposed provides consumers with the most important information they need to have access to pre-acquisition. The Bureau has observed that many financial institutions include details in their account agreements' fee schedules about free services, and the Bureau encourages financial institutions to continue to do so. To provide support to the proposed commentary regarding how to disclose free services and features, the Bureau has added to the regulatory text a sentence stating that a financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer.

While the Bureau is generally permitting formatting flexibility on the long form disclosure, the Bureau also is adopting the prohibition in the proposed rule against using any symbol, such as an asterisk, to explain the conditions in the long form disclosure under which any fee may be imposed. The Bureau continues to believe that it is important that consumers can easily follow the information in the long form disclosure and, absent the space constraints of the short form disclosure, the financial institution is able to explain any information about fees directly instead of relying on consumers to notice symbols and then associate them with explanatory text.

Regarding the consumer group's comment that the Bureau's proposed sample long form disclosure was ambiguous in certain places regarding fees disclosure, particularly with respect to payroll card account fees, the Bureau notes that the sample long form is meant to provide an example to aid financial institutions in complying with the requirements of final § 1005.18(b)(4).

Financial institutions, including those offering payroll card accounts, should ensure that their long form disclosures accurately reflect the fees and features of their prepaid accounts.

Final comment 18(b)(4)(ii)-1 explains that the requirement in final § 1005.18(b)(4)(ii) that a financial institution disclose in the long form all fees that may be imposed in connection with a prepaid account and is not limited to just fees for EFTs or the right to make transfers. It further explains that the requirement to disclose all fees in the long form includes any finance charges imposed on the prepaid account as described in Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 but does not include finance charges imposed on the covered separate credit feature as described in § 1026.4(b)(11)(i). The comment cross-references comment 18(b)(7)(i)(B)-2 for guidance on disclosure of finance charges as part of the § 1005.18(b)(4)(ii) fee disclosure in the long form. The comment also clarifies that a financial institution may also be required to include finance charges in the Regulation Z disclosures required pursuant to final § 1005.18(b)(4)(vii).

Final comment 18(b)(4)(ii)-2 elaborates on the disclosure of conditions in the long form. The comment provides several examples illustrating how a financial institution would disclose the amount of each fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. The comment also clarifies that a financial institution may, but is not required to, include on the long form disclosure additional information or limitations related to the service or feature for which a fee is charged, such as, for cash reloads, any limit on the amount of cash a consumer may load into the prepaid account in a single transaction or during a particular time period. Finally, the comment clarifies that the general requirement in final § 1005.18(b)(4)(ii)

does not apply to individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis.

Final comment 18(b)(4)(ii)-3 addresses disclosure of a service or feature without a charge. It reiterates the provision in the rule that a financial institution may, but is not required to, list in the long form disclosure any service or feature it provides or offers at no charge to the consumer. For example, a financial institution may list “online bill pay” in its long form disclosure and indicate a fee amount of “\$0” when the financial institution does not charge consumers a fee for that feature. The Bureau agrees that such services should be disclosed as \$0, rather than “free,” as requested by one industry commenter, because having a single standardized approach is shorter, simpler, and clearer for consumers to use to compare fees across prepaid accounts.

Comment 18(b)(4)(ii)-3 further explains, however, that where a fee is waived or reduced under certain circumstances or where a service or feature is available for an introductory period without a fee, the financial institution may not list the fee amount as “\$0” or “free.” Rather, the financial institution must list the highest fee, accompanied by an explanation of the waived or reduced fee amount and any conditions for the waiver or discount. The comment also provides several examples.

As discussed in more detail in the section-by-section analysis of § 1005.18(b) above, the Bureau does not believe that financial institutions change the fee schedules for prepaid accounts often, particularly for those sold at retail locations, and changes may require pulling and replacing or providing appropriate change-in-terms notices.

If a financial institution is making available a new optional service for all prepaid accounts in a particular prepaid account program, a financial institution may provide new

customers disclosures in accordance with § 1005.7(c) post-acquisition, without needing to pull and replace card packaging that does not reflect that new optional feature in any disclosure contained inside the package in accordance with §§ 1005.7 and 1005.18(b)(1)(ii)(C), (b)(4)(ii), and (f)(1). The Bureau intends to monitor financial institutions' practices in this area, however, and may consider additional requirements in a future rulemaking if necessary.

*Disclosure of third-party fees.* With regard to disclosure of third-party fees in the long form, the Bureau is finalizing the general proposed requirement that financial institutions disclose in the long form any third-party fee amounts known to the financial institution that may apply, but making changes regarding the wording and updating of the disclosure to address commenter concerns.

Specifically, the final rule provides that for any such third-party fee disclosed, the financial institution may, but is not required to, include a statement that the fee is accurate as of or through a specific date, a statement that the third-party fee is subject to change, or both statements. As in the proposal, if a third-party fee may apply but the amount of that fee is not known by the financial institution, the final rule requires that the long form disclosure include a statement indicating that the third-party fee may apply without specifying the fee amount.

The Bureau moved language clarifying disclosure of fees by a party acting on behalf of the financial institution from the proposed regulatory text to the commentary in the final rule. Specifically, comment 18(b)(4)(ii)-4 clarifies that fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed on the long form pursuant to final § 1005.18(b)(4)(ii).

The final rule also provides that a financial institution is not required to revise the long form disclosure required by § 1005.18(b)(4) to reflect a fee change by a third party until such

time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. Thus, whether for a prepaid account program with packaging material or for one with only online or oral disclosures, the financial institution must update the long form to disclose a third-party fee change when it otherwise updates its long form disclosure. Final comment 18(b)(4)(ii)-4 provides an example illustrating a disclosure on the long form of a third-party fee when that fee is known to a financial institution and an example of when it is not.

As discussed in the section-by-section analysis of § 1005.18(b)(3) above, the comprehensive design of the long form disclosure is better suited to inform consumers about the details of fee variations and third-party fees than the short form disclosure for which, due to its abridged nature, the final rule disallows disclosure of most third-party fees. Indeed, the Bureau believes that the comprehensiveness of the long form disclosure would be compromised by the exclusion of third-party fees, which would result in consumers not being made aware of all fees they could incur in connection with the prepaid account. The Bureau believes the final rule strikes an appropriate balance by requiring disclosure in the long form of third-party fees but providing, among other things, a safe harbor regarding reprinting or otherwise updating the long form disclosure when a third-party fee changes and a general statement for situations in which a financial institution does not know the amount of the third-party fee.

Disclosing the date as of or through which a third-party fee is accurate, the fact that the third-party fee is subject to change, or both provides flexibility to alert consumers to the limitations of the financial institution's knowledge about third-party fees. The Bureau also believes that it reduces the need to require instantaneous updates as third-party fees shift. Regarding the safe harbor for reprinting due to third-party fee changes, the Bureau believes it is

appropriate to require updates of these third-party fees when the financial institution prints new packaging materials or, if there are no packaging materials, when the financial institution otherwise updates the long form disclosure.

*18(b)(4)(iii) Statement Regarding Registration and FDIC or NCUA Insurance*

Proposed § 1005.18(b)(2)(ii)(D) would have required that the long form also include the disclosure required in the short form under proposed § 1005.18(b)(2)(i)(B)(13) regarding FDIC (or NCUSIF) pass-through deposit (or share) insurance, when appropriate.

The Bureau received one comment regarding the disclosure of FDIC or NCUSIF insurance in the long form. A consumer group recommended that, in addition to requiring disclosure of the statement regarding insurance eligibility required in the short form (*see* final § 1005.18(b)(2)(xi)), the Bureau require disclosure of additional information about the benefit of the insurance or the consequence of the lack of such coverage in a separate box for important notices. The consumer group also recommended specific language for such a notice.

As noted above, one consumer group also requested that the Bureau consider adding additional information to the registration and insurance disclosure in the short form, such as an explanation of what protections in addition to insurance eligibility registration provides or more fulsome information about the implications of insurance coverage. As discussed in connection with § 1005.18(b)(2)(xi), the Bureau is declining to add any more information to the registration/insurance disclosure in the short form disclosure, but has concluded that it would be useful to require financial institutions to provide more detailed information about insurance coverage in the long form disclosure. *See* final § 1005.18(b)(4)(iii).

Thus, for the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(b)(2)(ii)(D), renumbered as § 1005.18(b)(4)(iii), with substantial modifications.

Specifically, the Bureau is requiring a more fulsome disclosure regarding insurance, as well as the statement directing the consumer to register the account, where applicable. The Bureau has made other technical modifications to the rule for conformity and clarity.

Unlike the proposal, final § 1005.18(b)(2)(xi) requires that financial institutions disclose a statement regarding eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, rather than just a statement in situations where the prepaid account was not eligible for insurance. Final § 1005.18(b)(2)(xi) also requires that the statement direct the consumer to register the prepaid account for insurance and other account protections, where applicable, which had been a separate provision in the proposal. In addition, final § 1005.18(b)(4)(iii) requires an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable. New comment 18(b)(4)(iii)-1 provides examples illustrating how this disclosure might be made for FDIC and NCUA insurance in certain circumstances, and cross-references final comment 18(b)(2)(xi)-1 for guidance as to when NCUA insurance coverage should be disclosed instead of FDIC insurance coverage.

As discussed in the section-by-section analysis of § 1005.18(b)(2)(xi), the Bureau is persuaded by commenters, the results of its post-proposal consumer testing, and information received during the interagency consultation process that the registration and insurance disclosures should be combined, and that both the existence as well as the lack of insurance eligibility should be disclosed. The Bureau also believes that mirroring the § 1005.18(b)(2)(xi) disclosure in the long form will assist consumers in comparison shopping and reinforce the need to register prepaid accounts, where applicable.

As discussed above, while the Bureau's post-proposal consumer testing confirmed that some consumers erroneously equate FDIC coverage with fraud or theft protection, a number of

participants understood that the insurance protects consumers' funds in the case of bank insolvency.<sup>454</sup> Absent the space limitations of the short form disclosure, the Bureau believes the long form disclosure provides an optimal opportunity to briefly, but more fully, explain the implications of insurance coverage or lack thereof. The Bureau does not believe it necessary to prescribe the exact content of this disclosure because circumstances may vary for a particular prepaid account program; thus, the final rule requires only that the long form include (in addition to the statement required in the short form pursuant to final § 1005.18(b)(2)(xi)) an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

As noted above in the section-by-section analysis of § 1005.18(b)(2)(xi), the final rule refers to NCUA, rather than NCUSIF, insurance for credit unions. After further consideration and based on information received during the interagency consultation process, the Bureau believes the term "NCUA" may be more meaningful to consumers than "NCUSIF" and has revised the disclosures accordingly in both final § 1005.18(b)(2)(xi) and (4)(iii).

*18(b)(4)(iv) Statement Regarding Overdraft Credit Features*

Under the proposed rule, fees relating to overdraft and certain other credit features would have been subject to the general requirement in proposed § 1005.18(b)(2)(ii)(A) to disclose all fees and the condition under which they may be imposed, as well as the requirement in proposed § 1005.18(b)(2)(ii)(B) to provide certain Regulation Z disclosures if, at any point, a covered credit plan might have been offered in connection with the prepaid account. The proposed rule would not have required a basic statement in the long form regarding whether an overdraft or

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<sup>454</sup> See ICF Report II at 15 and 26. In the first round of post-proposal testing, two out of nine participants understood that FDIC insurance is meant to protect their money in case of a bank failure; in the second round, approximately half of the 11 participants understood this.

credit feature could be provided at all in connection with the prepaid account, parallel to the proposed statement in the short form.

Several consumer groups recommended that the long form, as the more comprehensive disclosure, should indicate whether the financial institution offers overdraft or other credit features in connection with that prepaid account program. The Bureau agrees that the long form disclosure, like the short form disclosure, should include an explicit statement as to whether or not the prepaid account offers any overdraft or credit feature because this is key information for consumers to consider in making their purchase and use decisions regarding prepaid accounts. See the section-by-section analysis of § 1005.18(b)(2)(x) above for further discussion of this disclosure requirement generally. While a financial institution offering a prepaid account program with an overdraft credit feature must disclose in the long form any fees that are imposed in connection with the prepaid account pursuant to final § 1005.18(b)(4)(ii), the Bureau believes a more explicit statement regarding the existence or lack of such a feature is also appropriate, as the availability of such a feature may not be obvious depending on the nature of the fees imposed in connection with the overdraft credit feature and where they are imposed (*i.e.*, on the prepaid account or on the covered separate credit feature). Moreover, inclusion of this statement makes the short form and long form disclosures parallel with regard to the disclosure of the existence of such a feature and, if one may be offered, the duration of the waiting period, and that fees would apply.

For these reasons, the Bureau is adopting the final rule with the additional requirement in new § 1005.18(b)(4)(iv) to disclose in the long form the same statement regarding overdraft credit features required in the short form pursuant to final § 1005.18(b)(2)(x).

*18(b)(4)(v) Statement Regarding Financial Institution Contact Information*

Proposed § 1005.18(b)(2)(ii)(C) would have required disclosure of the telephone number, mailing address, and website of the person or office that a consumer may contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a written copy of transaction history pursuant to proposed § 1005.18(c)(1)(iii) if the financial institution does not provide periodic statements pursuant to existing § 1005.9(b), or to notify the person or office when a consumer believes that an unauthorized EFT has occurred as required by existing § 1005.7(b)(2) and proposed § 1005.18(d)(1)(ii).

Having received no comments on this portion of the proposal, and for the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(C), renumbered as § 1005.18(b)(4)(v), with technical modifications for conformity and clarity. The Bureau believes that it is axiomatic for the comprehensive long form disclosure to include the contact information for the financial institution or its service provider through which consumers may obtain information about their prepaid accounts and provide notice of unauthorized transfers.

*18(b)(4)(vi) Statement Regarding CFPB Website and Telephone Number*

*The Bureau's Proposal*

Proposed § 1005.18(b)(2)(ii)(D) would have required disclosure of the URL of the website of the Consumer Financial Protection Bureau, and a telephone number a consumer can contact and the URL a consumer can visit to submit a complaint about a prepaid account. As discussed in the proposal and the section-by-section analysis of § 1005.18(b)(2)(xii) above, the Bureau intends to develop resources on its website that would, among other things, provide basic information to consumers about prepaid accounts, the benefits and risks of using them, and how to use the prepaid account disclosures. The Bureau also believed that consumers would benefit

from seeing on the long form disclosure the Consumer Financial Protection Bureau's website and telephone number that they can use to submit a complaint about a prepaid account.

#### *Comments Received*

As discussed in the section-by-section analysis of § 1005.18(b)(2)(xii) above, a group advocating on behalf of business interests opposed disclosing contact information for the Bureau in both the short form and long form disclosures. The commenter suggested that disclosure in the long form of a Bureau website URL and telephone number through which consumers could submit complaints about prepaid cards would undermine the relationship between financial institutions and their customers. The commenter said consumers should be encouraged to raise issues about their prepaid cards directly with the financial institution rather than directing those issues to the Bureau. An issuing bank similarly opposed the proposed requirement to include in the long form contact information through which consumers could submit complaints about their prepaid accounts, saying that the statement casts prepaid cards in a negative light. The commenter instead supported disclosure of a neutral statement referring consumers to the Bureau for more information about prepaid products.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(D), renumbered as § 1005.18(b)(4)(vi), with certain modifications. Specifically, for clarity, the Bureau has added to the regulatory text the specific language for this statement. In addition, the Bureau made technical modifications to the rule for conformity and clarity.

Final § 1005.18(b)(4)(vi) requires inclusion in the long form of a statement directing the consumer to a website URL of the Bureau ([cfpb.gov/prepaid](http://cfpb.gov/prepaid)) for general information about prepaid accounts, and a statement directing the consumer to the Bureau telephone number (1-

855-411-2372) and website URL ([cfpb.gov/complaint](http://cfpb.gov/complaint)) to submit a complaint about a prepaid account, using the following clause or a substantially similar clause: “For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid). If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit [cfpb.gov/complaint](http://cfpb.gov/complaint).” In the final rule, the Bureau has added the word “general” to the statement that the Bureau website provides “general information” about prepaid accounts for parity with final § 1005.18(b)(2)(xii).

The Bureau is not persuaded by industry commenters that it should not include these disclosure requirements in the final rule. In the same vein, regarding the long form disclosure of the telephone number and website URL for submitting a complaint, the Bureau believes it both logical and crucial to inform consumers of an available resource that can help them connect with financial institutions so their complaints about prepaid accounts can be heard and addressed. Indeed, the Bureau included a similar requirement in the Remittance Rule; there, remittance transfer providers must disclose the Bureau’s contact information on the receipt provided in conjunction with a remittance transfer.<sup>455</sup> In the preamble to the final Remittance Rule, the Bureau explained that such a disclosure requirement was necessary to ensure consumer complaints about remittance transfer providers were centralized in one place.<sup>456</sup>

#### *18(b)(4)(vii) Regulation Z Disclosures for Overdraft Credit Features*

##### *The Bureau’s Proposal*

Proposed § 1005.18(b)(2)(ii)(B) would have required the financial institution to include in the long form the disclosures described in Regulation Z § 1026.60(a), (b), and (c) if, at any

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<sup>455</sup> § 1005.31(b)(2)(vi).

<sup>456</sup> 77 FR 6194, 6229 (Feb. 7, 2012).

point, a credit plan that would be a credit card account under Regulation Z (12 CFR part 1026) may be offered in connection with the prepaid account. Regulation Z § 1026.60 sets forth disclosure requirements for credit and charge card application and solicitations commonly referred to as “Schumer Box” disclosures. Section 1026.60(b) lists the required disclosure elements, § 1026.60(a) contains general rules for such disclosures, and § 1026.60(c) contains specific requirements for direct mail and electronic applications and solicitations. Proposed § 1005.18(b)(2)(ii)(B) would have explained that a credit plan that would be a credit card account under proposed Regulation Z § 1026.2(a)(15) could be structured either as a credit plan that could be accessed through the same device that accesses the prepaid account, or through an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor offering the plan.

The Bureau recognized that Regulation Z does not require these disclosures to be provided until a consumer is actually solicited for a credit plan. The Bureau, however, believed it would be important for consumers who are considering whether to acquire a prepaid account to know not only if a credit plan could be offered at any point, as would have been required to be disclosed in the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(9), but also what the possible cost of such a plan might be. Because of the space constraints on the short form, as discussed in the proposal, the Bureau believed it would be appropriate for a consumer to receive as part of the long form disclosure more complete information about any credit plan that could be offered to them, even if they would not be solicited for such a plan until at least 30 days after registering a particular prepaid account pursuant to proposed § 1005.18(g) and proposed Regulation Z § 1026.12(h).

Proposed comment 18(b)(2)(ii)(B)-1 would have clarified that the disclosures described in Regulation Z § 1026.60(a), (b), and (c) must appear in the form required under § 1026.60(a), (b), and (c), and, to the extent possible, on the same printed page or webpage as the rest of the information required to be listed pursuant to proposed § 1005.18(b)(2)(ii). The Bureau recognized that depending on the number of fees included in the long form disclosure, it might not be possible to include both disclosures on the same printed page. The Bureau believed, however, that to the extent it would be possible to include these disclosures on the same printed page or webpage, doing so would make it easier for the consumer to review the disclosures.

#### *Comments Received*

An issuing bank opposed the proposed requirement to include the above-cited Regulation Z disclosures along with the long form disclosure, arguing that providing this level of detail regarding a potential overdraft or credit feature of a prepaid account is not logical at the pre-acquisition stage. It cautioned the information disclosed will likely be outdated by the time a consumer seeks or is offered such credit, and suggested that consumers may become confused or angry if the actual credit terms offered differ from those disclosed in the long form, which it said is likely considering the mandatory 30-day waiting period before solicitation and infrequency with which the proposed rule would have required updating disclosures in a retail location. It stated that this would result in stale Regulation Z disclosures, including the APR, that could be more than a year old at the time a consumer would actually apply for credit. The commenter suggested that the disclosures would confuse consumers who, upon seeing them in the long form disclosure, will likely assume credit is being or will be offered to them. The commenter also expressed concern that consumers seeking credit who do not ultimately qualify for it may be confused or angered and suspect the financial institution has engaged in discrimination or false

advertising. Finally, the commenter expressed concern that consumers who do obtain credit may be confused by being provided with the Regulation Z disclosures again at the time of solicitation and, perhaps, with changed terms. In sum, the commenter recommended that the Bureau remove this long form requirement as likely to provide little consumer benefit but rather lead to significant consumer misunderstanding.

A consumer group commenter supported disclosure of the Regulation Z and E information on the same page, if possible.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(2)(ii)(B), renumbered as § 1005.18(b)(4)(vii), with certain modifications. The Bureau is also finalizing proposed comment 18(b)(2)(ii)(B)-1, renumbered as 18(b)(4)(vii)-1, with certain revisions and is adding new comment 18(b)(4)(vii)-2, as discussed below.

Specifically, final § 1005.18(b)(4)(vii) requires that, as part of the long form disclosure, the disclosures required by Regulation Z § 1026.60(e)(1) must be given, in accordance with the requirements for such disclosures in § 1026.60, if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, may be offered to a consumer in connection with the prepaid account. Under the proposal, a financial institution would have been required to include the Regulation Z disclosures pursuant to § 1026.60(a), (b), and (c). While the content required for disclosures given under Regulation Z § 1026.60(b) and (e)(1) are largely the same, the disclosures pursuant to § 1026.60(e)(1) are tailored for credit card applications and solicitations made available to the general public—commonly referred to as “take one” disclosures—which the Bureau believes to be more apt for inclusion in the long form.

As discussed in the proposal and in the section-by-section analysis of § 1005.18(b)(2)(x) above, the Bureau believes it is important for consumers to be informed of the key costs and terms of an overdraft credit feature in order to be able to make informed purchase and use decisions with regard to both prepaid accounts and associated overdraft credit features—even though they may not be eligible for the feature until after a waiting period or at all. In response to the comment suggesting that such information may become stale and cause consumer confusion or worse, the Bureau notes that Regulation Z § 1026.60(e)(1) permits inclusion in a prominent location in the disclosure of the date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date, as well as a statement and contact information regarding any change in the required information since it was printed. The Bureau has also added an additional provision to § 1005.18(b)(4)(vii), discussed below, limiting the requirement to update these disclosures. For an overview of the Bureau’s overall approach to regulating overdraft credit features offered in conjunction with prepaid accounts, see the *Overview of the Final Rule’s Amendments to Regulation Z* section below.

Final § 1005.18(b)(4)(vii) also provides that a financial institution may, but is not required to, include above the Regulation Z disclosures required by § 1005.18(b)(4)(vii), a heading or other explanatory information introducing the overdraft credit feature. Given the organization of the long form disclosure and the placement of the Regulation Z disclosures at the end, the Bureau believes it is appropriate to provide financial institutions this option in case they deem it necessary or appropriate to include brief additional text to orient or explain to consumers to the ensuing disclosures.

Finally, the final rule provides that a financial institution is not required to revise the disclosures required by final § 1005.18(b)(4)(vii) to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. In conjunction with the final rule's incorporation of the Regulation Z § 1026.60(e)(1) disclosures, the Bureau believes it would be inefficient to require financial institutions to update their long form disclosures (and their initial disclosures, pursuant to final § 1005.18(f)(2)), each time a change is made to the fees and terms required to be included in the credit portion of that disclosure. The Bureau has thus added this exception, which mirrors the exception for third-party fees in final § 1005.18(b)(4)(ii) discussed above.

Final comment 18(b)(4)(vii)-1 provides guidance on where these disclosures must be located in the long form. Specifically, it states that if the financial institution includes the disclosures described in Regulation Z § 1026.60(e)(1), pursuant to final § 1005.18(b)(7)(i)(B), such disclosures must appear below the disclosures required by final § 1005.18(b)(4)(vi). If the disclosures provided pursuant to Regulation Z § 1026.60(e)(1) are provided in writing, these disclosures must appear in the form required by § 1026.60(a)(2), and to the extent possible, on the same page as the other disclosures required by final § 1005.18(b)(4). The Bureau continues to believe that consumers could more easily review these Regulation Z disclosures if they are on the same page as the rest of the long form information, although the Bureau understands that this may not be possible depending on the length of the prepaid account program's long form.

Final comment 18(b)(4)(vii)-2 explains that the updating exception in § 1005.18(b)(4)(vii) does not extend to any finance charges imposed on the prepaid account as described in final Regulation Z § 1026.4(b)(11)(ii), in connection with a covered separate credit

feature accessible by a hybrid prepaid-credit card as defined in final § 1026.61 that are required to be disclosed on the long form pursuant to final § 1005.18(b)(4)(ii). This comment also cross-references final comment 18(b)(4)(ii)-1.

*18(b)(5) Disclosure Requirements Outside the Short Form Disclosure*

The proposed rule did not include a prepaid account's purchase price or activation fee in the static portion of the short form disclosure. However, proposed comment 18(b)(2)(i)(B)(8)(I)-2 would have explained, among other things, that the price for purchasing or activating a prepaid account could be disclosed as an incidence-based fee for purposes of proposed § 1005.18(b)(2)(i)(B)(8)(I). (To qualify as an incidence-based fee under the proposal, the purchase price or activation fee would have had to be one of up to three fees, other than those disclosed as a static fee in the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(I) through (7), that were incurred most frequently in the prior 12-month period by consumers of that particular prepaid account product.)

An industry trade association recommended against requiring disclosure of the purchase price in the short form because, it said, consumers already are sufficiently alerted to its display on the packaging of the prepaid account or by the retailer. An issuing bank, on the other hand, recommended disclosure of the purchase price in the short form because, it said, consumers lack clarity on this fee in certain situations, such as when confronted with hundreds of prepaid cards in some retail settings. Several industry commenters, including an issuing bank, a program manager, and a trade association, recommended requiring disclosure of the activation fee instead of the purchase price. Several industry commenters recommended against requiring disclosure of the activation fee in the short form as an incidence-based fee because, they said, it is not a common fee and would be disclosed in the terms and conditions for the prepaid account. They

suggested the activation fee be added as a static fee to the short form, perhaps in lieu of one of the incidence-based fees, if the Bureau's research indicated the fee was common enough. Otherwise, they recommended it be disclosed only in the long form.

A consumer group agreed that the purchase price should not be disclosed in the short form as a static fee because it would take up scarce space when there is no fee (such as for online purchases of prepaid accounts), the purchase price can be conspicuously disclosed on other parts of the packaging, consumers already take notice of the price they have to pay for a prepaid card, and it is a one-time fee such that disclosing it within the short form would overemphasize it and mislead consumers to compare it with recurring fees. It also said that, for prepaid account programs where consumers frequently buy new prepaid cards, the purchase price may appear in any case as an incidence-based fee. Conversely, a consumer group urged requiring disclosure of the purchase price and any activation fee; another consumer group specifically recommended disclosure of the purchase price as a static fee or, alternatively, as a potential incidence-based fee. In support of its recommendation, this latter commenter said its research indicated that nearly half of regular GPR users purchase new cards after exhausting their funds on their current card. Moreover, it said, being charged a purchase fee at the point of purchase does not mean the consumer understands that fee is reducing the amount of funds being loaded onto the card at purchase. It also warned that consumers could confuse the "purchase fee" with the "per purchase fee." Individual consumers who submitted comments as part of a comment submission campaign organized by a national consumer advocacy group recommended that the short form disclosure include the purchase price.

With regard to branding, one industry commenter urged the Bureau to clarify that identification within the short form of the name of the prepaid issuer and the name of the prepaid account program would not violate the requirements of the rule.

For the reasons set forth below, the Bureau is adopting new § 1005.18(b)(5) and comments 18(b)(5)-1 and -2 to address issues of the disclosure of the purchase price and activation fee as well as identification of the financial institution and the prepaid account program. The final rule requires that, at the time a financial institution provides the short form, it must also disclose the following information: the name of the financial institution; the name of the prepaid account program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any. Pursuant to final § 1005.18(b)(7)(iii), short form disclosures must contain only information required or permitted under final § 1005.18(b)(2). Thus, the information required by § 1005.18(b)(5) must appear outside of the confines of the short form disclosure.

New § 1005.18(b)(5) sets forth the required location for the above-referenced disclosures. In a setting other than a retail location, this information must be disclosed in close proximity to the short form. In a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material. In a retail location, the purchase price must be disclosed either on the exterior of or in close proximity to the prepaid account access device's packaging materials. As described in more detail below, new comment 18(b)(5)-1 clarifies the content of the disclosure and comment 18(b)(5)-2 clarifies its location, including the meaning of "close proximity."

The Bureau agrees that, because the purchase price invariably is disclosed on the packaging or otherwise at the point of purchase prior to acquisition of a prepaid account, it is

unnecessary to use the limited space in the short form to disclose this one-time fee as a static fee. The Bureau likewise agrees that it is unnecessary to use the limited space in the short form to disclose the activation fee as a static fee, as it is not a common fee and if charged is only incurred once. The Bureau also believes that including these fees as potential additional fee types in the disclosure under final § 1005.18(b)(2)(ix) is neither an optimal way to alert consumers to the cost of purchasing or activating a prepaid account nor a good use of the additional fee type disclosure. Because the Bureau believes it is important for consumers to be aware of this fee prior to purchase in all situations, it is requiring that the purchase price and activation fee be disclosed, but outside the short form disclosure.

To ensure that consumers see the purchase price, it must be disclosed in close proximity to the short form—except that in a retail location the financial institution has the option to disclose the purchase price on the exterior of the packaging for the prepaid account access device (other than in the short form) or in close proximity to the display of packaging. The Bureau understands that at present, the purchase price for prepaid accounts sold at retail is disclosed either on the exterior of the prepaid account access device’s packaging or displayed near the packaging by the retailer. In an effort not to disturb this system, the Bureau is permitting disclosure of the purchase price in a retail location either on the exterior of or in close proximity to the prepaid account access device’s packaging material. The Bureau believes that either location would provide consumers with ample opportunity to be alerted to a prepaid account’s purchase price.

While the activation fee is not a common fee, unless it is plainly disclosed prior to acquisition when it does exist, the Bureau is concerned that it likely would not be noticed by many consumers before they acquire the prepaid account. The Bureau has observed that, similar

to purchase price, financial institutions that charge activation fees for prepaid accounts sold at retail often conspicuously disclose the activation fee on the front of the packaging. The Bureau believes that it is important that consumers be informed if a prepaid account they are considering charges an activation fee. The Bureau also believes that, considering that activation fees are uncommon, incurred once, and that in the current marketplace the Bureau has observed such fees disclosed on the front of the packaging in a retail setting, it is appropriate to require the disclosure outside the confines of the short form but in close proximity to it—and, in retail locations, on the exterior of the access device’s packaging material. The Bureau believes this requirement will more clearly apprise consumers of when the activation fee is charged and the amount of the fee.

Regarding the general issue of branding, branding information is not permitted to be included within the short form. However, the Bureau recognizes the importance to both industry and consumers of connecting the short form disclosure with the prepaid account’s commercial identity. The Bureau understands that it is common industry practice for financial institutions offering prepaid accounts at retail to include this information on the exterior of their packaging. The Bureau believes it is important for this information to be readily available for all prepaid programs, not just those sold at retail. For this reason, the Bureau is requiring, pursuant to new § 1005.18(b)(5), that the name of the financial institution and the name of the prepaid program be disclosed outside the short form but in close proximity to it or, in retail locations, on the exterior of the prepaid account access device’s packaging material.

New comment 18(b)(5)-1 clarifies that, in addition to the disclosures required by final § 1005.18(b)(5), a financial institution may, but is not required to, also disclose the name of the program manager or other service provider involved in the prepaid account program.

New comment 18(b)(5)-2 provides additional guidance regarding the location requirement of the rule and the meaning of “close proximity.” The comment explains that, for example, if a financial institution provides the short form online, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it appears on the same webpage as the short form disclosure. If the financial institution offers the prepaid account in its own branch locations and provides the short form disclosure on the exterior of its preprinted packaging materials, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if the information appears on the exterior of the packaging. If the financial institution provides written short form disclosures in a manner other than on preprinted packaging materials, such as on paper, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form if it appears on the same piece of paper as the short form disclosure. If the financial institution provides the short form disclosure orally, the information required by final § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it is provided immediately before or after disclosing the fees and information required pursuant to final § 1005.18(b)(2).

Comment 18(b)(5)-2 also explains that, for prepaid accounts sold in a retail location pursuant to the retail location exception in final § 1005.18(b)(1)(ii), final § 1005.18(b)(5) requires the information other than purchase price be disclosed on the exterior of the access device’s packaging material. If the purchase price, if any, is not also disclosed on the exterior of the packaging, disclosure of the purchase price on or near the sales rack or display for the packaging materials is deemed disclosed in close proximity to the short form disclosure.

### *18(b)(6) Form of Pre-Acquisition Disclosures*

Proposed § 1005.18(b)(3) would have set forth the requirements for how the short form and long form disclosures must be presented. Specifically, proposed § 1005.18(b)(3)(i) would have set forth general requirements for written, electronic, and oral disclosures. Proposed § 1005.18(b)(3)(ii) would have provided requirements regarding whether these disclosures must be made in a retainable form. Proposed § 1005.18(b)(3)(iii) would have set forth parameters for the tabular form in which the disclosures must be presented, including specific requirements for short forms presenting fee disclosures for multiple service plans. The Bureau has renumbered these provisions, each discussed in detail below, under § 1005.18(b)(6) in the final rule.

#### *18(b)(6)(i) General*

##### *18(b)(6)(i)(A) Written Disclosures*

Proposed § 1005.18(b)(3)(i)(A) would have required that the short form and long form disclosures be provided in writing, except as provided in proposed § 1005.18(b)(3)(iii)(B) and (C) for electronic and oral disclosures. The Bureau believed consumers could best review the terms of a prepaid account before acquisition when seeing these disclosures in written form.

The Bureau did not receive any comments specific to this proposed general requirement to provide the short form and long form disclosure in writing, and therefore, is adopting proposed § 1005.18(b)(3)(i)(A), renumbered as § 1005.18(b)(6)(i)(A), with minor modifications for clarity. The final rule states that, except as provided in final § 1005.18(b)(6)(i)(B) and (C), the disclosures required by final § 1005.18(b) must be in writing.

## *18(b)(6)(i)(B) Electronic Disclosures*

### *The Bureau's Proposal*

Currently, § 1005.4(a)(1) permits disclosures required by Regulation E to be provided in electronic form, subject to compliance with consumer consent and other applicable provisions of the E-Sign Act. The E-Sign Act generally allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if a consumer has affirmatively consented to such use and has not withdrawn such consent, and if certain delivery format requirements are met. Before receiving such consent, the E-Sign Act requires financial institutions to make clear to a consumer that the consumer has the option of receiving records in paper form, to specify whether a consumer's consent applies to a specific transaction or throughout the duration of the consumer's relationship with the financial institution, and to inform a consumer of how the consumer could withdraw consent and update information needed to contact the consumer electronically, among other requirements. The E-Sign Act also requires financial institutions to retain records of any disclosures that have been provided to a consumer electronically so that the consumer can access them later.

When the Bureau issued regulations on remittance transfers in subpart B of Regulation E, the Bureau altered the general requirement to provide disclosures in writing, such that pursuant to § 1005.31(a)(2) remittance transfer providers may provide pre-payment disclosures electronically when remittance transfers are requested electronically. Comment 31(a)(2)-1 explains that in such circumstances, the pre-payment disclosures may be provided without regard to the consumer consent and other applicable provisions of the E-Sign Act.

The Bureau similarly proposed to modify Regulation E's default requirements for pre-acquisition disclosures for prepaid accounts. Specifically, proposed § 1005.18(b)(3)(iii)(B)

would have required a financial institution to provide the short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) in electronic form when a consumer acquires a prepaid account through the internet, including via a mobile application. Although the Bureau believed that consumers can best review the terms of a prepaid account before acquiring it when seeing the terms in written form, it recognized that in certain situations, it is not practicable to provide written disclosures. For example, when a consumer acquires a prepaid account via the internet, the Bureau believed that a financial institution could not easily provide written (non-electronic) disclosures to a consumer pre-acquisition.

Proposed § 1005.18(b)(3)(i)(B) also would have stated that short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) must be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. In addition, proposed § 1005.18(b)(3)(i)(B) would have provided that these electronic disclosures need not meet the consumer consent and other applicable provisions of the E-Sign Act. Last, proposed § 1005.18(b)(3)(i)(B) would have required that disclosures provided to a consumer through a website where required by proposed § 1005.18(b)(1)(ii)(C) and as described in proposed § 1005.18 (b)(2)(i)(B)(II) must be made in an electronic form using a machine-readable text format that is accessible via both web browsers and screen readers.

Similar to pre-payment disclosures for remittance transfers, the Bureau believed that altering the general Regulation E requirement for electronic disclosures in § 1005.4(a)(1) was necessary to ensure that consumers receive relevant information at the appropriate time. The Bureau believed that during the pre-acquisition time period for prepaid accounts, it was important for consumers who decide to go online to acquire prepaid accounts to see the relevant disclosures for that prepaid account product in electronic form. The Bureau also said it believes

that consumers will often decide whether to acquire a particular prepaid account after doing significant research online, and that if they are not able to see disclosures on the prepaid accounts' websites, consumers cannot make an informed acquisition decision. Accordingly, the Bureau believed that, for acquisition of prepaid products via the internet or mobile applications, it would be more appropriate to require financial institutions to provide pre-acquisition disclosures electronically.

As discussed above, § 1005.4(a)(1) requires that financial institutions comply with the E-Sign Act when providing disclosures electronically. The Bureau did not propose to require such compliance for prepaid accounts that are acquired through the internet or mobile applications. Proposed § 1005.18(b)(3)(i)(B) only would have required that electronic short form and long form disclosures for prepaid accounts acquired through the internet be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer acquired the prepaid account. The Bureau believed that if a consumer has acquired a prepaid account through a website, it is reasonable to expect that the consumer would be able to view electronic disclosures on a website, and no E-Sign consent would be necessary. The Bureau also noted in the proposal that the requirement in proposed § 1005.18(b)(3)(i)(B) would apply only to the pre-acquisition disclosure of the short form and long form disclosures for prepaid accounts acquired over the internet or via mobile applications. It would not have altered the application of § 1005.4(a)(1) to prepaid accounts after acquisition nor to any other type of account.

The Bureau also proposed comment 18(b)(3)(i)(B)-1, which would have explained how to disclose the short form and long form electronically. Specifically, the proposed comment would have explained that a financial institution may, at its option, provide the short form and long form disclosures on the same webpage or on two different webpages as long as the

disclosures were provided in accordance with the pre-acquisition disclosure requirements in proposed § 1005.18(b)(1)(i). The Bureau recognized, as several consumer advocacy group commenters to the Prepaid ANPR stated, that disclosures provided electronically on websites may be difficult for consumers to find. Sometimes the disclosures are buried several pages deep or are only accessible to a consumer after the consumer completes some form of registration or otherwise logs onto the website. The Bureau generally believed that pre-acquisition disclosures provided on a website should be easy to locate, whether they are provided on the same webpage or on two separate pages, as addressed in proposed § 1005.18(b)(1) and proposed comment 18(b)(1)-2.

Proposed comment 18(b)(3)(i)(B)-2 would have provided guidance with respect to the lack of an E-sign requirement for prepaid account pre-acquisition disclosures. The proposed comment would have clarified that, for example, if a consumer is acquiring the prepaid account using a financial institution's website, it would be reasonable to expect that a consumer would be able to access pre-acquisition disclosures provided on a similar website.

Proposed comment 18(b)(3)(i)(B)-3 would have clarified that a disclosure would not comply with the requirement in § 1005.18(b)(3)(i)(B) regarding machine-readable text if it was not provided in a textual format that can be read automatically by internet search engines or other computer systems.

#### *Comments Received*

Several industry commenters, including industry trade associations, program managers, and a digital wallet provider as well as some consumer groups commented on the Bureau's proposal regarding electronic disclosure of the short form and long form. The Bureau received no comments regarding the requirement that disclosures be provided in machine-readable text.

Industry commenters primarily asked for clarification regarding the placement and treatment of the short form and long form disclosures in an online setting. Some commenters indicated that prepaid cards increasingly will be marketed and acquired via the internet, including through mobile applications and wearable devices. Commenters said that the rule, as proposed, did not sufficiently address how to comply when providing the short form and long form disclosures via these electronic delivery methods. One commenter noted that the prescriptive font size and other form and formatting requirements of the proposed rule remove the flexibility to shrink or resize disclosures to fit onto mobile screens, which could result in a confusing and frustrating user experience in which it would be impossible to view the entire disclosure at once without zooming out to a wider view.

One consumer group supporting the proposed requirement regarding electronic disclosure of the short form and long form urged the Bureau to additionally require that financial institutions also provide the disclosures in writing if they issue physical cards. Another consumer group expressed concern that consumers may not see the electronic disclosures and recommended that the Bureau require they be prominently displayed on financial institutions' websites. It also urged the Bureau to adopt specific rules regarding location of the short form and long form disclosures on the financial institution's website.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(3)(i)(B), renumbered as § 1005.18(b)(6)(i)(B), with certain modifications. First, the Bureau has added requirements to the final rule that electronic disclosures be provided in a responsive form and viewable across all screen sizes. Second, the Bureau has made technical modifications to the rule and comments for consistency and clarity. Third, in response to the comments discussed

above, the final rule and commentary more specifically address how to provide the required disclosures through electronic means. Fourth, in the final rule the Bureau has removed proposed comment 18(b)(3)(i)(B)-2 because it believes the rule is clear that financial institutions may provide disclosures electronically without regard to consumer consent and other applicable provisions of the E-Sign Act. Finally, final comments 18(b)(6)(i)(B)-1 and -2 now specifically address access to the required disclosures on websites and final comment 18(b)(6)(i)(B)-3, which addresses machine-readable text, is adopted generally as proposed.

The final rule requires that the disclosures required by final § 1005.18(b) must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a website or mobile application, and must be viewable across all screen sizes. The Bureau has added the requirement that these disclosures be viewable across all screen sizes to clarify that they must be able to be seen by consumers regardless of the electronic method used. The final rule also states that the long form disclosure must be provided electronically through a website when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in final § 1005.18(b)(1)(ii). The rule also finalizes the proposed requirements that electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via web browsers or mobile applications, as applicable, and via screen readers. Also, the final rule, like the proposed rule, provides that electronic disclosures provided pursuant to final § 1005.18(b) need not meet the consumer consent and other application provisions of the E-Sign Act.

Final comment 18(b)(6)(i)(B)-1 explains the rule's requirement that electronic disclosures be provided in a manner which is reasonably expected to be accessible in light of

how a consumer is acquiring the prepaid account. Specifically, the comment states that, for example, if a consumer is acquiring a prepaid account via a website or mobile application, it would be reasonable to expect that a consumer would be able to access the disclosures required by final § 1005.18(b) on the first page or via a direct link from the first page of the website or mobile application or on the first page that discloses the details about the specific prepaid program. The comment also cross-references final comment 18(b)(1)(i)-2 for additional guidance on placement of the short form and long form disclosures on a webpage. The additions to comment 18(b)(6)(i)(B)-1 respond to comments requesting clarification regarding the required location of the short form and long form disclosures when provided via electronic means.

In response to commenters' concerns discussed above, new comment 18(b)(6)(i)(B)-2 specifically addresses how to provide the required disclosures in a way that responds to smaller screen sizes. The comment clarifies that, in accordance with the requirement in final § 1005.18(b)(6)(i)(B) that electronic disclosures be provided in a responsive form, electronic disclosures provided pursuant to final § 1005.18(b) must be provided in a way that responds to different screen sizes, for example, by stacking elements of the disclosures in a manner that accommodates consumer viewing on smaller screens, while still meeting the other formatting requirements set forth in final § 1005.18(b)(7). For example, the disclosures permitted by final § 1005.18(b)(2)(xiv)(B) or (3)(ii) must take up no more than one additional line of text in the short form disclosure. The comment explains that if a consumer is acquiring a prepaid account using a mobile device with a screen too small to accommodate these disclosures on one line of text in accordance with the size requirements set forth in final § 1005.18(b)(7)(ii)(B), a financial institution is permitted to display the disclosures permitted by final § 1005.18(b)(2)(xiv)(B) and (3)(ii), for example, by stacking those disclosures in a way that responds to smaller screen sizes,

while still meeting the other formatting requirements in final § 1005.18(b)(7). The Bureau's source code for web-based disclosures provides an example of stacking.<sup>457</sup>

Final comment 18(b)(6)(i)(B)-3, which addresses machine-readable text, clarifies that a disclosure would not be deemed to comply with § 1005.18(b)(6)(i)(B) if it was not provided in a form that can be read automatically by internet search engines or other computer systems. As noted in the proposal, this textual format could include, for example, JSON, XML, or a similar format.

#### *18(b)(6)(i)(C) Oral Disclosures*

The Bureau proposed § 1005.18(b)(3)(i)(C), which would have stated that disclosures required by proposed § 1005.18(b)(2)(i) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in proposed § 1005.18(b)(2)(iii). Proposed § 1005.18(b)(3)(i)(C) would have also stated that disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(II) also must be made orally. The Bureau believed that when a consumer acquires a prepaid account orally by telephone or when a consumer requests to hear the long form disclosure in a retail store by calling the telephone number disclosed on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(II), it would not be practicable for a financial institution to provide these disclosures in written form, and therefore it would be appropriate for oral disclosures to be provided.

The Bureau did not receive any comments specific to proposed § 1005.18(b)(3)(i)(C) and therefore, is adopting this provision generally as proposed, renumbered as § 1005.18(b)(6)(i)(C), with technical modifications to the rule for conformity and clarity. Specifically, the Bureau has made clear that this provision applies both when a consumer is acquiring a prepaid account in a

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<sup>457</sup> See [www.consumerfinance.gov/prepaid-disclosure-files](http://www.consumerfinance.gov/prepaid-disclosure-files).

retail location and orally by telephone. The Bureau continues to believe that when consumers acquire a prepaid account orally by telephone or in a retail location, consumers should nonetheless have the benefit of pre-acquisition disclosures. Thus, final § 1005.18(b)(6)(i)(C) states that disclosures required by final § 1005.18(b)(2) and (5) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in final § 1005.18(b)(1)(iii). For prepaid accounts acquired in retail locations or orally by telephone, disclosures required by final § 1005.18(b)(4) provided by telephone pursuant to final § 1005.18(b)(1)(ii)(B) or final § 1005.18(b)(1)(iii)(B) also must be made orally.

#### *18(b)(6)(ii) Retainable Form*

#### *The Bureau's Proposal*

Proposed § 1005.18(b)(3)(ii) would have provided that, except for disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(11) or disclosures provided orally pursuant to proposed § 1005.18(b)(1)(iii), disclosures required by proposed § 1005.18(b)(2)(i) and (ii) must be made in a retainable form. Proposed comment 18(b)(3)(ii)-1 would have explained that a financial institution may satisfy the requirement to provide electronic disclosures in a retainable form if it provides disclosures on its website in a format that would be capable of being printed, saved or emailed to a consumer.

As noted in the proposal, § 1005.13(b) contains recordkeeping requirements applicable to Regulation E generally. However, the Bureau did not believe it was necessary that the oral disclosures provided to a consumer for a prepaid account acquired orally by telephone or the long form disclosure accessed by a consumer via telephone pre-acquisition in a retail store be retainable. Pursuant to proposed § 1005.18(f), after having acquired a prepaid account orally (or by any other means), a consumer would have received the long form disclosure in the initial

disclosures provided for the prepaid account. Further, the long form disclosure would also generally be available on the financial institution's website, as part of the full prepaid account agreement that would be required to be posted pursuant to proposed § 1005.19. The Bureau also did not believe it would be practicable to provide retainable forms of oral disclosures. The Bureau did, however, believe that providing retainable forms of written and electronic disclosures would be feasible.

#### *Comments Received*

One consumer group commented regarding the proposed retainability requirement. It supported the proposed requirement generally but recommended that the Bureau clarify that electronic disclosures provided via a pop-up window must be able to be easily printed to comply with the rule.

#### *The Final Rule*

For the reasons set forth herein, and in the absence of comments raising concerns about the proposed retainability requirement, the Bureau is adopting proposed § 1005.18(b)(3)(ii), renumbered as § 1005.18(b)(6)(ii), with certain modifications. The Bureau has added additional specificity to this provision to clarify exceptions to the retainability requirements for certain disclosures permitted or required under the final rule. The Bureau has also added to the final rule a cross-reference to § 1005.4(a)(1), which generally requires that disclosures provided pursuant to Regulation E be in a form consumers may keep, and conforms the language in the final rule to parallel that of § 1005.4(a)(1). In addition, as set forth below, the Bureau is adopting revisions to comment 18(b)(3)(ii)-1, renumbered as comment 18(b)(6)(ii)-1. Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

Final § 1005.18(b)(6)(ii) provides that, pursuant to § 1005.4(a)(1), disclosures required by § 1005.18(b) must be made in a form that a consumer may keep, except for disclosures provided orally pursuant to final § 1005.18(b)(1)(ii) or (iii), long form disclosures provided via SMS as permitted by final § 1005.18(b)(2)(xiii) for a prepaid account sold at retail locations pursuant to the retail location exception in final § 1005.18(b)(1)(ii), and the disclosure of a purchase price pursuant to final § 1005.18(b)(5) that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in final § 1005.18(b)(1)(ii).

The Bureau continues to believe that its modification to the general retainability requirement in Regulation E for oral disclosures (and certain other disclosures) is appropriate, as the Bureau does not believe it would be practicable to provide retainable forms of oral disclosures. The Bureau also notes that the requirements of final § 1005.18(b)(1)(ii)(D) and (f)(1) will ensure that even consumers who acquire prepaid accounts orally by telephone or who access the long form disclosure for prepaid accounts sold at retail locations either orally or via SMS will receive the long form disclosure in a retainable format, albeit after they acquire the prepaid account.

Final comment 18(b)(6)(ii)-1 illustrates the retainability requirement with an example stating that a short form disclosure with a tear strip running through it would not be deemed retainable because use of the tear strip to gain access to the prepaid account access device inside the packaging would destroy part of the short form disclosure. Electronic disclosures are deemed retainable if the consumer is able to print, save, and email the disclosures from the website or mobile application on which they are displayed. Therefore, a pop-up window or

modal<sup>458</sup> from which a consumer can only print, save, or email the disclosure by taking a screen shot of it would not satisfy the rule's retainability requirement.

The Bureau declines to require that electronic disclosures provided via a pop-up window be *easily* printed, as requested by a consumer group commenter because the Bureau believes such a standard is subjective and may be imprecise. The Bureau also cautions against the use of pop-up windows or modals from which it is difficult for consumers to figure out how to print or to actually print. Providing electronic disclosures in a manner which a consumer is not able to retain them by printing, saving, or emailing would not comply with this final rule and would be contrary to the general retainability requirement for disclosures provided under Regulation E.

#### *18(b)(6)(iii) Tabular Format*

##### *18(b)(6)(iii)(A) General*

##### *The Bureau's Proposal*

The Bureau set forth in proposed § 1005.18(b)(3)(iii) the tabular format requirements that would be used to present the short and long form disclosures. Specifically, proposed § 1005.18(b)(3)(iii)(A) would have required that, except as provided in proposed § 1005.18(b)(3)(iii)(B), short form disclosures required by proposed § 1005.18(b)(2)(i) that are provided in writing or electronically shall be in the form of a table substantially similar to proposed Model Forms A-10(a) through (d), as applicable. It also would have required that long form disclosures required by proposed § 1005.18(b)(2)(ii) that are provided in writing or electronically shall be in a form of a table substantially similar to proposed Sample Form A-10(e).

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<sup>458</sup> Modal windows, also known as dialog boxes or lightboxes, are “pop-up” elements that appear in front of a webpage, blocking the main page below. Similar to pop-up windows or system alerts, modals are unique because they prevent interaction with the page underneath.

The Bureau had observed that most (though not all) financial institutions currently use some sort of table to disclose fees in their prepaid account agreements, although each institution generally selects different fees to highlight and presents them in different orders. The Bureau also noted that financial institutions implement a variety of formats to present fee information on packaging material in retail stores. Thus, the burden is on consumers to identify the fees that are most important to them and find them across various formats to determine the best product for their needs.

The Bureau's pre-proposal consumer testing revealed that few participants researched prepaid accounts before acquisition, particularly when they acquired their accounts in retail stores. The Bureau believed that one of the reasons that consumers do not often engage in comparison shopping is because doing so is not straightforward. At retail, prepaid accounts are often displayed behind counters, close to check-out lanes at ends of aisles, and in other often crowded or difficult to access areas which the Bureau believed can limit careful review of a product's terms. The Bureau believed that financial institutions are more likely to present fee information in a clearer and more complete format for prepaid account products offered online, but, as mentioned above, the format used to display this information varies, making comparison shopping challenging. Although some variation is inevitable because each financial institution offers different services in connection with its prepaid accounts, the Bureau believed that requiring use of a standardized form to disclose fee information would be appropriate to minimize variation in presentation format. Additionally, in the case of the short form disclosure, a standardized form also would keep many of the fee types listed constant.

The Bureau proposed a sample form for the long form disclosure instead of a model form for the short form disclosure. The Bureau believed long form disclosures could vary depending

on the number of fees included in the form and the extent of relevant conditions that would have had to be disclosed in connection with each fee.

### *Comments Received*

While many commenters critiqued certain aspects of the proposed form and format of the short form and long form disclosures, the Bureau received no specific comments regarding the proposed general tabular format requirement for those disclosures. See the section-by-section analysis of § 1005.18(b)(7)(i) below for discussion of comments regarding grouping and other format requirements.

### *The Final Rule*

For the reasons set forth herein, and in the absence of comments, the Bureau is adopting § 1005.18(b)(3)(iii)(A) as proposed, renumbered as § 1005.18(b)(6)(iii)(A), with certain modifications for clarity and to set forth more explicitly the content required in the tabular format.

The final rule requires that when a short form disclosure is provided in writing or electronically, the information required by final § 1005.18(b)(2)(i) through (ix) shall be provided in the form of a table. Except as provided in final § 1005.18(b)(6)(iii)(B), the short form disclosures required by final § 1005.18(b)(2) shall be provided in a form substantially similar to Model Forms A-10(a) through (d), as applicable. The final rule requires that specific sections of the short form disclosure be in a tabular format. The Bureau continues to believe that this standardized format will increase consumer comprehension and enhance comparability among prepaid accounts, thereby creating a system under which consumers have the tools to make improved purchase and use decisions with regard to prepaid accounts.

The final rule, like the proposed rule, also requires that when a long form disclosure is provided in writing or electronically, the information required by final § 1005.18(b)(4)(ii) shall be provided in the form of a table. Sample Form A-10(f) provides an example of the long form disclosure required by final § 1005.18(b)(4) when the financial institution does not offer multiple service plans. The Bureau has removed the proposed requirement that the table in the long form be substantially similar to the table in the proposed sample form in favor of the statement that Sample Form A-10(f) provides an example of the long form disclosure. As discussed in the section-by-section analysis of § 1005.18(b)(4) above, the sample form for the long form disclosure, unlike the model forms for the short form disclosures, does not impose a “substantially similar” requirement. Unlike the short form disclosure, the Bureau believes that the comprehensive content of the long form, together with the wide variety of fees, fee types, and conditions under which those fees are imposed across financial institutions, is likely not suitable for a strictly standardized content and format design.

Because the long form disclosures, unlike the standardized short form disclosure, could vary substantially, the Bureau continues to believe that it is more appropriate to provide a sample form as an example that financial institutions may, but are not required to, incorporate or emulate in their own long form disclosures, rather than a model form that would only provide a safe harbor if financial institutions adhered closely to its parameters. Thus, in the regulatory text of the final rule, the Bureau has replaced any reference to long form content required to be disclosed in a form substantially similar to a sample form with language indicating that the sample form provides an example of the long form disclosure.

## *18(b)(6)(iii)(B) Multiple Service Plans*

### *The Bureau's Proposal*

As an alternative to proposed § 1005.18(b)(3)(iii)(A) (which would have applied to products with a single fee schedule), proposed § 1005.18(b)(3)(iii)(B) would have set forth tabular format requirements for prepaid products offering multiple service plans. Specifically, proposed § 1005.18(b)(3)(iii)(B)(1) would have stated that when a financial institution offers multiple service plans for a particular prepaid account product and each plan has a different fee schedule, the information required in the short form disclosure by proposed § 1005.18(b)(2)(i)(B)(1) through (7) may be provided for each service plan together in one table, in a form substantially similar to proposed Model Form A-10(f), and must include descriptions of each service plan included in the table, using the terms, “Pay-as-you-go plan,” “Monthly plan,” “Annual plan,” or substantially similar terms. Proposed § 1005.18(b)(3)(iii)(B)(1) would have further stated that when disclosing multiple service plans on one short form, the information that would have been required by proposed § 1005.18(b)(2)(i)(B)(8) must only be disclosed once in the table. Alternatively, proposed § 1005.18(b)(3)(iii)(B)(1) would have permitted a financial institution to disclose the information required by proposed § 1005.18(b)(2)(i)(B)(1) through (8) for only the service plan in which a consumer is enrolled automatically by default upon acquiring the prepaid account, in the form of a table substantially similar to proposed Model Forms A-10(c) or (d). Finally, proposed § 1005.18(b)(3)(iii)(B)(1) would have stated that regardless of whether a financial institution discloses fee information for all service plans on one form or chooses only to disclose the service plan in which a consumer is automatically enrolled by default, the disclosures required by proposed § 1005.18(b)(2)(i)(B)(9) through (14) must only be disclosed once.

As discussed in the proposal and herein, the Bureau believed that it was important for short and long form disclosures to have a standardized format in order to facilitate consumer comparison of multiple products and the ability to understand key fee and service information about a prepaid product. The Bureau also recognized, however, that financial institutions offering multiple service plans on one prepaid account needed flexibility to disclose information about multiple plans to a consumer. The Bureau therefore proposed that financial institutions may use one short form table that discloses the information required by proposed § 1005.18(b)(2)(i) for each of the service plans to highlight for a consumer that such plans exist. The Bureau explained that, a financial institution, at its option, could also choose to disclose only the service plan in which a consumer is enrolled upon acquiring the prepaid account using the tabular format described in proposed § 1005.18(b)(3)(iii)(A) and note elsewhere on the packaging material or on its website the other service plans it offers. The Bureau believed that these options would give financial institutions the flexibility to accommodate disclosure of multiple service plans, while also maintaining the simplicity of the tabular short form and long form designs to facilitate consumers' comparison shopping.

In the Bureau's pre-proposal consumer testing, some participants were confused by short forms that included multiple service plans similar to the one in proposed Model Form A-10(f). The Bureau therefore also considered proposing that financial institutions must disclose each service plan in a separate short form table instead of allowing financial institutions to disclose all of the plans on one short form. Some participants also were unsure of which service plan applied upon purchase when seeing multiple service plans on one short form, an issue that the Bureau believed may be resolved if a financial institution only discloses the fee schedule for the plan that applies upon a consumer's acquisition of the account. The Bureau thus sought comment on the

best way to accommodate prepaid accounts products offering multiple service plans on the short form disclosure while providing accurate and sufficient information to consumers.

In the proposal, the Bureau also acknowledged that only disclosing the service plan in which a consumer is automatically enrolled by default upon acquiring the prepaid account could potentially conflict with the requirement in proposed § 1005.18(b)(2)(i)(C) that financial institutions would have to disclose the highest fee for each fee type required to be disclosed in the short form. For example, a “pay-as-you-go” plan in which a consumer is enrolled upon acquisition might not impose a periodic fee, and thus, could disclose “\$0” in the top line of the short form where the periodic fee disclosure would be required. Under such a plan, if consumers were to opt into a monthly plan, however, they could be charged a periodic fee higher than \$0. The Bureau therefore also sought comment on whether the disclosure of only the default plan on the short form would be clear or if the Bureau should require that financial institutions always disclose multiple service plans on the short form.

Proposed § 1005.18(b)(3)(iii)(B)(2) would have stated that the information required to be disclosed in the long form by proposed § 1005.18(b)(2)(ii) must be presented for all service plans in the form of a table substantially similar to proposed Sample Form A-10(g). The Bureau believed that the long form disclosure should include all fee information about a prepaid account product, and therefore it should contain the fee schedule for every possible service plan.

Additionally, the Bureau proposed comment 18(b)(3)(iii)(B)-1, which would have provided additional guidance on the proposed definition of multiple service plans. Specifically, proposed comment 18(b)(3)(iii)(B)-1 would have stated that the multiple service plan disclosure provisions in proposed § 1005.18(b)(3)(iii)(B) apply when a financial institution offers more than one service plan for a particular prepaid account product, and each plan has a different fee

schedule. For example, a financial institution might offer a prepaid account product with one service plan where a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee. A financial institution may also offer a prepaid account product with one service plan for consumers who utilize another one of a financial institution's non-prepaid services (*e.g.*, a mobile phone service) and a different plan for consumers who only utilize a financial institution's prepaid account products. Each of these plans would be considered a "service plan" for purposes of proposed § 1005.18(b)(3)(iii)(B).

#### *Comments Received*

Several industry commenters, including industry trade associations, a program manager, and an issuing bank, commented on the proposed multiple service plan short form disclosure and recommended that the Bureau adopt a final rule permitting such disclosures for prepaid account loyalty programs and other current and future innovative fee structures. Some commenters asserted that the proposed rule failed to contemplate loyalty programs and thus urged the Bureau to permit use of the multiple service plan short form disclosure for such programs. Commenters also asserted that the rule as proposed would stymie future innovation of new fee plans by limiting use of the multiple service plan short form disclosure to plans already in existence.

Several consumer groups urged the Bureau to eliminate the multiple service plan short form disclosure. They believed the multiple service plan short form disclosure compared poorly with the general short form disclosure, saying it was too complex and confusing, defeated the comparison-shopping purpose of the short form disclosure, failed to disclose all the information in the short form (such as the two-tier distinction between certain fees, including the in-network and out-of-network ATM withdrawal and balance inquiry fees), and lacked the top-line emphasis

on key fees. Some of these groups also expressed concern that financial institutions seeking to minimize emphasis on certain of their fees might use the complexity of the multiple service plan short form disclosure to hide expensive fees, such as by starting with a pay-as-you-go plan with no monthly fee before disclosing higher fees for other plans.

Some consumer groups suggested that the Bureau require disclosure of the default fee plan in short forms at retail, and require that short form disclosures for the other plans be provided inside the packaging material or at the time the consumer chooses to switch to another fee plan. In other contexts that do not have the same space constraints as retail settings, such as online or at bank branches, consumer groups said the Bureau should require disclosure of separate short forms for each distinct fee plan.

#### *The Final Rule*

The Bureau is adopting final § 1005.18(b)(6)(iii)(B) largely as proposed, but has divided the provision regarding multiple service plan short form disclosures to separately address disclosure of the default service plan and disclosure of all service plans. Other modifications to these provisions are described in turn below.

#### *18(b)(6)(iii)(B)(1) Short Form Disclosure for Default Service Plan*

For the reasons set forth herein, the Bureau is adopting the portion of proposed § 1005.18(b)(3)(iii)(B)(1) that addressed the option to disclose a short form only for a multiple service plan's default plan, renumbered § 1005.18(b)(6)(iii)(B)(1) with technical modifications to the rule for conformity and clarity.

Final § 1005.18(b)(6)(iii)(B)(1) provides that when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by final § 1005.18(b)(2)(i) through (ix) may be provided in

the tabular format described in final § 1005.18(b)(6)(iii)(A) for the service plan in which a consumer is initially enrolled by default upon acquiring a prepaid account. New comment 18(b)(6)(iii)(B)(I)-1 clarifies that, pursuant to the requirement in § 1005.18(b)(3)(i) to disclose the highest amount a financial institution may impose for a fee disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (ix), a financial institution would not be permitted to disclose any short-term or promotional service plans as a default service plan.

In accordance with § 1005.18(b)(3)(i), a financial institution providing a short form for a multiple service plan's default plan only must disclose the highest fees under the default plan but not the highest fees across all service plans. The Bureau believes that to require otherwise would distort the information disclosed about the default service plan, leading to potential consumer confusion.

The Bureau notes that financial institutions disclosing the default plan can inform consumers of the prepaid program's other service plan options outside the short form disclosure, such as on other portions of the packaging, online, or via the telephone; further, disclosure of all plan information is required in the long form pursuant to final § 1005.18(b)(4) discussed below. The Bureau also notes that nothing in the final rule would prohibit a financial institution from providing a short form disclosure for each of its service plans separately (such as on its website or in other acquisition scenarios without the same space constraints as in retail locations) though, if doing so, the Bureau encourages financial institutions to make clear to consumers which plan, if any, is the default plan.

#### *18(b)(6)(iii)(B)(2) Short Form Disclosure for Multiple Service Plans*

For the reasons set forth herein, the Bureau is adopting the portion of proposed § 1005.18(b)(3)(iii)(B)(I) that addressed the option to use a modified short form to disclose

multiple service plans, renumbered § 1005.18(b)(6)(iii)(B)(2), with certain modifications as described below for clarity. In addition, for the reasons set forth below, the Bureau has modified comment 18(b)(3)(iii)(B)-1, renumbered as comment 18(b)(6)(iii)(B)(2)-1. The Bureau has also made other technical modifications for conformity.

Final § 1005.18(b)(6)(iii)(B)(2) provides that, as an alternative to disclosing the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(1), when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, fee disclosures required by final § 1005.18(b)(2)(i) through (vii) and (ix) may be provided in the form of a table with separate columns for each service plan in a form substantially similar to Model Form A-10(e). Column headings must describe each service plan included in the table, using the terms “Pay-as-you-go plan,” “Monthly plan,” “Annual Plan,” or substantially similar terms. For multiple service plans offering preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service, column headings must describe each service plan included in the table for the preferred- and non-preferred service plans, as applicable.

The Bureau has substantially redesigned the multiple service plan short form disclosure in order to address many of the concerns raised by consumer group commenters as described above. The short form disclosure for multiple service plans includes the following changes: expansion of the multi-columned table to disclose all required fees pursuant to final § 1005.18(b)(2)(i) through (vii) and (ix) together, rather than separating out fees that vary across plans from fees that do not; use of bold-face type for the fees listed pursuant to final § 1005.18(b)(2)(i) through (iv) to mirror the general short form disclosure’s emphasis on the top-

line fees; and addition of rows to separately disclose the two-tier fees for in-network and out-of-network ATM withdrawals and balance inquiries. *See* Model Form A-10(f).

The Bureau's post-proposal consumer testing indicated that the redesigned short form disclosure for multiple service plans markedly improved the disclosure's usability. Participants were able to navigate a prototype short form disclosure for multiple service plans and to use the disclosure to find specific information about particular plans. Moreover, the relative complexity of the form, although off-putting to some participants, did not appear to alter testing results.<sup>459</sup> Most participants quickly understood that the columns in the table represented different potential fee plans and all were generally able to compare fees in that form with the fees in a general short form disclosure. In light of comments received on the proposed version of the multiple service plan short form and the results of the Bureau's post-proposal consumer testing of the redesigned form, the Bureau is finalizing the rule permitting use of a short form disclosure for multiple service plans.

The Bureau recognizes that financial institutions offering multiple service plans may not have a default plan or may find a requirement to disclose only a short form for the default plan overly restrictive and choose instead to discontinue their multiple service plan programs. The Bureau does not intend to disfavor any prepaid account program over another in its rule and seeks to avoid potential disruption to prepaid account programs offering multiple service plans. While the Bureau acknowledges that the relative complexity and density of the multiple service plan short form disclosure may render it somewhat less consumer friendly than the general short form disclosure, the Bureau believes the redesigned form will provide financial institutions with flexibility to accommodate disclosure of products with multiple service plans, while also

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<sup>459</sup> *See* ICF Report II at 16 and 26-27.

retaining much of the standardization of the short form design that facilitates comprehension and comparison shopping for consumers.

As referenced above, the rule sets forth specific requirements for the column headings required to describe each service plan. The Bureau is finalizing the proposed requirement to use the terms “Pay-as-you-go plan,” “Monthly plan,” “Annual Plan,” or substantially similar terms. To illustrate, final comment 18(b)(6)(iii)(B)(2)-1 states that, for example, a financial institution that offers a prepaid account program with one service plan for which a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee, may use the short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(2).

As noted above, some industry commenters requested that the Bureau allow use of the multiple service plan short form for loyalty plans; this issue was addressed in proposed comment 18(b)(3)(iii)(B)-1. For clarity, the Bureau has addressed use of the multiple service plan short form for loyalty plans in the regulatory text of the final rule as described above. Final comment 18(b)(6)(iii)(B)(2)-1 reiterates that a financial institution that offers a prepaid account program with preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service (*e.g.*, a mobile phone service), often referred to as “loyalty plans,” may also use the short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(2). The comment also explains that pricing variations based on whether a consumer elects to use a specific feature of a prepaid account, such as waiver of the monthly fee for consumers electing to receive direct deposit, does not constitute a loyalty plan. Final comment 18(b)(6)(iii)(B)(2)-1 also cross-references final comment 18(b)(3)(iii)-1.ii for guidance on how to provide a single disclosure for like fees for multiple service plan short form disclosures.

*18(b)(6)(iii)(B)(3) Long Form Disclosure*

Proposed § 1005.18(b)(3)(iii)(B)(2) would have required that the information required by proposed § 1005.18(b)(2)(ii) must be presented for all service plans in the form of a table substantially similar to proposed Sample Form A-10(g). The Bureau did not receive any comments regarding this portion of the proposal.

The Bureau is adopting proposed § 1005.18(b)(3)(iii)(B)(2), renumbered as § 1005.18(b)(6)(iii)(B)(3), with a minor modification as described below, as well as with technical modifications for conformity and clarity.

Final § 1005.18(b)(6)(iii)(B)(3) states that the information in the long form disclosure required by final § 1005.18(b)(4)(ii) must be presented in the form of a table for all service plans. The Bureau has removed the proposed requirement that the table be substantially similar to proposed Sample Form A-10(g) and has also removed that proposed sample form from the final rule. As discussed in the section-by-section analysis of § 1005.18(b)(4) and § 1005.18(b)(6)(iii)(A) above, the final rule does not impose a substantially similar requirement for the sample form for the long form disclosure, unlike the model forms for the short form disclosures. This is because unlike the short form disclosure, the comprehensive content of the long form, together with the wide variety of fees, fee types, and conditions under which those fees are imposed across financial institutions, is not suitable for a strictly standardized content and format design. As discussed in the section-by-section analysis of *Appendix A-10 Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§§ 1005.15(c) and 1005.18(b))* below, to provide more flexibility to industry, the Bureau is not providing a sample form for a long form disclosure with multiple service plans. The Bureau notes that Sample Form A-10(f) provides an example of a tabular format for the long form disclosure.

## *18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures*

### *18(b)(7)(i) Grouping*

#### *18(b)(7)(i)(A) Short Form Disclosure*

##### *The Bureau's Proposal*

Proposed § 1005.18(b)(4)(i)(A) would have contained several formatting requirements for the short form disclosure. First, proposed § 1005.18(b)(4)(i)(A) would have stated that the information that would have been required by proposed § 1005.18(b)(2)(i)(A) or proposed § 1005.15(c)(2), when applicable, must be grouped together. Proposed § 1005.18(b)(4)(i)(A) would have further stated that the information that would have been required by proposed § 1005.18(b)(2)(i)(B)(1) through (4) must generally be grouped together and in the order they appear in the form of proposed Model Forms A-10(a) through (d). The Bureau believed that grouping the fees that would have been required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(1) through (4) in the top line of the short form disclosure would more effectively direct consumers' attention to these fees. The Bureau also believed that, when it is applicable, the payroll card account or government benefit account notice banner should appear at the top of the short form to ensure consumers understand that they do not have to accept such an account.

Proposed § 1005.18(b)(4)(i)(A) would have further stated that the information required by proposed § 1005.18(b)(2)(i)(B)(5) through (9) must generally be grouped together and in the order they appear in the form of proposed Model Forms A-10(a) through (d). The textual information required by proposed § 1005.18(b)(2)(i)(B)(10) through (14) must be generally grouped together and in the order they appear in proposed Model Forms A-10(a) through (d). The Bureau recognized that some consumers may focus only on fee information and not review

textual information, and noted that, in its pre-proposal consumer testing many participants did not notice some of the textual information included on prototype short forms until the facilitator pointed it out to them.

The Bureau also proposed in § 1005.18(b)(4)(i)(A) that the website URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(II) must not exceed 22 characters and must be meaningfully named. See the section-by-section analysis of § 1005.18(b)(2)(xiii) above for a discussion of this requirement in the final rule.

#### *Comments Received*

Several industry commenters addressed the proposed grouping or other related format requirements for the prepaid disclosures. A program manager supported the proposed grouping requirements saying they are reasonable and very similar to current disclosures, but cautioned that the short form disclosure format requirements would crowd out or dilute other critical information and oblige industry to extensively redesign current packaging. Another program manager said the rigidity of the format of the short form disclosure would limit the ability of industry to offer new types of prepaid cards. Two industry trade associations said the rule was unclear regarding the extent to which a financial institution could depart from the format of the required disclosures. In a comment generally addressing the format of the proposed disclosures, an issuing bank recommended that the short form and long form disclosures have the same format to avoid confusion and be recognizable.

#### *The Final Rule*

For the reasons set forth herein and in the absence of comments opposing the specific grouping requirements of the short form, the Bureau is adopting proposed § 1005.18(b)(4)(i)(A), renumbered as § 1005.18(b)(7)(i)(A), with minor modifications. First, the Bureau has added

references to the grouping requirements for the payroll card account disclosures set forth in final § 1005.18(b)(2)(xiv)(A) and (B). Second, the Bureau has made technical modifications to the rule for conformity and clarity.

The Bureau is adopting the proposed grouping requirements for the short form disclosure essentially as proposed. As stated in the proposal, the Bureau designed the top line of the short form disclosure to direct consumers' attention to what it believes are the most important fees for consumers to know in advance of acquiring a prepaid account. With regard to the statement regarding wage or salary payment options required for payroll card account (and government benefit account) short form disclosures, the Bureau believes that consumers understanding that their job (or government benefit) is not contingent upon their acceptance of the payroll card (or government benefit card) is of paramount importance in the short form disclosure. As in the proposed rule, the final rule generally groups fees together and non-fee information together. Similar to the proposed rule, the final rule also groups together the statements regarding fees that can vary, including new provisions § 1005.18(b)(3)(ii) (variable fee disclosure for the periodic fee) and § 1005.18(b)(2)(xiv)(B) (State-required information or other fee discounts and waivers for payroll card accounts and government benefit accounts).

The Bureau has made minor changes to the proposed grouping requirements. First, to conform to the principle stated above to group fees together and group other information together, the Bureau has relocated the statement regarding overdraft and credit, required by final § 1005.18(b)(2)(x), from the fee section in the proposed rule to a location among the non-fee other information. To more effectively connect the fee section with the statement regarding the number of additional fee types, required by final § 1005.18(b)(2)(viii)(A), the Bureau relocated this statement to the fee section. Finally, the new statement required by final

§ 1005.18(b)(2)(viii)(B) directing consumers to the disclosure of additional fee types required by final § 1005.18(b)(2)(ix) is located immediately after the statement regarding the number of additional fee types charged and immediately before the disclosure of any actual additional fee types.

Specifically, the final rule requires that the information required in the short form disclosure by final § 1005.18(b)(2)(i) through (iv) must be grouped together and provided in that order. The information required by final § 1005.18(b)(2)(v) through (ix) must be generally grouped together and provided in that order. The information required by final § 1005.18(b)(3)(i) and (ii), as applicable, must be generally grouped together and in the location described by § 1005.18(b)(3)(i) and (ii). The information required by final § 1005.18(b)(2)(x) through (xiii) must be generally grouped together and provided in that order.

The final rule also provides that the statement regarding wage or salary payment options for payroll card accounts required by final § 1005.18(b)(2)(xiv)(A) must be located above the information required by final § 1005.18(b)(2)(i) through (iv), as described in final § 1005.18(b)(2)(xiv)(A). The statement regarding State-required information or other fee discounts or waivers permitted by final § 1005.18(b)(2)(xiv)(B), when applicable, must appear in the location described in final § 1005.18(b)(2)(xiv)(B).

In response to comments generally addressing the format and formatting requirements of the short form and long form disclosures, the Bureau states that those requirements, together with the content requirements for the disclosures, were designed to create companion disclosures intended to facilitate consumers' prepaid account purchase and use decisions. The Bureau intended these disclosures to play very different but complementary roles and, thus, purposefully gave them different formats. The abridged nature of the short form, with its emphasis on key

fees and information, versus the comprehensive nature of the long form, with its requirement to disclose, among other things, all fees and the conditions under which they may be imposed, require different formats that together create a synergistic whole.

Regarding the comments questioning the extent to which a financial institution could depart from the required format, financial institutions must comply with the disclosure requirements set forth in the final rule but the Bureau notes that the regulatory text and commentary contain additional information and direction clarifying specific requirements in the final rule, including a number of optional modifications. Also the Bureau is providing the model and sample forms to provide concrete illustrations of the requirements under the rule.<sup>460</sup> For examples of short form disclosures that comply with the grouping requirements of final § 1005.18(b)(7)(i)(A), see Model Forms A-10(a) through (d). Model Forms A-10(a) and (b) illustrate the grouping requirements specifically for payroll card accounts and government benefit accounts, respectively. Model Forms A-10(c) and (d) illustrate the grouping requirements for short form disclosures in general, including those sold in retail locations. Model Form A-10(e) illustrates the short form grouping requirements specifically for prepaid account programs with multiple service plans disclosed pursuant to final § 1005.18(b)(6)(iii)(B)(2); these grouping requirements are addressed in detail in final § 1005.18(b)(7)(i)(C) discussed below.

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<sup>460</sup> For the convenience of the prepaid industry and to help reduce development costs, the Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule. These files are available at [www.consumerfinance.gov/prepaid-disclosure-files](http://www.consumerfinance.gov/prepaid-disclosure-files).

## *18(b)(7)(i)(B) Long Form Disclosure*

### *The Bureau's Proposal*

The Bureau proposed in § 1005.18(b)(4)(i)(B) that all fees that may be imposed by the financial institution in connection with a prepaid account that proposed § 1005.18(b)(2)(ii)(A) would have required to be disclosed in the long form must be generally grouped together and organized by categories of function for which a consumer would utilize the service associated with each fee. The Bureau believed that disclosing fees in categories would aid consumers' navigation of the long form disclosure, which would include all of a prepaid account's fees and could be much longer than the short form disclosure. Proposed § 1005.18(b)(4)(i)(B) would also have required that text describing the conditions under which a fee may be imposed must appear in the table directly to the right of the numeric fee amount disclosed pursuant to proposed § 1005.18(b)(2)(ii)(A). The information required by proposed § 1005.18(b)(2)(ii)(B) (that is, the Regulation Z disclosures regarding overdraft and other credit features) must be generally grouped together. The information required by proposed § 1005.18(b)(2)(ii)(C) through (E) (that is, the telephone number, website and mailing address; the statement regarding FDIC insurance, if applicable; and the Bureau website and telephone number), must be generally grouped together.

### *Comments Received*

The Bureau received two comments from industry on the grouping requirements of the long form disclosure. Both commenters requested that the Bureau provide examples of the categories of function required under the proposal in the long form disclosure.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(4)(i)(B), renumbered as § 1005.18(b)(7)(i)(B), with modifications to reflect additional content added by other provisions of the final rule. The Bureau has also made technical modifications to the rule for conformity and clarity. Finally, the Bureau has added new comments 18(b)(7)(i)(B)-1 and-2 to provide guidance regarding the requirements of final § 1005.18(b)(7)(i)(B).

First, the final rule addresses the grouping requirement for new § 1005.18(b)(4)(i), the title or heading for the long form disclosure. The final rule provides that the information required by new § 1005.18(b)(4)(i) be located in the first line of the long form disclosure.

The final rule, like the proposed rule, generally requires that like categories be grouped together in the long form disclosure. Regarding the disclosure in the long form of all fees and the conditions under which they may be imposed, the final rule, like the proposed rule, requires that the information required by final § 1005.18(b)(4)(ii) be generally grouped together and organized under subheadings by the category of function for which a financial institution may impose the fee.

While the proposed rule would have required that text describing the conditions under which a fee may be imposed must appear in the table directly to the right of the numeric fee amount disclosed, the final rule relaxes this requirement. In the final rule, the text describing the conditions under which a fee may be imposed must appear in the table required by final § 1005.18(b)(6)(iii)(A) in close proximity to the fee amount. The Bureau continues to believe that disclosing fees in categories will aid consumers in navigating the long form disclosure which, with the disclosure of all of a prepaid account's fees, could be much longer than the short form disclosure and will benefit from such organization. The Bureau has observed that many

financial institutions currently organize the fees schedules in their prepaid account agreements in this manner. With regard to the change to “close proximity” in the final rule, the Bureau believes that, while the short form disclosure necessitates stricter requirements to achieve more precise standardization, financial institutions should have more discretion in the long form. To this end, the sample form for the long form disclosure, as opposed to the model forms for the short form disclosures, serves as an example of a disclosure structure financial institutions may emulate or use to develop their own long form disclosure.

In response to the industry commenters requesting examples of the categories of function required in the long form disclosure, the Bureau directs financial institutions to the sample long form disclosure, Sample Form A-10(f). The sample form is provided as an example that financial institutions may, but are not required to, incorporate or emulate in developing their own long form disclosures. The following categories of function that appear in the sample form can serve as examples of categories that financial institutions might use in designing their long form disclosures: Get started (disclosing the purchase price), Monthly usage (disclosing the monthly fee), Add money (disclosing fees for direct deposit and cash reload), Spend money (disclosing bill payment fees), Get cash (disclosing ATM withdrawal fees), Information (disclosing customer service and ATM balance inquiry fees), Using your card outside the U.S. (disclosing fees for international transactions, international ATM withdrawals, and international ATM balance inquiries), and Other (disclosing the inactivity fee). Financial institutions may use some or all of the categories in the sample form or may create their own categories.

Regarding the statements in the long form disclosure, the rule requires that the information in the long form disclosure required by final § 1005.18(b)(4)(iii) through (vi) be generally grouped together, provided in that order, and appear below the information required by

final § 1005.18(b)(4)(ii). As in the short form disclosure, the Bureau believes that grouping together like categories of information here will improve readability and enhance consumer comprehension.

Finally, the final rule explains that if, pursuant to final § 1005.18(b)(4)(vii), the financial institution includes the disclosures described in Regulation Z § 1026.60(e)(1), such disclosures must appear below the disclosures required by final § 1005.18(b)(4)(vi).

New comment 18(b)(7)(i)(B)-1 provides an example illustrating the meaning of close proximity as used in the final § 1005.18(b)(7)(i)(B). The comment states that, for example, a financial institution is deemed to comply with this requirement if the text describing the conditions is located directly to the right of the fee amount in the long form disclosure, as illustrated in Sample Form A-10(f). The comment also cross-references final comment 18(b)(6)(i)(B)-2 regarding stacking of electronic disclosures for display on smaller screen sizes. As discussed above, that comment describes how compliance with the requirements of § 1005.18(b)(7)(i)(B) may be achieved, for example, through stacking of the long form disclosure for a consumer viewing it on an electronic device with a smaller screen size.

New comment 18(b)(7)(i)(B)-2 explains how to create a subheading by category of function for any finance charges that may be imposed on a prepaid account as described in Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. The comment explains that, pursuant to § 1005.18(b)(7)(i)(B), the financial institution may, but is not required to, group all finance charges together under a single subheading. The comment goes on to say that this includes situations where the financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card

than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. The comment illustrates this with an example of a financial institution that charges on the prepaid account a \$0.50 per transaction fee for each transaction that accesses funds in the asset feature of a prepaid account and a \$1.25 per transaction fee for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the financial institution is permitted to disclose the \$0.50 per transaction fee under a general transactional subheading and disclose the additional \$0.75 per transaction fee under a separate subheading together with any other finance charges that may be imposed on the prepaid account.

*18(b)(7)(i)(C) Multiple Service Plan Disclosure*

The Bureau proposed in § 1005.18(b)(4)(i)(C) that when a financial institution provides disclosures in compliance with proposed § 1005.18(b)(3)(iii)(B)(I) and discloses the fee schedules of multiple service plans together on one form, the fees that would have been required to be listed pursuant proposed § 1005.18(b)(2)(i)(B)(I) through (7) that vary among service plans must be generally grouped together, and the fees that are the same across all service plans must be grouped together. *See* proposed Model Form A-10(f). Proposed § 1005.18(b)(4)(i)(C) would have further stated that if the periodic fee varies between service plans, the financial institution must use the term “plan fee,” or a substantially similar term when disclosing the periodic fee for each service plan. The Bureau believed that, when a financial institution chooses to disclose multiple service plans together on one short form, it would be most useful for a consumer to see all the fees that vary among plans grouped together to more easily compare the different plans. The Bureau sought comment on whether this grouping distinction for short forms that include multiple service plans makes sense.

Proposed § 1005.18(b)(4)(i)(C) also would have stated that when providing disclosures for multiple service plans on one short form in compliance with proposed § 1005.18(b)(3)(iii)(B)(I), the incidence-based fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(8) must be grouped with the fees that are the same across all service plans. The Bureau believed that since a financial institution would have to consider total incidence across all plans when determining its incidence-based fee disclosure to comply with proposed § 1005.18(b)(2)(i)(B)(8), it made sense that these fees would be grouped with the fees that are the same across all service plans.

The Bureau received comments from industry and consumer groups regarding the multiple service plan short form generally, which are addressed in the section-by-section analysis of § 1005.18(b)(6)(iii)(B) above. Most relevant to this provision were the comments from several consumer groups that urged the Bureau to eliminate the multiple service plan short form disclosure. The Bureau did not receive any comments, however, specific to proposed § 1005.18(b)(4)(i)(C).

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(4)(i)(C), renumbered as § 1005.18(b)(7)(i)(C), with substantial modifications to reflect the redesigned short form for multiple service plans as discussed in the section-by-section analysis of § 1005.18(b)(6)(iii)(B) above.

The final rule's grouping requirements correspond to the formatting requirements for the redesigned short form disclosure for multiple service plans set forth in final § 1005.18(b)(6)(iii)(B)(2). Similar to the grouping requirements in the short form and long form disclosures, the final rule's grouping requirements for short form disclosures for multiple service plans conform to the principle of grouping fees together and grouping other information together.

Specifically, final § 1005.18(b)(7)(i)(C) requires that when providing a short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(2), in lieu of the requirements in final § 1005.18(b)(7)(i)(A) for grouping of the disclosures required by final § 1005.18(b)(2)(i) through (iv) and (v) through (ix), the information required by final § 1005.18(b)(2)(i) through (ix) be grouped together and provided in that order. Model Form A-10(e) illustrates the grouping requirements specifically for short form disclosures with multiple service plans disclosed pursuant to final § 1005.18(b)(6)(iii)(B)(2).

#### *18(b)(7)(ii) Prominence and Size*

##### *The Bureau's Proposal*

Proposed § 1005.18(b)(4)(ii)(A) through (D) would have set forth the prominence and size requirements for the short form and long form disclosures. Generally, the Bureau believed that the information provided to consumers in the short form and long form disclosure should appear in a large enough font size to ensure that consumers can easily read the information. Further, the Bureau observed in its pre-proposal consumer testing that some participants had to use reading glasses or otherwise struggled to read existing prepaid account disclosures and that many participants reported a preference for larger font sizes to facilitate their ability both to read and to understand disclosures. Thus, the Bureau proposed minimum font size requirements for both the short form and long form disclosures in order to ensure that consumers can easily read the disclosures. In addition, the Bureau believed that the proposed relative font sizes for the disclosures made on the short form would ensure that consumers' attention is quickly drawn to the most important information about a prepaid account (*i.e.*, the top-line fees).

The Bureau also noted in the proposal that the proposed minimum font sizes were likely also the maximum sizes that could be used on the short form disclosure to ensure that it will still

fit on most packaging material currently used in retail settings. In other acquisition scenarios, when space constraints are not as much of an issue, the Bureau expected that financial institutions would use larger versions of the short form disclosure. For example, when distributing disclosures for payroll card accounts in printed form, financial institutions could use a 8.5x11 inch piece of paper to present a larger version of the short form disclosure, as long as the form maintains the visual hierarchy of the information as reflected in the proposed relative font size requirements. Proposed § 1005.18(b)(4)(ii)(B)(2), discussed in more detail below, would have required that the statement disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(10), and the telephone number and website URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(11) must be more prominent than the information disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(12) through (14) and proposed § 1005.18(b)(2)(i)(C). The Bureau believed that it is particularly important for a consumer to see this information on the short form disclosure, and that making it more prominent than the other textual language on the short form could help to draw consumers' attention to these disclosures.

#### *Comments Received*

The Bureau received few comments regarding the proposed prominence and size requirements. A digital wallet provider commented that the prescriptive font size and other format and formatting requirements of the proposed rule would remove the flexibility to shrink or resize disclosures to fit onto mobile screens, resulting in a confusing and frustrating user experience as it would be impossible to view the entire disclosure at once without zooming out to a wider view.<sup>461</sup> A trade association recommended that the Bureau preempt State laws regarding font size where compliance with both the proposed font size and State law would be

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<sup>461</sup> See the section-by-section analysis of § 1005.18(b)(6)(i)(B) above for the Bureau's response to this commenter's concern and other issues relating to electronic disclosures.

impracticable, specifically citing a Maryland law requiring a minimum 12-point font for its required payroll card account disclosures that the commenter indicated would make it difficult to fit the short form on one page. A consumer group commenter recommended that the Bureau require larger font size for disclosures provided in non-retail settings. It said that while small print may be unavoidable in retail stores, font size was not similarly constrained in other locations such as websites, bank branches, and in settings in which payroll card accounts and government benefit accounts are offered.

### *The Final Rule*

The Bureau is adopting proposed § 1005.18(b)(4)(ii)(A) through (D), renumbered as § 1005.18(b)(7)(ii)(A) through (D), generally as proposed with additional specificity for certain requirements and other modifications as discussed below. The Bureau is also adopting new comments 18(b)(7)(ii)-1 and -2 to provide additional clarification regarding type size requirements in final § 1005.18(b)(7)(ii). See the section-by-section analyses of § 1005.18(b)(7)(ii)(A), (B), (C), and (D) below for prominence and size requirements with respect to typeface and type color generally as well as specific requirements regarding the general short form disclosure, the long form disclosure, and the multiple service plan short form disclosure, respectively.

The Bureau is finalizing the proposed visual hierarchy of information for the short form disclosure created by requiring minimum type sizes in descending order because, as explained in the proposal, this format quickly garners consumers' attention, directing it first to the information the Bureau's research indicates is most important to consumers when selecting a prepaid account. The final rule also retains the actual type size requirements as proposed, with the addition of size requirements for newly-created permissible or required disclosures or those

that were unspecified in the proposed rule. The Bureau continues to believe that the size requirements will ensure that consumers can read and understand the disclosures without struggling to see small print while also accommodating the existing packaging constraints for prepaid accounts sold at retail locations. Also, in the final rule, the Bureau has replaced “font” size with “type” size for clarity, as the term font can refer to both type size and type style. Finally, instead of stating that disclosures must be made in the “corresponding pixel size” for electronic disclosures when providing the minimum type size for each element of the disclosures, the final rule includes the actual corresponding pixel size for each type size specified.

The Bureau declines to mandate type size requirements that vary depending on the setting in which consumers receive the pre-acquisition disclosures. As discussed above, the Bureau designed the minimum type sizes requirements for the short form disclosure, that appear in final § 1005.18(b)(7)(ii)(B) and (D), to accommodate the existing packaging constraints related to the sale of prepaid accounts on J-hooks displays in retail locations. Financial institutions are encouraged, but not required, to use larger type sizes when providing pre-acquisition disclosures for prepaid accounts in less space-restrictive settings. For example, financial institutions offering prepaid accounts online, in a bank branch, in the context of payroll card accounts and government benefit accounts, and in other similar circumstances are encouraged to provide the short form disclosure in a type size that exceeds the minimum requirements in the rule to enhance both consumer engagement and comprehension of the prepaid account’s terms.

To illustrate this, both the proposed and final model forms for government benefit accounts and payroll card accounts use type sizes that exceed the regulatory minimum. *See* Model Forms A-10(a) and (b). Even when disclosing other information on the same page as the short form disclosure, such as when exercising the option to display State-required information

or other fees and discounts on the same page as (but outside) the short form disclosure for these products pursuant to final §§ 1005.15(c)(2)(ii) and 1005.18(b)(2)(xiv)(B), the Bureau believes the required disclosures can exceed the minimum size requirements set forth in the final rule. To that end, new comment 18(b)(7)(ii)-1 explains that a financial institution may provide disclosures in a type size larger than the required minimum to enhance consumer comprehension in any acquisition scenario, as long as the financial institution complies with the type/pixel size hierarchy set forth in final § 1005.18(b)(7)(ii). New comment 18(b)(7)(ii)-2 clarifies that references in final § 1005.18(b)(7)(ii) to “point” size correspond to printed disclosures and references to “pixel” size correspond to disclosures provided via electronic means

The Bureau declines to follow the recommendation of an industry commenter that the Bureau preempt certain State law font size requirements that it believes would be impracticable to reconcile with the Bureau’s font size requirements. Section 1005.12(b) addresses standards for when inconsistent State law is preempted, but the Bureau does not read the comment to argue that the Bureau’s font size requirements are inconsistent with any State law requirements. Moreover, the Bureau notes that financial institutions can provide short form disclosures for payroll accounts in a larger font and on 8.5x11” or larger paper, as they are not subject to the same space constraints, for example, as are many retail locations.

In addition, as explained in the section-by-section analysis of § 1005.18(b)(7)(iii) below generally regarding State-required information not permitted within the short form disclosure, financial institutions are free to disclose State-required information outside the confines of the short form disclosure, even on the same page as the short form disclosure. In fact, as discussed in the section-by-section analysis of § 1005.18(b)(2)(xiv)(B), the final rule permits inclusion in the short form disclosure of a statement directing the consumer to a particular location outside

the short form disclosure for certain information (ways the consumer may access payroll card account funds and balance information for free or for a reduced fee). Financial institutions have the option of providing other State-required information, including information complying with State conspicuousness requirements, in the location referenced in the short form disclosure pursuant to § 1005.18(b)(2)(xiv)(B) or in any other location the financial institution sees fit outside the short form disclosure. Because financial institutions have these options outside the short form disclosure to disclose information required by or otherwise comply with the laws of specific States, the Bureau does not believe either further modification to this final rule nor preemption of State law regarding prominence and size is necessary or appropriate.

*18(b)(7)(ii)(A) General*

Proposed § 1005.18(b)(4)(ii)(A) would have required that all text used to disclose information pursuant to proposed § 1005.18(b)(2) be in a single, easy-to-read type face. All text included in the tables required to be disclosed pursuant to proposed § 1005.18(b)(3)(iii) must be all black or one color type and printed on a white or other neutral contrasting background whenever practical. The Bureau believed that contrasting colors for the text and the background of the short form and long form disclosures would make it easier for consumers to read the disclosures. The Bureau did not receive any comments on this proposed requirement.

For the reasons set forth herein, and in the absence of comments, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(A), renumbered as § 1005.18(b)(7)(ii)(A), with technical modifications for conformity and clarity. In addition, for the reasons set forth below, the Bureau is adopting new comment 18(b)(7)(ii)(A)-1.

The final rule requires that all text used to disclose information in the short form or in the long form disclosure pursuant to final § 1005.18(b)(2), (3)(i) and (ii), and (4) be in single, easy-

to-read type that is all black or one color and printed on a background that provides a clear contrast. The Bureau has removed the proposed requirement that the background be provided in clear contrast to the type whenever practical because the Bureau does not believe there is a circumstance under which providing a clear contrast would not be practical. As stated in the proposal, the Bureau believes that contrasting colors for the text and the background of the short form and long form disclosures will make it easier for consumers to read and comprehend the disclosure.

New comment 18(b)(7)(ii)(A)-1 explains that a financial institution complies with the color requirements if, for example, it provides the disclosures required by final § 1005.18(b)(2), (3)(i) and (ii), and (4) printed in black type on a white background or white type on a black background. While the Bureau continues to believe that using black/white for the text and a contrasting white/black for the background of the disclosures would provide an ideal presentation, it also recognizes that using other similarly dark colors for text with a neutral background color could also provide clear contrast. For example, as noted in the proposal, the Bureau believes that the statement at the top of the short form disclosure for payroll card accounts required by final § 1005.18(b)(2)(xiv)(A) disclosed in black type on a grey background, if the background of the rest of the short form disclosure is white, could provide a clear contrast that would help alert consumers to that notice. *See, e.g.*, final Model Form A-10(b).

The comment also explains that, pursuant to final § 1005.18(b)(7)(ii)(A), the type and color may differ between the short form disclosure and the long form disclosure provided for a particular prepaid account program. For example, a financial institution may use one font/type style for the short form disclosure for a particular prepaid account program and use a different font/type style for the long form disclosure for that same prepaid account program. Similarly, a

financial institution may use black type for the short form disclosure for a particular prepaid account program and use blue type for the long form disclosure for that same prepaid account program.

The Bureau notes that neither final § 1005.18(b)(7)(ii)(A) nor anything else in the final rule specifies the minimum type size or other prominence requirements for the disclosures required outside the short form by final § 1005.18(b)(5).

*18(b)(7)(ii)(B) Short Form Disclosure*

*18(b)(7)(ii)(B)(1) Fees and Other Information*

*The Bureau's Proposal*

Proposed § 1005.18(b)(4)(ii)(B)(2) would have required that the fee amounts disclosed by proposed § 1005.18(b)(2)(i)(B)(1) through (4) be more prominent than the other parts of the disclosure required by proposed § 1005.18(b)(2)(i) and appear in a minimum 11-point font or the corresponding pixel size.

As discussed above, the Bureau believed that consumers commonly incur these top-line fees when a financial institution imposes charges for these services. In the Bureau's pre-proposal consumer testing, participants reported that these fee disclosures were the most important to them.<sup>462</sup> The Bureau recognized that a financial institution may not charge all of the fees identified in proposed § 1005.18(b)(2)(i)(B)(1) through (4). For example, a financial institution might not charge any per purchase fees when it imposes a monthly fee. The Bureau, however, still believed that such fees should be disclosed in a more prominent and larger font size than other information on the short form disclosure in order to draw consumers' attention to this information before acquiring a prepaid account. The Bureau also proposed that pixel sizes

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<sup>462</sup> See ICF Report I at i.

used correspond to the font sizes specified because font sizes can vary when applied in electronic contexts. Though the font sizes may differ, the Bureau explained that the relative sizes of the components of the short form would have to remain consistent to maintain the visual hierarchy of information included in the form.

Additionally, the Bureau proposed in § 1005.18(b)(4)(ii)(B)(2) that the disclosures required by proposed § 1005.18(b)(2)(i)(B)(5) through (9) (namely, the ATM balance inquiry fees, inactivity fee, and incidence-based fees) must appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required by proposed § 1005.18(b)(2)(i)(B)(1) through (4). As discussed in the recap of the proposal above, the Bureau believed that, while these other fees are important for a consumer to know pre-acquisition, the Bureau believed that these fees are less likely to drive most consumers' acquisition decisions when shopping among prepaid accounts and thus should be disclosed using a smaller font size.

Proposed § 1005.18(b)(4)(ii)(B)(2) also would have required that the disclosures required by proposed § 1005.18(b)(2)(i)(B)(10) through (14) appear in a minimum seven-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(5) through (9) (that is, the ATM balance inquiry fees, customer service fee, inactivity fee, incidence-based fees, and the statement regarding overdraft services and other credit features). Additionally, the statement disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(10), and the telephone number and website URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(11) would have had to be more prominent than the information disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(12) through (14) and (b)(2)(i)(C).

Proposed § 1005.18(b)(4)(ii)(B)(2) would have also stated that text used to distinguish each of the two fees that would have been required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(2), (3) and (5), or to explain the duration of inactivity that triggers a financial institution to impose an inactivity fee as required by proposed § 1005.18(b)(2)(i)(B)(7) must appear in a minimum six-point font or the corresponding pixel size and appear in no larger a font than what is used for information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(9) through (12). The Bureau believed that this descriptive information was less important than the actual fee information and therefore should be in a smaller font or pixel size.

The Bureau did not receive any comments specifically regarding the prominence and size requirements in proposed § 1005.18(b)(4)(ii)(B)(2).

#### *The Final Rule*

For the reasons set forth herein, and in the absence of comments opposing the specific prominence and size requirements for the fees and other information in the short form disclosure, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(B)(2), renumbered as § 1005.18(b)(7)(ii)(B)(1), as proposed with certain modifications. The Bureau is adopting the actual size requirements as proposed, with the addition of size requirements that were unspecified in the proposed rule. The Bureau has also replaced the proposed requirement that certain portions of the short form disclosure be more prominent with the more specific requirement that such disclosures appear in bold-faced type to clarify that other methods of illustrating prominence, such as italicized type, would not be deemed compliant. Finally, the Bureau has made technical modifications to the rule for conformity and clarity.

As stated in the proposal and above, the top line of the short form disclosure uses prominence and relative type size to highlight what the Bureau's research indicates are the fees that are most important to consumers when selecting a prepaid account. Thus, the final rule requires that the information required by final § 1005.18(b)(2)(i) through (iv) appear as follows: fee amounts in bold-faced type; single fee amounts in a minimum type size of 15 points (or 21 pixels); two-tier fee amounts for ATM withdrawal in a minimum type size of 11 points (or 16 pixels) and in no larger a type size than what is used for the single fee amounts; and fee headings in a minimum type size of eight points (or 11 pixels) and in no larger a type size than what is used for the single fee amounts.

Echoing the proposed rule, the next rung of the visual hierarchy for the short form disclosure includes the remaining fees and the statements regarding additional fee types. The Bureau continues to believe that this information, while important, is not as crucial as the top-line information in driving consumer acquisition decisions and, thus, merits disclosure in a relatively smaller type size. Thus, the final rule requires that the information required by final § 1005.18(b)(2)(v) through (ix) appear in a minimum type size of eight points (or 11 pixels) and appear in the same or a smaller type size than what is used for the fee headings required by final § 1005.18(b)(2)(i) through (iv).

As in the proposed rule, the final rung of the visual hierarchy for the short form disclosure includes the statements required by final § 1005.18(b)(2)(x) through (xiii). The Bureau believes that this information, while important, is secondary to the fee information provided in larger type above the statements. Thus, the final rule requires that the information required by final § 1005.18(b)(2)(x) through (xiii) appear in a minimum type size of seven points

(or nine pixels) and appear in no larger a type size than what is used for the information required to be disclosed by final § 1005.18(b)(2)(v) through (ix).

While the proposal would have required that certain disclosures in the short form be more prominent than other parts of the disclosure, the final rule specifies that those disclosures appear in bold-faced type. The Bureau believes that the statement regarding the number of additional fee types should be in bold-faced type to alert consumers that the short form does not disclose all fee types that the consumer may incur using that particular prepaid account and to inform them of the total number of additional fee types that could be charged. As discussed in the section-by-section analysis of § 1005.18(b)(2)(viii) above, in the Bureau's post-proposal consumer testing, participants expressed interest in knowing more about these fee types.<sup>463</sup> Relatedly, the Bureau believes it is important to direct consumers to the source from which consumers can learn about these additional fee types and other information about the prepaid account program. The Bureau believes that standardized and consistent use of bold-faced type for elements the Bureau believes merit greater prominence supports the overall goal of the short form disclosure to provide consumers with clear and easy-to-read information that will enhance their prepaid account purchase and use decisions. Therefore, the final rule requires that the statements disclosed pursuant to final § 1005.18(b)(2)(viii)(A) and (x) and the telephone number and website URL disclosed pursuant to final § 1005.18(b)(2)(xiii), where applicable, must appear in bold-faced type. For the reasons set forth in the section-by-section analysis of § 1005.18(b)(2)(x) above, the Bureau believes the statement regarding the availability of an overdraft credit feature must stand out to consumers.

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<sup>463</sup> See ICF Report II at 11.

Finally, the final rule sets forth the smallest type size requirements for the remaining elements of the short form disclosure, which provide the details of certain fees. The final rule requires that text used to distinguish each of the two-tier fees pursuant to final § 1005.18(b)(2)(iii), (v), (vi), and (ix), to explain that the fee required by final § 1005.18(b)(2)(vi) applies “per call,” where applicable, or to explain the conditions that trigger an inactivity fee and that the fee applies monthly, or for the applicable time period, pursuant to final § 1005.18(b)(2)(vii) appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by § 1005.18(b)(2)(x) through (xiii).

*18(b)(7)(ii)(B)(2) Variable Fees*

Proposed § 1005.18(b)(4)(ii)(B)(3) would have required that the explanatory text for variable fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(C), when applicable, must appear in a minimum seven-point font or the corresponding pixel size and appear in no larger the font than what is used for the information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(5) through (8). The Bureau believed that this explanatory text should be in the same font size as the rest of the textual information included on the short form disclosure.

The Bureau did not receive any comments on the prominence and size requirements for variable fees in proposed § 1005.18(b)(4)(ii)(B)(3).

For the reasons set forth herein, and in the absence of comments opposing the specific prominence and size requirements regarding variable fees in the short form disclosure, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(B)(3), renumbered as § 1005.18(b)(7)(ii)(B)(2), with certain modifications. The Bureau is adopting the actual size requirements for disclosing variable fee as proposed, with the addition of size requirements that were unspecified in the

proposed rule. The Bureau has also made technical modifications to the rule to for conformity and clarity.

In keeping with the rationale set forth in the proposed rule, the final rule conforms the size of the explanatory text and symbols for variable fees pursuant to final § 1005.18(b)(3)(i) and (ii) with the type size of the rest of the statements required in the short form disclosure. Thus, the final rule requires that the symbols and corresponding statements regarding variable fees disclosed in the short form pursuant to final § 1005.18(b)(3)(i) and (ii), when applicable, appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required by final § 1005.18(b)(2)(x) through (xiii). A symbol required next to the fee amount pursuant to final § 1005.18(b)(3)(i) and (ii) must appear in the same type size or pixel size as what is used for the corresponding amount.

*18(b)(7)(ii)(B)(3) Payroll Card Account Additional Content*

Proposed § 1005.18(b)(4)(ii)(B)(1) would have provided that the information required by proposed § 1005.18(b)(2)(i)(A) and proposed § 1005.15(c)(2) (that is, the payroll card account and government benefit account banner notices) must appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(1) through (4) (that is, the top-line fees in the short form).

The Bureau did not receive any comments regarding the prominence and size requirements in proposed § 1005.18(b)(4)(ii)(B)(1).

For the reasons set forth herein, and in the absence of comments opposing the specific prominence and size requirements regarding the payroll card account and government benefit account banner notices in the short form disclosure, the Bureau is adopting proposed

§ 1005.18(b)(4)(ii)(B)(I), renumbered as § 1005.18(b)(7)(ii)(B)(3), with certain modifications. The Bureau is adopting the final rule with the addition of size requirements for new § 1005.18(b)(2)(xiv)(B). The Bureau has also made technical modifications to the rule for conformity and clarity. These revisions have been carried through to final § 1005.15(c)(2), the parallel provision addressing additional content requirements in the government benefit account section.

As discussed above, the Bureau continues to believe that the statement regarding wage or salary payment options required in the short form disclosure pursuant to final § 1005.18(b)(2)(xiv)(A) is key information for consumers being offered payroll card accounts to know before they choose whether or not to accept the payroll card account. For this reason, the Bureau believes the type size of the statement should be no larger than, but generally the same size as, the top-line fee headings. Thus, the final rule requires the statement regarding wage or salary payment options for payroll card accounts required by final § 1005.18(b)(2)(xiv)(A), when applicable, appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by final § 1005.18(b)(2)(i) through (iv).

Because the new disclosure permitted for payroll card accounts by final § 1005.18(b)(2)(xiv)(B) regarding State-required information and other fee discounts or waivers is a statement similar to and located near the statements required by final § 1005.18(b)(3)(i) and (ii) and those required by final § 1005.18(b)(2)(x) through (xiii), the final rule requires the statement regarding State-required information and other fee discounts and waivers permitted final § 1005.18(b)(2)(xiv)(B) to appear in the same type size used to disclose variable fee information pursuant to final § 1005.18(b)(3)(i) and (ii), or, if none, the same type size used for the information required by final § 1005.18(b)(2)(x) through (xiii).

*18(b)(7)(ii)(C) Long Form Disclosure*

Proposed § 1005.18(b)(4)(ii)(C) would have provided that the disclosures required by proposed § 1005.18(b)(2)(ii) (that is, the fees and other information in the long form disclosure) must appear in a minimum eight-point font or the corresponding pixel size. The Bureau believed that the long form disclosure, which would list all of a prepaid account's fees, need only appear in a font that is clear enough for consumers to read. The Bureau did not believe any part of the long form disclosure should be more prominent than another part. Thus, the Bureau did not propose any rules regarding the relative font size of information disclosed in the long form.

The Bureau did not receive any comments regarding the prominence and size requirements for the long form disclosure in proposed § 1005.18(b)(4)(ii)(C).

For the reasons set forth in the proposal, and in the absence of comments opposing the prominence and size requirements regarding the long form disclosure, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(C), renumbered as § 1005.18(b)(7)(ii)(C), with technical modifications for conformity and clarity. Final § 1005.18(b)(7)(ii)(C) provides that the long form disclosures required by final § 1005.18(b)(4) must appear in a minimum type size of eight points (or 11 pixels). The final rule does not impose any additional prominence or size requirements for the long form disclosure.

*18(b)(7)(ii)(D) Multiple Service Plan Short Form Disclosure*

Proposed § 1005.18(b)(4)(ii)(D) would have required that when providing disclosures in compliance with proposed § 1005.18(b)(3)(iii)(B)(I) and disclosing the fee schedules of multiple service plans together on one form, disclosures required by proposed § 1005.18(b)(2)(i)(B)(I) through (9) must appear in a minimum seven-point font or the corresponding pixel size.

Disclosures required by proposed § 1005.18(b)(2)(i)(B)(10) through (14) must appear in the font sizes set forth in proposed § 1005.18(b)(4)(ii)(B)(2).

The Bureau did not receive any comments on the prominence and size requirements for the multiple service plan short form in proposed § 1005.18(b)(4)(ii)(D).

For the reasons set forth below, and in the absence of comments opposing the prominence and size requirements regarding the short form disclosure for multiple service plans, the Bureau is adopting proposed § 1005.18(b)(4)(ii)(D), renumbered as § 1005.18(b)(7)(ii)(D), with certain modifications. The Bureau generally is adopting the size requirements for the multiple service plan short form disclosure as proposed but with additional prominence and size requirements to address the redesigned short form disclosure for multiple service plans and, upon further consideration, to include specifications that were not addressed in the proposed rule. The Bureau has made technical modifications to the rule for conformity and clarity.

The design structure and increased density and complexity of the short form disclosure for multiple service plans, as compared to the general short form disclosure, requires more simplified uniform size requirements. Thus, the final rule requires that, when providing a short form disclosure for multiple service plans pursuant to final § 1005.18(b)(6)(iii)(B)(2), the fee headings required by final § 1005.18(b)(2)(i) through (iv) must appear in bold-faced type. With this requirement, the disclosure of these fees will somewhat mimic the focus on the top-line disclosures in the general short form. The information required by final § 1005.18(b)(2)(i) through (xiii) must appear in a minimum type size of seven points (or nine pixels), except the following must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by final § 1005.18(b)(2)(i) through (xiii): text used to distinguish each of the two-tier fees required by final

§ 1005.18(b)(2)(iii) and (v); text used to explain that the fee required by final § 1005.18(b)(2)(vi) applies “per call,” where applicable; text used to explain the conditions that trigger an inactivity fee pursuant to final § 1005.18(b)(2)(vii); and text used to distinguish that fees required by § 1005.18(b)(2)(i) and (vii) apply monthly or for the applicable time period.

### *18(b)(7)(iii) Segregation*

#### *The Bureau’s Proposal*

Proposed § 1005.18(b)(5) would have explained that disclosures that would have been required under § 1005.18(b) that are provided in writing or electronically must be segregated from everything else and could contain only information that is directly related to the disclosures required under § 1005.18(b). The Bureau believed it was important that only the information it would have required to be disclosed be included on the short form and long form disclosures. The Bureau noted that financial institutions (or whatever entity is responsible for marketing the prepaid account) could use the remainder of a prepaid account’s packaging material or website to disclose other information to a consumer, but the Bureau believed it was important to limit the amount of information permitted in the required disclosures to protect the integrity of their design.

#### *Comments Received*

A number of industry commenters, including trade associations and program managers, as well as several employers and a local government agency commented on the proposed segregation provision, recommending that the Bureau eliminate the segregation requirements for payroll card account disclosures to permit inclusion in the short form and long form of State-required information for prepaid accounts. Some commenters said that much of this information could not be feasibly or lawfully disclosed on other parts of the packaging material or online and

would require a third disclosure form in addition to the short form and long form disclosures just to disclose State-required information.

### *The Final Rule*

For the reasons set forth herein, the Bureau is adopting proposed § 1005.18(b)(5), renumbered as § 1005.18(b)(7)(iii), with technical modifications for conformity and clarity. The Bureau is also adopting new comment 18(b)(7)(iii)-1.

As discussed in the proposal, to preserve the design integrity of the short form and long form disclosures, which the Bureau believes will facilitate consumer engagement and optimal consumer comprehension, it is necessary that the information in these disclosures be restricted to that required or permitted under this final rule. Thus, the final rule requires that the short form and long form disclosures required by final § 1005.18(b)(2) and (4) must be segregated from other information and must contain only information that is required or permitted for those disclosures by final § 1005.18(b).

New comment 18(b)(7)(iii)-1 addresses information permitted outside the short form and long form disclosures. Specifically, the comment explains that the segregation requirement does not prohibit the financial institution from providing information elsewhere on the same page as the short form disclosure, such as the information required by final § 1005.18(b)(5) (that is, the names of the financial institution and prepaid account program and any purchase price or activation fee), additional disclosures required by State law for payroll card accounts, or any other information the financial institution wishes to provide about the prepaid account. Similarly, the comment explains that the segregation requirement does not prohibit a financial institution from providing the long form disclosure on the same page as other disclosures or

information, or as part of a larger document, such as the prepaid account agreement, cross-referencing § 1005.18(b)(1) and (f)(1).

Thus, as long as the long form disclosure remains intact and free of extraneous information not required or permitted within its structure, neither the segregation requirement nor any other part of the final rule prohibits disclosure of the long form as part of the cardholder agreement. Thus, the long form may be disclosed as a separate document or may be inserted intact within another document such as the cardholder agreement.

The Bureau declines to exclude payroll card accounts from the segregation requirements of final § 1005.18(b)(7)(iii), as requested by some commenters. The Bureau believes it is necessary to preserve the design integrity of the short form and long form disclosures for all types of prepaid accounts. The Bureau notes that, pursuant to final § 1005.18(b)(4)(ii), all fees and conditions, including those required by State law, must be disclosed in the long form disclosure. Thus, inclusion of State-required information in the long form (with regard to fees and the conditions under which they may be imposed for the prepaid account) would not only *not* violate the segregation requirements of final § 1005.18(b)(7)(iii) but exclusion of this information would violate the requirements of final § 1005.18(b)(4)(ii) to disclose all fees and conditions. The Bureau acknowledges, however, that State laws may have other specific presentation requirements for their disclosures that may not correspond to the final rule's requirements for the long form as set forth in final § 1005.18(b)(4)(ii) and (6)(iii)(A) and thus may necessitate additional disclosure in a format that complies with those requirements.

With regard to the short form disclosure, see the section-by-section analysis of § 1005.18(b)(2)(xiv)(B) above for discussion of how State-required and other fee discounts and waivers may be disclosed in conjunction with the short form disclosure. Pursuant to final

§ 1005.18(b)(2)(xiv)(B), the final rule permits disclosure in the short form for payroll card accounts (and government benefit accounts pursuant to final § 1005.15(c)(2)(ii)) of a statement directing consumers to State-required information and other fee discounts and waivers, whether this information is located on the same page as (but outside) the short form disclosure or in another location such as the cardholder agreement or on a website.

Also, because payroll card accounts (and government benefit accounts) are not provided in retail locations where space may be limited, the Bureau is not persuaded by arguments that State-required information cannot be provided in other ways such as on the same page but outside the short form disclosure, on another portion of the packaging for the prepaid account, or in a package of information accompanying the account.

#### *18(b)(8) Terminology of Pre-Acquisition Disclosures*

For the reasons set forth below, the Bureau is adopting the final rule with the addition of § 1005.18(b)(8), which requires that fee names and other terms must be used consistently within and across the disclosures required by final § 1005.18(b). New comment 18(b)(8)-1 provides an example illustrating this requirement. The comment also clarifies that a financial institution may substitute the term prepaid “account” for the term prepaid “card” as appropriate, wherever it is used in final § 1005.18(b).

A consumer group commenter recommended that the Bureau require uniform terms across disclosures to prevent use of a variety of terminology for certain required fees and information. The Bureau agrees that use of consistent terminology within and across the short form and long form disclosures for a particular prepaid account program will enhance consumer comprehension, and thus is adopting new § 1005.18(b)(8). The Bureau declines to eliminate the “substantially similar” requirement for various terms throughout final § 1005.18(b)(2) and

replace it with a less flexible standard. Thus, the final rule generally does not require the uniform use of a specific term for particular fees across all short form disclosures. The Bureau believes it can achieve a degree of standardization across short form disclosures that will enhance consumer engagement and comprehension by requiring that the terms used be substantially similar to the terms set forth in the rule and model forms without mandating universal use of a specific term. Moreover, the Bureau believes the safe harbor afforded to financial institutions using the short form disclosure model forms will encourage financial institutions to use the specific terminology in the model forms where appropriate.

However, as set forth in the comment 18(b)(8)-1, a financial institution may use the terms prepaid “account” and prepaid “card” interchangeably in the short and long forms, as appropriate. The Bureau is allowing use of these terms because they may be used synonymously in the prepaid context, particularly in light of the terminology used in this final rule, but the Bureau recognizes that in some cases one of the terms may be more apt than the other.

#### *18(b)(9) Prepaid Accounts Acquired in Foreign Languages*

##### *The Bureau’s Proposal*

Regulation E generally permits, but does not require, that disclosures be made in a language other than English, provided that where foreign language disclosures are provided the disclosures are made available in English upon a consumer’s request.<sup>464</sup> When the Bureau issued its remittance transfer regulation (subpart B of Regulation E), it altered Regulation E’s general requirement for foreign language disclosures to require disclosures be made in English in addition to a foreign language, if that foreign language is used principally by the remittance transfer provider to advertise, solicit, or market remittance transfer services at the office in which

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<sup>464</sup> § 1005.4(a)(2).

the sender conducts a transaction or asserts an error.<sup>465</sup> The Bureau amended Regulation E in this way pursuant to a statutory mandate in section 1073 of the Dodd-Frank Act.

The Bureau proposed to modify the general Regulation E foreign language requirement for prepaid accounts such that proposed § 1005.18(b)(6) would have required that if a financial institution principally uses a foreign language on prepaid account packaging material, by telephone, in person, or on the website a consumer utilizes to acquire a prepaid account, the short form and long form disclosures made pursuant to proposed § 1005.18(b)(2)(i) and (ii) would have to be provided in that same foreign language. Proposed § 1005.18(b)(6) would have also required a financial institution to provide the long form disclosure required by proposed § 1005.18(b)(2)(ii) in English upon a consumer's request and on any part of the website where it provides the long form disclosure in a foreign language. Proposed comment 18(b)(6)-1 would have provided several examples as to when financial institutions would have to provide the short form and long form disclosures in a foreign language.

#### *Comments Received*

The Bureau received several comments from industry, consumer groups, and one State government agency addressing this aspect of the proposal. Specifically, the consumer groups and the State government agency generally supported requiring financial institutions to provide pre-acquisition disclosures in the foreign language the financial institution uses in connection with the acquisition of a prepaid account. Some of these commenters argued that, if financial institutions market prepaid accounts in a foreign language, or otherwise reach out to non- and limited-English speaking consumers, they should also be required to provide the disclosures in that language. One commenter urged the Bureau to require financial institutions to provide

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<sup>465</sup> ICF Report II at 11.

disclosures in commonly spoken languages. Another commenter explained that providing disclosures in a consumer's preferred language gives non- and limited-English speaking families accurate information regarding their prepaid accounts and creates an inclusive culture that consumers seek when making financial decisions. Another commenter requested that the Bureau extend this requirement to all required disclosures, not just the pre-acquisition disclosures.

Some of the consumer groups urged the Bureau to further expand the proposed foreign language requirements to require foreign language support for live customer service calls in any language the financial institution uses in connection with the marketing or acquisition of a prepaid account. Some commenters stated that customer service representatives (and interpreters) should be both fluent in the spoken language and knowledgeable about prepaid accounts to ensure that communication with non- and limited-English speaking consumers is as effective as communication with other consumers. One commenter explained that deploying a customer service representative (or an interpreter) that does not have the necessary expertise can result in the dissemination of inaccurate information. Other commenters stated that customer service calls in foreign languages also enable non- and limited-English speaking consumers to obtain account balances, request transaction information, access general account information, and exercise dispute rights. See the section-by-section analysis of § 1005.18(c)(1) for a discussion of the comments received on foreign language support for customer service calls as it relates to accessing account information.

Two industry trade associations and a coalition of prepaid account issuers agreed that, where a financial institution engages in a deliberate marketing program to solicit consumers in a foreign language, it may be reasonable to require disclosures in that same language. One of the commenters explained that, in those situations, financial institutions control the languages used

in the marketing programs and can determine whether it makes business sense to develop and implement disclosures in a particular language.

The Bureau received several comments from industry, including from industry trade associations, and a law firm writing on behalf of a coalition of prepaid issuers, arguing, however, that the foreign language disclosure requirement, as proposed, would discourage financial institutions from servicing non- and limited-English speaking consumers in their preferred languages, especially at branch locations and call centers. Several commenters argued that the “by telephone” and “in person” components of the proposed requirement could actually be detrimental to consumers because employees of a financial institution would be prohibited from engaging with them in their preferred languages if the financial institution did not have pre-acquisition disclosures available in those languages. These commenters stated that the proposed requirement would also undermine financial institutions’ efforts to service communities with a high number of non- and limited-English speaking consumers (by hiring staff with specific language abilities and establishing branches and offices in those areas), which they stated is generally supported by other bank regulators. Several commenters urged the Bureau to apply instead the current foreign language disclosure requirements under Regulation E to prepaid accounts.<sup>466</sup> However, these commenters requested that, if the Bureau proceeds with the proposed requirement, the term “principally uses a foreign language” not cover certain situations, such as responses to consumer-initiated inquiries; interactions with consumers through the use of an interpreter; and interactions where the financial institution knows, based on a prior relationship or interaction, that the consumer prefers a language other than English.

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<sup>466</sup> As discussed above, Regulation E generally permits, but does not require, that disclosures be made in a language other than English, provided that where foreign language disclosures are provided the disclosures are made available in English upon a consumer’s request. *See* § 1005.4(a)(2).

These industry commenters argued that the requirement as proposed would also impose significant compliance burdens on financial institutions. These commenters explained that financial institutions would need to train their employees to speak only in English, or in the specific languages for which pre-acquisition disclosures are available, if the topic of prepaid accounts comes up while assisting consumers. These commenters stated that customer service interactions that are in person or over the telephone could implicate hundreds of languages, thereby making compliance with the proposed requirements virtually impossible. These commenters further stated that financial institutions cannot always control the languages spoken at a retail setting, by a program manager, or even at branch locations. In addition, these commenters stated that financial institutions cannot ensure that third-party providers, such as employers and government agencies, will comply with the requirement because financial institutions might not know whether a language other than English is spoken at the time of acquisition.

One industry commenter urged the Bureau not to require financial institutions to provide the long form disclosure in English upon request in addition to providing the disclosures in a foreign language, as it did not believe it would be necessary or customary to do so.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(b)(6), renumbered as § 1005.18(b)(9), pursuant to its authority under EFTA sections 904(a) and (c), 905(a), and section 1032(a) of the Dodd-Frank Act, with several modifications explained below. The Bureau believes that certain foreign language disclosures are necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, because the proposed revision will assist consumers'

understanding of the terms and conditions of their prepaid accounts. In addition, consistent with section 1032(a) of the Dodd-Frank Act, the foreign language disclosures will ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account.

Final § 1005.18(b)(9)(i) sets forth the general foreign language disclosure requirements for prepaid accounts. Specifically, it requires a financial institution to provide the pre-acquisition disclosures required by § 1005.18(b) in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) the financial institution principally uses a foreign language on prepaid account packaging material; (2) the financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or (3) the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language.

The Bureau is finalizing in § 1005.18(b)(9)(i) the general requirement from the proposal that a financial institution must provide the pre-acquisition disclosures in a foreign language, if the financial institution principally uses that foreign language on prepaid account packaging material, by telephone, or on the website a consumer uses to acquire a prepaid account. The Bureau is clarifying in final § 1005.18(b)(9)(i) that the requirement to provide the pre-acquisition disclosures in a foreign language applies only in connection with the acquisition of a prepaid account. In addition, the Bureau has replaced the phrase “on the website” with “electronically”

in final § 1005.18(b)(9)(i) to more clearly cover all situations in which a consumer can electronically acquire a prepaid account, such as by clicking on a link provided by the financial institution on an advertisement accessed on a mobile device, for example. The Bureau continues to believe that if a financial institution provides a way for a consumer to acquire a prepaid account in a foreign language, the financial institution is making a deliberate effort to obtain the consumer's business and therefore should be required to provide the pre-acquisition disclosures in that foreign language. The Bureau also believes that if a financial institution principally uses a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, the consumer should receive pre-acquisition disclosures in that foreign language to ensure they are able to understand the required disclosures.

However, the Bureau has removed from final § 1005.18(b)(9)(i) the proposed requirement to provide the pre-acquisition disclosures in a foreign language if the financial institution principally uses that foreign language in person, as requested by several commenters. The Bureau agrees with commenters that servicing non- and limited-English speaking consumers in their preferred language is critical and would not want to discourage employees of financial institutions at branch locations from using their foreign language abilities to assist these consumers. Similarly, the Bureau understands the importance of servicing communities with a high number of non- and limited-English speaking consumers and does not seek to stifle efforts made by financial institutions to reach out to these communities.<sup>467</sup> In addition, the Bureau understands that financial institutions cannot always know or control the languages that are spoken at branch locations or in other in-person environments (particularly when those locations

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<sup>467</sup> See CFPB's Financial Education Programs Serving Immigrant Populations (July 2016), *available at* <http://www.consumerfinance.gov/data-research/research-reports/financial-education-programs-serving-immigrant-populations/>.

are operated by third parties), and that providing disclosures in every possible language their employees speak might not be feasible. The Bureau believes that by not including the in-person trigger in final § 1005.18(b)(9)(i), financial institutions will be able to better comply with this requirement while not discouraging them from servicing non- and limited-English speaking consumers.

The Bureau has added a trigger for when a financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material for the consumer to acquire a prepaid account by telephone or electronically, in response to the comments it received. The Bureau agrees with commenters that if a financial institution deliberately targets consumers by advertising, soliciting, or marketing to them in a foreign language, the financial institution should be required to provide the pre-acquisition disclosures in that same language. The Bureau believes it is particularly important to require financial institutions to provide the disclosures in a foreign language, if in addition to deliberately targeting consumers, financial institutions use those same communications to drive consumers to a specific telephone number or website to acquire a prepaid account.

Final § 1005.18(b)(9)(ii) provides that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to final § 1005.18(b)(9)(i) must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the website where it discloses this information in a foreign language. The Bureau believes that the ability to obtain the long form disclosure information in English will be beneficial to consumers in various situations, such as when a family member is assisting a non-English speaking consumer to

manage his prepaid account but only reads English. Further, this requirement is consistent with existing § 1005.4(a)(2), which requires that disclosures made under Regulation E in a language other than English be made available in English upon the customer's request. The Bureau has observed that many financial institutions that offer prepaid accounts in a foreign language already provide the pre-acquisition disclosures and the initial disclosures in both English and the foreign language without a request from the consumer, which the Bureau believes is beneficial for consumers. The Bureau has also revised the internal paragraph references within final § 1005.18(b)(9) and related commentary to conform to numbering changes in this final rule and has made other technical revisions for organizational purposes.

The Bureau is finalizing proposed comment 18(b)(6)-1, renumbered as comment 18(b)(9)-1, with examples that reflect the changes to § 1005.18(b)(9)(i) and that illustrate situations in which a financial institution must provide the pre-acquisition disclosures in a foreign language and situations in which it is not required to provide the disclosures.

The Bureau is adopting new comment 18(b)(9)-2 to clarify when a foreign language is principally used. This comment explains that all relevant facts and circumstances determine whether a foreign language is principally used by the financial institution to advertise, solicit, or market under final § 1005.18(b)(9). Whether a foreign language is principally used is determined at the packaging material, advertisement, solicitation, or marketing communication level, not at the prepaid account program level or across the financial institution's activities as a whole. A financial institution that advertises a prepaid account program in multiple languages would evaluate its use of foreign language in each advertisement to determine whether it has principally used a foreign language therein.

The Bureau is adopting new comment 18(b)(9)-3 to explain the term “advertise, solicit, or market.” This comment clarifies that any commercial message, appearing in any medium, that promotes directly or indirectly the availability of prepaid accounts constitutes advertising, soliciting, or marketing for purposes of § 1005.18(b)(9). This comment also provides examples illustrating advertising, soliciting, and marketing. The Bureau notes that advertising, soliciting, and marketing could include, for example, outreach via social media. New comment 18(b)(9)-3 resembles comment 31(g)(1)-2, which corresponds to the foreign language disclosure requirements for remittance transfers in § 1005.31(g)(1). However, new comment 18(b)(9)-3 has been altered to accommodate for the differences between how consumers acquire prepaid accounts and how they initiate remittance transfers. For example, the Bureau did not include in new comment 18(b)(9)-3 specific examples from comment 31(g)(1)-2 related to advertisements, solicitations, and marketing communications at an office because scenarios at an office do not usually apply in the prepaid account context.<sup>468</sup> In addition, the Bureau believes that leaving these examples out of new comment 18(b)(9)-3 avoids confusion related to the proposed in person trigger that was removed from this final rule. Thus, final § 1005.18(b)(9) would not apply to general advertisements, solicitations, and marketing communications that are in a foreign language and displayed at a retail or branch location that do not meet any of the triggers in § 1005.18(b)(9)(i)(A) through (C).

The Bureau is adopting new comment 18(b)(9)-4 to explain the requirements in final § 1005.18(b)(9)(ii), which states that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) must also provide the

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<sup>468</sup> These examples include announcements in a foreign language on a public address system at an office; printed material in a foreign language on any exterior or interior sign at an office; and point-of-sale displays in a foreign language at an office. *See* comment 31(g)(1)-2.

information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the website where it discloses this information in a foreign language. New comment 18(b)(9)-4 clarifies that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) may, but is not required to, provide the English version of the pre-acquisition long form disclosure information required by final § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in final § 1005.18(b) for the long form disclosure.

The Bureau declines to implement at this time other suggestions made by several commenters, which include requiring foreign language support for customer service calls; requiring customer service representatives and interpreters to be both fluent in a foreign language and knowledgeable about prepaid accounts; and requiring all disclosures, not just pre-acquisition disclosures, to be provided in a foreign language. The Bureau believes these measures are beyond the scope of this rulemaking and therefore declines to adopt them now. The Bureau is also concerned that imposing additional requirements in this final rule would discourage financial institutions from servicing non- or limited-English speaking consumers and from offering prepaid accounts in foreign languages. The Bureau understands that the costs associated with such requirements involve hiring and retaining trained personnel fluent in other languages, which may be cost prohibitive for many financial institutions. In addition, the Bureau has focused on the pre-acquisition disclosures because it believes that they present a reasonable and appropriate step forward focusing on the most important information at the stage that the consumer is acquiring the prepaid account. But for the reasons discussed above, the Bureau declines to insert additional requirements in this final rule.

*18(c) Access to Prepaid Account Information*

EFTA section 906(c) requires that a financial institution provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an EFT. Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an EFT occurred or, if there are no such transfers, a periodic statement at least quarterly.<sup>469</sup> Financial institutions must deliver periodic statements in writing and in a form that the consumer can keep, unless consent is received for electronic delivery or unless Regulation E provides otherwise.<sup>470</sup>

In the Payroll Card Rule, the Board modified the periodic statement requirement for payroll card accounts similar to what it had done previously for government benefit accounts under § 1005.15. Pursuant to existing § 1005.18(b), financial institutions can provide for payroll card accounts periodic statements that comply with the general provisions in Regulation E, or alternatively, the institution must make available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)).

As discussed below, the Bureau proposed § 1005.18(c)(1) and (2) to apply Regulation E's periodic statement requirement to prepaid accounts, and an alternative that would allow

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<sup>469</sup> The periodic statement must include transaction information for each EFT, the account number, the amount of any fees assessed, the beginning and ending account balance, the financial institution's address and telephone number for inquiries, and a telephone number for preauthorized transfers. § 1005.9(b).

<sup>470</sup> See §§ 1005.4(a)(1) and 1005.9(b).

financial institutions to instead provide access to account balance by telephone, at least 18 months of electronic account transaction history, and at least 18 months written account transaction history upon request. Proposed § 1005.18(c)(3) would have required financial institutions to disclose all fees assessed against the account, in any electronic or written account transaction histories and on periodic statements. In addition, the Bureau proposed in § 1005.18(c)(4) to require financial institutions to disclose, in any electronic or written account transaction histories and on periodic statements, monthly and annual summary totals of the amount of all fees imposed on the prepaid account, and the total amounts of deposits to and debits from the prepaid account.

As discussed in detail in the section-by-section analyses that follow, the Bureau is finalizing § 1005.18(c) generally as proposed with several modifications. Specifically, final § 1005.18(c)(1) requires 12 months of electronic account transaction history and 24 months of written account transaction history instead of 18 months for both. The Bureau is also adopting new § 1005.18(c)(2) to provide a modified version of the periodic statement alternative for prepaid accounts when a consumer's identity cannot be or has not been verified by the financial institution. Furthermore, the Bureau is finalizing proposed § 1005.18(c)(2), renumbered as § 1005.18(c)(3), as proposed to require that the history of electronic and written account transactions include the information set forth in § 1005.9(b), which lists the various items that must be included in a periodic statement, such as detailed transaction information and fees assessed. In addition, the Bureau is finalizing proposed § 1005.18(c)(3), renumbered as § 1005.18(c)(4), generally as proposed to require a financial institution to disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made

available by the financial institution. Finally, the Bureau has modified proposed § 1005.18(c)(4), renumbered as § 1005.18(c)(5), to require financial institutions to provide the summary totals of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date; the Bureau is not finalizing the proposed requirement that financial institutions provide summary totals of all deposits to and debits from a consumer's prepaid account.

#### *18(c)(1) Periodic Statement Alternative*

##### *Periodic Statement Requirement Generally*

##### *The Bureau's Proposal*

As discussed above, existing § 1005.18(b) states that financial institutions that issue payroll cards can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the institution must make available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)). The Bureau proposed to extend this alternative to all prepaid accounts, with certain modifications, as described in the section-by-section analyses of § 1005.18(c)(1)(i) through (iii) below.

##### *Comments Received*

The Bureau received a number of comments regarding whether the Regulation E periodic statement requirement should be applied to prepaid accounts. Many consumer groups supported such a requirement, arguing that the periodic statement is an important tool for managing

consumer finances, as consumers use information about their account usage when making financial decisions. One commenter also argued that receiving periodic statements encourages consumers to monitor their accounts on a regular basis for errors and unauthorized transactions. Another commenter requested that the Bureau require financial institutions to provide annual statements for record-keeping and tax-preparation purposes.

Several of these commenters and one State government agency argued that consumers should have the option to sign up for paper periodic statements for free or a nominal fee, instead of having to call each time to make a request—taking up customer service resources and possibly incurring a fee. These commenters argued that periodic statements in paper form are essential for recordkeeping purposes, especially for older consumers and consumers with no internet or electronic access. These commenters also argued that paper periodic statements are more convenient and easier to review for consumers who find it difficult to remember passwords or log into their online accounts, or for consumers who simply prefer paper over electronic statements. One commenter stated that a myriad of regulations, laws, and court procedures necessitate the continued availability of paper periodic statements and noted several circumstances in which it believed paper statements are necessary.

Conversely, some industry commenters, including issuing banks, credit unions, and a credit union trade association, argued that periodic statements should not be required for prepaid accounts, considering the lifespan of a prepaid account is usually very short. One commenter added that statements would not make sense particularly for non-reloadable, low-value prepaid accounts, as these products are anonymous and do not have the functionality or associated fees of reloadable prepaid accounts, deposit accounts, or other traditional bank accounts. Some commenters argued that a periodic statement requirement would impose unnecessary costs and

recordkeeping burdens and provide consumers little value, as they prefer immediate, electronic access to their account information and transaction history. Regarding the form and content of the periodic statement, a few credit union trade associations requested a model form, and an issuing bank requested clarification regarding the information that would be required on the statement.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing the portion of the proposal that extends the Regulation E periodic statement requirement to prepaid accounts. As stated above, the requirement to provide consumers with a periodic statement for each account that may be accessed by means of an EFT is required by EFTA section 906(c), and the Bureau does not believe it would be appropriate to completely exempt prepaid accounts from this requirement. The Bureau also recognizes that access to account information—whether through a periodic statement or the periodic statement alternative pursuant to final § 1005.18(c)(1) discussed below—is essential for consumers to manage their prepaid accounts and to monitor account transactions and fees on a regular basis.

The Bureau declines to require financial institutions to provide periodic statements in paper form, as requested by several commenters. The Bureau notes that § 1005.4(a)(1) allows disclosures, including periodic statements, required by Regulation E to be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the E-Sign Act.<sup>471</sup> The Bureau does not believe it is necessary or appropriate at this time to mandate paper statements for prepaid accounts. Regarding one commenter's request for an annual statement, the Bureau believes consumers will have sufficient

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<sup>471</sup> 15 U.S.C. 7001 *et seq.*

access to account information through periodic statements pursuant to § 1005.9(b) or through electronic and written account transaction histories pursuant to the periodic statement alternative in final § 1005.18(c)(1).

The Bureau does not believe it is necessary to provide additional information or guidance about the form and content of the periodic statement, as requested by some commenters.

Because prepaid accounts are subject to Regulation E by virtue of this final rule, the requirements for periodic statements set forth in § 1005.9(b), as well as the general disclosure requirements in § 1005.4, apply to prepaid accounts.<sup>472</sup> The Bureau reminds financial institutions that the requirement in final § 1005.18(c)(5) to display the summary totals of fees for the prior calendar month and the calendar year to date applies to financial institutions providing periodic statements as well as those following the alternative, as discussed below. The requirement to provide a periodic statement under Regulation E is separate from the requirement under final Regulation Z § 1026.7(b) with respect to a covered separate credit feature that is accessible by a hybrid prepaid-credit card. See the section-by-section analyses of Regulation Z §§ 1026.6 and 1026.7(b) for additional information regarding the Regulation Z periodic statement requirement.

#### *Periodic Statement Alternative Generally*

##### *Comments Received*

The Bureau received several comments addressing the periodic statement alternative generally. Several consumer groups, a State government agency, industry trade associations, and a few credit unions supported the proposal, arguing that the alternative would benefit consumers and impose little to no additional burden on industry. These commenters explained that the

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<sup>472</sup> As discussed below, final § 1005.18(c)(3) requires that electronic and written account transaction histories under the periodic statement alternative include all of the information set forth in § 1005.9(b).

requirements to provide account information by telephone and online are consistent with consumer preference. These commenters further stated that the alternative would impose no additional costs and burden for financial institutions that currently provide periodic statements. One of the consumer groups urged the Bureau to require all financial institutions to provide access to account information as would be required under the proposed alternative, even if financial institutions provide periodic statements pursuant to § 1005.9(b).

Conversely, several industry commenters, including credit union trade associations, a credit union, and a think tank, argued that the proposed alternative would provide no relief to financial institutions and could in fact be equally or more costly and burdensome than providing periodic statements, leaving financial institutions—particularly credit unions—with few options. These commenters explained that financial institutions that do not have the proper infrastructure in place to meet the requirements of the alternative would need to invest in system upgrades and website development and coordinate with third-party data processors to obtain the information needed to provide periodic statements or account transaction history. Several of the credit union trade associations explained that most credit unions rely on third parties to maintain their websites and to provide the data for account transaction history; therefore, reliance on the third parties to capture the required information and to make necessary changes would require industry-wide coordination and may result in higher fees. Several other credit union trade associations argued that the proposed alternative would not be appropriate for prepaid accounts because prepaid accounts are generally seen as short-term or disposable products, and the consumer relationship typically lasts as long as there are funds available on the account. Relatedly, one think tank argued that government agencies would find it difficult to manage beneficiaries' account transaction histories for 18 months.

### *The Final Rule*

For the reasons discussed herein, the Bureau is finalizing § 1005.18(c)(1) generally as proposed, with certain modifications as discussed below. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to create an exception to the periodic statement requirements of EFTA section 906(c), because the periodic statement alternative will assist consumers' understanding of their prepaid account activity.

The Bureau believes the periodic statement alternative adopted by the Board for payroll card accounts, with the modifications discussed below, is appropriate to extend to all prepaid accounts. The Bureau proposed to adopt the periodic statement alternative for prepaid accounts, which was based on the on the alternative under the Payroll Card Rule, to reduce some of the burden financial institutions would have otherwise experienced if required to provide periodic statements for prepaid accounts. The Bureau believes that the alternative it is adopting not only helps reduce costs, but also strikes the appropriate balance between providing consumers with access to their account information and not unnecessarily burdening financial institutions. Specifically, financial institutions that wish to provide periodic statements may do so (either on paper or electronically with E-Sign consent<sup>473</sup>), while financial institutions that find such an approach problematic or undesirable—because of the cost, burden, or otherwise—may instead follow the alternative. Regardless of which option a financial institution chooses, consumers will have access to account information either by virtue of a periodic statement or through the

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<sup>473</sup> See § 1005.4(a)(1).

methods required under the alternative (that is, account balance by telephone, electronic account transaction history, and written account transaction history upon request).

The Bureau does not expect the alternative to be particularly burdensome for most financial institutions. As noted in the Bureau's Study of Prepaid Account Agreements and other public studies, many financial institutions already follow the existing alternative from the Payroll Card Rule.<sup>474</sup> Because consumers need reliable access to account information to manage their prepaid accounts and to assist them when making financial decisions generally, the Bureau believes it is appropriate to require that financial institutions must either provide a periodic statement or follow the alternative. Reliable access to account information is especially important since prepaid accounts have become more prevalent in recent years and are increasingly being used as replacements for traditional checking accounts; that is, they are no longer universally seen or used as short-term or disposable products. Regarding commenters' concerns about the costs and burden associated with the alternative, the Bureau believes the modifications it has made to the length of time electronic and written account transaction histories must cover, as discussed below, will help alleviate those concerns.

The Bureau declines to require all financial institutions to provide access to account information as required under the alternative, even if they provide periodic statements, as requested by a commenter, as it does not believe it to be necessary or appropriate to do so at this

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<sup>474</sup> See Study of Prepaid Account Agreements at 18 tbl.5. The Bureau found that almost all prepaid account agreements reviewed (including 99.03 percent of agreements reviewed for GPR card programs) provide electronic access to account information; a majority of programs reviewed (including 73.91 percent of agreements for GPR card programs) explicitly provide that transactional history is available for at least 60 days (which is consistent with the payroll card account alternative in existing § 1005.18(b)); and most programs reviewed (including 88.41 percent of agreements for GPR card programs) make clear that paper statements or paper account histories are available upon request. *See id.* at 19 tbl.6 and 21 tbl.8. *See also* Ctr. for Fin. Services Innovation, *2016 Prepaid Industry Scorecard: Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 4 (Mar. 2016), available at <http://www.cfsinnovation.com/Document-Library/2016-Prepaid-Scorecard> (2016 CFSI Scorecard); 2014 Pew Study at 19-20.

time. As discussed above, the Bureau proposed to adopt the periodic statement alternative for prepaid accounts in order to reduce some of the burden financial institutions experience with regard to mailing periodic statements. Requiring a financial institution to provide access to account information pursuant to the alternative, despite its election to provide periodic statements, would contradict the intended purpose of the alternative.

#### *Other Methods of Access to Account Information*

##### *Comments Received*

The Bureau sought comment on the methods of access consumers need to their account information and on other alternatives to the Payroll Card Rule's approach regarding access to account information. The Bureau received several industry and consumer group comments in response to this request. All of these commenters generally supported the idea that consumers should have access to their prepaid account information. However, commenters were divided on whether the Bureau should require other methods of access—in addition to the periodic statement requirement pursuant to § 1005.9(b) and the periodic statement alternative provided by final § 1005.18(c)(1)—and whether such access should be provided at no cost to the consumer.

Several consumer groups urged the Bureau to require free text message and email alerts and free access to customer service, arguing that these methods are essential tools for consumers to successfully manage their accounts. These commenters argued that imposing fees to access account information discourages consumers, especially those experiencing financial hardship, from monitoring transactions and exercising their error resolution rights under Regulation E. These commenters explained that text messages and email alerts provide a quick and easy way for consumers to be notified about low account balances and transactions made. One commenter stated that offering text message updates available at no charge can help consumers that have

limited internet access and also assist financial institutions in identifying fraud and other unauthorized transactions more quickly. In addition, these commenters explained that consumers need access to customer service for a variety of reasons, such as to ask questions, check balances, dispute charges, and verify the receipt of wages and other transactions. Several commenters requested that the Bureau require foreign language support for customer service calls, particularly if a financial institution uses a foreign language in connection with the marketing or acquisition of a prepaid account.

On the other hand, industry commenters argued against a requirement to provide other methods of access for account information at no cost to the consumer. These commenters stated that text message and email alerts should be optional, so that financial institutions can determine the needs of their customers without unnecessary restrictions. These commenters also stated that providing various methods of access to account information can be costly to industry and therefore financial institutions should be permitted to charge consumers reasonable fees for certain methods of access.

### *The Final Rule*

The Bureau has considered the above comments and declines to require financial institutions to provide other methods of access to account information at this time. The Bureau is concerned that requiring financial institutions to provide free text message and email alerts and free access to customer service could increase technological and operational costs and burdens, including the hiring and training of additional customer service personnel. The Bureau also believes that financial institutions can assess the methods of access that best meet the needs of their customers. For example, the Bureau is aware that many financial institutions already provide free text message and email alerts and access to customer service, as the competitive

nature of the industry is moving financial institutions to offer these services.<sup>475</sup> However, the Bureau believes that the periodic statement requirement of § 1005.9(b) or the periodic statement alternative in final § 1005.18(c)(1) is sufficient at this time to ensure that all prepaid consumers have access to their account information.

Regarding commenters' request that the Bureau require financial institutions to provide foreign language support for customer service, the Bureau does not believe such a requirement is necessary or appropriate at this time. The Bureau understands that financial institutions that market prepaid accounts in foreign languages generally offer customer service support in those languages and that some offer foreign language customer service support, particularly in Spanish, even if they do not engage in foreign language marketing. However, the Bureau has concerns about the costs and burdens to industry, if it were to formalize such a requirement in this final rule. While consumers will have the right to obtain, in certain situations, pre-acquisition disclosures in a foreign language pursuant to final § 1005.18(b)(9), the Bureau is concerned that a foreign-language customer-service requirement here could deter financial institutions from offering prepaid accounts in foreign languages because financial institutions would have to ensure, among other things, that live customer service in a foreign language is available at all times. However, the Bureau will continue to monitor industry practice in this area and may revisit this issue in a future rulemaking.

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<sup>475</sup> The CFSI found that 60 percent of the prepaid market sampled (11 of 22 cards) allows users to customize alerts (compared to 30 percent of the market sampled (7 of 18 cards) in 2014). The CFSI noted that 11 cards allow cardholders to set a "low balance" threshold and receive an email or text alert when their balance falls below that threshold. Five cards also allow users to select notifications of transactions or withdrawals over a certain dollar amount. *See* 2016 CFSI Scorecard at 2, 9. *See also* 2014 Pew Study at 19-20.

*18(c)(1)(i)*

*The Bureau's Proposal*

As noted above, under the Payroll Card Rule, a financial institution is not required to furnish periodic statements pursuant to § 1005.9(b) if it instead follows the periodic statement alternative for payroll card accounts in existing § 1005.18(b)(1). Existing § 1005.18(b)(1)(i) requires a financial institution to provide access to the consumer's account balance through a readily available telephone line. The Bureau proposed to extend this requirement as proposed § 1005.18(c)(1)(i) to all prepaid accounts.

As discussed in the section-by-section analysis of § 1005.15(d)(1)(i) above, the periodic statement alternative for government benefit accounts requires access to balance information through a readily available telephone line as well as at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an EFT). The Bureau sought comment on whether a similar requirement to provide balance information at a terminal should be added to the requirements of proposed § 1005.18(c)(1)(i) for prepaid accounts generally. The Bureau also requested comment on whether, alternatively, the requirement to provide balance information for government benefit accounts at a terminal should be eliminated from § 1005.15, given the other enhancements proposed and for parity with proposed § 1005.18.

*Comments Received*

A number of commenters, including consumer groups, an office of a State Attorney General, a State government agency, and a credit union, supported the proposal to extend to prepaid accounts the first part of the periodic statement alternative to provide access to a consumer's account balance through a readily available telephone line. In addition, these

commenters, as well as several labor organizations, urged the Bureau to require free access to balance information at a terminal for all prepaid accounts. They explained that terminals are convenient and easy to use, especially for non-English speakers and consumers who have difficulty navigating an automated menu over the telephone. These commenters also noted that terminals provide account balances in real-time and are valuable to consumers with limited telephone and internet access.

Several consumer groups also argued that imposing fees to access balance information at a terminal discourages consumers, especially those experiencing financial hardship, from monitoring transactions and exercising their error resolution rights under Regulation E. These commenters noted that paying for such access is especially difficult for consumers who are already experiencing financial hardship and that consumers generally do not expect to be charged for checking their balance information. They suggested that the cost of providing balance information at a terminal is minimal and should be bundled with the cost of withdrawals. However, one program manager challenged this point, arguing that access to balance information at a terminal is the most expensive method to check account balances because these transactions would likely generate a cost to merchants and networks that would likely then be assessed back to financial institutions. Another program manager urged the Bureau not to require access to balance information at a terminal given the costs to industry, and a credit union specifically requested that financial institutions not be required to provide access to balance information by both telephone and at a terminal.

One industry commenter requested that the Bureau allow online access to a digital wallet account balance as an alternative to providing access via a readily accessible telephone line. This commenter explained that consumers who use digital wallets must have a means to access

their accounts electronically, and that digital wallet providers use email and other electronic communications as the primary way to provide information to consumers. This commenter further explained that, given the relationship between the consumer and the digital wallet provider, it does not believe consumers of such products wish to check their account balance via telephone.

### *The Final Rule*

For the reasons discussed herein, the Bureau is finalizing § 1005.18(c)(1)(i) as proposed. The Bureau believes that, as part of the periodic statement alternative, access to balance information is essential for consumers to use and manage their accounts. The Bureau understands that providing such access through a readily available telephone line is a common method of doing so. In addition, the Bureau believes that most financial institutions already provide balance information by telephone. Notwithstanding the consumer benefits of accessing balance information at a terminal, the Bureau does not believe that requiring such access for all prepaid accounts justifies the additional costs to industry at this time, given that consumers can obtain balance information through other, less expensive methods. The Bureau also declines to exempt digital wallets that are prepaid accounts from the requirement to provide balance information by telephone under the periodic statement alternative, as requested by one commenter, because balance information should be accessible by telephone in the event online access to such information is unavailable.

As explained in the proposal, the Bureau expects that a readily available telephone line for providing balance information be a local or toll-free telephone line that, at a minimum, is available during standard business hours. Further, the Bureau expects that, in most cases, financial institutions would provide 24-hour access to balance information through an automated

line, which would ensure that consumers could access balance information at their convenience. The Bureau reminds financial institutions that neither they nor their service providers are permitted to charge consumers a fee for accessing balance information by telephone, when providing that information as part of the periodic statement alternative pursuant to final § 1005.18(c)(1)(i).

*18(c)(1)(ii) and 18(c)(1)(iii)*

*The Bureau's Proposal*

Existing § 1005.18(b)(1)(ii) requires financial institutions to provide an electronic history of the consumer's payroll card account transactions, such as through a website, that covers at least 60 days preceding the date the consumer electronically accesses the account.

The Bureau proposed to extend this existing requirement in § 1005.18(b)(1)(ii) to prepaid accounts in proposed § 1005.18(c)(1)(ii) and to expand the length of time that online access must cover from 60 days to 18 months. The Bureau proposed to extend this time period because it believed that based on how consumers are currently using prepaid accounts, more than 60 days of account history may be, in many cases, beneficial for consumers. While recent account history is important for consumers tracking balances or monitoring for unauthorized transactions, a longer available account history serves a variety of potential purposes. For example, some consumers might need to demonstrate on-time bill payment or to compile year-end data for tax preparation purposes. The Bureau also believed that a consumer may realize during any given year that he or she needs financial records from the prior calendar year and that access to 18 months of prepaid account history would give the consumer six months into the next calendar year. In addition, based on pre-proposal outreach to prepaid account providers and publicly available studies, the Bureau believed that many prepaid accounts provide at least 12 months of

account history and that, even if they do not, the cost of extending existing online histories to 18 months would be minimal.

Existing § 1005.18(b)(1)(iii) requires financial institutions to provide a written history of the consumer's payroll card account transactions promptly in response to an oral or written request, that covers at least 60 days preceding the date the financial institution receives the consumer's request. Similar to the requirement to provide electronic account transaction history, the Bureau proposed to extend this requirement to all prepaid accounts in proposed § 1005.18(c)(1)(iii) and to expand the length of time for which written history must be provided from 60 days to 18 months. The Bureau also proposed to extend to all prepaid accounts existing comment 18(b)-1, which requires that the account transactions histories provided under existing § 1005.18(b)(1)(ii) and (iii) reflect transactions once they have been posted to the account, renumbered as proposed comment 18(c)-1. In addition, the Bureau also proposed to extend to all prepaid accounts existing comment 18(b)-2 regarding retainability of electronic account history renumbered as proposed comment 18(c)-2.

The Bureau recognized that in certain situations, consumers' requests for written account information may exceed what would be required under the proposal; therefore, the Bureau proposed to clarify in proposed comment 18(c)-3 those instances where a financial institution would be permitted to charge a fee for providing such information. Proposed comment 18(c)-3 would have included several examples of requests that exceed the requirements of proposed § 1005.18(c)(1) for providing account information and for which a financial institution would be permitted to charge a fee.

Proposed comment 18(c)-4 would have explained that a financial institution may provide fewer than 18 months of written account transaction history if the consumer requests a shorter

period of time. If a prepaid account has been open for fewer than 18 months, the financial institution need only provide account information pursuant to proposed § 1005.18(c)(1)(ii) and (iii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution must continue to provide at least 18 months of account transaction information from the date the request is received. In addition, this comment would have explained that when a prepaid account has been closed or inactive for 18 months, the financial institution is no longer required to make any account or transaction information available. The proposed comment would have referenced existing comment 9(b)-3, which provides that, with respect to written periodic statements, a financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

#### *Comments Received*

The Bureau received many comments requesting that it modify the time period that must be covered in a consumer's electronic and written account transaction history. Most consumer groups supported the Bureau's proposal to provide at least 18 months of account transaction history, noting the consumer benefits of having a longer time period and arguing that the impact on industry should be minimal because data storage costs continue to decrease and consumers rarely request copies of their account transaction history. These commenters also argued that—contrary to the Bureau's proposal—financial institutions should not be permitted to charge a fee for providing written account transaction history that is older than the required time period, arguing that it should not cost more to print and mail older information than it is to print and mail newer information.

A few consumer groups argued, however, that a 24-month time period would be more appropriate than 18 months because consumers could identify seasonal patterns, and October 15

tax filers could access transactions earlier than March 15 of the previous year. One of these commenters explained that it could take months for unauthorized transactions to be recognized and months or years to complete fraud investigations and resolve disputes with third parties. This commenter also stated that 24 months would allow consumers to access a longer period of account history, which would be particularly helpful to consumers who are unable to print or save transaction history on a regular basis. These commenters also requested that written account transaction histories go back at least seven years, which they said would be consistent with some document retention policies, so that consumers who use prepaid accounts as primary transaction accounts could look up older charges in the event of a tax audit or when applying for a mortgage.

A number of industry commenters, including issuing banks and credit unions, trade associations, and program managers, urged the Bureau to shorten the proposed 18-month time period and, relatedly, stated that financial institutions would need longer than the proposed nine-month compliance period to implement the requirement as proposed. These commenters argued that the potential costs to industry would outweigh any consumer benefit, since, in their experience, consumers rarely request 18 months of transaction history and do not currently use account transaction history for tax preparation purposes. Some industry commenters requested a 60-day time period, which they stated would be consistent with the current periodic statement alternative for payroll card accounts and with the error resolution and limited liability notification requirements under Regulation E. Other industry commenters requested a time period of no longer than 12 months, arguing that most financial institutions do not retain more than 12 months of account transaction history in a real-time online format, and therefore, requiring a longer time period would be problematic for financial institutions. These

commenters also stated that 12 months would be sufficient for consumers to manage their accounts and would be consistent with consumer expectation. Several other industry commenters requested that the Bureau instead require financial institutions to provide consumers with a copy of their written account transaction history upon request once every 12 months at no cost and then allow financial institutions to charge a reasonable fee for any subsequent requests made during that 12-month time period. One of the credit union commenters argued that the time period to provide account transaction history should be left to the financial institution's discretion.

Several of these industry commenters argued that maintaining 18 months of account transaction history would result in significant costs to financial institutions. These commenters explained that storing and securing such information would lead to operational costs related to upgrading systems, changing record retention policies and procedures, and training personnel.<sup>476</sup> Several credit union trade associations argued that the proposed time period would be especially problematic for credit unions because they retain limited historical account information in their systems and rely on periodic statements if a member requests information beyond what is in their systems.<sup>477</sup>

Several industry commenters explained some of the differences between the types of information needed to make available and provide electronic and written account transaction histories and the costs associated with maintaining each. These commenters stated that generally, information in a real-time, online database is necessary to make available electronic

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<sup>476</sup> These industry commenters also described specific actions that they believed would increase costs and burden. These included updating data processor systems (or developing interfaces with third-party providers' processing systems); purchasing data storage systems; and redesigning platforms and websites.

<sup>477</sup> Under the Bureau's proposal, however, if a financial institution provides a periodic statement, it would not have been required to make available 18 months of electronic account transaction history. The Bureau thus believes these commenters' concerns regarding issues related to retaining a longer period of account history are misplaced.

account transaction history, and archived information is retrieved to provide written account transaction history that extends beyond the time period retained in the real-time database. These commenters stated that real-time information is usually archived after 12 months of the account being opened or when the account is closed, if sooner, and typically retained for several years. They explained that real-time information is easier to access, but more expensive to maintain than archived information, and archived information is inexpensive to maintain, but can be difficult to access. These commenters therefore concluded that maintaining 18 months of electronic account transaction information would be costly because maintaining that length of real-time information is expensive. These commenters further argued that responding to one-off requests from consumers for 18 months of written account transaction history would also be problematic because archived information, although inexpensive to maintain, is usually restricted to certain personnel or stored with a third-party processor, who typically charges a fee to retrieve the information. These commenters also argued that mailing account transaction histories that cover a time period longer than 60 days would increase printing and mailing costs.

Despite the costs associated with retrieving archived information, these commenters stated that they would rather provide a longer period of written account transaction history than make available a longer period of electronic account transaction history, given that maintaining electronic history is more expensive. However, because of the cost and complexity associated with retrieving archived information, these commenters requested that the Bureau allow financial institutions to begin accumulating data as of the effective date of the final rule (until they have built up to 18 months of accumulated transaction history), rather than requiring financial institutions to make available or provide the full length of account transaction histories as of the effective date, to alleviate some of the compliance burden.

A few program managers suggested further modifications that they believed would help reduce the costs associated with the proposed periodic statement alternative. Two of these program managers urged the Bureau to allow financial institutions to charge a fee for responding to requests for written account transaction histories. Another requested that the Bureau expressly allow financial institutions to inform consumers that they may request written history that covers less than the required time period.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.18(c)(1)(ii) and (iii) with modifications to revise the time periods a consumer's electronic and written account transaction history must cover. Specifically, final § 1005.18(c)(1)(ii) requires financial institutions to make available electronic account transaction history that covers at least 12 months preceding the date the consumer electronically accesses the account, instead of 18 months as proposed. Final § 1005.18(c)(1)(iii) requires financial institutions to provide written account transaction history that covers at least 24 months preceding the date the financial institution receives the consumer's request, instead of 18 months as proposed. The Bureau continues to believe that, based on how consumers are currently using prepaid accounts, access to more than 60 days of electronic and written account transaction history will be beneficial to consumers for a variety of reasons, such as monitoring for unauthorized transactions, tracking spending habits, demonstrating on-time bill payment, and compiling year-end data for tax preparation purposes.

However, based on the response from industry commenters, the Bureau is persuaded that providing 18 months of electronic account transaction history could be particularly burdensome to industry, especially since costs related to retaining electronic history increase as the time period lengthens. The Bureau believes that 12 months of electronic account transaction history

is consistent with the length of history consumers expect to access online and should not be problematic for financial institutions since many already provide at least 12 months of account transaction history, as discussed by industry commenters. The Bureau thus believes this revision strikes the appropriate balance between burden imposed on industry overall while, in conjunction with final § 1005.18(c)(1)(iii), ensuring that additional transaction history will be available for consumers who need it. The Bureau reminds financial institutions that neither they nor their service providers are permitted to charge consumers a fee for accessing electronic account transaction history when providing that information as part of the periodic statement alternative pursuant to § 1005.18(c)(1)(ii).

Considering the costs associated with maintaining electronic account transaction history, as discussed by commenters, the Bureau declines at this time to require financial institutions to provide electronic account transaction history covering a time period longer than 12 months. However, under the final rule, consumers will be able to request 24 months of written account transaction history pursuant to § 1005.18(c)(1)(iii), which the Bureau believes adequately addresses the various scenarios offered by consumer group commenters as to why consumers may need access to a longer period of account transaction history. In addition, the Bureau does not believe that the time period for electronic account transaction histories should be left to the financial institution's discretion, as requested by one commenter, because consistency across the market reduces any potential for consumer confusion and assures that sufficient history is available for all consumers.

With regard to written account transaction histories, under the final rule, consumers will benefit from having access to two full years of transaction information if needed, without requiring industry to absorb the expense of making that length of information available

electronically on an ongoing basis. The Bureau declines to require financial institutions to provide seven years of written account transaction history, as suggested by several commenters. The Bureau believes that 24 months of written history upon request is sufficient to meet the needs of consumers and does not believe it is necessary at this time to require financial institutions to provide an even longer written account history upon request at no cost. Based on information received from industry commenters, the Bureau believes the requirement to provide 24 months of written account transaction history, in conjunction with the requirement to provide 12 months of electronic account transaction history under final § 1005.18(c)(1)(ii), strikes an appropriate balance in providing consumers with the information necessary to manage their accounts while not imposing undue burden on industry. As explained by these commenters, maintaining archived information, which a financial institution will likely need to retrieve to provide 24 months of written history, is less expensive than retaining the real-time information necessary for making electronic history available online. Moreover, because, as explained by some commenters, many financial institutions already retain several years of archived data and consumers do not typically request long periods of written history, the Bureau does not believe that maintaining, retrieving, and providing 24 months of written history upon request should be particularly burdensome to financial institutions. The Bureau notes that financial institutions are not required to provide written history for a longer period than what the consumer actually wants; a financial institution may, for example, inform consumers that they may request written history that covers less than 24 months.

Furthermore, as explained in the proposal, the Bureau anticipates that, in general, written transaction account histories will be sent the next business day or soon after a financial institution receives the consumer's oral or written request. Financial institutions may also

designate a specific telephone number for consumers to call and a specific address for consumers to write to request a written copy of their account transaction history.

Regarding industry commenters' concerns about the proposed nine-month compliance period, final § 1005.18(h)(1) imposes a general effective date of October 1, 2017 for this final rule. However, final § 1005.18(h)(3)(i) provides an accommodation for financial institutions that do not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to final § 1005.18(c)(1)(ii) or 24 months of written account transaction history upon request pursuant to final § 1005.18(c)(1)(iii) on October 1, 2017. Specifically, in that case, the financial institution may make available or provide the electronic and written histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements of final § 1005.18(c)(1)(ii) and (iii). See the section-by-section analysis of § 1005.18(h) below for additional information about the final rule's effective dates and related accommodations.

The Bureau received no comments specifically addressing proposed comment 18(c)-1. Accordingly, the Bureau is finalizing comment 18(c)-1 as proposed. This comment explains that the electronic and written history of the consumer's account transactions provided under final § 1005.18(c)(1)(ii) and (iii), respectively, shall reflect transfers once they have been posted to the account. Thus, a financial institution does not need to include transactions that have been authorized but that have not yet posted to the account.

The Bureau received no comments regarding proposed comment 18(c)-2. Accordingly, the Bureau is finalizing comment 18(c)-2 as proposed. This comment explains that the electronic history required under final § 1005.18(c)(1)(ii) must be made available in a form that the consumer may keep, as required under § 1005.4(a)(1). Financial institutions may satisfy this

requirement if they make the electronic history available in a format that is capable of being retained. For example, a financial institution satisfies the requirement if it provides electronic history on a website in a format that is capable of being printed or stored electronically using a web browser.

The Bureau is finalizing comment 18(c)-3 substantially as proposed, with minor modifications for consistency with the revised time periods in the regulatory text. Specifically, final comment 18(c)-3 clarifies that financial institutions may charge a fee for providing written account transaction history that is older than 24 months. This comment also provides examples of requests that exceed the requirements of final § 1005.18(c)(1)(iii) and which therefore a financial institution may charge a fee. In addition, the Bureau has revised the internal paragraph references to conform to other numbering changes in this final rule.

The Bureau declines at this time to permit financial institutions to charge consumers a fee for providing the written account transaction history required by final § 1005.18(c)(1)(iii), as suggested by some commenters. As with the electronic account transaction history required by § 1005.18(c)(1)(ii), the Bureau believes it is necessary for consumers to have free access to at least 24 months of written account transaction history to effectively manage their prepaid accounts. The Bureau believes that charging fees to consumers who make occasional requests for written histories could have a chilling effect on consumers' ability to obtain information about transactions and, thus, to exercise their error resolution rights. The Bureau reminds financial institutions that neither they nor their service providers are permitted to charge consumers a fee for requesting written account transaction history when providing that information as part of the periodic statement alternative pursuant to § 1005.18(c)(1)(iii).

For the final rule, the Bureau has divided proposed comment 18(c)-4 into two, numbered as final comments 18(c)-4 and -5, to discuss the requirements for electronic and written account transaction history separately. The Bureau is finalizing the portion of comment 18(c)-4 addressing electronic account transaction history, with several modifications. Specifically, final comment 18(c)-4 no longer explains that if a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution must continue to provide at least 18 months of account transaction information from the date the request is received. In addition, final comment 18(c)-4 no longer states that when a prepaid account has been closed or inactive for 18 months, the financial institution is no longer required to make available any account or transaction information. Given the revised time periods that electronic and written account transaction histories must cover, the Bureau has also removed from final comment 18(c)-4 the references to written account transaction history and, as discussed below, is adopting new comment 18(c)-5 to explain separately the requirements for providing access to written account transaction history. In addition, the Bureau has revised the internal paragraph references in comment 18(c)-4 to conform to other numbering changes in this final rule and has made several other modifications for clarity.

Specifically, final comment 18(c)-4 clarifies that, if a prepaid account has been opened for fewer than 12 months, the financial institution need only provide electronic account transaction history pursuant to final § 1005.18(c)(1)(ii) since the time of account opening. Final comment 18(c)-4 also explains that, if a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution need not make available electronic

account transaction history. This comment cross-references comment 9(b)-3.<sup>478</sup> However, if an inactive account becomes active, the financial institution must again make available 12 months of electronic account transaction history. The Bureau does not believe it is necessary to require financial institutions to continue making access to electronic history available for closed and inactive accounts because consumers do not typically expect to access this information electronically once an account is closed or becomes inactive. The Bureau also believes that not requiring financial institutions to provide electronic access for closed and inactive accounts will reduce burden on industry relative to the proposal, and consumers will still have access to such information, if needed, in writing upon request as required by final § 1005.18(c)(1)(iii).

As noted above, the Bureau is adopting new comment 18(c)-5 to explain the requirements for providing access to written account transaction history that had been addressed in proposed comment 18(c)-4. The Bureau is adopting the requirements substantially as proposed, with several minor modifications. Specifically, new comment 18(c)-5 explains that a financial institution may provide fewer than 24 months of written account transaction history if the consumer requests a shorter period of time. This comment also clarifies that, if a prepaid account has been opened for fewer than 24 months, the financial institution need only provide written account transaction history pursuant to final § 1005.18(c)(1)(iii) since the time of account opening. Even if a prepaid account is closed or becomes inactive, the financial institution must continue to provide upon request at least 24 months of written account transaction history preceding the date the request is received. When a prepaid account has been closed or inactive for 24 months or longer, the financial institution is no longer required to make available any written account transaction history pursuant to final § 1005.18(c)(1)(iii). In addition, the Bureau

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<sup>478</sup> Existing comment 9(b)-3 provides that a financial institution is not required to send periodic statements to consumers whose accounts are inactive as defined by the financial institution.

has revised the internal paragraph references in comment 18(c)-5 to conform to other numbering changes in this final rule and has made several other modifications for clarity.

*18(c)(2) Periodic Statement Alternative for Unverified Prepaid Accounts*

The Bureau is adopting new § 1005.18(c)(2) to provide a modified version of the periodic statement alternative for prepaid accounts that cannot be or have not been verified by the financial institution. Specifically, for prepaid accounts that are not payroll card accounts or government benefit accounts, the final rule does not require a financial institution to provide written account transaction history pursuant to final § 1005.18(c)(1)(iii) for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in final § 1005.18(e)(3)(i)(A) through (C).

The Bureau did not receive any comments on this issue, but upon further consideration, believes this modification to the periodic statement alternative would be appropriate, particularly in light of the modifications the Bureau has made to the error resolution requirements for unverified accounts in final § 1005.18(e)(3). The Bureau believes that the limited nature of prepaid accounts that cannot be or have not been verified by a financial institution does not justify requiring financial institutions to provide written account transaction histories upon request for these accounts. The Bureau believes that these accounts do not typically remain active for more than 12 months, and even if they do, they are usually only used to conduct a limited number of transactions. In addition, a financial institution will not likely have a physical address for an unverified prepaid account, and therefore, cannot mail a copy of the consumer's written account transaction history. The Bureau believes, however, that consumers of these accounts still need to have access to balance information by telephone as well as electronic account transaction history in order to manage their accounts.

The Bureau is adopting new comment 18(c)-6 to provide further guidance on the periodic statement alternative for unverified accounts provided in § 1005.18(c)(2). Specifically, comment 18(c)-6 explains that, if a prepaid account is verified, a financial institution must provide written account transaction history upon the consumer's request that includes the period during which the account was not verified, provided the period is within the 24-month time frame specified in final § 1005.18(c)(1)(iii).

*18(c)(3) Information Included on Electronic or Written Histories*

Under existing § 1005.18(b)(2), the history of electronic and written account transactions for payroll card accounts must include the information set forth in § 1005.9(b). Section 1005.9(b) lists the various items that must be included in periodic statements, including, but not limited to, detailed transaction information and fees assessed. The Bureau proposed to extend this existing requirement to all prepaid accounts as new § 1005.18(c)(2) and revise the cross-references to correspond with proposed § 1005.18(c)(1)(ii) and (iii), but otherwise leave the requirement unchanged.

The Bureau received comments from an issuing bank, an industry trade association, and a program manager on this provision, stating that they agreed with the Bureau's proposal to leave this provision unchanged. Accordingly, the Bureau is finalizing § 1005.18(c)(2), renumbered as § 1005.18(c)(3), as proposed.

*18(c)(4) Inclusion of All Fees Charged*

EFTA section 906(c), generally implemented in § 1005.9(b), provides that, among other things, a periodic statement must include the amount of any fees assessed against an account for EFTs or account maintenance. The Bureau notes that Regulation DD requires that periodic

statements disclose all fees debited to accounts covered by that regulation.<sup>479</sup> Regulation DD defines “account” to mean “a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts.”<sup>480</sup> Because some prepaid accounts, as proposed to be defined under Regulation E, may not also constitute accounts as defined under Regulation DD (or the corresponding regulations applicable to credit unions),<sup>481</sup> the Bureau proposed § 1005.18(c)(3) to ensure that periodic statements and histories of account transactions for all prepaid accounts include all fees, not just those related to EFTs and account maintenance.

Proposed § 1005.18(c)(3) would have stated that a periodic statement furnished pursuant to § 1005.9(b) for a prepaid account, an electronic history of account transactions whether provided under proposed § 1005.18(c)(1)(ii) or otherwise, and a written history of account transactions provided under proposed § 1005.18(c)(1)(iii) must disclose the amount of any fees assessed against a prepaid account, whether for EFTs or otherwise. The Bureau received no comments on this portion of the proposal.

For the reasons set forth herein, the Bureau is finalizing § 1005.18(c)(3), renumbered as § 1005.18(c)(4), substantially as proposed, with several modifications for clarity. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to modify the periodic statement requirements of EFTA section 906(c) to require inclusion of all fees charged. These revisions will assist consumers’ understanding of their prepaid account activity. In addition, the Bureau is also using its

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<sup>479</sup> Regulation DD § 1030.6(a)(3).

<sup>480</sup> Regulation DD § 1030.2(a).

<sup>481</sup> *See* 12 CFR part 707.

disclosure authority pursuant to section 1032(a) of the Dodd-Frank Act because the Bureau believes that comprehensive disclosure of fee information will help ensure that the features of prepaid accounts are fully, accurately, and effectively disclosed to consumers, over the term of the product or service, in a manner that permits consumers to understand the costs, benefits, and risks associated with prepaid accounts.

Final § 1005.18(c)(4) states that a financial institution must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

The Bureau is also adopting new comment 18(c)-7 to further clarify the requirements of final § 1005.18(c)(4). Specifically, this comment explains that a financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its website, the financial institution must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on the periodic statement and on the consumer's electronic account transaction history made available on its website. Likewise, a financial institution that follows the periodic statement alternative in final § 1005.18(c)(1) must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on the electronic history of the consumer's account transactions made available pursuant to final

§ 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to final § 1005.18(c)(1)(iii).

The Bureau sought comment on whether any other specific protections of Regulation DD, which may not apply to prepaid accounts provided by financial institutions (as defined in Regulation E) that are not depository institutions (as defined in Regulation DD), could be addressed for all prepaid accounts to ensure consistent protections for prepaid accounts regardless of who is providing the account. The Bureau received no comments on this issue and the Bureau is making no additional changes to final § 1005.18(c)(4) other than those discussed herein.

#### *18(c)(5) Summary Totals of Fees*

##### *The Bureau's Proposal*

Proposed § 1005.18(c)(4) would have required financial institutions to provide a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of all deposits to the account, and the total amount of all debits from the account, for the prior calendar month and for the calendar year to date. This information would have been disclosed on any periodic statement provided pursuant to § 1005.9(b), in any electronic history of account transactions whether provided pursuant to proposed § 1005.18(c)(1)(ii) or otherwise, and on any written history of account transactions provided pursuant to proposed § 1005.18(c)(1)(iii). The Bureau's proposed summary total of fees requirement was similar to the requirement to disclose fees and interest in open-end credit plans under Regulation Z.<sup>482</sup>

Proposed comment 18(c)-5 would have explained that if a financial institution provides periodic statements pursuant to § 1005.9(b), the total fees, deposits, and debits may be disclosed

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<sup>482</sup> See Regulation Z § 1026.7(b)(6).

for each statement period rather than for each calendar month, if different. Proposed comment 18(c)-5 would have also explained that the fees that must be included in the summary total include those that are required to be disclosed pursuant to proposed § 1005.18(b)(2)(ii)(A). For example, an institution would have been required to include the fee it charges a consumer for using an out-of-network ATM in the summary total of fees, but it would not have been required to include any fee charged by an ATM operator with whom the institution has no relationship for the consumer's use of that operator's ATM.

In addition, proposed comment 18(c)-5 would have explained that the summary total of fees should be net of any fee reversals and that the total amount of all debits from the account should be exclusive of fees assessed against the account. Finally, proposed comment 18(c)-5 would have explained that the total deposits and total debits must include all deposits to and debits from the prepaid account, not just those deposits and debits that are the result of EFTs.

#### *Comments Received*

The Bureau received comments from several consumer groups, who supported this portion of the proposal and argued that setting apart monthly and year-to-date fee totals would help consumers understand the costs associated with their accounts and how to minimize fees. These commenters stated that financial institutions should also be required to include a statement that indicates actions consumers can take to lower their fees, such as using network ATMs.

Several industry groups, including program managers, issuing banks, credit unions, and a trade association generally supported this portion of the proposal and the goal of providing consumers access to information needed to manage their prepaid accounts, but cautioned that implementing the requirement as proposed would require more time than the proposed nine-month compliance period and would require costly system updates. For example, a credit union

explained that the proposed summary total of fees requirement would be complex and burdensome for a financial institution that houses its data with a third-party processor and stated that retrieving the data to perform the analysis would be costly. In addition, an issuing bank explained that the proposal would require changes to the prepaid account processing infrastructure design and stated that those changes would be inconsistent with how statements are calculated for checking and other consumer asset accounts that tend to share the same processing infrastructure. A government benefits card program manager argued that, because the summary totals requirement would take significant time and investments to implement, the Bureau should exempt government benefit accounts from this aspect of the proposal. A program manager argued that the summary totals requirement would not be appropriate for non-reloadable products. A program manager requested that, for financial institutions that do not have the data to calculate the summary totals as of the final rule's effective date, the requirement be implemented on a going-forward basis only.

Regarding the proposed requirement to disclose the summary totals of fees specifically, these commenters stated that they recognize the value in providing aggregated fees paid over time and therefore support the overall goal the Bureau seeks to achieve by including this provision. However, several industry commenters, including program managers and issuing banks, urged the Bureau to require financial institutions to include in the summary totals of fees only fees that are discernible to the financial institution. These commenters explained that a transaction that includes a third-party fee, such as an out-of-network ATM fee, may not separate the fee portion from the total amount and therefore determining the fee amounts for each consumer would be costly and burdensome. These commenters also stated that financial institutions cannot provide details about or accurately disclose those fees. An issuing bank stated

that a financial institution also cannot determine whether a fee was waived due to the consumer's relationship with the third party. One consumer group argued, however, that financial institutions can determine the amounts of third-party fees. This commenter explained that, if a consumer withdraws \$40 in cash from an ATM that charges a \$2.50 out-of-network fee, the withdrawal will appear as \$42.50, and the financial institution would be able to discern the \$2.50 third-party fee. A payroll card program manager requested that the Bureau allow financial institutions to provide a form disclaimer regarding fees that are outside of the financial institution's control or an example showing consumers when such fees may occur. Another program manager requested that the Bureau allow financial institutions to distinguish fees for using a prepaid account (such as per transaction fees), optional fees, and third-party fees.

Several industry commenters also suggested other modifications to this aspect of the proposal, which they believed would minimize the costs and burdens to industry. For example, a credit union requested that financial institutions not be required to provide paper statements displaying the summary totals of fees and argued that displaying fees on electronic statements is sufficient and the most appropriate way to communicate with consumers. Another credit union and a program manager requested that the year-to-date calculation be eliminated. The credit union argued that consumers usually find year-to-date totals confusing and can instead calculate their own totals using the information available online. On the other hand, another program manager argued that that the proposed summary by calendar month is overly proscriptive and inconsistent with consumer usage and preference. This commenter explained that the transaction history begins on the date of the first transaction (not the first day of the month) and continues until the account is closed or becomes inactive for a period of time.

One issuing bank opposed this portion of the proposal altogether, arguing that providing summary totals of fees would not help consumers understand how to limit such fees, unless the summary distinguishes behavior-based fees (*i.e.*, fees that apply to certain conduct engaged in by the accountholder, such as out-of-network ATM fees) from service-based fees (*i.e.*, fees that apply to all accountholders without regard to conduct, such as monthly fees). This commenter also requested, if the Bureau decides to finalize this portion of the proposal, that the Bureau clarify definitions for the terms fee, deposit, and debit.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(c)(4), renumbered as § 1005.18(c)(5), with modifications as described below. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to modify the periodic statement requirements of EFTA section 906(c) to require a summary total of both monthly and annual fees. These proposed revisions will assist consumers' understanding of their prepaid account activity. In addition, the Bureau is also using its disclosure authority pursuant to section 1032(a) of the Dodd-Frank Act because the Bureau believes that disclosure of these summary totals of fees will help ensure that the features of prepaid accounts, over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with prepaid accounts.

The Bureau is finalizing the requirement that financial institutions provide the summary totals of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date. The Bureau has

removed the requirement that financial institutions provide summary totals of all deposits to and debits from a consumer's prepaid account from the final rule.

The Bureau believes the final rule will provide consumers important information for better understanding and managing their prepaid accounts. The Bureau agrees with commenters that displaying the summary totals of fees is valuable to consumers and believes the requirement will be an important consumer education and money management tool that will help consumers understand the actual costs of using their prepaid accounts. The Bureau believes that this requirement will be beneficial to consumers of all prepaid accounts, including government benefit accounts, and is therefore not exempting any accounts from this requirement. The Bureau is not, however, requiring financial institutions to include a statement that indicates actions consumers can take to lower their fees, as requested by consumer group commenters. The Bureau does not believe such a requirement justifies the additional costs to financial institutions at this time. However, the Bureau believes it is beneficial for financial institution to educate and inform consumers on how to avoid fees, as many do currently. The Bureau will continue to monitor industry practice and may revisit this issue at a later time.

The Bureau believes that not requiring financial institutions to provide the summary totals of all deposits to and debits from a prepaid account will not harm consumers. The Bureau believes that consumers likely know how much money is deposited into and debited out of their accounts and can easily calculate this information by using the data from their transaction history and account balance. In addition, the Bureau believes that the modification to limit the summary totals requirement to fees only and the modifications to the rule's effective date discussed below addresses industry commenters' concerns about not having sufficient time to implement the requirement.

The Bureau is finalizing the proposed portion of § 1005.18(c)(4) (renumbered as § 1005.18(c)(5)) that requires the summary totals of fees to appear on any periodic statement for a prepaid account provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution pursuant to final § 1005.18(c)(1)(ii) and (iii). As discussed in the section-by-section analysis of § 1005.18(c)(1) above, consumers value receiving information about their accounts in both electronic and paper forms. The Bureau believes that it is important for consumers to have access to summary totals of fees for their accounts regardless of the method by which they access their account information.

The Bureau is not requiring that third-party fees, such as out-of-network ATM fees and cash reload fees, be included in the summary totals. Final § 1005.18(c)(5) provides, in part, that the summary totals consist of fees assessed by the financial institution against the consumer's account, as explained further in comment 18(c)-8.ii, discussed below. The Bureau agrees with industry commenters that, even if financial institutions can determine whether third-party fees were assessed against a prepaid account, requiring them to extract details about such fees could be problematic for financial institutions, especially for transactions that involve foreign currency conversion calculations. The Bureau notes that third-party cash reload fees do not need to be included in the summary totals of fees. This is different from how cash reload fees are treated in the pre-acquisition disclosures context, where financial institutions must include third-party cash reload fees on the short form disclosure.<sup>483</sup>

Regarding a program manager's request to permit financial institutions to distinguish fees in the fee totals, noted above, the Bureau agrees that allowing some flexibility in how financial institutions display summary totals of fees may be beneficial to consumers. The Bureau has

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<sup>483</sup> See final § 1005.18(b)(2)(iv); *see also* final § 1005.18(b)(3)(v).

clarified in comment 18(c)-9, discussed below, that financial institutions may also include sub-totals of the types of fees that make up the summary totals of fees. The Bureau reminds financial institutions that all disclosures should be clear and readily understandable as required by § 1005.4(a), including the summary totals of fees pursuant to final § 1005.18(c)(5) and any sub-totals thereof.

Regarding industry commenters' concerns about the proposed nine-month effective date, final § 1005.18(h)(1) imposes a general effective date of October 1, 2017 for this final rule. However, final § 1005.18(h)(3)(ii) provides an accommodation for financial institutions that do not have readily accessible the data necessary to calculate the summary totals of fees pursuant to final § 1005.18(c)(5) on October 1, 2017. Specifically, in that case, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by final § 1005.18(c)(5). See the section-by-section analysis of § 1005.18(h) below for additional discussion regarding the final rule's effective date and related accommodations.

The Bureau has modified proposed comment 18(c)-5, renumbered as comment 18(c)-8, to reflect the revision to the regulatory text discussed above, and to make several modifications for clarity. Also, for clarity, the Bureau has divided this comment into two parts: final comment 18(c)-8.i explains the summary totals of fees requirement generally and final comment 18(c)-8.ii clarifies the requirements regarding third-party fees. Specifically, final comment 18(c)-8.i explains that a financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must display the monthly and annual fee totals on the periodic statement, as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic

statements and also makes available the consumer's electronic account transaction history on its website, the financial institution must display the monthly and annual fee totals on the periodic statement and on the consumer's electronic account transaction history made available on its website. Likewise, a financial institution that follows the periodic statement alternative in final § 1005.18(c)(1) must display the monthly and annual fee totals on the electronic history of the consumer's account transactions made available pursuant to final § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to final § 1005.18(c)(1)(iii). In addition, this comment clarifies that, if a financial institution provides periodic statements pursuant to § 1005.9(b), fee totals may be disclosed for each statement period rather than each calendar month, if different. This comment also clarifies that the summary totals of fees should be net of any fee reversals.

Final comment 18(c)-8.ii clarifies that a financial institution may, but is not required to, include third-party fees in its summary totals of fees provided pursuant to final § 1005.18(c)(5). For example, a financial institution must include in the summary totals of fees the fee it charges a consumer for using an out-of-network ATM, but it need not include any fee charged by an ATM operator, with whom the financial institution has no relationship, for the consumer's use of that operator's ATM. Similarly, a financial institution need not include in the summary totals of fees the fee charged by a third-party reload network for the service of adding cash to a prepaid account at a point-of-sale terminal.

The Bureau is also adopting new comment 18(c)-9 to clarify that a financial institution may, but is not required to, also include sub-totals of the types of fees that make up the summary totals of fees as required by final § 1005.18(c)(5). For example, if a financial institution distinguishes optional fees (*e.g.*, custom card design fees) from fees to use the account, in

displaying the summary totals of fees, the financial institution may include sub-totals of those fees, provided the financial institution also presents the combined totals of all fees.

*18(d) Modified Disclosure Requirements*

The Bureau proposed to extend the requirements in existing § 1005.18(c)(1) related to initial disclosures regarding access to account information and error resolution, and in existing § 1005.18(c)(2) regarding annual error resolution notices, to all prepaid accounts. The Bureau proposed to renumber existing § 1005.18(c)(1) and (2) as § 1005.18(d)(1) and (2) for organizational purposes and to separate the modified requirements related to disclosures in existing § 1005.18(c)(1) and (2) from the modifications for limitations on liability and error resolution requirements in existing § 1005.18(c)(3) and (4).

EFTA section 905(a)(7) requires financial institutions to provide consumers with an annual error resolution notice. The annual error resolution notice provision for payroll card accounts in existing § 1005.18(c)(2) permits a financial institution, in lieu of providing an annual notice concerning error resolution, to include an abbreviated error resolution notice on or with each electronic and written history provided in accordance with existing § 1005.18(b)(1). Financial institutions providing periodic statements are similarly permitted to provide an abbreviated error resolution notice on or with each periodic statement pursuant to § 1005.8(b). In preparing the proposal, the Bureau considered limiting the requirement to provide annual error resolution notices to only active and registered prepaid accounts, but given this existing alternative for providing an abbreviated notice with electronic and written history, the Bureau did not believe such a modification was necessary.

The Bureau requested comment on the application of these provisions for initial disclosures regarding access to account information and error resolution, and annual error

resolution notices, to all prepaid accounts. Specifically, the Bureau sought comment on whether financial institutions would face particular challenges in providing annual error resolution notices to all prepaid consumers, as well as whether it should have required that annual error resolution notices be sent for prepaid accounts in certain circumstances, such as those accounts for which a consumer has not accessed an electronic history or requested in written history in an entire calendar year and thus would not have received any error resolution notice during the course of the year.

Few commenters submitted feedback on this portion of the proposal. An issuing bank urged the Bureau to shorten the written error resolution notice it would be required to provide consumers by proposed § 1005.18(d)(1)(ii), and to permit financial institutions to post the complete notice electronically instead of providing it in writing. The commenter argued that the initial disclosures were generally too lengthy, potentially leading to consumer inattention and confusion. A consumer group commenter similarly urged the Bureau to simplify the notice and require that it be distributed as a separate, stand-alone form.

With respect to the annual error resolution notice and the alternative in proposed § 1005.18(d)(2), several industry commenters, including trade associations, a program manager, and a payment processor, argued that the Bureau should eliminate the annual error resolution requirement, or narrow it to only apply to active and/or registered prepaid accountholders. These commenters argued that consumers do not want to receive unsolicited paper notices. A trade association representing credit unions argued that both the annual and periodic notices were unnecessary since the terms of these notices remain static from year to year and could more simply be incorporated into the cardholder agreement. A consumer group commenter argued by

contrast that the Bureau should retain a requirement to provide a written annual notice for dormant accounts.

For the reasons set forth herein, the Bureau is finalizing § 1005.18(d) as proposed, with minor revisions for clarity and consistency. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to adopt an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), to permit notices for prepaid accounts as described in final § 1005.18(d)(2), in order to facilitate compliance with error resolution requirements.

The Bureau has considered the modifications suggested by commenters but declines to adopt tailored requirements for how and when financial institutions must disclose information about consumers' rights related to error resolution, limited liability, and access to account information for prepaid accounts. The Bureau continues to believe that it is appropriate to apply to all prepaid accounts the account access and error resolution disclosure requirements that currently apply to payroll card accounts. The Bureau believes that the existing regime strikes an appropriate balance by providing consumers with enough information to know about and exercise their rights without overwhelming them with more information than they can process or put to use.

#### *18(e) Modified Limitations on Liability and Error Resolution Requirements*

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit. EFTA section 909 governs consumer liability for unauthorized EFTs. The Bureau proposed to extend to all prepaid accounts the Payroll Card Rule's limited liability provisions and error resolution provisions,

including provisional credit. The Bureau also proposed to reorganize existing § 1005.18(c)(3) and (4) into proposed § 1005.18(e)(1) and (2) and to revise the paragraph headings for proposed § 1005.18(e), (e)(1) and (e)(2). Similar to the reorganization of existing § 1005.18(c)(1) and (2) above into final § 1005.18(d)(1) and (2), these changes were proposed to simplify the organization of proposed § 1005.18 generally and to separate the modified requirements related to limited liability and error resolution from other modifications made for prepaid accounts.

As discussed in detail in the section-by-section analyses of § 1005.18(e)(1), (2), and (3) below, the Bureau proposed to modify Regulation E's limited liability and error resolution timing requirements for prepaid accounts to accommodate how account information would be delivered by financial institutions choosing to follow the periodic statement alternative in proposed § 1005.18(c)(1), discussed above, and to except unverified prepaid accounts from the limited liability and error resolution requirements.

#### *18(e)(1) Modified Limitations on Liability Requirements*

EFTA section 909 addresses consumer liability and is implemented in § 1005.6. For accounts under Regulation E generally, including payroll card accounts and government benefit accounts, § 1005.6(a) provides that a consumer may be held liable for an unauthorized EFT resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met.<sup>484</sup> Pursuant to § 1005.6(b)(1), if the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of \$50 or the amount of unauthorized transfers made before giving notice. Pursuant to § 1005.6, if timely notice is not

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<sup>484</sup> The required disclosures for this purpose include a summary of the consumer's liability under § 1005.6, or under State law or other applicable law or agreement, for unauthorized EFTs; the telephone number and address of the person or office to be notified when the consumer believes an unauthorized transfer has been or may be made; and the financial institution's business days. See §§ 1005.6(a) and 1005.7(b)(1) through (3).

given, the consumer's liability is the lesser of \$500 or the sum of (1) the lesser of \$50 or the amount of unauthorized transfers occurring within two business days of learning of the loss/theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution. Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized EFT that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

Existing § 1005.18(c)(3)(i) provides that, for payroll card accounts following the periodic statement alternative in existing § 1005.18(b), the 60-day period in § 1005.6(b)(3) for reporting unauthorized transfers begins on the earlier of (1) the date the consumer electronically accesses his account under § 1005.18(b)(1)(ii), provided that the electronic history made available to the consumer reflects the transfer, or (2) the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under § 1005.18(b)(1)(iii) in which the unauthorized transfer is first reflected. Alternatively, existing § 1005.18(c)(3)(ii) provides that a financial institution may comply with the requirements of § 1005.18(c)(3)(i) by limiting a consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account. The Bureau notes that this provision only modifies the 60-day period for consumers to report an unauthorized transfer and does not alter any other provision of § 1005.6.

The Bureau proposed to extend to all prepaid accounts the existing limited liability provisions of Regulation E with modifications to certain timing requirements for financial

institutions following the periodic statement alternative in proposed § 1005.18(c)(1).<sup>485</sup> The text of proposed § 1005.18(e)(1) featured certain minor modifications for consistency but otherwise was unchanged from existing § 1005.18(c)(3).

Several consumer groups urged the Bureau to harmonize the liability limitations provided under Regulation E with those provided in Regulation Z for credit cards. Under Regulation Z § 1026.12(b), a cardholder's liability for an unauthorized transfer cannot exceed \$50; the payment networks' dispute rules, which apply to network-branded prepaid cards, generally apply the Regulation Z limitations on liability. The commenters argued that it is confusing to have different liability limitation amounts potentially apply to a transaction on the same card. The commenters argued that the limitation amounts in Regulation E should be reduced to \$50, in line with the limitation amounts in Regulation Z.

The Bureau is adopting § 1005.18(e)(1) as proposed, with minor revisions for clarity and consistency. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to exercise its authority under EFTA 904(c) to modify the timing requirements of EFTA 909(a). In addition, the Bureau has considered the modifications suggested by commenters, but declines to revise the liability limitations for prepaid accounts set forth in § 1005.18(e)(1). The dollar amount a consumer may be liable for an unauthorized transfer is specified by statute in EFTA section 909(a)(1) and (2). These limitations already apply to payroll card accounts and government benefit accounts. The Bureau is not persuaded that the process of identifying or resolving errors with respect to prepaid

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<sup>485</sup> The Bureau proposed an additional modification in § 1005.18(e)(3), discussed below, to provide an exception to the requirement to provide limited liability protection when a financial institution had not completed collection of consumer identifying information and identity verification for a prepaid account, assuming notice of the risk of not registering the prepaid account had been provided to the consumer.

accounts is sufficiently different from the process applied with respect to payroll card accounts or government benefit accounts to warrant a separate limited liability regime. Further, the Bureau believes that adopting a different limited liability regime for prepaid accounts than the regime currently in existence accounts generally under Regulation E would require many financial institutions to change their practices, since, as the Bureau noted in the proposal, the vast majority of programs reviewed in the Bureau's Study of Prepaid Account Agreements already limit consumer liability in accordance with existing Regulation E provisions.<sup>486</sup>

### *18(e)(2) Modified Error Resolution Requirements*

#### *Overview of Existing Requirements*

EFTA section 908 governs the timing and other requirements for consumers and financial institutions on error resolution, including provisional credit, and is implemented for accounts under Regulation E generally, including payroll card accounts and government benefit accounts, in § 1005.11. Specifically, § 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an EFT from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.*, whether the transfer was unauthorized), within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days. After determining that an error occurred, the financial institution must correct an error within one

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<sup>486</sup> The Bureau found in its Study of Prepaid Account Agreements that 87.44 percent of agreements for GPR card programs and 64.28 percent of all other programs' agreements provided full limited liability protections to consumers. *See* Study of Prepaid Account Agreements at 16 tbl.4. Similarly, CFSI found in its 2014 study of the prepaid industry that all 18 programs in its review (representing an estimated 90 percent of the GPR card marketplace) had adopted the Payroll Card Rule's version of Regulation E error resolution and limited liability protections. *See* 2014 CFSI Scorecard at 12.

business day.<sup>487</sup> Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account.

Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within 10 business days, its investigation may take up to 45 days if it provisionally credits the amount of the alleged error back to the consumer's account within 10 business days of receiving the error notice.<sup>488</sup> Pursuant to § 1005.11(c)(2)(i)(A), provisional credit is not required if the financial institution requires but does not receive written confirmation within 10 business days of an oral notice by the consumer. Pursuant to § 1005.11(d)(2), if the investigation establishes proof that the transaction was, in fact, authorized, the financial institution may reverse any provisional credit previously extended (assuming there are still available funds in the account).

Existing § 1005.18(c)(4) provides that, for payroll card accounts following the periodic statement alternative in existing § 1005.18(b), the period for reporting an unauthorized transaction is tied, in part, to the date the consumer electronically accesses the consumer's account pursuant to existing § 1005.18(b)(1)(ii), provided that the electronic account history made available to the consumer reflects the alleged error, or the date the financial institution sends a written history of the consumer's account transactions requested by the consumer pursuant to existing § 1005.18(b)(1)(iii) in which the alleged error is first reflected. The Bureau

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<sup>487</sup> See § 1005.11(c)(1).

<sup>488</sup> The financial institution has 90 days (instead of 45) if the claimed unauthorized EFT was not initiated in a State, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. § 1005.11(c)(3)(ii).

notes that this provision only modifies the 60-day period for consumers to report an error and does not alter any other provision of § 1005.11.

*The Bureau's Proposal*

The Bureau proposed to extend to all prepaid accounts the error resolution provisions of Regulation E, including provisional credit, with modifications to the § 1005.11 timing requirements in proposed § 1005.18(e)(2) for financial institutions following the periodic statement alternative in proposed § 1005.18(c)(1). The text of proposed § 1005.18(e)(2) updated internal paragraph citations to reflect other numbering changes made in the proposal, but otherwise was unchanged from existing § 1005.18(c)(4). Notably, as set forth in greater detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau also proposed an exception to the requirement to provide limited liability and error resolution when a financial institution had not completed collection of consumer identifying information and identity verification for a prepaid account, assuming appropriate notice of the risk of not registering the prepaid account had been provided to the consumer. The Bureau proposed to extend to all prepaid accounts existing comment 18(c)-1 regarding the 120-day error resolution safe harbor provision, renumbered as comment 18(e)-1 and with the reference to payroll card accounts changed to prepaid accounts. The Bureau also proposed to extend existing comment 18(c)-2, regarding consumers electronically accessing their account history, to all prepaid accounts, renumbered as comment 18(e)-2. In that proposed comment, the reference to payroll card account was changed to prepaid account, plus one substantive modification to clarify that access to account information via a mobile application, as well as through a web browser, would constitute electronic access to an account for purposes of the timing provisions in proposed § 1005.18(e)(1) and (2). The Bureau also proposed to add an additional sentence to the end of proposed

comment 18(e)-2 to explain that a consumer would not be deemed to have accessed a prepaid account electronically when the consumer receives an automated text message or other automated account alert, or checks the account balance by telephone.

The Bureau proposed to extend existing comment 18(c)-3, regarding untimely notice of error by a consumer, to all prepaid accounts, renumbered as comment 18(e)-3 and with internal paragraph citations updated to reflect other numbering changes made in the proposal. The last sentence of the existing comment currently provides that where the consumer's assertion of error involves an unauthorized EFT, the institution must comply with § 1005.6 before it may impose any liability on the consumer. The Bureau proposed to specifically note that compliance with § 1005.6 included compliance with the extension of time limits provided in § 1005.6(b)(4).

#### *Comments Received*

Most industry commenters and all consumer group commenters generally supported the proposal to extend to all prepaid accounts the error resolution provisions currently applicable to payroll card accounts. At the same time, several industry commenters argued that prepaid accounts may have a higher incidence of fraudulently asserted errors than other accounts covered by Regulation E for a number of reasons, including that prepaid accounts are often purchased anonymously; prepaid cards are easier to abandon and are more frequently abandoned by consumers who quickly spend down the balance and discard the card; and prepaid consumers may not have any other ongoing relationship with the issuing bank or program manager. Requiring financial institutions to provide error resolution rights to all prepaid accounts, they argued, would thus result in unsustainable fraud losses for industry, leading to market exit and rising consumer costs. These commenters did not, however, provide any data or particular

details in support of their assertions. To avoid this result, these commenters urged the Bureau to limit the application of the error resolution provisions to prepaid accounts in certain respects.

Several industry commenters, including issuing banks, program managers, a payment network, and an industry trade association, urged the Bureau not to require error resolution for certain types of prepaid accounts, such as reload packs or cards that cannot be reloaded.<sup>489</sup> These commenters argued that these products are not transaction account substitutes, and as such should not receive the same protections as other accounts covered under Regulation E. In addition, the commenters argued that fraudulently asserted error claims are more likely to occur on non-reloadable cards, since the cards are mostly unregistered and used for a short period of time. The commenters also stated that the operating margins on these types of cards are slim and argued that, therefore, the costs of providing complete limited liability and error resolution protections, including provisional credit, would outweigh any profits and thus force providers of such products to pass on costs to consumers or exit the market.

Some industry commenters, including several issuing banks, a payment network, and a number of trade associations, expressed particular concern about the requirement to extend provisional credit to prepaid accounts. The issuing bank commenters confirmed that they currently extend provisional credit where appropriate for most types of prepaid accounts. These issuing banks and other industry commenters argued, however, that a mandate requiring them to extend provisional credit would increase their fraud-related costs by emboldening wrongdoers to submit more fraudulent error claims. The commenters urged the Bureau to take one of several approaches to limit the provisional credit requirement. One group of commenters, including

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<sup>489</sup> Several industry commenters requested that the Bureau exempt all non-reloadable prepaid cards, including reload packs, from the definition of prepaid account in proposed § 1005.2(b)(3), thereby excluding such cards from all rule requirements, including error resolution and limited liability requirements. These comments are discussed in the section-by-section analysis of § 1005.2(b)(3) above.

several issuing banks and a trade association, suggested that the provisional credit requirement be limited to prepaid accounts held by consumers with whom the issuer has an “ongoing relationship,” as evidenced, for example, by repeated electronic deposits to the prepaid account. Another group of commenters, including an industry trade association and an issuing bank, urged the Bureau not to require provisional credit for accounts or transaction types that exhibit characteristics correlated with a heightened risk of fraud. Commenters suggested varied and at times inconsistent ideas about what these characteristics might be, ranging from, for example, the age of the account, how soon after account opening the alleged error occurred, or whether the transaction occurred at the point of sale or at an ATM.

Commenters who recommended limiting provisional credit also argued that the aggregate amount of fraud losses related to provisional credit increases as the time period within which a financial institution must provide provisional credit decreases, and that 10 business days is not long enough to complete an investigation for errors asserted on prepaid accounts. Accordingly, a number of commenters urged the Bureau to extend the 10 business days permitted under § 1005.11(c)(1) to 20 business days for all prepaid accounts, and 30 business days for prepaid accounts held by consumers who do not have an ongoing relationship with the financial institution. Similarly, a payment network and a law firm writing on behalf of a coalition of prepaid issuers requested that financial institutions have flexibility to delay granting provisional credit beyond 10 business days where a factors-based test indicated that there was a significant risk of loss related to the extension of provisional credit.

Consumer advocates, by contrast, argued against rolling back the provisional crediting requirements. They noted that prepaid accounts are used in substantially similar ways as traditional consumer transaction accounts and thus should receive protections for funds lost due

to unauthorized use in the same timeframe as other accounts covered by Regulation E. The commenters repeatedly emphasized how important provisional credit can be for consumers, noting that many consumers who use prepaid cards have limited liquid assets and may put a substantial portion of those assets into their prepaid accounts. Without provisional credit, in the event of an unauthorized transfer, a consumer could be without critical funds for the duration of the financial institution's investigation—up to 45 days, or 90 days in certain circumstances.

Several consumer groups also commented on the timelines in proposed § 1005.18(e)(2) governing when a consumer must report an unauthorized transfer in order to receive error resolution protections, arguing that the current regime is confusing. For example, they noted that the 120-day safe harbor in proposed § 1005.18(e)(2)(ii) is not disclosed on the error resolution notice required by proposed § 1005.18(d)(1)(ii).<sup>490</sup> Consumers may not be aware, therefore, that a different time limit applies to their prepaid account, and may believe their error was timely reported when in fact it was not, or they may fail to report an error that they believed was no longer timely when in fact it was. In addition, the commenters stated that many consumers do not receive paper statements and never access their account information online, so, they argued, a timeline that runs from the date they access their account information should not apply to them. For these reasons, the consumer groups urged the Bureau to adopt a single, uniform time limit of 120 days from the date the transaction was posted to the consumer's account. A number of trade associations representing credit unions also argued that the error resolution reporting timeline should run from the date the transaction was posted to the consumer's account, for the reason that the posting date is an objective and easily discernible point in time. These commenters,

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<sup>490</sup> As discussed above, these provisions were proposed largely unchanged from existing § 1005.18(c)(4)(ii) and (2), respectively. *See also* appendix A-7.

however, urged the Bureau to make the timeline a uniform 60 days from the date the transaction was posted.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.18(e)(2) and comments 18(e)-1, -2, and -3 largely as proposed, with minor revisions for clarity and consistency. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to exercise its authority pursuant to EFTA section 904(c) to modify the timing requirements of EFTA section 909(a).

The Bureau has considered the comments regarding the implications of extending all of Regulation E's error resolution requirements to prepaid accounts. The Bureau acknowledged in the proposal that prepaid accounts might present unique fraud risks that other transaction accounts may not. The Bureau also acknowledges that these risks may be especially heightened with respect to prepaid accounts that have not been or cannot be registered or whose cardholder identity has not or cannot be verified. It was for these reasons that the Bureau proposed in § 1005.18(e)(3) to exempt financial institutions from the requirement to provide limited liability or error resolution protections, including provisional credit, for accounts with respect to which the financial institution had not completed its consumer identification and verification process. The Bureau is finalizing a limited exemption as to provisional credit, as discussed in the section-by-section analysis of § 1005.18(e)(3) below, but is not exempting financial institutions from the general requirement to provide limited liability and error resolution protections for such accounts.

The Bureau is not persuaded by commenters that the unique risks posed by prepaid accounts warrant modifications to Regulation E's limited liability and error resolution regime beyond the final rule's accommodation for provisional credit on unverified accounts. Indeed, the Bureau understands that most prepaid issuers already provide error resolution with respect to most prepaid accounts, in compliance with the Payroll Card Rule<sup>491</sup> (though, as discussed in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau understands that most financial institutions do not provide provisional credit for accounts that cannot be registered). Indeed, in its Study of Prepaid Account Agreements, the Bureau found that across all agreements reviewed, 77.85 percent provided full error resolution with provisional credit protections; 12.31 percent provided error resolution with limitations on provisional credit; 9.23 percent provided error resolution without provisional credit; and 0.62 provided no error resolution protections.<sup>492</sup> The Bureau notes that industry commenters did not dispute the findings of the Bureau's Study nor did they provide any data or particular details in support of their premise that the Bureau's codification of their own existing practices would result in unsustainable fraud losses for the industry. The Bureau thus does not believe that modifications to Regulation E's limited liability

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<sup>491</sup> As discussed above, the FMS Rule requires that the issuer of a prepaid card that receives a Federal payment must comply with the error resolution and provisional credit requirements for payroll cards accounts in Regulation E. *See* 31 CFR 210.5(b)(5). The Bureau understands that prepaid cards that receive Federal payments and, as discussed previously, by extension many other prepaid cards that are eligible to receive Federal payments if the consumer so chooses, already comply with these provisions. In addition, the Bureau notes that the four major payment card networks' rules all impose some form of zero liability protections for cardholders in certain circumstances. At least one network, for example, requires provisional credit to be given after five days for unauthorized transactions occurring over its network, unless certain exceptions apply.

<sup>492</sup> *See* Study of Prepaid Account Agreements at 13 tbl.3. Because these statistics weight all agreements equally, and thus do not reflect individual programs' or providers' market shares, the Bureau also specifically analyzed the 22 agreements for GPR card programs in the Study that belong to five of the largest program managers in the GPR card market. The Bureau found that 17 of these agreements provided full error resolution protections with provisional credit, three provided error resolution with limitations on provisional credit, and two provided error resolution without provisional credit. *See id.*

and error resolution regime for all prepaid accounts is necessary, and in fact the Bureau has scaled back the exclusion for unverified accounts in proposed § 1005.18(e)(3), discussed below.

The Bureau also declines to categorically exempt non-reloadable cards from the error resolution requirements, as some industry commenters had urged. The Bureau notes that non-reloadable cards can be used to disburse large sums of money to consumers. For example, prepaid accounts that are used to disburse insurance proceeds, tax refunds, or non-recurring employment benefits such as bonuses or termination payments are—or could be—non-reloadable. The funds held in such accounts may be particularly important to a consumer, who may have, for example, lost a home or a job; error resolution is especially critical for a consumer in that position who has been victimized by fraud. The Bureau does not anticipate that the requirement to provide error resolution rights to non-reloadable cards specifically should place a significant regulatory burden on industry.<sup>493</sup>

Likewise, the Bureau declines to exempt certain types of accounts or transactions from the requirement to provisionally credit a consumer's account in the event a financial institution takes longer than permitted by § 1005.11(c)(1) (or § 1005.11(c)(3)(i), as applicable) to investigate an error. The Bureau understands, as noted by consumer group commenters, that consumers who use prepaid accounts may have limited liquid assets and may place or hold a substantial portion of those assets in the prepaid account. Without provisional credit, in the event of an unauthorized transaction or other error, a consumer could be without access to those funds for as long as 90 days, a period of time that could cause a significant disruption to the consumer's household finances. In addition, the Bureau notes that there appears to be no

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<sup>493</sup> Pursuant to final § 1005.2(b)(3)(i)(D) and comment 2(b)(3)(i)-8.v, an account whose only function is to make a one-time transfer of funds into a separate prepaid account, such as a reload pack, is excluded from the final rule. As such, the request to specifically exempt them from § 1005.18(e) is moot.

industry consensus around the criteria the Bureau should use as a proxy for an account or transaction's relative riskiness for purposes of determining whether it should be excluded from the provisional credit requirements.<sup>494</sup> Finally, although a significant proportion of industry comment letters voiced some opposition to the proposed provisional crediting requirements, the Bureau understands that most financial institutions are already providing error resolution, including provisional credit, for most prepaid accounts. Therefore, once again, the Bureau does not believe that requiring provisional credit for most prepaid account types should add significant additional costs or otherwise be problematic for industry.

With respect to the suggestions that the Bureau extend the time periods that apply before a financial institution must extend provisional credit, the Bureau notes that, under both the proposal and the final rule, the 20-day time frame requested by some commenters already applies in some circumstances—specifically, financial institutions may take up to 20 business days to investigate errors asserted with respect to transfers that occurred within 30 days of the date of the first deposit into the account.<sup>495</sup> In other words, new accounts, which some commenters indicated are more prone to fraudulent error claims, are already given a longer provisional crediting time frame under Regulation E.

With respect to the suggestion that financial institutions have 30 business days to investigate errors before provisionally crediting the consumer's account, the Bureau notes that, depending on calendar timing, 30 business days could be nearly as long or longer than the 45 calendar days financial institutions currently have to investigate claims when provisional credit is

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<sup>494</sup> The Bureau recognized this issue in the proposal. In discussing potential alternatives to the proposed limited liability and error resolution regime, the Bureau considered and rejected several criteria for evaluating an account's riskiness, such as whether the account had been opened for a certain period of time or whether it received direct deposits, concluding that each had serious drawbacks. *See* 79 FR 77102, 77184 (Dec. 23, 2014).

<sup>495</sup> *See* § 1005.11(c)(3)(i).

provided.<sup>496</sup> Thus, a rule that extended the pre-provisional credit investigation period to 30 business days would in effect be doing away with the provisional credit requirement altogether for prepaid accounts. For the reasons stated above, the Bureau believes that provisional credit is an important consumer protection, especially for consumers who rely on a prepaid account as the primary means to store and transact with their funds. The Bureau declines to adjust the investigation time periods in such a way as to essentially obviate the provisional credit requirements for prepaid accounts. Finally, with respect to the time limits that apply to a consumer's timely reporting of an error, the Bureau also declines to revise the applicable limits as requested by some commenters. Again, the Bureau notes that the 60-day limit governing how long a consumer has to report an unauthorized transfer is set by statute in EFTA section 908(a). The Bureau did not intend to generally revise that timeline in this rulemaking.

The Bureau is adopting proposed comment 18(e)-3 with a revision to correct an existing scrivener's error. That comment previously stated that financial institutions were not required to comply with the requirements of § 1005.11 with respect to transfers that occurred more than 60 days prior to when a consumer accessed the account or the financial institution sent a written account history. This is a misstatement of existing § 1005.18(c)(4)(i)(A) and (B) (renumbered in this final rule as § 1005.18(e)(2)(i)(A) and (B)), which state that financial institutions must comply with § 1005.11 with respect to notices of error received by the earlier of 60 days after the consumer accesses the account or 60 days after the financial institution sends a written history of the account upon the consumer's request.

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<sup>496</sup> Depending on holiday schedules and other factors, 30 business days could be longer than 45 calendar days. For example, 30 business days from December 1, 2016 would end on January 17, 2017, whereas 45 calendar days from December 1, 2016 would end two days earlier, on January 15, 2017.

### *18(e)(3) Error Resolution for Unverified Accounts*

#### *The Bureau's Proposal*

Proposed § 1005.18(e)(3) would have provided that for prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution disclosed to the consumer the risks of not registering a prepaid account using a notice that is substantially similar to the proposed notice contained in paragraph (c) of appendix A-7, a financial institution would not be required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account for which it has not completed its collection of consumer identifying information and identity verification.<sup>497</sup> However, once the consumer's identity had been verified, a financial institution would have had to limit the consumer's liability for unauthorized EFTs and resolve any errors that occurred prior to verification subject to the timing requirements of existing §§ 1005.6 or 1005.11, or the modified timing requirements in proposed § 1005.18(e), as applicable.

Proposed comment 18(e)-4 would have explained that for the purpose of compliance with proposed § 1005.18(e)(3), consumer identifying information could include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. The comment would have also explained that for an unauthorized transfer or an error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or alleged error was based on the date the consumer contacted the financial institution to report the unauthorized transfer or alleged error, not the date the financial institution completed its customer identification and verification process. Comment

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<sup>497</sup> Relatedly, the Bureau proposed to require that financial institutions include on the short form disclosure for all prepaid accounts a statement emphasizing the importance of registering the prepaid account. See the section-by-section analysis of § 1005.18(b)(2)(xi) above.

18(e)-4 would have further explained that for an error asserted on a previously unverified prepaid account, the time limits for a financial institution's investigation of errors pursuant to § 1005.11(c) began on the day following the date the financial institution completed its customer identification and verification process. A financial institution may not delay completing its customer identification and verification process, or refuse to verify a consumer's identity, based on the consumer's assertion of an error.

The Bureau stated its understanding that financial institutions often conduct customer identification and verification at the onset of a relationship with a consumer, such as at the time a consumer signs up to receive wages via a payroll card account or when a consumer requests a GPR card online. For GPR cards purchased at retail stores, the financial institution may—but does not always—obtain customer-identifying information and perform verification at the time the consumer calls or goes online to activate the card. Because of restrictions imposed by FinCEN's Prepaid Access Rule<sup>498</sup> and the payment card networks' operating rules, among other things, the Bureau understood that customer identification and verification was almost always performed before a card can be reloaded, used to make cash withdrawals, or used to receive cash back at the point of sale. The Bureau believed that providers thus had an incentive to encourage consumers to register their cards to increase the functionality and thus the longevity of the consumer's use of the account.

Collection of consumer identifying information and verification of identity under proposed § 1005.18(e)(3) would have included information collected, and identities verified, by a financial institution directly as well as by a service provider or agent of the institution. Thus, the Bureau expected that financial institutions providing prepaid accounts for purposes such as

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<sup>498</sup> See 31 CFR 1022.210(d)(1)(iv).

student financial aid disbursements or property or casualty insurance payments would likely not be able to avail themselves of the exclusion in § 1005.18(e)(3) because consumer identifying information was collected and consumers' identities verified by the financial institution, or a service provider or agent of the institution, prior to distribution of such prepaid accounts. The Bureau proposed to adopt the exemption for unverified accounts because it understood that a financial institution could face difficulties in determining whether an unauthorized transaction occurred if it did not know a prepaid accountholder's identity. For example, a financial institution could have a video recording provided by a merchant or ATM operator showing the card user, but without having identified the accountholder, it would have no way of knowing if the individual conducting the transaction is authorized to do so.

The Bureau believed that financial institutions would follow the customer identification and verification requirements set forth in FinCEN's CIP requirements for banks in 31 CFR 1020.220 or for providers and sellers of prepaid access in 31 CFR 1022.210(d)(1)(iv). However, it sought comment on whether FinCEN's regulations, as discussed above, were the appropriate standard to use for identification and verification of prepaid accountholders, or whether some other standard should be used. Further, the Bureau anticipated that when a consumer called to assert an error on an unverified account, the financial institution would inform the consumer of its policy regarding error resolution on unverified accounts and would begin the customer identification and verification process at that time. As noted previously, the Bureau believed that providers had an incentive to encourage consumers to register their cards to increase the functionality and thus the longevity of the consumer's use of the account. However, the Bureau sought comment on the accuracy of this assumption, and on whether the Bureau should impose a time limit for completion of the customer identification and verification process.

### *Comments Received*

All consumer group commenters expressed support for the Bureau's decision to extend error resolution and limited liability protections to prepaid accounts. Several consumer group commenters detailed at great length the importance of providing consumers—especially consumers who may have a hard time making ends meet—with recourse if their accounts are subject to error or fraud. Thus, while a number of consumer groups expressed cautious support for the proposed limitation on protections for unregistered accounts, stating that they believed it struck a good balance between protecting consumers and ensuring that the rule does not encourage additional fraudulent activity, a number of consumer groups urged the Bureau to revise proposed § 1005.18(e)(3) to require complete limited liability and error resolution for additional account or transaction types. Specifically, one consumer group urged the Bureau to always require limited liability and error resolution where the consumer has a proof of purchase, while another consumer group urged the Bureau to always require the protections with respect to send-money transactions since, it asserted, innocent errors were more likely to occur with respect to that type of transaction. Two other consumer groups asked the Bureau to expand the exclusion of government benefit accounts and payroll card accounts in proposed § 1005.18(e)(3) to explicitly extend to other account types with respect to which the financial institution collects personally identifiable information in order to disburse the funds. For example, they noted that, for accounts such as those used to disburse student loans or insurance proceeds, the financial institution must collect personally identifiable information about the account recipient before distributing the access device. For such accounts, the financial institution has the information it needs to verify a consumer's identity, and as such, should not be eligible for the exemption from the requirement to provide limited liability and error resolution protections.

In addition, two consumer groups expressed concern that the Bureau's decision to exempt unregistered accounts from the requirement to provide error resolution and limited liability protections would incentivize issuers to avoid registering accounts. They urged the Bureau to require registration for all prepaid accounts, arguing that, if registration were not a requirement, financial institutions may try to prevent consumers from registering, and then use the fact of an account's non-registration and verification as a pretext for not providing that account with complete limited liability and error resolution protections. Going further, a city government agency for consumer affairs objected to any limitation on protections for unregistered accounts, arguing that consumers who do not have a chance to register their accounts before becoming victims of fraud nonetheless deserve equal protections under Regulation E.

Several industry commenters expressed support for the Bureau's approach in proposed § 1005.18(e)(3) of not requiring limited liability or error resolution for accounts for which the financial institution had not completed its collection and verification of consumer identifying information. By contrast, there was significant industry opposition to the provision requiring that, once an account was registered and verified, financial institutions provide limited liability and error resolution rights, including provisional credit, for transactions that occurred *prior* to registration. One trade association stated that, for prepaid accounts for which customer identification and verification is attempted but cannot be completed, it would support those accounts receiving some error resolution protections pending completion of the process, but not provisional credit. Other commenters, including a number of trade associations, a program manager, and a payment processor, argued on the one hand that applying limited liability and error resolution provisions to pre-registration errors would greatly increase fraud losses, since it was extremely difficult to investigate an error that occurred before the financial institution knew

the identity of the cardholder. On the other hand, these commenters argued that requiring full limited liability and error resolution protections for pre-registration errors would not confer significant additional benefits on consumers since it was unlikely that an error or fraudulent transaction would occur prior to registration.

A program manager and a credit union objected to proposed § 1005.18(e)(3) for slightly different reasons: they viewed it as a requirement that financial institutions conduct consumer identification and identity verification for all prepaid accounts. The program manager, which manages non-reloadable, non-registrable prepaid cards, among other products, argued that not only did the exemption require financial institutions to offer account registration, but it essentially obligated financial institutions to undertake a robust identity verification process with respect to each consumer. Otherwise, consumers could register their accounts with fake names and still be entitled to provisional credit. The Bureau's proposal, the commenter argued, would therefore extend an account registration requirement to accounts that are not currently required to perform such a process under FinCEN regulations, such as single-use or non-reloadable accounts. Such a change to industry practice, it argued, would necessitate major software and systems revisions at a great cost to financial institutions and their customers.

With respect to the Bureau's request for comment on whether it should require financial institutions to adopt a specific standard for collecting and verifying a consumer's identity, several industry commenters, including program managers and a trade association, argued that financial institutions should retain discretion with respect to which registration standard they adopt. They argued further that, whereas the FinCEN standard is effective and should be deemed sufficient for purposes of analyzing whether the financial institution had adequate consumer identification procedures in place, it should not be adopted as the required standard

because the goals underlying the FinCEN customer identification requirements—preventing money laundering—differ from those of the proposed rule. Another industry commenter disagreed, arguing that the Bureau should require a single uniform standard for consumer identification and verification, and that the FinCEN standard should be the standard adopted. According to this commenter, the FinCEN standard has been effective in monitoring and preventing fraud for other transaction account types, and as such should prove effective for screening the identities of prepaid accountholders as well.

### *The Final Rule*

For the reasons discussed herein, the Bureau is finalizing § 1005.18(e)(3) and related commentary with several substantive revisions. Specifically, the Bureau has revised the limitation on a financial institution's requirement to provide limited liability and error resolution protections for unregistered accounts. Under the final rule, financial institutions must provide limited liability and error resolution protections for all accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, for accounts with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no process), the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, from receipt of a notice of error to investigate and determine whether an error occurred without provisionally crediting a consumer's account. The Bureau has made several changes to § 1005.18(e)(3) and its commentary to conform the proposed text to this revised formulation. In addition, it has added regulatory text and commentary, explained in more detail below, to address when a financial institution has completed its consumer identification and verification process, and to clarify that if, at the time

the financial institution was required to provisionally credit an account, the financial institution had not yet completed its identification and verification process, the financial institution need not provisionally credit the account.

To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to finalize § 1005.18(e)(3) with a modified limitation on financial institutions' requirement to provide limited liability and error resolution for accounts that have not completed the consumer identification and verification process.

As explained in greater detail below, the Bureau is adopting § 1005.18(e)(3) revisions to clarify, in response to industry comments, that it is not requiring financial institutions to adopt a consumer identification and verification process for all prepaid accounts. Because it is concerned that this revision, on its own, would result in a class of un-registrable prepaid accounts that do not receive any limited liability or error resolution protections, however, the Bureau has also revised the scope of the exception in proposed § 1005.18(e)(3). Under the final rule, financial institutions must provide limited liability and error resolution protections for all accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, for accounts with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no process), the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, from receipt of a notice of error to investigate and determine whether an error occurred without provisionally crediting a consumer's account.

The Bureau agrees with commenters that the proposed rule left open the question of whether financial institution had to adopt a consumer identification and verification process, or whether certain prepaid account types that do not offer or require an account registration process could continue to allow their customers to use the cards anonymously. The Bureau believes that there are legitimate reasons a consumer may opt for a particular account type—such as certain non-reloadable cards—that allows him or her to remain anonymous. Similarly, the Bureau is sensitive to industry’s concerns that requiring financial institutions to adopt a consumer identification and verification regime where they previously did not have one would result in increased costs and, potentially, decreased consumer access to certain prepaid account products. Accordingly, the Bureau has declined to finalize a requirement that all prepaid accounts offer some sort of registration process.

However, the Bureau is also concerned that financial institutions will choose not to offer registration or to delay completing registration as a way to avoid having to provide provisional credit. To that end, the Bureau is adopting new comment 18(e)-5, which provides an example of when a financial institution has not concluded the consumer identification and verification process with respect to a particular consumer: the example describes a financial institution that initiates the identification and verification process by collecting identifying information about a consumer and informing the consumer of the nature of the outstanding information, but, despite efforts to obtain additional information from the consumer, is unable to conclude the process because of conflicting information about the consumer. For the same reasons, the Bureau is finalizing a clarification in new comment 18(e)-5 stating that a financial institution may not delay completing its customer identification and verification process or refuse to verify a consumer’s identity based on a consumer’s assertion of an error. The Bureau believes that, as

stated above, financial institutions have an incentive to encourage consumers to register their accounts to increase the functionality and thus the longevity of consumers' use of their accounts.

To clarify that it is not requiring financial institutions to adopt a consumer identification and verification process for prepaid accounts, the Bureau has finalized a provision that makes clear that financial institutions that do not offer a process by which a consumer's identifying information is collected and identity verified have not completed the consumer identification and verification process with respect to that account. As such, and as described in more specific detail below, with respect to such accounts that cannot be registered, the financial institution may avail itself of the limited exemption from the provisional credit requirements.

The Bureau is concerned, however, that adding this clarification would expand the scope of the limited exemption in proposed § 1005.18(e)(3) in ways that would leave many vulnerable consumers unprotected. The Bureau agrees with the numerous consumer groups that emphasized the importance of limited liability and error resolution for prepaid consumers. In addition, while it is true that consumers may not generally use non-reloadable products as transaction account substitutes given that the funds will eventually be spent down in their entirety, the Bureau believes that extending protections to all broadly usable prepaid accounts is necessary to avoid consumer confusion as to what protections apply to similar accounts. Indeed, the Bureau notes that its testing showed that prepaid consumers currently expect prepaid products to be accompanied by protections for error or unauthorized use.<sup>499</sup>

The Bureau is concerned, therefore, that § 1005.18(e)(3), as revised by the clarification discussed above regarding un-registrable accounts, would leave such accounts without any

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<sup>499</sup> See, e.g., ICF Report I at 10 (noting that "When asked what would happen if there were a fraudulent or inaccurate charge on their prepaid account, most participants believed that their prepaid card provider would credit the funds to their account. This belief seemed to be based almost exclusively on prior experiences with prepaid card providers and other financial institutions, rather than an understanding of any legal protections that may or may not exist.").

limited liability and error resolution protections enforceable under Federal law during its entire existence, instead of only during the limited time before which a consumer registers his or her card. The Bureau did not intend to leave this entire class of prepaid accounts without such consumer protections. At the same time, as stated above, the Bureau acknowledges industry's concerns about the potential costs of having to extend provisional credit for accounts where the financial institution does not know and has not verified the consumer's identity.

To balance these concerns, the Bureau has revised the proposed limitation on the requirement to provide limited liability and error resolution protections in proposed § 1005.18(e)(3). Rather than limit the requirement to provide any limited liability and error resolution protections, the final rule only limits the requirement to extend provisional credit for accounts with respect to which the financial institution has not completed its consumer identification and verification process. Thus, under new § 1005.18(e)(3)(i), with respect to accounts other than payroll card or government benefit accounts, a financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, from receipt of a notice of error to investigate and determine whether an error occurred without provisionally crediting a consumer's account if the financial institution has not completed its consumer identification and verification process with respect to that prepaid account. In effect, revised § 1005.18(e)(3)(i) now operates as an additional exception to § 1005.11(c)(2)(i), akin to existing § 1005.11(c)(2)(i)(A) and (B). As discussed above, the Bureau has added a new § 1005.11(c)(2)(i)(C) to make that clear. The Bureau is likewise adding a reference to new § 1005.11(c)(2)(i)(C) in § 1005.18(e)(3)(i) to clarify its operation.

The Bureau believes this revision is necessary to ensure that all prepaid account consumers have some recourse when they experience an unauthorized or erroneous transfer.

While the Bureau considered whether to require limited liability and error resolution for unregistered accounts only when the accounts cannot be registered, the Bureau believes it is preferable to treat all unregistered accounts uniformly. Once again, the Bureau also believes this approach will help reduce consumer confusion as to what protections apply to similar accounts, especially in light of the Bureau's observations that prepaid consumers currently expect prepaid products to be protected against unauthorized use and other errors. Furthermore, the Bureau understands that, by revising the proposed limitation on the requirement to provide limited liability and error resolution as described herein, the Bureau is aligning § 1005.18(e)(3) with current industry practice. The Bureau believes the narrower limitation in revised § 1005.18(e)(3)(i) addresses the majority of industry's concerns. Again, the Bureau understands that most prepaid issuers already offer limited liability and error resolution protections with respect to most account types they offer.<sup>500</sup> Indeed, many issuing bank commenters confirmed that they provide some limited liability and error resolution protections—but no provisional credit—for accounts that have not or cannot be registered. As such, the Bureau believes that the final rule generally reflects current industry practice and should not place a significant increased burden on financial institutions.

The Bureau is also revising the scope of the exclusion in § 1005.18(e)(3) beyond government benefit and payroll card accounts. As it noted in the proposal, the Bureau agrees with commenters that financial institutions providing prepaid accounts for purposes such as student financial aid disbursement or insurance payments should not be able to avail themselves of the exclusion in § 1005.18(e)(3), because consumer identifying information is typically collected and verified by the financial institution or its service provider prior to or as part of the

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<sup>500</sup> See Study of Prepaid Account Agreements at 16 tbl.4; 2014 CFSI Scorecard at 12.

acquisition process for those accounts.<sup>501</sup> In the proposal, the Bureau expressly excluded government benefit and payroll card accounts from § 1005.18(e)(3) for a similar reason—that is, because it believed financial institutions often conduct the consumer identification and verification at the onset of the relationship with a government benefit or payroll card account customer.<sup>502</sup> However, it did not expressly exclude from § 1005.18(e)(3) other types of accounts that similarly collect and verify consumer information prior to or during the acquisition process. The Bureau is now finalizing commentary that clarifies that such accounts cannot avail themselves of § 1005.18(e)(3).

Specifically, new comment 18(e)-6 states that a financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have completed its consumer identification and verification process with respect to that account. The reference to a third party collecting the verified information is intended to codify the Bureau’s understanding, stated in the proposal, that collection and verification of information can be done by the financial institution directly, as well as by a service provider or agent of the institution. The comment provides an example of a financial institution that obtains from a university the identifying information necessary to disburse funds to students via the financial institution’s prepaid account. Such a financial institution, the example states, would be deemed to have completed its consumer identification and verification process with respect to those students’ accounts.

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<sup>501</sup> 79 FR 77102, 77185 (Dec. 23, 2014).

<sup>502</sup> *Id.* The Bureau also wanted to ensure that payroll card and government benefit accounts maintained the same level or limited liability and error resolution protections they had under existing Regulation E.

Next, the Bureau believes that financial institutions should maintain discretion with respect to the type of consumer identification and verification process they adopt. As such, the Bureau is not finalizing a requirement that financial institutions adopt the FinCEN registration process, nor any other specific process for how to identify and verify an account, except that it is finalizing the guidance in proposed comment 18(e)-4 that consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number, or other government-issued identification number. The Bureau notes, however, that on March 21, 2016, the Board, the FDIC, the NCUA, the OCC, and FinCEN issued interagency guidance to clarify that the FinCEN registration requirements apply to the cardholders of general purpose prepaid cards that have the features of an account and are issued by a bank.<sup>503</sup> Specifically, the guidance states that a general purpose prepaid card should be treated as an account if it provides a customer with the ability to reload funds or provides a consumer with access to credit or overdraft features.

Instead of adopting a single standard for consumer registration, the Bureau is adopting several provisions and commentary to clarify when, for purposes of § 1005.18(e)(3)(i), a financial institution can assert that it has not completed its consumer identification and verification process. Together, the new provisions are intended to make clear that a financial institution is only required to extend provisional credit for accounts where it actually knows and has verified the consumer's identity.

Specifically, pursuant to new § 1005.18(e)(3)(ii)(A), a financial institution has not completed its consumer identification and verification process where it has not concluded its

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<sup>503</sup> Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp., Nat'l Credit Union Admin., Office of the Comptroller of the Currency, Fin. Crimes Enforcement Network, *Interagency Guidance to Issuing Banks Applying Customer Identification Program Requirements to Holders of Prepaid Cards* (Mar. 21, 2016), available at <http://www.federalreserve.gov/bankinforeg/srletters/sr1607.pdf>.

consumer identification and verification process, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7. Next, new § 1005.18(e)(3)(ii)(B) states that a financial institution has not completed the identification and verification process where it has concluded the process but could not verify the consumer's identity, again provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7. Although consumers will now receive limited liability and error resolution protections, except provisional credit, before their account is registered with the financial institution, the Bureau believes it is still important that consumers understand that their protections are more limited until they register their accounts. As such, the Bureau is still requiring financial institutions to provide a notice substantially similar to the model notice contained in paragraph (c) of appendix A-7 in order to qualify for § 1005.18(e)(3)(ii)(A) and (B).<sup>504</sup>

Finally, as stated earlier, new § 1005.18(e)(3)(ii)(C) sets forth that a financial institution has not completed the process where the financial institution does not have a consumer identification and registration process by which the consumer can register the prepaid account. To qualify for this provision, a financial institution need not provide the notice in paragraph (c) of appendix A-7 since the consumer cannot register his or her card to obtain provisional credit protections. For the same reason, the Bureau has revised proposed comment 18(e)-4. The proposed comment would have recounted that proposed § 1005.18(e)(3) provided that, in order to take advantage of the exception from the requirement to comply with the limited liability and

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<sup>504</sup> The Bureau has revised the content of the notice to reflect the revisions to § 1005.18(e)(3) discussed herein. Those changes are discussed in the section-by-section analysis of appendix A-7 below.

error resolution requirements, a financial institution would have had to disclose to the consumer the risks of not registering a prepaid account using a notice substantially similar to paragraph (c) of appendix A-7. Since the requirement to provide the notice in paragraph (c) of appendix A-7 now appears in § 1005.18(e)(3)(ii)(A) and (B), but not in § 1005.18(e)(3)(ii)(C), the statement is no longer accurate, and as such has been removed.

With respect to the requirement in proposed § 1005.18(e)(3) that, once an account is verified, financial institutions must provide limited liability and error resolution protections for pre-verification errors, the Bureau has considered the comments objecting to this aspect of the proposal, but is finalizing the general approach in new § 1005.18(e)(3)(iii). To conform the proposed provision to the revisions discussed above (narrowing the scope of the exclusion set forth in final § 1005.18(e)(3)(i)), new § 1005.18(e)(3)(iii) states that, if a consumer's account has been verified, a financial institution must comply with the provisions set forth in § 1005.11(c) in full with respect to any errors that satisfy the timing requirements of § 1005.11, or the modified timing requirements of § 1005.18(e), as applicable, including with respect to errors that occurred prior to verification. Thus, under the revised exclusion approach, once an account has been verified, financial institutions that take longer than 10 business days (or 20 business days, as applicable) to investigate a timely error report must provisionally credit the account with respect to an error, whether it occurred before or after the account was verified, in compliance with the applicable time limitations set forth in § 1005.11(c).

The Bureau agrees with industry commenters that it is unlikely that there will be many unauthorized transfers between the time a consumer acquires a prepaid account and the time the

consumer is able to register the account.<sup>505</sup> As such, the Bureau does not believe that a requirement to provide provisional credit protections for pre-registration transactions on a previously unregistered account should place a substantial burden on industry. The Bureau believes, however, that to the extent there are errors prior to verification, these could be significant—they could, for example, involve the initial amount the consumer loaded onto the account at acquisition, which could be a significant sum. Further, the Bureau notes that existing provisions in § 1005.11 already accommodate for potential fraudulent error claims asserted with respect to new accounts. Under both the proposed and final rule, new accounts would receive the benefit of the extended 20-business day investigation timeline set forth in § 1005.11(c)(3)(i).<sup>506</sup> Further, as set forth below, if, at the time the financial institution was supposed to provisionally credit the account, the financial institution had not yet completed its consumer identification and verification process, the financial institution is not required to extend provisional credit to that account.

The Bureau has made two other substantive revisions to address the timing requirements governing a financial institution's obligation to provide limited liability and error resolution rights once a consumer's account has been verified. First, the Bureau has removed a large portion of proposed comment 18(e)-4, which addressed the timelines for a consumer's timely report and a financial institution's timely investigation of an unauthorized transfer for accounts

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<sup>505</sup> Existing customer identification requirements, such as those imposed under the FinCEN Prepaid Access Rule, limit the functionality of most prepaid accounts prior to registration. Most GPR prepaid cards purchased online or by telephone require full customer identification and verification before a card is mailed to the consumer. For GPR cards purchased at retail, some financial institutions require the cardholder to call or go online to provide identifying information before the card can be used; if the verification process fails, the card functionality is limited to that of a gift card.

<sup>506</sup> The Bureau notes further that Regulation E permits financial institutions to ask for written confirmation of a consumer's oral error notification; if the institution does not receive the confirmation it seeks within 10 business days of an oral notice of error, the financial institution is not required to provide provisional credit with respect to that error claim. *See* § 1005.11(c)(2)(i)(A).

that were previously unverified. Because the final rule requires financial institutions to provide limited liability and error resolution rights to accounts regardless of whether or not they have been verified, the substance of that portion of the proposed comment is no longer applicable.

Second, as referenced above, the Bureau is adopting new § 1005.18(e)(3)(iii)(A) to address circumstances where a financial institution verifies an account *after* a consumer reports an unauthorized transfer. Specifically, new § 1005.18(e)(3)(iii)(A) addresses a situation where, at the time the financial institution is required to provisionally credit the account, the financial institution has not yet completed its identification and verification process with respect to that account. New § 1005.18(e)(3)(iii)(A) states that, under that circumstance, the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) (45 days) or (3)(ii) (90 days) to investigate and determine whether an error occurred, without provisionally crediting the account. The Bureau believes this clarification is necessary, as without it, a financial institution could be retroactively liable for failing to extend provisional credit in a timely manner pursuant to § 1005.11(c)(1), even though, under new § 1005.18(e)(3)(i), it was not required to extend such credit yet since it had not completed its consumer identification and verification process.

In addition to the changes outlined above, the Bureau has made several minor revisions for clarity and conformity with revisions to other parts of the rule.

#### *18(f) Disclosure of Fees and Other Information*

##### *The Bureau's Proposal*

EFTA section 905(a)(4) requires that financial institutions disclose to consumers, as part of an account's terms and conditions, any charges for EFTs or for the right to make such transfers. Existing § 1005.7(b)(5) implements this requirement by stating that, as part of the

initial disclosures, any fees imposed by a financial institution for EFTs or for the right to make transfers must be disclosed.

Proposed § 1005.18(f) would have required a financial institution to disclose any fees imposed by a financial institution for EFTs or the right to make such transfers and to include in its initial disclosures given pursuant to § 1005.7(b)(5) all other fees imposed by the financial institution in connection with a prepaid account. For each fee, a financial institution would have been required to disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, and, to the extent known, whether any third-party fees may apply. Proposed § 1005.18(f) would have also required a financial institution to include all of the information required to be disclosed in the long form disclosure and be provided in a form substantially similar to proposed Sample Form A-10(e).

#### *Comments Received*

The Bureau received comments from an industry trade association, issuing banks and a credit union, and program managers on this aspect of the proposal. These commenters generally supported full disclosure of all fees, not just fees related to EFTs. However, some expressed concern that proposed § 1005.18(f)'s inclusion of the long form disclosure would be duplicative, given that prepaid accounts would also be subject to other disclosure requirements under Regulation E as well. Specifically, these commenters argued that requiring financial institutions to provide the short form, long form, and initial disclosures is redundant and would result in information overload and consumer confusion. One issuing credit union urged the Bureau not to require financial institutions to include the long form disclosure in the initial disclosures, while an issuing bank suggested that the Bureau require the long form disclosure be delivered only as part of the initial disclosures. See the section-by-section analysis of § 1005.18(b) above for a

more detailed discussion of the comments received on the pre-acquisition long form disclosure generally.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing proposed § 1005.18(f), renumbered as § 1005.18(f)(1), generally as proposed, with certain modifications for clarity as explained below. The Bureau is adopting this provision pursuant to its authority under EFTA section 904(c) to adjust the requirement in EFTA section 905(a)(4), which is implemented in existing § 1005.7(b)(5), for prepaid accounts, and its authority under section 1032(a) of the Dodd-Frank Act. The Bureau believes that disclosure of all fees for prepaid accounts will, consistent with EFTA section 902 and section 1032(a) of the Dodd-Frank Act, assist consumers' understanding of the terms and conditions of their prepaid accounts, and ensure that the features of prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with a prepaid account.

The Bureau believes that it is important that the initial account disclosures provided to consumers list all fees that may be imposed in connection with a prepaid account. The Bureau believes that because consumers will likely reference these disclosures throughout their ongoing use of their prepaid accounts, it is important that these disclosures include all relevant fee information, not just those fees related to EFTs. In addition, the Bureau believes that most financial institutions are already disclosing all fees in the terms and conditions accompanying prepaid accounts. Regulation DD, which implements the Truth in Savings Act, requires that initial disclosures for deposit accounts include the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the

conditions under which the fee may be imposed.<sup>507</sup> Because some prepaid accounts as defined by this final rule may not also constitute accounts as defined under Regulation DD (or the corresponding regulations applicable to credit unions),<sup>508</sup> final § 1005.18(f)(1) in conjunction with the long form disclosure requirements in final § 1005.18(b)(4) will ensure that prepaid account consumers receive fee disclosures that include all fees, not just those related to EFTs or the right to make transfers.

Final § 1005.18(f)(1) provides that a financial institution must include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to final § 1005.18(b)(4). The Bureau is adopting new comment 18(f)-1, which clarifies that a financial institution may, but is not required to, disclose the information required by final § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in final § 1005.18(b) for the long form disclosure as part of its initial disclosures provided pursuant to § 1005.7; a financial institution may choose to do so, however, in order to satisfy other requirements in final § 1005.18.<sup>509</sup> The Bureau believes these revisions streamline the proposed language and make clearer the Bureau's intent as to when the long form disclosure itself must be provided.

Relatedly, the Bureau is adopting new § 1005.18(f)(2) to avoid any uncertainty as to when a change-in-terms notice is required. Specifically, this provision makes clear that the change-in-terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or final § 1005.18(f)(1). New § 1005.18(f)(2) also provides, however, that if a financial institution discloses the amount of a third-party fee in its

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<sup>507</sup> Regulation DD § 1030.4(b)(4).

<sup>508</sup> See 12 CFR part 707.

<sup>509</sup> See, e.g., final § 1005.18(b)(1)(ii) regarding the retail location exception.

pre-acquisition long form disclosure pursuant to final § 1005.18(b)(4)(ii) and initial disclosures pursuant to final § 1005.18(f)(1), the financial institution is not required to provide a change-in-terms notice solely to reflect a change in that fee amount imposed by the third party.

New § 1005.18(f)(2) also states that if a financial institution provides pursuant to § 1005.18(f)(1) the Regulation Z disclosures required by § 1005.18(b)(4)(vii) for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein.<sup>510</sup> New comment 18(f)-2 explains that the exception provided in new § 1005.18(f)(2) does not extend to any finance charges imposed on the prepaid account as described in final Regulation Z § 1026.4(b)(11)(ii) in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 that are required to be disclosed pursuant to § 1005.18(b)(4)(ii). This comment also references comment 18(b)(4)(ii)-1. See the section-by-section analysis of § 1005.18(b)(4)(vii) above for a detailed discussion of this disclosure requirement in the final rule.

#### *18(f)(3) Disclosures on Prepaid Account Access Devices*

The Bureau proposed § 1005.18(b)(7) to require a financial institution to disclose on the prepaid account device itself the name of the financial institution, a website URL, and a telephone number that a consumer can use to access information about the prepaid account. Proposed § 1005.18(b)(7) would have provided that, if a financial institution did not provide a physical access device in connection with a prepaid account, this disclosure would have been required to appear at the URL or other entry point a consumer must visit to access the prepaid

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<sup>510</sup> The Bureau notes that Regulation Z, 12 CFR 1026.60(e)(4) requires that the disclosures given pursuant to § 1026.60(e)(1), which are required to be provided when an overdraft credit feature is offered in connection with a prepaid account pursuant to § 1005.18(b)(4)(vii), must be accurate as of the date of printing. A variable APR is accurate if it was in effect within 30 days before printing.

account electronically. Proposed § 1005.18(b)(7) would have also stated that a disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device would not constitute a disclosure on the access device. Proposed comment 18(b)(7)-1 would have clarified that a consumer might use this information disclosed on the access device to contact a financial institution with a question about a prepaid account's terms and conditions, or to report when an unauthorized transaction has occurred involving a prepaid account.

The Bureau received no comments regarding these proposed requirements for disclosures on prepaid account devices. The Bureau is thus finalizing proposed § 1005.18(b)(7), renumbered as § 1005.18(f)(3), substantially as proposed, with modifications as to the location of this disclosure at an electronic entry point to the account. The Bureau has also removed from the regulatory text the explanation regarding disclosures made on an accompanying document and included it in final comment 18(f)-3, as discussed below. The Bureau is finalizing this provision pursuant to its authority under EFTA sections 904(a) and (c), and 905(a), and section 1032(a) of the Dodd-Frank Act, because it will assist consumers in better understanding the terms and conditions of their prepaid accounts, even after they have acquired the account.

The Bureau is also finalizing proposed comment 18(b)(7)-1, renumbered as comment 18(f)-3, with modifications to clarify the examples for why a consumer might use the information disclosed on an access device to contact the financial institution. Specifically, this comment now clarifies that the financial institution must provide this information to allow consumers to, for example, contact the financial institution to learn about the terms and conditions of the prepaid account, obtain prepaid account balance information, request a copy of transaction history pursuant to final § 1005.18(c)(1)(iii) if the financial institution does not

provide periodic statements pursuant to § 1005.9(b), or notify the financial institution when the consumer believes that an unauthorized EFT occurred as required by § 1005.7(b)(2) and final § 1005.18(d)(1)(ii). Final comment 18(f)-3 also clarifies that a disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device does not constitute a disclosure on the access device. The Bureau believes it is important for a consumer to be able to access fee information, as well as check an account's balance, and have a means for reporting unauthorized transactions, even after a consumer has acquired a prepaid account. Disclosing telephone numbers on an access device will allow consumers to access this information, even if they are not in the location where they retained the disclosures or are unable to access disclosures via the internet.

#### *18(g) Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards*

##### *The Bureau's Proposal*

The proposal would have added proposed § 1005.18(g)(1) to set forth timing rules related to when a credit card plan under Regulation Z could be linked to a prepaid account. The proposal also would have added proposed § 1005.18(g)(2) to set forth rules related to the terms applicable to a prepaid account when a credit card plan could be is linked to a prepaid account. For the reasons discussed below, the Bureau has not adopted proposed § 1005.18(g)(1). The Bureau is finalizing proposed § 1005.18(g)(2) as § 1005.18(g) with revisions, as discussed below. For organizational purposes, proposed § 1005.18(g)(2) is discussed first, followed by a discussion of proposed § 1005.18(g)(1).

Proposed § 1005.18(g)(2) would have set forth rules related to the terms applicable to a prepaid account when a credit card plan could be linked to a prepaid account. Specifically,

proposed § 1005.18(g)(2) would have provided that where a credit card plan subject to Regulation Z may be offered at any point to the consumer with respect to a prepaid account that is accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions to a consumer's account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account.

The proposal would have added proposed comment 18(g)-1 to cross-reference provisions in Regulation Z that would have provided guidance on when a program would have constituted a credit plan under the proposal (*see* proposed Regulation Z § 1026.2(a)(20) and proposed Regulation Z comment 2(a)(20)-2.ii) and would have provided guidance on when an access device for a prepaid account would have been a credit card under the proposal (*see* existing Regulation Z § 1026.2(a)(15)(i), and proposed Regulation Z comment 2(a)(15)-2.i.F).

Proposed comment 18(g)-2.i would have provided guidance on the applicability of the restriction in proposed § 1005.18(g)(2). Specifically, proposed comment 18(g)-2.i would have explained that a financial institution may offer different terms on different prepaid account products, where the terms may differ between a prepaid account product where a credit card plan subject to Regulation Z cannot be linked to the prepaid account, and a prepaid account product where a credit card plan subject to Regulation Z can be linked to the prepaid account. Nonetheless, on the prepaid account product where a credit card plan subject to Regulation Z may be offered at any point to the consumer that is accessed by an access device for the prepaid account that is a credit card under Regulation Z, a financial institution that establishes or holds such a prepaid account would have been prohibited from applying different terms and conditions

to a consumer's account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account. Proposed comment 18(g)-2.ii would have explained that proposed § 1005.18(g)(2) prevents a financial institution from waiving fees or reducing the amount of fees that do not relate to an extension of credit, carrying a credit balance, or credit availability, if the consumer elects to link the prepaid account to a credit card plan.

Proposed comment 18(g)-2.ii would have provided examples of account terms and conditions that would be subject to the restrictions in proposed § 1005.18(g)(2). The proposed examples in comment 18(g)-2.ii would have included fees assessed on the prepaid account that do not relate to an extension of credit, carrying a credit balance, or credit availability, including any transaction fees for transactions that are completely funded by the prepaid account and any one-time or periodic fees imposed for opening or holding a prepaid account. The proposed comment also would have cross-referenced proposed Regulation Z § 1026.4(b)(2) and proposed Regulation Z comment 4(b)(2)-1.iii and iv, which would have provided additional guidance on fees that would have related to an extension of credit, carrying a credit balance, or credit availability.

Proposed comment 18(g)-2.iii also would have provided examples of account terms and conditions that are not subject to the restrictions in proposed § 1005.18(g)(2) because these terms and conditions would have related to an extension of credit, carrying a credit balance, or credit availability. The proposed examples would have included (1) fees or charges assessed on the prepaid account applicable to transactions that access the credit card plan subject to Regulation Z, including transaction fees for transactions that either access just the credit card plan, or access both the prepaid account and the credit card plan; and (2) any one-time or periodic fees imposed

for the issuance or availability of the credit card plan subject to Regulation Z. Proposed comment 18(g)-2.iv would have provided examples that illustrate the prohibition in proposed § 1005.18(g)(2).

*Comments Received*

The Bureau did not receive any industry comments on this specific aspect of the proposal. One consumer group commenter expressed concern that under proposed comment 18(g)-2.i, a financial institution may offer different terms on two separate card programs, one that has the potential for a credit feature accessed by prepaid card that is a credit card and one that does not. This commenter expressed concern that a financial institution could steer consumers who want to activate such a credit feature to an entirely different prepaid account that has additional fees or other features, including one that is not even offered to the general public, but is only offered to consumers who have asked about or likely to opt in to such a credit feature.

This commenter also noted the partial list of terms and conditions set forth in proposed comment 18(g)-2 where a financial institution under the proposal would not have been able to vary these terms and conditions between consumers who do and do not link a credit feature to the prepaid account that would make the prepaid card into a credit card. The commenter urged the Bureau to add load or transfer fees to this list of fees. The commenter believed that a financial institution should not be permitted to charge a higher or lower fee on the prepaid account for loading funds if the consumer links the credit feature to his or her prepaid account.

## *The Final Rule*

The Bureau is finalizing proposed § 1005.18(g)(2), renumbered as § 1005.18(g), with revisions for consistency with final Regulation Z §§ 1026.4 and 1026.61.<sup>511</sup> The Bureau is not adopting proposed § 1005.18(g)(1), for reasons discussed below. New § 1005.18(g)(1) provides that except as provided in new § 1005.18(g)(2), with respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new Regulation Z § 1026.61, a financial institution must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature. New § 1005.18(g)(2) provides that a financial institution is not prohibited under new § 1005.18(g)(1) from imposing a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. As discussed in the section-by-section analysis of Regulation Z § 1026.4(b)(11)(ii) below, new Regulation Z § 1026.4(b)(11)(ii) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z

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<sup>511</sup> The Regulation Z proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1005.18(g)(2) would have provided that where a credit card plan subject to Regulation Z that is accessed by such an account number may be offered at any point to the consumer, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions to a consumer’s account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account. Proposed comment 18(g)-1 would have discussed when these account numbers were credit cards under Regulation Z. Proposed comment 18(g)-2 would have provided guidance how proposed § 1005.18(g)(2) would have applied to credit card plans accessed by these account numbers. For the reasons set forth in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the final rule does not adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z. Thus, provisions in proposed § 1005.18(g)(2) and proposed comments 18(g)-1 and -2 related to these account numbers have not been adopted.

§ 1026.61, any fee or charge imposed on the asset feature of the prepaid account is a finance charge to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card.

As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adopting new § 1005.18(g) pursuant to its authority under EFTA sections 904(a) and (c). In implementing its overdraft opt-in rule under § 1005.17, the Board required that “[a] financial institution shall provide to consumers who do not affirmatively consent to the institution’s overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.”<sup>512</sup> The Board recognized that without this requirement, “some institutions could otherwise effectively compel the consumer to provide affirmative consent to the institution’s payment of overdrafts for ATM and one-time debit card transactions by providing consumers who do not opt in with less favorable terms, conditions, or features than consumers who do opt in.”<sup>513</sup>

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<sup>512</sup> See existing § 1005.17(b)(3), which was numbered as § 205.17(b)(3) in the Board’s rules.

<sup>513</sup> 74 FR 59033, 59044 (Nov. 17, 2009).

The Bureau believes that a similar requirement should be extended here for similar reasons. As discussed in the section-by-section analysis of Regulation Z § 1026.12(a)(1) below, a covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with new Regulation Z § 1026.61(c). New Regulation Z § 1026.61(c) requires that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

The Bureau believes some institutions could otherwise effectively compel the consumer to apply for or request a covered separate credit feature as described above by providing consumers who do not make such an application or request with less favorable terms, conditions, or features than consumers who do make such applications or requests. For example, an institution could waive the monthly fee for holding a prepaid account for consumers who apply for or request that a covered separate credit feature be connected to the prepaid account, but not waive the monthly fee for consumers who do not make such an application or request.

The Bureau is revising the commentary to § 1026.18(g) from the proposal to be consistent with new Regulation Z §§ 1026.4(b)(11)(ii) and 1026.61. New comment 18(g)-1 provides that new Regulation Z § 1026.61 defines the term covered separate credit feature accessible by a hybrid prepaid-credit card. The Bureau also is adding new comment 18(g)-2.i to

provide that new Regulation Z § 1026.61(a)(5)(ii) defines the term “asset feature.” Under new Regulation Z § 1026.61(a)(5)(ii), the term “asset feature” means an asset account that is a prepaid account, or an asset subaccount of a prepaid account. New comment 18(g)-2.ii provides that new § 1005.18(g) applies to account terms, conditions, and features that apply to the asset feature of the prepaid account. New § 1005.18(g) does not apply to the account terms, conditions, or features that apply to the covered separate credit feature, regardless of whether it is structured as a separate credit account or as a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account.

The final rule moves proposed comment 18(g)-2.i to comment 18(g)-3 and revises it to be consistent with new Regulation Z § 1026.61. New comment 18(g)-3 provides that under new § 1005.18(g), a financial institution may offer different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts. The Bureau notes concerns expressed by the consumer group commenter that financial institutions could steer consumers who want to activate a credit feature accessible by a prepaid card that is a credit card to an entirely different prepaid account that has additional fees or other features, including one that is not even offered to the general public, but is only offered to consumers who have asked about or likely to opt in to such a credit feature. Nonetheless, at this time, the Bureau retains the flexibility for financial institutions to impose different fees on different prepaid account

programs. The Bureau will monitor whether financial institutions are structuring prepaid account programs in an attempt to evade the provisions in new § 1005.18(g).

The final rule moves proposed comment 18(g)-2.ii to new comment 18(g)-4 and revises it to be consistent with new Regulation Z § 1026.61. New comment 18(g)-4 provides that account terms, conditions, and features subject to new § 1005.18(g) include, but are not limited to (1) interest paid on funds deposited into the asset feature of the prepaid account, if any; (2) fees or charges imposed on the asset feature of the prepaid account;<sup>514</sup> (3) the type of access device provided to the consumer. For instance, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit feature that is accessible by a hybrid prepaid-credit card, while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature; (4) minimum balance requirements on the asset feature of the prepaid account; or (5) account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

The final rule moves proposed comment 18(g)-2.iii through iv to new comment 18(g)-5 and revises it to be consistent with final Regulation Z §§ 1026.4 and 1026.61. New comment 18(g)-5.i provides that with respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new Regulation Z § 1026.61, new § 1005.18(g) only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program that do not have a such a credit feature. This comment explains that new § 1005.18(g) prohibits a financial institution from imposing a lower fee or charge on prepaid

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<sup>514</sup> See new comment 18(g)-5 discussed below for additional guidance on how new § 1005.18(g) applies to fees or charges imposed on the asset feature of the prepaid account.

accounts with a covered separate credit feature than the amount of a comparable fee or charge it charges on prepaid accounts in the same prepaid account program without such a credit feature.

This comment also states that with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61, a fee or charge imposed on the asset feature of the prepaid account generally is a finance charge under final Regulation Z § 1026.4(b)(11)(ii) to the extent that the amount of the fee or charge exceeds the amount of a comparable fee or charge imposed on prepaid accounts in the same prepaid account program that do not have such a credit feature.

As discussed in more detail below, new comment 18(g)-5.ii through iv also provides illustrations of how new § 1005.18(g) applies to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61.

#### *Transaction Fees to Access Prepaid Account Funds*

New comment 18(g)-5.ii provides three examples that illustrate how new § 1005.18(g) applies to per transaction fees for each transaction to access funds available in the asset feature of the prepaid account. For example, assume that a consumer has selected a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered. For prepaid accounts without such a credit feature, the financial institution charges \$0.50 for each transaction conducted that accesses funds available in the prepaid account. For prepaid accounts with a credit feature, the financial institution also charges \$0.50 on the asset feature for each transaction conducted that accesses funds available in the asset feature of the prepaid account. New comment 18(g)-5.ii.A provides that for purposes of new § 1005.18(g), the

financial institution is imposing the same fee for each transaction that accesses funds in the asset feature of the prepaid account, regardless of whether the prepaid account has a covered separate credit feature accessible by a hybrid prepaid-credit card. New comment 18(g)-5.ii.A also states that with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in new Regulation Z § 1026.61, the \$0.50 per transaction fee imposed on the asset feature for each transaction that accesses funds available in the asset feature of the prepaid account is not a finance charge under new § 1026.4(b)(11)(ii). This comment cross-references new Regulation Z § 1026.4(b)(11)(ii) and comment 4(b)(11)(ii)-1 for a discussion of the definition of finance charge with respect to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61.

As set forth in new comment 18(g)-5.ii.B, if in the above example with respect to prepaid accounts with a covered separate credit feature, the financial institution imposes a \$1.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account for prepaid accounts with a covered separate credit feature, the financial institution is permitted to charge a higher fee under new § 1005.18(g)(2) on prepaid accounts with a covered separate credit feature than it charges on prepaid accounts without such a credit feature. The \$0.75 excess in this example is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

Nonetheless, as discussed in new comment 18(g)-5.ii.C, if in the above example for prepaid accounts with a covered separate credit feature, the financial institution imposes a \$0.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account, the financial institution is in violation of new § 1005.18(g) because it is imposing a

lower fee on the asset feature of a prepaid account with a covered separate credit feature than it imposes on prepaid accounts in the same program without such a credit feature.

#### *Fees Related to Covered Separate Credit Features*

New comment 18(g)-5.iii and iv provides additional guidance on the type of fees that are considered comparable fees to fees imposed on prepaid accounts for credit extensions from covered separate credit features accessible by hybrid prepaid-credit cards. This guidance is consistent with the guidance provided in Regulation Z comment 4(b)(11)(ii)-1.ii and iii with respect to the definition of finance charge in new Regulation Z § 1026.4(b)(11)(ii).

In developing these rules, as set forth in new Regulation Z § 1026.61(a)(2)(i)(B) and comment 61(a)(2)-4.ii, the Bureau was conscious that there were two potentially distinct types of credit extensions that could occur on a covered separate credit feature. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's website to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Because the two scenarios involve different sets of activities, the range of fees that are likely to be triggered is also likely to be different. New comment 18(g)-5.iii and iv therefore provides separate guidance on the comparable fees under new § 1005.18(g) with respect to each of the two types of credit extensions.

*Credit extensions from the covered separate credit feature within the course of a transaction.* Comment 18(g)-5.iii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Specifically, comment 18(g)-5.iii provides that where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing such a transaction, any per transaction fees imposed on the asset feature of the prepaid account, including load and transfer fees, with such a credit feature should be compared to the per transaction fees for each transaction to access funds in the asset feature of a prepaid account that is in the same prepaid account program but does not have such a credit feature. Thus, per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of new § 1005.18(g).

To illustrate these principles, comment 18(g)-5.iii sets forth a set of several examples explaining how new § 1005.18(g) applies in situations in which credit is accessed from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New comment 18(g)-5.iii.A provides the following example: Assume that a prepaid account issuer charges \$0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Also, assume that the prepaid account issuer charges \$0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered

separate credit feature in the course of a transaction. In this case, for purposes of new § 1005.18(g), the financial institution is imposing the same fee for each transaction it pays, regardless of whether the transaction accesses funds available in the asset feature of the prepaid accounts without a covered separate credit feature, or is paid from credit from a covered separate credit feature in the course of authorizing, settling or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Also, for purposes of new Regulation Z § 1026.4(b)(11)(ii), the \$0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

As described in new comment 18(g)-5.iii.B, if the prepaid account issuer in the above example instead charged \$1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is permitted to charge the higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The \$0.75 excess is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

Nonetheless, as discussed in new comment 18(g)-5.iii.C, if in the above example, the financial institution imposes \$0.25 on the asset feature of the prepaid account for each transaction conducted where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is in violation of new § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account

with a covered separate credit feature than the amount of the comparable fee it imposes on prepaid accounts in the same program without such a credit feature.

Comment 18(g)-5.iii.D provides another example. Assume a prepaid account issuer charges \$0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Assume also that the prepaid account issuer charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of \$1.75 per transaction) must be compared to the \$0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. The financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The \$1.25 excess is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

Comment 18(g)-5.iii.E provides the last in this set of examples. Assume a prepaid account issuer charges \$0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature, and charges a load fee of \$1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature. Assume also that the prepaid account issuer charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts

in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of \$1.75 per transaction) must be compared to the per transaction fee (*i.e.*, the fee of \$0.50) to access funds available in the asset feature of the prepaid accounts on a prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted by drawing funds into a prepaid account from some other source (*i.e.*, the fee of \$1.25) are not comparable for purposes of new § 1005.18(g). The financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction to access funds available in the asset feature of the prepaid accounts without such a credit feature. The \$1.25 excess is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

For the reasons set forth in more detail in the section-by-section analysis of Regulation Z § 1026.4(b)(11)(ii) below, the Bureau believes that the above standard for determining comparable fees with respect to fees or charges imposed on the asset feature of prepaid accounts accessible by hybrid prepaid-credit cards will help prevent evasion of the rules set forth in the final rule with respect to hybrid prepaid-credit cards. The Bureau believes that many prepaid cardholders who wish to use covered separate credit features may not have other deposit accounts or savings accounts from which they can transfer funds to prevent an overdraft on the prepaid account in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers to prevent an overdraft on the prepaid account. As a result, the Bureau does not believe that a per transaction fee for credit drawn or transferred from a covered separate credit feature accessible

by a hybrid prepaid-credit card during the course of a transaction should be allowed to be compared with a per transaction fee for a service that many prepaid cardholders who wish to use covered separate credit features may not be able to use. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to per transaction fees imposed on prepaid accounts for transactions that access funds in the prepaid account in the same prepaid account program that does not have a covered separate credit feature. All prepaid account holders can use prepaid accounts to make transactions that access available funds in the prepaid account, so these types of transactions will be available to all prepaid account holders.

*Credit extensions from a covered separate credit feature outside the course of a transaction.* Comment 18(g)-5.iv provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's website to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

Comment 18(g)-5.iv provides that load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of new § 1005.18(g).

Comment 18(g)-5.iv provides examples to illustrate this guidance. The first example set forth in comment 18(g)-5.iv.A relates to loads to transfer funds from a non-covered separate credit feature. Specifically, assume a prepaid account issuer charges a \$1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.*, the fee of \$1.25) are compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.*, the fee of \$0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.*, the fee of \$1.25) is not comparable for purposes of new § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The \$1.25 fee imposed on the asset feature of the prepaid account with a separate credit feature is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

As set forth in comment 18(g)-5.iv.B, a second example relates to a one-time transfer of funds from a separate asset account. In this second example, assume that a prepaid account

issuer charges a \$1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.*, the fee of \$1.25) are compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.*, the fee of \$0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.*, the fee of \$1.25) is not comparable for purposes of new § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under new § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The \$1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge under new Regulation Z § 1026.4(b)(11)(ii).

For the reasons set forth in more detail in the section-by-section analysis of Regulation Z § 1026.4(b)(11)(ii) below, the Bureau believes that many prepaid accountholders who wish to use covered separate credit features may not have other asset accounts, such as checking accounts or savings accounts, or other credit accounts, from which they can draw or transfer asset funds or credit for deposit into the prepaid account outside the course of a transaction

conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that load or transfer fees for credit from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction should be allowed to be compared with a load or transfer fees from an asset account, or non-covered separate credit feature, outside the course of a transaction. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. The Bureau believes that such direct deposit methods commonly are offered on most types of prepaid accounts and that most prepaid accountholders who wish to use covered separate credit feature are able to avail themselves of these methods.<sup>515</sup>

*Proposed § 1005.18(g)(1)*

The proposal would have added proposed § 1005.18(g)(1) that generally would have restricted financial institutions that establish or hold prepaid accounts from linking a credit card plan under Regulation Z to a prepaid account, or allowing the prepaid account to be linked to such a credit card plan, until 30 days after the prepaid account has been registered. Specifically, proposed § 1005.18(g)(1)(i) would have restricted financial institutions that establish or hold prepaid accounts from providing solicitations or applications to holders of prepaid accounts to open credit card accounts subject to Regulation Z, prior to 30 days after the prepaid accounts have been registered. For purposes of proposed § 1005.18(g)(1), the term *solicitation* would have meant an offer by the person to open a credit or charge card account subject to Regulation Z that does not require the consumer to complete an application. A “firm offer of credit” as

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<sup>515</sup> The Bureau understands that prepaid account issuers currently offering overdraft services condition consumer eligibility on receipt of a regularly-occurring direct deposit in excess of a specified threshold.

defined in section 603(l) of the Fair Credit Reporting Act<sup>516</sup> for a credit or charge card would be a solicitation for purposes of proposed § 1005.18(g)(1).

Proposed § 1005.18(g)(1)(ii) would have restricted financial institutions that establish or hold prepaid accounts of consumers from allowing prepaid access devices to access credit card plans subject to Regulation Z that would make the prepaid access devices into credit cards at any time prior to 30 days after the prepaid accounts have been registered. Proposed § 1005.18(g)(1)(iii) would have restricted financial institutions that establish or hold prepaid accounts of consumers from allowing credit extensions from credit card plans subject to Regulation Z to be deposited in prepaid accounts, where the credit plans are accessed by account numbers that are credit cards under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, prior to 30 days after the prepaid account has been registered. Proposed § 1005.18(g)(1)(iii) was intended to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the open-end account using an account number only, and (3) the advance is deposited into the prepaid account.

Proposed § 1005.18(g)(1) would have complemented a similar proposed provision in Regulation Z, proposed § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule), which would have required credit card issuers to wait at least 30 days after the prepaid account has been registered before the card issuer may provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account that will be accessed by the prepaid card that is a credit card under Regulation Z, or by an account number that is a credit card under

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<sup>516</sup> 15 U.S.C. 1681a(l).

Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

In the proposal, the Bureau noted that proposed § 1005.18(g)(1) and proposed Regulation Z § 1026.12(h) would have overlapped in cases where the credit card plan is accessed by a prepaid card or the credit card plan is being offered by a financial institution that holds the prepaid account and is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In those cases, the financial institution would have been a “card issuer” under existing Regulation Z § 1026.2(a)(7)<sup>517</sup> and the Bureau proposed that both the requirements of proposed Regulation Z § 1026.12(h) and proposed Regulation E § 1005.18(g)(1) would have applied to the financial institution who also is a card issuer. Nonetheless, the Bureau intended proposed Regulation E § 1005.18(g)(1) and proposed Regulation Z § 1026.12(h) to impose the same restrictions in those situations. In cases where the credit card account is being offered by a person other than the person who holds the prepaid account and is being accessed by an account number as described above, the person issuing the account number that is a credit card (*i.e.*, card issuer) would have been required to comply with proposed Regulation Z § 1026.12(h). In addition, the financial institution that holds the prepaid account would have been required to comply with proposed § 1005.18(g)(1).

The Bureau has not finalized proposed § 1005.18(g)(1) because the Bureau believes the amendment is unnecessary in light of other revisions in the final rule, as discussed below. As

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<sup>517</sup> Under the proposal, with respect to a prepaid card that is a credit card where the card accesses a credit plan that is offered by a third party, a person offering the credit plan that is accessed by the prepaid card would be an agent of the person issuing the prepaid card and thus would be a card issuer with respect to the prepaid card that is a credit card. *See* Regulation Z proposed comment 2(a)(7)-1.ii. In this case, both the person offering the credit plan and the financial institution issuing the prepaid card would be card issuers under Regulation Z § 1026.2(a)(7).

discussed in more detail in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the Regulation Z proposal provided that the term “credit card” would have included an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor. For the reasons set forth in the section-by-section analysis of Regulation Z § 1026.2(a)(15)(i) below, the Bureau has decided not to adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z. Thus, the Bureau believes that the provisions in proposed § 1005.18(g)(1) are not needed to address covered separate credit features accessible by hybrid prepaid-credit cards because those credit features are addressed in new Regulation Z § 1026.61(c).

As discussed in more detail in the section-by-section analysis of Regulation Z § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new Regulation Z § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new Regulation Z § 1026.61 and a credit card under final Regulation Z § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New Regulation Z § 1026.61(c) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the

consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

With respect to a hybrid prepaid-credit card, the financial institution would be a “card issuer” under final Regulation Z § 1026.2(a)(7).<sup>518</sup> The Bureau does not believe that it is necessary to include similar provisions to proposed § 1005.18(g)(1) in Regulation E that would cover a financial institution that offers a hybrid prepaid-credit card that accesses a covered separate credit feature. In this case, the financial institution is a card issuer under final Regulation Z § 1026.2(a)(7) and is covered by the provisions in Regulation Z that apply to card issuers, including new Regulation Z § 1026.61(c).

#### *18(h) Effective Date*

##### *The Bureau’s Proposal*

The Bureau proposed, in general, a nine-month effective date for its rulemaking on prepaid accounts. Specifically, proposed § 1005.18(h)(1) would have stated that, except as provided in proposed § 1005.18(h)(2), the requirements of EFTA and Regulation E, as modified by proposed § 1005.18, would have applied to prepaid accounts nine months following the publication of the Bureau’s final rule in the *Federal Register*. This would have included the disclosure requirements in proposed § 1005.18(b) and (f)(2), and would have applied to prepaid account packaging, access devices, and other physical materials that are manufactured, printed, or otherwise prepared in connection with a prepaid account on or after nine months. Thus,

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<sup>518</sup> Under the final rule in Regulation Z comment 2(a)(7)-1.ii, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new Regulation Z § 1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer as those terms are defined in new Regulation Z § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card. In this case, both the person offering the covered separate credit feature and the financial institution issuing the prepaid card are card issuers under final Regulation Z § 1026.2(a)(7).

proposed § 1005.18(h)(1) would have generally made applicable to all prepaid accounts the requirements of EFTA and Regulation E, as modified by the provisions of proposed § 1005.18, including those governing disclosures, access to prepaid account information, limited liability and error resolution, among others, after nine months. For instance, the new disclosure requirements would have applied immediately at the nine-month mark for disclosures and other information made available to consumers online or by telephone.

However, this first proposed effective date would not have required immediate destruction or removal of previously printed materials because it would have only required packages, cards, and other materials printed on or after the nine month date to comply with the rule's disclosure requirements in proposed § 1005.18(b) and (f)(2). Instead, the Bureau proposed a delayed effective date for certain additional packaging-related changes, which would have been 12 months following the publication of the final rule in the *Federal Register*. This second date, in proposed § 1005.18(h)(2), would have required full compliance with the rule's disclosure requirements and would have prohibited the offering, sale, or otherwise making available of prepaid accounts and related packaging, access devices, or other printed materials without such disclosures. As a result, by 12 months, financial institutions and their third-party distribution agents would have had to remove from retail store shelves and other distribution channels any prepaid accounts with disclosures not fully in compliance with the rule.

For prepaid account packaging, access devices, and other printed materials created prior to this first effective date, the Bureau believed that nothing it proposed would trigger requirements under existing Regulation E to provide a change-in-terms notice insofar as the proposal would not have required increased fees, liability, or fewer types of available EFTs for

consumers.<sup>519</sup> If, however, financial institutions wished to avail themselves of the more limited error resolution or limited liability requirements for existing unregistered prepaid accounts where their existing terms provide greater protections, the Bureau noted that a change-in-terms notice might be required.

The Bureau also noted that, independent of the proposed rule, financial institutions that wish to make substantive changes to prepaid account fees or terms are often required by other laws to remove from retail stores and other distribution channels prepaid account packaging, access devices, and other printed materials that their changes render inaccurate, and to provide notice of those changes to consumers with existing prepaid accounts. Such laws may include operative state consumer protection and contract laws.

#### *Comments Received*

The Bureau received many comments from industry, including trade associations, issuing banks, credit unions, program managers, payment networks, a payment processor, and a law firm writing on behalf of a coalition of prepaid issuers, arguing that the proposed nine- and 12-month compliance periods would be insufficient to implement the changes that would be required under the proposal.

These commenters argued that, due to the perceived complexity of the proposal, industry would need more time to review the requirements of the final rule and implement extensive system and operational changes, which would include, among other things, revising internal procedures and training staff. Commenters recommended a range of time periods, starting at 12 months but generally converging around 18 to 24 months. One trade association, however, said that it found the proposed nine- and 12-month effective dates reasonable. Commenters stated

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<sup>519</sup> See § 1005.8(a) and 12 CFR 1030.5(a)(1).

that the rule will affect the entire prepaid industry at the same time and will require coordination and planning among all industry participants, including third-party vendors. They explained that high demand for packaging manufacturers would strain resources and suppliers and cause significant delays in the production process. Industry commenters also expressed concern about the costs and waste associated with pulling and replacing packaging with non-compliant disclosures. These commenters stated that a longer compliance period would ensure that industry has time to comprehensively implement the required changes, with minimal business disruption, and avoid the destruction of millions of card packages. These commenters also urged the Bureau to consider holiday season system freezes and peak time demands when setting an effective date for the final rule, as well as impacts related to the roll-out of EMV-enabled cards and POS terminals. These commenters explained that, as an industry practice, various entities involved in the prepaid value chain observe a “freeze period” during which no major system updates should take place, often due to increased volumes during certain times of the year. The exact periods may differ for financial institutions, program managers, data processors, and retail stores, but combined generally span October through April.

Several commenters explained that industry would need more time than the Bureau proposed to implement necessary system and operational changes, in order to comply with specific aspects of the proposal. For example, with respect to disclosures, several commenters stated that the proposed requirements would, among other things, require industry to design new disclosures that would appear on packaging materials, which would need to be newly produced, and on websites and mobile applications, which would need to be redesigned and reprogrammed. These commenters explained that providing disclosures prior to the acquisition of government benefit accounts, payroll card accounts, and campus cards would require revisions to current

procedures, training of third parties and employees, enhanced monitoring of third-party practices, and the removal and replacement of preprinted card stock. To help mitigate the costs that would be associated with destroying unused packaging material, several credit unions and credit union trade associations urged the Bureau to consider a compliance period driven by the expiration date on the card stock. These commenters explained that some credit unions purchase card stock four years in advance of the last expiration date, as cards are sold with a three-year expiration date range. One industry trade association suggested that the Bureau grant a safe harbor for any prepaid account packaging manufactured in the ordinary course of business within 90 days of publication of the final rule in the *Federal Register*. Another industry trade association suggested that the Bureau grant an exemption for cards issued before a certain date, allow financial institutions to exhaust the card stock and notify consumers in a reasonable manner that additional rights apply to the existing cards, or impose a “manufacture date” after which all cards manufactured must comply with the final rule. A payment network suggested that the Bureau grant a safe harbor and allow financial institutions to keep existing physical cards stocked at retail locations and notify consumers of any changes either by sending change-in-terms notices or by obtaining consumer consent upon registration. This commenter added that this approach would both cure outdated pricing on card packaging and also allow financial institutions to introduce new features that have a fee.

Regarding the proposed access to account information requirements, several commenters stated that displaying the proposed summary totals of fees, deposits, and debits for the prior calendar month and the calendar year to date in proposed § 1005.18(c)(4) would require financial institutions to map the fee information for each cardholder, redesign online transaction history pages, and change the formatting for paper statements. With respect to the proposed requirement

to provide 18 months of account transaction history under the periodic statement alternative in proposed § 1005.18(c)(1)(ii) and (iii), several industry commenters stated that making the changes necessary to provide 18 months of account history nine months after publication of the final rule would be problematic and time-consuming. These commenters explained that financial institutions may not currently have 18 months of account transaction history for prepaid accounts and, if they do, older information is likely archived and not easily accessible. These commenters also explained that financial institutions would need to redesign systems to be capable of supporting 18 months of account transaction history and would need to train staff on the new systems and capabilities.

Several commenters stated that submitting prepaid account agreements to the Bureau and posting agreements on the issuer's website pursuant to proposed § 1005.19(b) and (c), respectively, would require financial institutions to create a process for updating agreements on a quarterly basis, develop a periodic monitoring process to ensure accuracy of these agreements, create a location on their websites for the posting of agreements, and develop a process for maintaining inventory of these agreements.

Regarding the proposed changes to the treatment of overdraft services and certain other credit plans for prepaid accounts, several industry commenters explained that, to avoid coverage under the rule as proposed for inadvertent overdrafts such as those resulting from force pay transactions, financial institutions would either need to block authorization requests where the final transaction amount is not known in advance (such as gasoline purchases at automated fuel dispensers) and require cardholders to pay in advance for every transaction that could potentially result in an inadvertent overdraft, or add transaction audit steps for merchant-initiated transactions to ensure that merchants have a current, accurate authorization before any prepaid

card transaction is processed. One program manager that currently offers overdraft services on some of its prepaid accounts requested a compliance period of at least 24 months to develop and test new systems for delivering the required disclosures (*e.g.*, periodic statements for prepaid cards that are also deemed a credit card) and to perform underwriting for complying with ability-to-pay requirements under Regulation Z. For existing prepaid accounts that offer overdraft services, this commenter urged the Bureau to establish at least a 6-month period during which overdraft services could continue to be offered without being subject to the final rule, so that consumers could be given sufficient notice regarding the changes to allow them to make alternative financial arrangements as necessary. This commenter explained, however, that if the Bureau established an effective date for a period longer than nine months (such as 24 months), the 6-month wind-down period would be less important.

Several commenters suggested modifications to the proposed effective dates that they believed would reduce the potential compliance burden on industry. A few industry commenters suggested a longer compliance period for products sold at retail and for portions of the rule that require system changes. One payment network and a law firm writing on behalf of a coalition of prepaid issuers urged the Bureau to allow consumers to continue using their existing prepaid cards until the card expires, which the payment network believed would allow financial institutions to avoid destroying millions of cards consistent with the spirit of what is commonly referred to as the “ECO Card Act.”<sup>520</sup> For existing vendor contracts that may be in violation of

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<sup>520</sup> Public Law 111-209 (2010). This act amended the statutory date by which the Board’s regulations implementing of the gift card provisions of the Credit CARD Act were required to become effective. The Credit CARD Act had originally called for an effective date of August 22, 2010 for the Gift Card Rule; the ECO Card Act, which was enacted on July 27, 2010, extended that effective date. Specifically, the ECO Card Act extended the effective date to January 31, 2011 for gift certificates, store gift cards, and general-use prepaid cards that were produced prior to April 1, 2010, provided certain conditions (including regarding in-store signage) were met. *See also* 75 FR 66644 (Oct. 29, 2010); Press Release, Network Branded Prepaid Card Ass’n, *Senate Passed, By Unanimous Consent, NBPCA Backed H.R. 5502, the ECO Card Act* (July 14, 2010), available at <http://www.nbpc.com/en/News->

the final rule, one state employment department and an industry commenter urged the Bureau to either grandfather in existing contracts until they expire, or provide a reasonable timeframe in which to amend or rebid the contracts. One industry commenter requested that the final rule clearly state when revisions to Regulation Z will become effective to avoid confusion for financial institutions that are also subject to 32 CFR part 232, the regulation implementing the MLA,<sup>521</sup> which the DOD proposed shortly before the Bureau released its proposed rulemaking on prepaid accounts.

The Bureau received few comments from consumer groups regarding this portion of the proposal. One consumer group suggested that the Bureau could allow financial institutions to implement the access to account information requirements set forth in § 1005.18(c) on a rolling basis. This commenter explained that under such scenario, a financial institution would not be required to provide account information from prior to the final rule's effective date, but instead could begin accumulating it on the effective date until the financial institution has the information needed for the full time periods required by the rule.

### *The Final Rule*

Upon consideration of the comments received, the Bureau believes it is appropriate to provide a longer implementation period in light of some of the logistical issues raised by industry. The Bureau believes it is important to ensure that industry has sufficient time to implement the changes required by this final rule, but it is also important not to delay the important consumer protections the rule sets forth any longer than necessary. The Bureau has

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Room/Press-Releases/ECO-Card-Act.aspx (stating that passage of the ECO Card Act granted industry “a meaningful period to transition until January 31, 2011 thereby avoiding the needless destruction of hundreds of millions of cards and packaging that would have resulted in millions of dollars in losses . . . .”)

<sup>521</sup> See 79 FR 58602 (Sept. 29, 2014). The DOD subsequently finalized this rulemaking, which became effective on October 1, 2015 (compliance required by October 3, 2016). See 80 FR 43560 (July 22, 2015) and part II.C above.

thus extended the general effective date of this final rule from the proposed nine months following the publication of the rule in the *Federal Register* to approximately 12 months following issuance of the final rule. The Bureau has also made a number of modifications and accommodations in the rule to address particular concerns raised by commenters.

Specifically, the Bureau's final rule on prepaid accounts, as set forth herein, will generally become effective on October 1, 2017, with a few exceptions as discussed below. Under this final rule (unlike the proposal), financial institutions are not required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. The final rule also includes specific provisions addressing how financial institutions should provide notices of changes and updated initial disclosures in certain circumstances. Further, this final rule includes an accommodation for financial institutions that do not have readily available the data necessary to comply fully with the periodic statement alternative requirements in final § 1005.18(c)(1)(ii) and (iii) or the summary totals of fees requirement in final § 1005.18(c)(5) as of October 1, 2017. In addition, the requirement to submit prepaid account agreements to the Bureau pursuant to final § 1005.19(b) is delayed until October 1, 2018.

The Bureau has included several provisions in regulatory text and commentary to make clearer these specific modifications to the rule's general October 1, 2017 effective date. Specifically, final § 1005.18(h) establishes a general effective date as well as special transition rules for certain disclosure provisions. The delayed effective date for submission of prepaid account agreements to the Bureau is addressed in § 1005.19(f).

The Bureau notes that nothing in this final rule changes the existing requirements for payroll card accounts or government benefit accounts prior to October 1, 2017. Financial

institutions offering payroll card accounts or government benefit accounts must comply with all existing requirements applicable to those accounts under EFTA and Regulation E until October 1, 2017. Beginning October 1, 2017, financial institutions must comply with modified requirements in subpart A of Regulation E for such accounts as set forth in this final rule.

Final § 1005.18(h)(1) provides that except as provided in § 1005.18(h)(2) and (3), the requirements of the final rule apply to prepaid accounts beginning October 1, 2017. Final § 1005.18(h)(2)(i) establishes an exception for non-compliant disclosures on existing prepaid account access devices and packaging materials to eliminate the proposed pull and replace requirement. In return, final § 1005.18(h)(2)(ii) requires that financial institutions provide notices of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via non-compliant packaging materials printed prior to the effective date. Final § 1005.18(h)(2)(iii) clarifies the requirements for providing notice of changes to consumers who acquired prepaid accounts before October 1, 2017. Final § 1005.18(h)(2)(iv) facilitates the delivery of the notices of changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Finally, § 1005.18(h)(3) sets forth the accommodation for financial institutions that do not have readily accessible the data necessary to comply fully with the periodic statement alternative or summary totals of fees requirements. These provisions are each discussed in detail below.

*18(h)(1).* Final § 1005.18(h)(1) explains, that except as provided in § 1005.18(h)(2) and (3), the requirements of subpart A of Regulation E, as modified by final § 1005.18, apply to prepaid accounts as defined in final § 1005.2(b)(3), including government benefit accounts subject to final § 1005.15, beginning October 1, 2017, which is approximately 12 months following the Bureau's issuance of this final rule.

The Bureau believes 12 months is an appropriate compliance period for this final rule in general, particularly given the modifications and accommodations discussed below, and should provide financial institutions sufficient time to review the requirements of the final rule, implement the necessary system and operational changes, and for coordination and planning among all industry participants. The Bureau has specified an October 1, 2017 effective date for the final rule in general, rather than making it contingent on publication of the final rule in the *Federal Register*, for several reasons. The Bureau believes an October 1, 2017 effective date will not interfere with holiday season system freezes and peak time demands, which commenters stated generally spans October through April, and setting a date certain in this context will provide more clarity and comfort to industry in this regard. (In response to related concerns raised by commenters, the Bureau believes that, given the modification to eliminate the proposed pull and replace requirement, and given that the liability shift for EMV cards took place in late 2015, the impact regarding the roll-out of EMV-enabled cards will be minimal, if at all.) In addition, the Bureau has included in regulatory text and commentary several detailed provisions and examples involving dates that it believes will be easier for industry to understand if a particular effective date is specified.<sup>522</sup> Finally, with respect to the Regulation Z portion of this final rule, TILA section 105(d) generally provides that a regulation requiring any disclosure that differs from the disclosures previously required by parts A, D, or E of TILA “shall have an effective date of that October 1 which follows at least six months the date of promulgation.”<sup>523</sup>

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<sup>522</sup> See, e.g., final §§ 1005.18(b)(2)(ix) and 1005.19. See also the specific accommodations surrounding the effective date in final § 1005.18(h)(2) and (3) discussed herein.

<sup>523</sup> 15 U.S.C. 1604(d). This section also provides, however, that the Bureau may at its discretion lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. *Id.*

The Bureau seeks to ensure that consumers receive the benefit of the protections in this final rule as soon as possible and therefore declines to provide financial institutions additional time beyond the 12-month compliance period, except as discussed herein, to comply with specific portions of the rule, as suggested by commenters. With respect to an industry commenter's request to continue overdraft services for six months after the effective date without being subject to the final rule in order to inform consumers of changes to those services, the Bureau believes the overall change to a 12-month effective date should provide sufficient time to provide such notice to consumers. The Bureau does not believe any further modifications or extensions to the effective date are necessary or appropriate. Regarding commenters' concern about the time needed to handle inadvertent overdrafts such as those resulting from force pay transactions, the Bureau has generally excluded such transactions from coverage under Regulation Z.<sup>524</sup>

Regarding commenters' request to grandfather in or provide a timeframe to amend or rebid existing vendor contracts, the Bureau does not believe this is necessary and thus declines to do so; however, the Bureau believes the modification to eliminate the proposed pull and replace requirement for preprinted packaging materials will help ameliorate commenters' concerns until new contracts can be executed.

The Bureau believes a 12-month compliance period is sufficient for financial institutions to make system and operational changes to comply with this final rule, especially given the modifications and accommodations discussed herein. Regarding commenters' concern about the time needed to design new disclosures, the Bureau is providing native design files (for print disclosures) and source code (for web-based disclosures) for all of the model and sample

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<sup>524</sup> See final Regulation Z § 1026.61(a)(4).

disclosures forms included in the final rule to aid in their development.<sup>525</sup> The Bureau is also committed to working with industry to help address and alleviate burden through regulatory implementation support and guidance.<sup>526</sup> With respect to commenters' concern about the time needed to change the process for providing disclosures prior to the acquisition of government benefit accounts, payroll card accounts, and campus cards, the final rule specifically clarifies the timing of acquisition requirements in final comment 18(b)(1)(i)-1 for payroll card accounts and prepaid accounts generally, and in final comments 15(c)-1 and -2 for government benefit accounts. These revisions are consistent with the current practices of many employers and government agencies and therefore should not necessitate significant modifications to current procedures. See the section-by-section analyses of §§ 1005.18(b)(1)(i) and 1005.15(c) for additional information regarding the timing for delivery of pre-acquisition disclosures.

Regarding commenters' concern about the time needed to implement changes to comply with the periodic statement alternative in § 1005.18(c)(1) and the summary totals of fees requirement in § 1005.18(c)(5), the Bureau believes the modifications made to those provisions should aid industry in coming into compliance with those requirements. Specifically, the Bureau has modified § 1005.18(c)(1)(ii) to require at least 12 months of electronic account transaction history, which commenters stated many financial institutions already make available, and therefore any changes needed to comply with that portion of the rule should be minimal. Likewise, providing at least 24 months of written account transaction history pursuant to final § 1005.18(c)(1)(iii) should have minimal impact on existing business processes because many

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<sup>525</sup> These files are available at [www.consumerfinance.gov/prepaid-disclosure-files](http://www.consumerfinance.gov/prepaid-disclosure-files).

<sup>526</sup> See, e.g., <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid>.

financial institutions currently archive several years of account information.<sup>527</sup> Moreover, the Bureau has modified § 1005.18(c)(4), renumbered as § 1005.18(c)(5), to require financial institutions to provide the summary totals of fees only and has removed the proposed requirement to provide summary totals of all deposits to and debits from a consumer's prepaid account. The Bureau also believes the accommodation set forth in § 1005.18(h)(3) for financial institutions that do not have readily available the data necessary to comply fully with the periodic statement alternative or summary totals of fees requirements as of the effective date should provide financial institutions the time needed to comply with the final rule. See the section-by-section analysis of § 1005.18(c) for additional information regarding the periodic statement alternative and the summary totals of fees requirement.

The Bureau has also made several revisions to address commenters' concerns regarding the time needed to comply with the requirements to submit prepaid account agreements to the Bureau pursuant to final § 1005.19(b) and to post agreements on the issuer's website pursuant to final § 1005.19(c). With respect to the submission requirement, the final rule sets forth a delayed effective date in final § 1005.19(f)(2), which will provide issuers the time needed to develop and implement their own internal processes and procedures for submitting agreements to the Bureau. Regarding the posting requirement, the Bureau believes the modification in final § 1005.19(c) to require issuers to post on their websites only agreements that are offered to the general public will reduce the number of agreements at least some issuers must post and therefore should decrease the amount of time needed to comply with this requirement relative to the proposal. In addition, the Bureau believes many issuers already post these agreements to their websites. See

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<sup>527</sup> See the section-by-section analyses of § 1005.18(c)(1)(ii) and (iii) above.

the section-by-section analysis of § 1005.19 for additional information about the prepaid account agreement submission and posting requirements and the related effective dates.

*18(h)(2)(i)*. Final § 1005.18(h)(2)(i) establishes an exception for non-compliant disclosures on existing prepaid account access devices and packaging materials. Specifically, it provides that the disclosure requirements of subpart A of Regulation E, as modified by final § 1005.18, shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017.

The Bureau is not adopting the proposed requirement that financial institutions and their third-party distribution agents remove from retail store shelves and other distribution channels any prepaid accounts with disclosures not fully in compliance with the final rule as of the effective date. Thus, financial institutions are not required to pull and replace prepaid account access devices and packaging materials that do not contain new disclosures required by this final rule (such as the short form disclosure) or that contain disclosures that are no longer accurate as a result of this final rule (such as a disclosure stating that at least 60 days of electronic and written account transaction history are available under the periodic statement alternative, rather than 12 and 24 months of history, respectively, as required by this final rule). Likewise, financial institutions are not required to retrieve from consumers prepaid account access devices, such as prepaid cards, that were distributed prior to the effective date. The Bureau believes this modification will help to reduce the demand on packaging manufacturers, which commenters stated would have strained resources and caused delays in the production process, and will also mitigate the waste that would have been associated with pulling and replacing packaging with

non-compliant disclosures. Financial institutions are not required to provide the pre-acquisition disclosures pursuant to final § 1005.18(b) prior to October 1, 2017.

The Bureau is adopting new comment 18(h)-1 to explain that the October 1, 2017 effective date applies to disclosures made available or provided to consumers electronically, orally by telephone, or in a form other than on pre-printed materials, such as disclosures printed on paper by a financial institution upon a consumer's request. In addition, the Bureau is adopting new comment 18(h)-2 to provide examples of disclosures that would fall under the exception set forth in § 1005.18(h)(2)(i) and to make clear that disclosures and access devices that are manufactured, printed, or otherwise produced on or after October 1, 2017 must comply with all the requirements of subpart A of Regulation E.

*18(h)(2)(ii).* Because the final rule does not require financial institutions to pull and replace packaging materials manufactured, printed, or otherwise produced before October 1, 2017, the Bureau believes it is appropriate to require financial institutions to provide a notice of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via such non-compliant packaging materials. Specifically, new § 1005.18(h)(2)(ii)(A) requires that, if a financial institution has changed a prepaid account's terms and conditions as a result of this final rule taking effect 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 provide to the consumer a notice of the change within 30 days of obtaining the consumer's contact information. Separately, § 1005.18(h)(2)(ii)(B) requires that the financial institution mail or deliver to the consumer initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) that have been updated as a result of this final rule taking effect, within 30 days of obtaining the consumer's contact information. The Bureau notes that financial

institutions must mail or deliver initial disclosures pursuant to § 1005.18(h)(2)(ii)(B) even if § 1005.18(h)(2)(ii)(A) does not apply.

Because of changes made in the final rule relative to the proposal, the Bureau believes that it is even less likely that financial institutions will make broad changes to their prepaid programs as a result of the final rule taking effect of the kind that would trigger requirements to provide a change-in-terms notice to existing customers under § 1005.8(a) or § 1005.18(f)(2). Those rules require that existing customers be provided with an advance notice in writing only for changes that would result for the consumer in increased fees, increased liability, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of transfers. For instance, because the final rule requires that Regulation E limited liability and error resolution requirements apply to all accounts, even if they are not registered or verified, the Bureau no longer anticipates that financial institutions would be making changes to their account agreements that would increase liability for consumers. However, based on comments the Bureau received from industry, the Bureau is aware that some financial institutions anticipate discontinuing an available EFT service as it is currently offered as a result of the final rule taking effect, in that the new requirements imposed on overdraft credit features offered in conjunction with prepaid accounts would require certain program restructuring in ways that may affect availability in certain circumstances or for certain consumers.

In light of these circumstances, the Bureau believes it is appropriate to impose a requirement (in § 1005.18(h)(2)(ii)(A)) on financial institutions that is parallel to the spirit of Regulation E change-in-terms requirements to notify consumers who acquire a prepaid account after the effective date of the final rule via non-compliant packaging if such changes to the prepaid account's terms and conditions are being made as a result of the rule taking effect.

Accordingly, § 1005.18(h)(2)(ii) requires such notice to be provided, via the method specified in § 1005.18(h)(2)(iv), within 30 days of obtaining the consumer's contact information.

While the Bureau believes that changes to existing programs' terms and conditions as a result of this final rule taking effect that would trigger change-in-terms requirements under Regulation E for existing customers will be rare, the Bureau expects that financial institutions will make other types of changes to their initial disclosures pursuant to §§ 1005.7 and 1005.18(f)(1) in response to this final rule. Accordingly, in light of the decision not to require that outdated packaging be pulled and replaced, the Bureau believes it is appropriate to require (in § 1005.18(h)(2)(ii)(B)) that consumers who acquire a prepaid account with packaging that was printed prior to the effective date receive updated initial disclosures that accurately describe the account's terms, conditions, and related information as required under the final rule.

The Bureau is adopting § 1005.18(h)(2)(ii) pursuant to its authority under EFTA sections 904(a) and (c) and 905(a), and section 1032 of the Dodd-Frank Act. The Bureau believes that the notices required pursuant to new § 1005.18(h)(2)(ii) will, consistent with section 1032(a) of the Dodd-Frank Act, ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account. In addition, consistent with EFTA sections 904 and 905(a), the Bureau believes the updated initial disclosures will help consumers understand the new terms of their prepaid accounts, as authorized under EFTA section 904(a) and (c) to effectuate the purposes of EFTA.<sup>528</sup>

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<sup>528</sup> The Bureau notes that this approach is similar to EFTA section 905(c), which provided that for any account of a consumer made accessible prior to EFTA's effective date, the initial disclosures required by EFTA section 905(a) were required to have been disclosed not later than the earlier of (1) the first periodic statement required by EFTA section 906(c) after EFTA's effective date or (2) 30 days after EFTA's effective date.

Because financial institutions generally mail to consumers a personalized prepaid card embossed with the consumer's name, and other informational materials, after the account is registered, the Bureau believes that requiring financial institutions to include a notice of the applicable changes to the prepaid account's terms and conditions and the updated initial disclosures in that mailing will impose very little burden on industry. Further, as discussed under new § 1005.18(h)(2)(iv) below, a financial institution is permitted to deliver the notice and disclosures electronically, without regard to E-Sign consent, if it is not otherwise already mailing or delivering to the consumer written account-related communications within the time periods specified in new § 1005.18(h)(2)(ii). The Bureau believes that the combined effect of new § 1005.18(h)(2)(i) and (ii) will help reduce compliance burden on industry relative to the proposal, while still providing appropriate transparency to consumers.

*18(h)(2)(iii).* The Bureau is adopting new § 1005.18(h)(2)(iii) to specify and balance burden concerns with respect to providing notices of changes to prepaid accounts' terms and conditions to consumers who acquired prepaid accounts before October 1, 2017. As with § 1005.18(h)(2)(ii) discussed above, the Bureau recognizes that some financial institutions may make changes to prepaid account terms and conditions as a result of this final rule taking effect that would otherwise require a change-in-terms notice under Regulation E, in that the new requirements imposed on overdraft credit features offered in conjunction with prepaid accounts would require certain program restructuring in ways that may affect availability in certain circumstances or to certain consumers. The Bureau believes that financial institutions that offer such features typically require consumers to consent to delivery of electronic disclosures pursuant to the E-Sign Act before any credit is extended, but there may be other consumers with

prepaid accounts in the same prepaid account program who have never sought to activate that feature on their prepaid accounts and who have not specifically consented to electronic delivery.

In light of these unusual circumstances and other considerations with regard to general implementation of the final rule, the Bureau believes that financial institutions may choose to effectuate such changes in terms as of October 1, 2017, or may want to do so earlier depending on operational convenience. New § 1005.18(h)(2)(iii), which applies to prepaid accounts acquired by consumers before October 1, 2017, is designed to address both scenarios. Specifically, it provides that if a financial institution has changed a prepaid accounts' terms and conditions as a result of this final rule taking effect 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 provide to the consumer a notice of the change 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 less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to notify the consumer of the change in accordance with the timing requirements set forth in § 1005.18(h)(2)(ii)(A). The financial institution is not required to send a change-in-terms notice for such change pursuant to § 1005.8(a) or § 1005.18(f)(2). As discussed under new § 1005.18(h)(2)(iv) below, a financial institution may provide the notice pursuant to § 1005.18(h)(2)(iii) in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act in certain circumstances.

The Bureau believes this special notice requirement provides appropriate flexibility to financial institutions in informing consumers with regard to changes to their accounts as a result of the final rule taking effect. The Bureau emphasizes, however, that all changes to a prepaid

account's terms and conditions as a result of this final rule taking effect must nevertheless become effective by October 1, 2017. That is, if a financial institution were to provide to a consumer a notice of a change that is subject to § 1005.18(h)(2)(iii) on September 20, the change must nonetheless become effective by October 1; a financial institution is not permitted to delay the effective date of such a change until October 11 (*i.e.*, 21 days after the financial institution notified the consumer).

The Bureau is adopting § 1005.18(h)(2)(iii) pursuant to its authority under EFTA sections 904(a) and (c), and section 1032 of the Dodd-Frank Act. EFTA section 905(b) requires financial institutions to notify consumers in writing at least 21 days prior to the effective date of any change in any term or condition of the consumer's account if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. Because of the unique circumstances involved in effectuating the final rule particularly with regard to consumers who have never sought to activate a credit or overdraft feature in conjunction with a prepaid account and consumers who may be acquiring prepaid accounts close to the date that certain services are discontinued or restricted, the Bureau is exempting financial institutions in this limited circumstance from complying with the change-in-terms notice requirements in § 1005.8(a) and § 1005.18(f)(2). Instead, financial institutions must notify consumers of the change, using the method specified in § 1005.18(h)(2)(iv), 21 days in advance of the change taking effect or, in some circumstances, within 30 days of obtaining the consumer's contact information. Pursuant to EFTA section 904(c), the Bureau believes that exemption from the change-in-terms notice requirement is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers and to facilitate compliance, by assisting consumers' understanding of the new terms

and conditions of their prepaid accounts that are purchased in outdated packaging. In addition, the Bureau believes that the notice to consumers regarding changes to terms and conditions pursuant to § 1005.18(h)(2)(iii) will, consistent with section 1032(a) of the Dodd-Frank Act, ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account.

Although the Bureau did not propose, nor is it finalizing, a requirement that financial institutions to provide updated initial disclosures to all consumers who opened prepaid accounts prior to the effective date of this final rule, the Bureau notes that it believes it would nonetheless be beneficial for financial institutions to provide updated initial disclosures to existing customers so that they will understand their rights under the new regime and to avoid potential consumer confusion. Accordingly, as discussed in connection with § 1005.18(h)(2)(iv) below, the Bureau has provided a special rule to facilitate delivery of such communications.

*18(h)(2)(iv)*. The Bureau is adopting new § 1005.18(h)(2)(iv) to facilitate delivery of notices of certain changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Specifically, it provides that for these accounts, if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the E-Sign Act, or is not otherwise already mailing or delivering to the consumer written account-related communications within the respective time periods specified in § 1005.18(h)(2)(ii) or (iii), the financial institution may provide to the consumer a notice of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii) or required or voluntary updated initial disclosures as a result of this final rule taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

As discussed above, the Bureau has decided, in response to comments, that financial institutions should not be required to pull and replace prepaid account packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. In addition, the Bureau believes specific provisions are necessary to address how financial institutions should provide notices of certain changes to prepaid account terms and conditions and updated initial disclosures for prepaid accounts that are acquired via outdated packaging. As discussed above, the Bureau believes that most financial institutions will be able to send the notices and disclosures pursuant to § 1005.18(h)(2)(ii) and (iii) at the same time it sends an embossed card following account registration, and therefore there should be little additional burden. For existing customers from whom the financial institution has not already obtained consent to receive disclosures electronically pursuant to the E-Sign Act, or for customers to whom the financial institution is not otherwise mailing or delivering written account-related communications during the relevant time period, the Bureau believes that permitting electronic delivery of notices of changes in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii) or required or voluntary updated initial disclosures as a result of this final rule taking effect will minimize compliance burden while still facilitating consumers' understanding of the new terms and conditions of their prepaid accounts in a timely way. Accordingly, new § 1005.18(h)(2)(iv) addresses delivery of voluntary disclosures as well as disclosures that are specifically required under final rule § 1005.18(h)(2)(ii) and (iii) in order to incentivize and facilitate such communications.

The Bureau is adopting new comments 18(h)-3, -4, and -5 to provide further guidance regarding the provision of consumers with notices pursuant to final § 1005.18(h)(2). Specifically, new comment 18(h)-3 explains that a financial institution that is required to notify

consumers of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii), or that otherwise provides updated initial disclosures as a result of this final rule taking effect, may provide the notice or disclosures either as a separate document or included in another notice or mailing that the consumer receives regarding the prepaid account to the extent permitted by other laws and regulations. New comment 18(h)-4 explains that a financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(h)(2)(ii) or (iii). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

The Bureau is adopting new comment 18(h)-5 to explain the requirements for closed and inactive accounts. Specifically, new comment 18(h)-5 explains that the requirements of § 1005.18(h)(2)(iii) do not apply to prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive account becomes active, the financial institution must comply with the applicable portions of those provisions within 30 days of the account becoming active again in order to avail itself of the timing requirements and accommodations set forth in § 1005.18(h)(2)(iii) and (iv).

*18(h)(3)*. As discussed above, the Bureau is adopting new § 1005.18(h)(3) and new comment 18(h)-6 to provide an accommodation for financial institutions that do not have sufficient data in a readily accessible form in order to fully comply with the requirements for providing electronic and written account transaction history pursuant to final § 1005.18(c)(1)(ii) and (iii) and the summary totals of fees pursuant to final § 1005.18(c)(5) by October 1, 2017. New § 1005.18(h)(3)(i) provides that if, on October 1, 2017, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to final § 1005.18(c)(1)(ii) or to provide 24 months of written

account transaction history upon request pursuant to final § 1005.18(c)(1)(iii), the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in § 1005.18(c)(1)(ii) and (iii).

New comment 18(h)-6.i provides the following example to illustrate the provisions of final § 1005.18(h)(3)(i): a financial institution that had been retaining only 60 days of account history before October 1, 2017 would provide 60 days of written account transaction history upon a consumer's request on October 1, 2017. If, on November 1, 2017, the consumer made another request for written account transaction history, the financial institution would be required to provide three months of account history. The financial institution must continue provide as much account history as it has accumulated at the time of a consumer's request until it has accumulated 24 months of account history. Thus, all financial institutions must fully comply with the electronic account transaction history requirement set forth in § 1005.18(c)(1)(ii) no later October 1, 2018 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later October 1, 2019.

Similarly, new § 1005.18(h)(3)(ii) provides that if, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to § 1005.18(c)(5), the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). New comment 18(h)-6.ii explains that if, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of

fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on November 1, 2017 for the month of October, and the year-to-date fee total beginning on October 1, 2017, provided the financial institution discloses that it is displaying the year-to-date total beginning on October 1, 2017 rather than for the entire calendar year 2017. On January 1, 2018, financial institutions must begin displaying year-to-date fee totals for calendar year 2018.

*19(f)*. The effective dates for the prepaid account agreement submission and posting requirements in final § 1005.19 are discussed in more detail in the section-by-section analysis of § 1005.19(f) below. Final § 1005.19(f)(1) provides that the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017, except as provided in final § 1005.19(f)(2), which sets forth a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b).

#### *Section 1005.19 Internet Posting of Prepaid Account Agreements*

In 2009, section 204 of the Credit CARD Act added new TILA section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditor's websites and to submit those agreements to the Board for posting on a publicly-available website established and maintained by the Board.<sup>529</sup> The Board implemented these provisions in what is

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<sup>529</sup> 15 U.S.C. 1632(d).

now Regulation Z § 1026.58.<sup>530</sup> The Bureau's receipt of credit card agreements pursuant to Regulation Z § 1026.58 has aided the Bureau in its market monitoring functions, and the Bureau's posting of those credit card agreements on its website may, among other things, enable consumers to more effectively compare credit cards.

The Bureau proposed and is finalizing § 1005.19 for substantially the same reasons with respect to prepaid accounts. Specifically, the Bureau proposed § 1005.19 to require prepaid account issuers to submit agreements for prepaid accounts to the Bureau for posting on a publicly-available website established and maintained by the Bureau. The Bureau also proposed to require issuers to make prepaid account agreements available to the public on the issuers' own websites or, in certain limited circumstances, provide agreements directly to consumers holding prepaid accounts via a restricted website or in writing upon request. The Bureau expects to use the prepaid account agreements it receives from issuers pursuant to § 1005.19 to assist in its market monitoring efforts pursuant to its authority under Dodd-Frank Act section 1022(c)(1) and (4). In addition, the Bureau believes that posting prepaid account agreements on the Bureau's website in the future will allow consumers to more easily compare terms of prepaid accounts currently in the marketplace as well as facilitate third parties' analysis of prepaid accounts and the development of online shopping tools. Consumers will also benefit from having access to their prepaid account agreements available through the issuers' websites (or available upon request in limited instances).

The specific requirements in proposed § 1005.19 largely mirrored existing provisions in Regulation Z § 1026.58. The final rule mirrors Regulation Z § 1026.58 in many respects as well,

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<sup>530</sup> In 2015, the Bureau suspended temporarily the requirement that credit card issuers submit agreements to the Bureau. *See* Regulation Z § 1026.58(g); 80 FR 21153 (Apr. 17, 2015). The temporary suspension expired one year later. *See* 81 FR 19467 (Apr. 5, 2016).

although the final rule deviates from the proposal and Regulation Z § 1026.58 in some instances, as discussed below. The Bureau expects these rules to generally function in the same manner, albeit with certain modifications made in proposed § 1005.19 to address differences between the credit card and prepaid account markets. However, the requirements of Regulation Z § 1026.58 and those of § 1005.19 are distinct and independent of one another. In other words, issuers must comply with both as appropriate. The Bureau notes, however, that it does not believe it is likely that any agreement will constitute both a credit card agreement and a prepaid account agreement and thus be required to be submitted under both § 1005.19 and Regulation Z § 1026.58. Given the requirement in new Regulation Z § 1026.61(b) that credit features accessible by hybrid prepaid-credit cards generally must be structured as separate sub-accounts or accounts distinct from the prepaid asset account, in conjunction with the account-opening disclosure requirements in existing Regulation Z § 1026.6 and the initial disclosure requirements in existing § 1005.7(b) as well as final § 1005.18(f)(1), the Bureau believes it is unlikely that an issuer would use a single agreement to provide all such disclosures for both a prepaid account and for a covered separate credit feature.

The Bureau proposed and is finalizing § 1005.19 pursuant to its disclosure authority in EFTA section 905(a), its adjustment authority in EFTA section 904(c), and its authority in section 1032(a) of the Dodd-Frank Act. The Bureau believes collection and disclosure of the agreements allows for clear and accessible disclosure of the terms and conditions of prepaid accounts, and is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, because the final rule will assist consumers' understanding of and shopping for prepaid accounts based on the terms and conditions of those accounts. In addition, collection and disclosure of the

agreements will, consistent with section 1032(a) of the Dodd-Frank Act, permit the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. The Bureau also proposed and is finalizing § 1005.19 pursuant to its authority in section 1022(c)(4) of the Dodd-Frank Act. Section 1022(c)(1) of the Dodd-Frank Act directs the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. In support of this function, the Bureau has authority under section 1022(c)(4) to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. Thus, pursuant to the Bureau's authority under section 1022(c), the Bureau is finalizing a requirement that prepaid account issuers submit prepaid account agreements to the Bureau on a rolling basis, subject to certain exceptions, in order to aid the Bureau's monitoring for risks to consumers in the offering or provision of consumer financial products or services under section 1022(c)(1) and (4) of the Dodd-Frank Act.

In the future, the Bureau intends to publish on its website a database of the prepaid account agreements collected, similar to the database currently available for credit card agreements. Under section 1022(c)(3) of the Dodd-Frank Act, the Bureau "shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year," and "may make public such information obtained by the Bureau under this section as is in the public interest." The Bureau is not finalizing proposed § 1005.19(b)(7) regarding posting of agreements on the Bureau's website, however, given that the requirement

speaks to the Bureau's actions and not to regulated entities, and thus there is no need to finalize the provision through regulatory text.

For the reasons discussed below, the Bureau is generally finalizing § 1005.19 as proposed with certain modifications as summarized here and discussed in detail below. Specifically, the Bureau is finalizing § 1005.19(a) largely as proposed, but is adopting new § 1005.19(a)(6) to define the term “offers to the general public” to accommodate a revision in final § 1005.19(c) to require only agreements that are offered to the general public to be posted to the issuer's publicly available website. The Bureau is also finalizing § 1005.19(b) with several modifications to revise the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. Furthermore, the Bureau is adopting new § 1005.19(b)(1)(v) to add to the list of criteria set forth in § 1005.19(b)(1)(i) through (iv) that issuers must also include in their submission any other identifying information about each agreement, as required by the Bureau, which may include the effective date, the name of the program manager, and the name of other relevant parties, if applicable, such as the employer for a payroll card program. In addition, as discussed above, the Bureau has removed proposed § 1005.19(b)(7) regarding posting of agreements on the Bureau's website, though the Bureau still intends to publish the agreements it receives in the future. The Bureau is finalizing the general requirement in § 1005.19(c) that issuers post and maintain prepaid account agreements on their publicly available websites, except if those agreements are not available to the general public or if they qualify for one of the proposed exceptions. The Bureau is also finalizing the general requirement in § 1005.19(d) to provide consumers with access to their individual prepaid account agreements. Furthermore, the Bureau is finalizing § 1005.19(e) as proposed to waive the requirement that issuers obtain E-Sign consent from consumers in order to provide prepaid account agreements in

electronic form pursuant to § 1005.19(c) and (d). Finally, the Bureau is adopting new § 1005.19(f) to state that the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017, except for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b), which has a delayed effective date of October 1, 2018.

#### *19(a) Definitions*

The Bureau proposed in § 1005.19(a) certain definitions specific to proposed § 1005.19. The Bureau is largely finalizing § 1005.19(a) as proposed, with several modifications as discussed below.

#### *19(a)(1) Agreement*

The Bureau proposed § 1005.19(a)(1) to define “agreement” or “prepaid account agreement” for purposes of proposed § 1005.19 as the written document or documents evidencing the terms of the legal obligation, or prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement or prepaid account agreement would have also included fee information, as defined in proposed § 1005.19(a)(3), discussed below. Proposed § 1005.19(a)(1) would have mirrored the definition of “agreement” or “credit card agreement” in Regulation Z § 1026.58(b)(1).

Proposed comment 19(a)(1)-1 would have explained that an agreement may consist of several documents that, taken together, define the legal obligation between the issuer and the consumer. The Bureau did not include the second part of Regulation Z comment 58(b)(1)-2, which gives the example of provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer’s or consumer’s obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract. The

Bureau did not believe that prepaid account agreements contain arbitration clauses or provisions allowing the issuer to unilaterally alter contract terms in documents that are separate from the main agreement, and therefore does not believe such examples are necessary to include in proposed comment 19(a)(1)-1. The Bureau also did not include a comment similar to Regulation Z comment 58(b)(1)-1, which addresses inclusion of certain pricing information in a credit card agreement, as the Bureau did not believe such a comment was relevant to prepaid accounts.

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(1) and comment 19(a)(1)-1 as proposed.

#### *19(a)(2) Amends*

The Bureau proposed § 1005.19(a)(2) to provide that for purposes of proposed § 1005.19, an issuer “amends” an agreement if it makes a substantive change (an “amendment”) to the agreement. A change would have been considered substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in proposed § 1005.19(a)(3) would have been deemed to be substantive. Proposed § 1005.19(a)(2) mirrors the definition of the term amends in Regulation Z § 1026.58(b)(2).

With respect to Regulation Z § 1026.58, the Board had determined that requiring resubmission of credit card agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency.<sup>531</sup> The Bureau believed the same would be true for prepaid account issuers and therefore proposed a similar definition here.

Proposed comment 19(a)(2)-1 would have given examples of changes, other than changes to fee information, that generally would be considered substantive, including: (i) addition or

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<sup>531</sup> 75 FR 7658, 7760 (Feb. 22, 2010).

deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

Proposed comment 19(a)(2)-2 would have given examples of changes that generally would not be considered substantive, such as: (i) correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the prepaid account to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

The Bureau received comments from two consumer groups regarding whether certain changes, such as to an issuer's corporate name or to the name of the prepaid account program to which the agreement applies, should be considered substantive for the purposes of § 1005.19. These commenters argued that such changes should be deemed substantive, explaining that they could impact a consumer's or researcher's ability to find an agreement if it was searched for using a different name.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(2) as proposed. The Bureau is also finalizing comment 19(a)(2)-1 with several revisions. The Bureau has modified comment 19(a)(2)-1 to include the following as examples of changes that would generally be considered substantive: changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number; and changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program; and changes to the name of the prepaid account program to which the agreement applies. In addition, the Bureau is finalizing comment 19(a)(2)-2 with corresponding revisions to remove changes to the name of the prepaid account program to which the agreement applies as an example of a change that generally would not be considered substantive. The Bureau agrees with commenters that if changes to the corporate name of the issuer or program manager and changes to the name of the prepaid account program to which the agreement applies are not reflected in agreements posted to the issuer's website or to the Bureau's website in the future, a consumer might not be able to locate an agreement for an existing prepaid account or effectively compare agreements when shopping for a new prepaid account. Other parties, such as researchers, would likely also find it difficult to locate particular agreements.

#### *19(a)(3) Fee Information*

The Bureau proposed § 1005.19(a)(3) to define "fee information" for purposes of proposed § 1005.19 as the information listed in the long form fee disclosure in proposed § 1005.18(b)(2)(ii).

Proposed § 1005.19(a)(3) was similar to the definition of pricing information in Regulation Z § 1026.58(b)(7), but omitted the exclusion for temporary or promotional rates and

terms or rates and terms that apply only to protected balances, as the Bureau did not believe there is currently an equivalent to such rates and terms for prepaid accounts.

The Bureau received comments from several consumer groups regarding whether issuers should be required to include the short form disclosure (required by proposed § 1005.18(b)(2)(i)) in the definition of fee information and thus be required to submit it to the Bureau and post it on the issuer's website. Two consumer groups requested that issuers be required to submit short form disclosures to the Bureau for posting on the Bureau's website. Another consumer group stated that the short form disclosure should be required to be placed on either the issuer's homepage or the landing page for the product.

The Bureau is finalizing § 1005.19(a)(3) with several modifications. The Bureau is retaining the general definition of fee information from the proposal, but is modifying it to also include the short form disclosure. The Bureau has also made changes to the internal paragraph citations to reflect other numbering changes made in this final rule. Specifically, final § 1005.19(a)(3) provides that the term fee information means the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to final § 1005.18(b)(4).

The Bureau continues to believe that to enable consumers to shop for prepaid accounts and to compare information about various prepaid accounts in an effective manner, it is necessary that the agreements posted to the issuer's website and on the Bureau's website in the future include fees and other pricing information. The Bureau expects that most issuers will include the long form disclosure itself as required by final § 1005.18(b)(4) (or the long form information pursuant to final § 1005.18(f)(1)) directly in their prepaid account agreements.

Others may perhaps maintain the long form disclosure as an addendum or other supplement to their prepaid account agreements.

Upon further consideration, the Bureau believes it is necessary that issuers also submit the short form disclosure to the Bureau and post it to their websites, as suggested by some commenters. The Bureau believes submitting the short form disclosure, in addition to the information on the long form disclosure, will be useful to both the Bureau in its market monitoring efforts and to consumers and other parties in the future when prepaid account agreements are posted to the Bureau's website. The Bureau believes the short form disclosure, particularly the disclosures related to additional fee types pursuant to final § 1005.18(b)(2)(viii) and (ix), will provide the Bureau with insight into industry practices in implementing this final rule's disclosure requirements across a range of prepaid account types. In addition, the Bureau does not believe the requirement to submit this one additional document will be particularly burdensome or complicated for issuers, especially because the Bureau believes that issuers will generally maintain their short form disclosures in a readily accessible, electronic format.

#### *19(a)(4) Issuer*

##### *The Bureau's Proposal*

The Bureau proposed § 1005.19(a)(4) to define "issuer" or "prepaid account issuer" for purposes of proposed § 1005.19 as the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement. Proposed § 1005.19(a)(4) would have mirrored the definition of card issuer in Regulation Z § 1026.58(b)(4).

In some cases, more than one financial institution is involved in the administration of a prepaid program. For example, a smaller bank may partner with a larger bank to market prepaid accounts to the smaller bank's customers, or a bank may partner with a program manager to offer

prepaid accounts. The Bureau understands that the terms of the arrangements can vary, for example with respect to which party uses its name and brand in marketing materials, sets fees and terms, conducts customer identification and verification, provides access to account information, holds the pooled account, and absorbs the risk of default or fraud.

The Board believed that with respect to the definition of card issuer in what is now Regulation Z § 1026.58(b)(4), without a bright-line rule defining which institution is the issuer, institutions might find it difficult to determine their obligations under § 1026.58.<sup>532</sup> Similarly, absent clarification from the Bureau, the Bureau was concerned that it may be difficult to determine which entity would be responsible for compliance with proposed § 1005.19 for a particular prepaid account. For example, if two financial institutions are involved in issuing a prepaid program, one may have fewer than 3,000 open accounts while the other has more than 3,000 open accounts. It may be difficult to determine whether, for example, the de minimis exception in proposed § 1005.19(b)(4) applies in such cases. In addition, it may be unclear which institution is obligated to post and maintain the agreements on its website pursuant to proposed § 1005.19(c) or (d)(1)(i) or respond to telephone requests for copies of agreements pursuant to proposed § 1005.19(d)(1)(ii), discussed below. The Bureau therefore believed it would be beneficial to clarify which institution would be the prepaid account issuer for purposes of proposed § 1005.19. The Bureau thus proposed to define the term issuer in proposed § 1005.19(a)(4) as described above.

Proposed comment 19(a)(4)-1, which mirrors Regulation Z comment 58(b)(4)-1, would have provided an example of how the definition of issuer would have applied when more than one bank is involved in a prepaid program.

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<sup>532</sup> See 76 FR 22948, 22987 (Apr. 25, 2011).

Proposed comment 19(a)(4)-2, which mirrors Regulation Z comment 58(b)(4)-2, would have explained that while an issuer has a legal obligation to comply with the requirements of proposed § 1005.19, it generally may use a third-party service provider to satisfy its obligations under proposed § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding the use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of proposed § 1005.19 on the issuer's behalf. Proposed comment 19(a)(4)-2 would have provided an example describing such an arrangement between a bank and a program manager.

Proposed comment 19(a)(4)-3, which mirrors Regulation Z comment 58(b)(4)-3.i, would have noted that, as explained in proposed comment 19(c)-2, if an issuer provides consumers with access to specific information about their individual accounts, such as providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii), through a third-party website, the issuer would have been deemed to maintain that website for purposes of proposed § 1005.19. Such a website would have been deemed to be maintained by the issuer for purposes of proposed § 1005.19 even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's website would have been considered an example of a third-party website that may be deemed to be maintained by the issuer for purposes of proposed § 1005.19. Proposed comment 19(a)(4)-3 would have provided an example describing such an arrangement between a bank and a program manager.

The Bureau did not propose a comment similar to that of Regulation Z comment 58(b)(4)-3.ii which addresses website posting of private label credit card plans, as the Bureau did not believe such a comment was relevant for prepaid accounts, as discussed below.

#### *Comments Received*

In the proposal, the Bureau acknowledged that an institution that partners with multiple other entities to issue prepaid accounts, such as in the payroll card account context, will in many cases use the same agreement for all of the prepaid accounts issued in connection with those arrangements. Therefore, while the number of prepaid accounts issued with a given partner may be small, the total number of consumers subject to the corresponding agreement may be quite large. The Bureau solicited comment on whether submission of a separate agreement for each issuer is the best approach in this situation or whether such agreements should be submitted in some other manner. The Bureau received comments from one consumer group regarding this issue, stating that a single agreement could be submitted as long as the agreement is labeled and searchable in such a way that the names of the multiple entities are listed on it. This commenter explained that this approach would enable the public to see that the agreement is the same for several entities, without having to spend time reviewing each agreement. The Bureau did not receive any other comments on this portion of the proposal.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(4) and its related commentary substantially as proposed, with several revisions for clarity. The Bureau has also changed the name of final comment 19(a)(4)-3 from *Partner Institution Web Sites* as proposed to *Third-Party Web Sites* because the content of the comment is primarily related to third-party

websites; a partner institution website is merely an example of a third-party website that may be deemed to be maintained by the issuer for purposes of final § 1005.19.

The Bureau continues to believe that the definition of issuer creates a bright-line rule that will enable institutions involved in issuing prepaid accounts to determine their obligations under final § 1005.19. The Bureau also believes that the definition is consistent with the actual legal relationship into which a consumer enters under a prepaid account agreement. In addition, the Bureau believes that the institution to which the consumer is legally obligated under the agreement may be in the best position to provide accurate, up-to-date agreements to both the Bureau and consumers.

Regarding situations in which an institution partners with multiple other entities to issue prepaid accounts, the Bureau is adopting new comment 19(b)(1)-2, to explain that if a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. This comment also explains that each issuer may use the program manager to submit the agreement on its behalf, in accordance with final comment 19(a)(4)-2. Because the number and the role of the entities involved in a particular prepaid account agreement may vary, the Bureau believes it is clearer to require issuers, not program managers (or other parties), to submit these agreements to the Bureau. In addition, the Bureau believes that submitting a separate agreement for each issuer, rather than submitting one agreement with multiple issuers listed, as suggested by one commenter, will be less confusing to consumers and other parties reviewing agreements on the Bureau's website in the future.

#### *19(a)(5) Offers*

The Bureau proposed § 1005.19(a)(5) to provide that for purposes of proposed § 1005.19, an issuer “offers,” or “offers to the public,” a prepaid account agreement if the issuer solicits

applications for or otherwise makes available prepaid accounts that would be subject to that agreement.

Proposed comment 19(a)(5)-1 would have explained that an issuer is deemed to offer a prepaid account agreement to the public even if the issuer solicits applications for or otherwise makes available prepaid accounts only to a limited group of persons. For example, agreements for affinity cards marketed to students and alumni of a particular institution of higher education, or agreements offered only to residents of a specific geographic location for a particular prepaid account, would have been considered to be offered to the public. Similarly, agreements for prepaid accounts issued by a credit union would have been considered to be offered to the public even though such prepaid accounts are available only to credit union members. Agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs would have also been considered to be offered to the public.

Proposed § 1005.19(a)(5) was similar to the definition of the term “offers” in Regulation Z § 1026.58(b)(5). Regulation Z § 1026.58(b)(5) provides that an issuer “offers” or “offers to the public” an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement. The Bureau did not believe that prepaid account issuers solicit or accept applications for prepaid accounts in the same manner as credit card issuers do for credit card accounts, and thus modified this language for purposes of proposed § 1005.19(a)(5). Proposed comment 19(a)(5)-1 was similar to Regulation Z comment 58(b)(5)-1 but would have included several additional examples of prepaid accounts offered to the public. The Bureau did not propose an equivalent comment to Regulation Z comment 58(b)(5)-2, which provides that a card issuer is deemed to offer a credit card agreement to the public even if the

terms of that agreement are changed immediately upon opening to terms not offered to the public, as the Bureau did not believe that prepaid account terms are modified in this manner.

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(5) with modifications to accommodate the revision in final § 1005.19(c), discussed below, to require only agreements that are offered to the general public to be posted to the issuer's publicly available website. Specifically, the Bureau has removed the phrase "offers to the public" from § 1005.19(a)(5) and, as discussed below, is adopting new § 1005.19(a)(6) to define the term "offers to the general public." Final § 1005.19(a)(5) provides that an agreement is "offered" if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public. Furthermore, because proposed comment 19(a)(5)-1 described agreements that are offered to the public, which is now discussed in new § 1005.19(a)(6), the Bureau has renumbered this comment as comment 19(a)(6)-1 and has made revisions for consistency with new § 1005.19(a)(6) discussed below.

#### *19(a)(6) Offers to the General Public*

As noted above, the Bureau is adopting new § 1005.19(a)(6) to define the term "offers to the general public." Specifically, new § 1005.19(a)(6) provides that for purposes of final § 1005.19, an issuer "offers to the general public" a prepaid account agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.

The Bureau is finalizing proposed comment 19(a)(5)-1, renumbered as comment 19(a)(6)-1, with modifications for consistency with new § 1005.19(a)(6). Specifically, final comment 19(a)(6)-1 explains that an issuer is deemed to offer a prepaid account agreement to the

general public even if the issuer markets, solicits applications for, or otherwise makes available prepaid accounts only to a limited group of persons. This comment explains that if, for example, an issuer solicits only residents of a specific geographic location for a particular prepaid account, the agreement would be considered to be offered to the general public. In addition, this comment explains that agreements for prepaid accounts issued by a credit union are considered to be offered to the general public even though such prepaid accounts are available only to credit union members.

The Bureau is also adopting new comment 19(a)(6)-2 to explain prepaid account agreements not offered to the general public. Specifically, this comment explains that a prepaid account agreement is not offered to the general public when a consumer is offered the agreement only by virtue of the consumer's relationship with a third party. This comment provides that agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs are examples of agreements that are not offered to the general public.

#### *19(a)(7) Open Account*

The Bureau proposed § 1005.19(a)(6) to provide that for purposes of proposed § 1005.19, a prepaid account is an "open account," or "open prepaid account," if (i) there is an outstanding balance in the prepaid account; (ii) if the consumer can load funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit through a credit plan that would be a credit card account under Regulation Z (12 CFR part 1026) that is offered in connection with a prepaid account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) would have been considered an open account or open prepaid account.

Proposed comment 19(a)(6)-1 would have explained that a prepaid account that meets any of the criteria set forth in proposed § 1005.19(a)(6) is considered open even if the issuer considers the account inactive. The term open account was used in the provisions regarding the de minimis and product testing exceptions in proposed § 1005.19(b)(4) and (5) and the requirements in proposed § 1005.19(d) for agreements not submitted to the Bureau, discussed below.

Proposed § 1005.19(a)(6) was similar to the definition of open account or open credit card account in Regulation Z § 1026.58(b)(6). While Regulation Z § 1026.58(b)(6) defines an open credit card account as one in which the cardholder can obtain extensions of credit on the account, or there is an outstanding balance on the account that has not been charged off, the Bureau modified the definition to better reflect what it believed constitutes an open account in the prepaid context. Proposed § 1005.19(a)(6) would have included the explanation used in Regulation Z § 1026.58(b)(6), which provides that an account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is nonetheless considered an open account. Proposed comment 19(a)(6)-1 was similar to Regulation Z comment 58(b)(6)-1, with modifications to reflect the terms of proposed § 1005.19(a)(6).

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(6), renumbered as § 1005.19(a)(7), largely as proposed, with revisions to reflect the changes in final Regulation Z § 1026.61 regarding hybrid prepaid-credit cards. Specifically, final § 1005.19(a)(6) provides, in part, that for the purposes of § 1005.19, a prepaid account is an “open account” or “open prepaid account” if the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as

defined in Regulation Z § 1026.61, in connection with the account. The Bureau is also finalizing comment 19(a)(6)-1, renumbered as comment 19(a)(7)-1, as proposed, with minor revisions for clarity.

#### *19(a)(8) Prepaid Account*

The Bureau proposed § 1005.19(a)(7) to provide that for purposes of proposed § 1005.19, “prepaid account” means a prepaid account as defined in proposed § 1005.2(b)(3). Proposed comment 19(a)(7)-1 would have explained that for purposes of proposed § 1005.19, a prepaid account includes, among other things, a payroll card account as defined in proposed § 1005.2(b)(3)(iii) and a government benefit account as defined proposed §§ 1005.2(b)(3)(iv) and 1005.15(a)(2).

The Bureau received comments from several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, in response to the Bureau’s request for comment regarding whether there were any types of prepaid accounts as defined in proposed § 1005.2(b)(3) that should be excluded from the definition of prepaid account for purposes of § 1005.19, or that should be excluded from certain requirements in § 1005.19. These commenters urged the Bureau to exclude prepaid account agreements that are not offered to the public (such as for payroll card, government benefit, and campus card accounts) from the requirement in proposed § 1005.19(b) to submit agreements to the Bureau for posting on the Bureau’s publicly available website and the requirement in proposed § 1005.19(c) to post agreements on the issuer’s publicly available website. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university)

and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the Bureau's and issuer's websites, overwhelm consumers, and cause confusion because consumers might not understand which agreement applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. The commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General urged the Bureau not to exclude any prepaid account agreements from the requirement to submit agreements to the Bureau for posting on the Bureau's publicly available website and the requirement to post agreements on the issuer's publicly available website. These commenters argued that publicly posting these agreements would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they stated would result in more informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by market participants. This commenter explained that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to

come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once a card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(7), renumbered as § 1005.19(a)(8), as proposed. The Bureau is also finalizing comment 19(a)(7)-1, renumbered as comment 19(a)(8)-1, with minor revisions for clarity and an updated internal paragraph citation to reflect numbering changes made in this final rule.

The Bureau believes that the submission of all prepaid account agreements, including payroll card, government benefit, campus card, and other account agreements that are not available to the general public, is essential for the Bureau's market monitoring efforts. Furthermore, the Bureau's posting of these agreements to its website in the future will increase transparency in the terms of these agreements and the types and amounts of the fees imposed in these programs. The increased transparency will allow the public, including consumers, to become better informed about these accounts, which will likely encourage competition and improve fees in the various markets. In addition, the public posting to the Bureau's website in the future will allow entities such as employers, government agencies, and universities

considering making prepaid account programs available to their constituencies to review similar agreements with other institutions and compare the various terms before entering into their own agreements. The Bureau also agrees that consumers of accounts with agreements that are not available to the general public, such as payroll card accounts, will be able to make meaningful comparisons with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts. For these reasons, the Bureau declines to exclude payroll card, government benefit, campus card, and other account agreements that are not available to the general public from the final rule's submission requirement, as requested by some commenters.

The Bureau is persuaded, however, that posting agreements that are not offered to the general public to the issuer's publicly available website may impose unnecessary administrative burden and have little consumer benefit. The Bureau has thus modified § 1005.19(c), discussed below, to exempt agreements that are not offered to the general public from the posting requirement. The final rule does not require issuers to post on the issuer's publicly available website agreements that are not offered to the general public, such as payroll card, government benefit, and campus card agreements. However, issuers of these agreements are still required to provide consumers with access to their specific agreements, as required by final § 1005.19(d). See the section-by-section analysis of § 1005.19(c) below for additional information regarding the posting requirement.

#### *Private Label Credit Cards*

The Board defined the term "private label credit card account" in what is now Regulation Z § 1026.58(b)(8)(i) as a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. The term "private label credit card plan" in Regulation Z

§ 1026.58(b)(8)(ii) is similarly defined as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. Regulation Z contains an exception and other specific provisions tailored specifically to private label credit card accounts and plans.<sup>533</sup>

The Bureau did not believe that equivalent provisions were necessary or appropriate for proposed § 1005.19, as the equivalent of a private label credit card in the prepaid context would be a closed-loop gift card. Such gift cards were outside the scope of the term prepaid account, as defined in proposed §§ 1005.2(b)(3) and 1005.19(a)(7). The Bureau did not receive any comments on this issue.

#### *19(b) Submission of Agreements to the Bureau*

Proposed § 1005.19(b) would have required each issuer to electronically submit to the Bureau prepaid account agreements offered by the issuer on a quarterly basis for the Bureau to post on its website pursuant to proposed § 1005.19(b)(7).

The Bureau received many comments from consumer groups and industry on this portion of the proposal. Consumer groups generally supported the proposal, arguing that it would provide important consumer benefits and impose little burden on industry. On the other hand, industry commenters, including trade associations, issuing banks, credit unions, a payment network, and a law firm writing on behalf of a coalition of prepaid issuers, cited reasons for why they believed the proposal would be burdensome and unnecessary. Several of these commenters also argued that the submission requirement in proposed § 1005.19(b) should be suspended until the Bureau develops an automated, streamlined submission process and system. A few of these commenters stated that submitting agreements to the Bureau should be manageable, assuming

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<sup>533</sup> See, e.g., Regulation Z § 1026.58(b)(8), (c)(6); comments 58(b)(8)-1 through -4; comments 58(c)(6)-1 through -6; and comment 58(d)-3.

the process is similar to the process for submitting credit card agreements to the Bureau pursuant to Regulation Z § 1026.58. Other commenters argued, however, that the submission process should not be compared to the submission process for credit card agreements because there are many more prepaid account agreements than credit card agreements.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b) with several modifications. The final rule also establishes a delayed effective date of October 1, 2018 for final § 1005.19(b), as discussed in the section-by-section analysis of § 1005.19(f)(2) below. The Bureau is finalizing § 1005.19(b)(1) with revisions to change the time period in which issuers must submit prepaid account agreements to the Bureau from a quarterly basis to a rolling basis and to clarify the information that each submission must contain. The Bureau is finalizing § 1005.19(b)(2) and (3), regarding the submission requirements for amended and withdrawn agreements, substantially as proposed. The Bureau is also finalizing § 1005.19(b)(4) and (5), regarding the de minimis and product testing exceptions, with modifications to clarify that whether an issuer or agreement qualifies for either exception is determined as of the last day of the calendar quarter. Moreover, the Bureau is finalizing § 1005.19(b)(6), regarding the form and content requirements for submissions to the Bureau, generally as proposed. Finally, the Bureau is not adopting § 1005.19(b)(7) at this time, as discussed below. The Bureau notes that due to the change requiring submissions to be made on a rolling, rather than quarterly, basis, as well as other modifications the Bureau has made for this final rule, the Bureau believes that the Regulation Z § 1026.58 guidance referenced in a number of the proposed comments would no longer be particularly useful to prepaid account issuers and thus the Bureau has modified the comments accordingly to include examples specific to prepaid directly in the commentary text.

## *19(b)(1) Submissions on a Rolling Basis*

### *The Bureau's Proposal*

The Bureau proposed § 1005.19(b)(1) to require issuers to make quarterly submissions of prepaid account agreements to the Bureau, in the form and manner specified by the Bureau, unless certain exceptions applied. Such quarterly submissions would have been required to be sent to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Proposed comment 19(b)(1)-1 would have referred to Regulation Z comment 58(c)(1)-1 for additional guidance as to the quarterly submission timing requirement.

Regulation Z § 1026.58(b)(3) defines the term “business day,” for purposes of § 1026.58, to mean a day on which the creditor’s offices are open to the public for carrying on substantially all of its business functions. Section 1005.2(d) contains a similar definition of the term business day (any day on which the offices of the consumer’s financial institution are open to the public for carrying on substantially all business functions). Because that definition applies generally in subpart A and the Bureau believed it was appropriate for use in proposed § 1005.19, the Bureau believed it was unnecessary to define the term again within proposed § 1005.19.

Proposed § 1005.19(b)(1) would have required that each quarterly submission contain the following four items. First, a quarterly submission would have been required to contain identifying information about the issuer and the agreements submitted, including the issuer’s name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name of the program manager, if any, for each agreement.

Second, the quarterly submission would have been required to contain the prepaid account agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer had not previously submitted to the Bureau.

Third, the quarterly submission would have been required to contain any prepaid account agreement previously submitted to the Bureau that was amended during the previous calendar quarter and that the issuer offered to the public as of the last business day of the preceding calendar quarter, as described in proposed § 1005.19(b)(2).

Finally, the quarterly submission would have been required to contain notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer was withdrawing, as described in proposed § 1005.19(b)(3), (4)(iii), and (5)(iii).

Proposed comment 19(b)(1)-2.i would have explained that an issuer would not be required to make any submission to the Bureau at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions: (A) offering a new prepaid account agreement that was not submitted to the Bureau previously; (B) amending an agreement previously submitted to the Bureau; or (C) ceasing to offer an agreement previously submitted to the Bureau. Proposed comment 19(b)(1)-2.ii would have referred to Regulation Z comment 58(c)(1)-2.ii for additional guidance as to when a quarterly submission is not required.

Proposed comment 19(b)(1)-3 would have explained that proposed § 1005.19(b)(1) permits an issuer to submit to the Bureau on a quarterly basis a complete, updated set of the prepaid account agreements the issuer offers to the public. Proposed comment 19(b)(1)-3 would have also referred to Regulation Z comment 58(c)(1)-3 for additional guidance regarding quarterly submission of a complete set of updated agreements.

Proposed § 1005.19(b)(1) generally mirrored Regulation Z § 1026.58(c)(1), except for the addition of the program manager's name into proposed § 1005.19(b)(1)(i). Proposed comments 19(b)(1)-1, -2, and -3 were similar to Regulation Z comments 58(c)(1)-1, -2, and -3

except that proposed comments 19(b)(1)-1, -2.ii and -3 were shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding quarterly submission of agreements as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts.

### *Comments Received*

The Bureau received comments from both consumer groups and industry regarding whether the submission of agreements on a quarterly basis would be appropriate. The consumer groups and most of the industry commenters urged the Bureau to require issuers to submit agreements whenever changes are made. A few other industry commenters requested an annual submission. The industry commenters stated that because prepaid account agreements do not change often, imposing a quarterly submission requirement would result in burden associated with constantly monitoring agreements for updates and ensuring that updated agreements are submitted to the Bureau. The consumer groups argued that a quarterly submission would not ensure that the Bureau has the most recent agreements, which they believed could erode consumer confidence and the value posting the agreements to the Bureau's website.

Several consumer groups and a labor organization requested that submissions to the Bureau include the names of the issuing bank, program manager, and branding entity (such as an employer, government agency, or institute of higher education), and other names that might be associated with a prepaid account (such as the entity that provides customer support). One of these commenters explained that many issuers use marketing or other affinity-related names that make it difficult for a consumer to know which entity issued the prepaid account. Another commenter suggested that submissions also include employer information and the effective date of the agreement. Conversely, one credit union trade association objected to providing to the

Bureau the issuer's identifying information, arguing that such information is provided on the agreement as well as the disclosures, and the tax identification number and program manager are irrelevant.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(1) with modifications to revise the time period in which issuers must make prepaid account agreement submissions to the Bureau from a quarterly basis to a rolling basis. Specifically, final § 1005.19(b)(1)(i) provides that an issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Final § 1005.19(b)(1)(i) also provides that submissions must be made to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer a prepaid account agreement, as described in final § 1005.19(b)(1)(ii) through (iv).

The Bureau believes that requiring submission of a prepaid account agreement on a rolling basis will help alleviate potential compliance burden related to the submission requirement. Specifically, the Bureau believes it will be less burdensome for issuers to submit agreements as they are offered or amended (or notification when an agreement is being withdrawn) than it would be for issuers to wait to submit agreements on a fixed schedule, especially since prepaid account agreements do not change often. Furthermore, the Bureau expects that issuers will incorporate the agreement submission process into their own internal business processes and believes the revision to require submission on a rolling basis (rather than quarterly) will help align those processes. In addition, the Bureau believes that requiring submission no later than 30 days after an issuer offers, amends, or ceases to offer an agreement

will help ensure that the most up-to-date agreements are available to the Bureau for its market monitoring purposes, as well as on the Bureau's website in the future.

As noted above, § 1005.19(b)(1)(i) through (iv) lists the items that each submission to the Bureau must contain. Based on the comments it received, the Bureau has revised § 1005.19(b)(1)(i) to require that each submission also contain the effective date of the prepaid agreement, the name of the program manager, and the names of other relevant parties, if applicable, such as the employer for a payroll card program or the agency for a government benefit program. The Bureau believes that providing this identifying information about each agreement will help the Bureau, consumers, and other parties locate agreements quickly and more effectively. For example, submitting the name of each employer that offers a payroll card account under a specific agreement will assist consumers in identifying the agreement to which their payroll card account is subject. The Bureau notes, however, that submissions should not contain personally identifiable information relating to any consumer, such as the consumer's name, address, telephone number, or account number.

The Bureau is finalizing comment 19(b)(1)-1, with modifications for clarity and consistency with the revisions to § 1005.19(b)(1). This comment does not refer to Regulation Z comment 58(c)(1)-1 for additional guidance because, given that final § 1005.19(b)(1) requires submission of prepaid account agreements on a rolling rather than quarterly basis, the Bureau does not believe that comment would provide useful guidance. The Bureau is therefore adopting new comment 19(b)(1)-1 to provide examples illustrating the 30-day time period in which issuers must submit agreements.

The Bureau is not finalizing proposed comments 19(b)(1)-2 and -3, which would have provided clarification for the quarterly submission requirement, because the Bureau has revised

§ 1005.19(b)(1) to require issuers to make submissions of prepaid account agreements to the Bureau on a rolling basis.

As noted in the section-by-section analysis of § 1005.19(a)(4) above, the Bureau is adopting new comment 19(b)(1)-2 to explain the submission requirement for an institution that partners with multiple other entities to issue prepaid accounts. This comment explains that if a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. This comment further explains that each issuer may use the program manager to submit the agreement on its behalf, in accordance with comment 19(a)(4)-2. Because the number and role of the parties involved in a particular prepaid account agreement may vary, the Bureau believes it is clearer to require issuers, not program managers (or other parties), to submit these agreements to the Bureau. In addition, the Bureau believes that submitting separate agreements for each issuer, rather than submitting one agreement with multiple issuers as suggested by one commenter, will be less confusing to consumers and other parties reviewing agreements on the Bureau's website in the future.

#### *19(b)(2) Amended Agreements*

##### *The Bureau's Proposal*

The Bureau proposed § 1005.19(b)(2) to provide that if a prepaid account agreement has been submitted to the Bureau, the agreement has not been amended, and the issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. Proposed comment 19(b)(2)-1 would have referred to Regulation Z comment 58(c)(3)-1 for additional guidance regarding no requirement to resubmit agreements that have not been amended.

Proposed § 1005.19(b)(2) would have also required that if a prepaid account agreement that previously has been submitted to the Bureau is amended, and the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. Proposed comment 19(b)(2)-2 would have further explained that the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective and would have referred to Regulation Z comment 58(c)(3)-2 for additional guidance regarding the submission of amended agreements. Proposed comment 19(b)(2)-3 would have reiterated that agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau and would have referred to Regulation Z comment 58(c)(3)-3 for additional guidance on agreements that have been amended but are no longer offered to the public.

Finally, proposed comment 19(b)(2)-4 would have explained that an issuer may not fulfill the requirement in proposed § 1005.19(b)(2) to submit the entire amended agreement to the Bureau by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments would have been required to be integrated into the text of the agreement (or the optional addendum described in proposed § 1005.19(b)(6)), not provided as separate riders. Proposed comment 19(b)(2)-4 would have also referred to Regulation Z comment 58(c)(3)-4 for additional guidance as to the submission of revised agreements.

Proposed § 1005.19(b)(2) mirrored the Regulation Z provisions regarding submission of amended agreements in Regulation Z § 1026.58(c)(3). Proposed comments 19(b)(2)-1 through -

4 mirrored Regulation Z comments 58(c)(3)-1 through -4, although the proposed 19(b)(2) comments were shortened to cross-reference the parallel comments in Regulation Z for specific examples of submission of amended agreements as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts.

### *The Final Rule*

The Bureau received no comments on this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(b)(2) as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from quarterly to rolling. Specifically, final § 1005.19(b)(2) provides that if a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change comes effective. Given the revisions to § 1005.19(b)(1), the Bureau has removed proposed comments 19(b)(2)-1 and -2, which would have explained the requirement to submit amended agreements on a quarterly basis.

The Bureau is not finalizing proposed comment 19(b)(2)-3, which would have provided guidance for issuers submitting amended agreements that are no longer offered, because under the revised rolling submission requirement, an issuer would not likely amend an agreement and less than 30 days later decide to stop offering that agreement. If the issuer stopped offering the agreement, the issuer would be required to notify the Bureau that it is withdrawing the agreement, as required by final § 1005.19(b)(3) and as explained in final comment 19(b)(3)-1.

The Bureau is finalizing comment 19(b)(2)-4, renumbered as comment 19(b)(2)-1, largely as proposed, with several minor revisions for clarity and conformity with the revisions to § 1005.19(b)(1). Final comment 19(b)(2)-1 explains that if an agreement previously submitted

to the Bureau is amended, final § 1005.19(b)(2) requires the issuer to submit the entire revised agreement to the Bureau. This comment further explains that an issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. Amendments must be integrated into the text of the agreement (or the optional addendum described in § 1005.19(b)(6)), not provided as separate riders. This comment does not refer to Regulation Z comment 58(c)(3)-4 for additional guidance because the Bureau does not believe the example illustrated in comment 58(c)(4)-4 regarding APRs would be useful for prepaid account issuers. The Bureau continues to believe that permitting issuers to submit change-in-terms notices or riders containing amendments or revisions would make it difficult to determine a prepaid account's current fees and terms. Consumers could be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Bureau believes that issuers are better placed than consumers to assemble this information and customarily incorporate revised terms into their prepaid account agreements on a regular basis rather than only issue separate riders or notices.

*19(b)(3) Withdrawal of Agreements No Longer Offered*

The Bureau proposed § 1005.19(b)(3) to provide that if an issuer no longer offers to the public a prepaid account agreement that previously has been submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. Proposed § 1005.19(b)(3) mirrored the Regulation Z provisions regarding withdrawal of agreements previously submitted to the Bureau in Regulation Z § 1026.58(c)(4). Proposed comment 19(b)(3)-1 would have referenced Regulation Z comment 58(c)(4)-1 for a

specific example regarding withdrawal of submitted agreements as the Bureau intended that this provision would function the same for prepaid accounts as it does for credit card accounts.

With respect to credit cards, the Board found that the number of credit card agreements currently in effect but no longer offered to the public was extremely large, and thus providing such agreements to the Board would have posed a significant burden on issuers as well as diluted the active agreements posted on the Board's website to such an extent that they might no longer be useful to consumers.<sup>534</sup> The Bureau did not believe that prepaid issuers have open prepaid accounts subject to agreements no longer offered to the public the same way that credit card issuers do. However, the Bureau believed that the primary benefit of making prepaid account agreements available on the Bureau's website would be to assist consumers in comparing prepaid account agreements offered by various issuers when shopping for a new prepaid account; including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers because consumers could not obtain the accounts subject to these agreements.

The Bureau received one comment from a consumer group on this aspect of the proposal. The consumer group argued that issuers with programs that have a significant number of open accounts whose agreements are no longer offered to the public should be required to submit such agreements to the Bureau, with a notation that the agreement is no longer offered. This commenter explained that doing so would avoid confusion about active programs that would otherwise be absent from the Bureau's website and would allow users to compare those programs to newer programs. The Bureau does not believe such a requirement is necessary at

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<sup>534</sup> 74 FR 54124, 54189 (Oct. 21, 2009).

this time in light of the limited benefits to consumers, and thus declines to require the submission of agreements of open accounts that are no longer offered to the public.

The Bureau is therefore finalizing § 1005.19(b)(3) and its related commentary substantially as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. The Bureau has also made several revisions to conform with the changes made to the proposed definition of “offers,” reflected in final § 1005.19(a)(5) and (6), discussed above. Specifically, final § 1005.19(b)(3) provides that if an issuer no longer offers a prepaid account agreement that was previously submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the issuer ceases to offer the agreement that it is withdrawing the agreement. Upon further consideration, the Bureau believes that it is necessary to provide clarification on what it means for a prepaid account to no longer be offered. Therefore, the Bureau has revised comment 19(b)(3)-1 to clarify that an issuer no longer offers an agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement. In addition, final comment 19(b)(3)-1 does not refer to Regulation Z comment 58(c)(4)-1 for additional guidance because comment 58(c)(4)-1 describes a scenario in which an issuer must notify the Bureau that it is withdrawing an agreement by a quarterly submission deadline, which is not relevant to final § 1005.19(b)(3).

#### *19(b)(4) De Minimis Exception*

##### *The Bureau’s Proposal*

The Bureau proposed § 1005.19(b)(4) to provide a de minimis exception for the requirement to submit prepaid account agreements to the Bureau. Proposed § 1005.19(b)(4)(i)

would have stated that an issuer is not required to submit any prepaid account agreements to the Bureau if the issuer had fewer than 3,000 open prepaid accounts as of the last business day of the calendar quarter. As in Regulation Z, this de minimis exception would have applied to all open prepaid accounts of the issuer, not to each of the issuer's prepaid account programs separately.

For Regulation Z, the Board was not aware of a way to define a "credit card plan" that would not divide issuers' portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception.<sup>535</sup> The Board therefore established a de minimis exception based on an issuer's total number of open accounts in what is now Regulation Z § 1026.58(c)(5). The Bureau believed that the same issues apply in attempting to define a "prepaid account program" for purposes of a de minimis threshold, and therefore similarly proposed to adopt a de minimis threshold that applies to all of an issuer's prepaid programs, rather than on a program-by-program basis.

The Bureau proposed to use a lower de minimis threshold of 3,000 open prepaid accounts, in place of the 10,000 open accounts threshold used in Regulation Z. The prepaid accounts market is smaller than the credit card market (based on number of open accounts) and there are some indications that smaller issuers (*i.e.*, with small numbers of open accounts rather than small based on entity size) may account for more of the prepaid market than do smaller issuers in the credit card market. The Bureau sought to create a de minimis threshold that would exempt a similar portion of open prepaid accounts from this requirement as are exempted by the current analogous requirement for credit cards. However, at the time of the proposal, the Bureau did not have specific data that would permit it to accurately determine a comparable threshold for prepaid accounts.

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<sup>535</sup> 74 FR 54124, 54191 (Oct. 21, 2009).

As the Bureau explained in the proposal, recent public data indicated that none of the top 100 Visa and MasterCard credit card issuers (ranked by dollar amount of outstandings, and which covers both consumer and commercial credit cards) came close to falling below the 10,000 Regulation Z de minimis threshold, even as those issuers (when combined with Discover and American Express, which are the two largest U.S. issuers that are not MasterCard or Visa issuers) amount to more than 92 percent of total general purpose credit card loans outstanding.<sup>536</sup> The smallest credit card issuers in this top-100 list, based on total accounts and total active accounts, exceed the de minimis threshold by a factor of between two (for active accounts) and nearly four (for total accounts).

In comparison, the same public source indicated that three of the top 50 Visa and MasterCard prepaid account issuers would fall below a 10,000 threshold, and one of these is right at the proposed 3,000 threshold.<sup>537</sup> Furthermore, the data in this report included a number of other types of prepaid products beyond commercial cards that were outside the proposed definition of prepaid account, such as consumer gift, healthcare, and rebates/rewards, creating the likelihood that additional top-50 prepaid issuers could fall below a de minimis threshold of 10,000 open prepaid accounts.<sup>538</sup> Although it is not straightforward to calculate exactly how

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<sup>536</sup> HSN Consultants, Inc., *The Nilson Report, Issue 1035*, at 8, 10-11 (Feb. 2014), and HSN Consultants, Inc., *The Nilson Report, Issue 1038*, at 10-11 (Apr. 2014). Public data for the next tranche of credit card issuers does not include account volume, but it does include outstandings volume. The lowest outstandings for an issuer in the third 50 cohort are more than 60 percent of the outstandings for the smallest issuer by total account volume in the top-100. See HSN Consultants, Inc., *The Nilson Report, Issue 1042* at 11 (June 2014). As the smallest issuer by total account volume in the top-100 exceeded the de minimis threshold by several factors, the available indications are that the third 50 cohort would not fall below the de minimis threshold either.

<sup>537</sup> HSN Consultants, Inc., *The Nilson Report, Issue 1043*, at 10 (June 2014). One issuer had 9,000 cards in circulation, another had 8,000, and a third had only 3,000.

<sup>538</sup> One issuer was reported to have 14,000 cards in circulation, another had 16,000, and a third had 18,000.

much of the market these top-50 prepaid issuers represent, available indications are that it is significantly below the 92 percent accounted for by the top-100 credit card issuers.<sup>539</sup>

Proposed comment 19(b)(4)-1 would have explained that the de minimis exception in proposed § 1005.19(b)(4) is distinct from the product testing exception in proposed § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the financial institution's total number of open accounts. Proposed comment 19(b)(4)-2 would refer to Regulation Z comment 58(c)(5)-2 for additional guidance on the de minimis exception.

Proposed § 1005.19(b)(4)(ii) would have stated that if an issuer that previously qualified for the de minimis exception ceases to qualify, the issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. Proposed comment 19(b)(4)-3 would have referred to Regulation Z comment 58(c)(5)-3 for additional guidance on the date for determining whether an issuer qualifies for the de minimis exception. Proposed comment 19(b)(4)-4 would have also referred to Regulation Z comment 58(c)(5)-4 for additional guidance on the date for determining whether an issuer ceases to qualify for the de minimis exception.

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<sup>539</sup> Nilson reports that the top-50 prepaid issuers accounted for some \$118 billion in purchase volume in 2013. HSN Consultants, Inc., *The Nilson Report, Issue 1043*, at 1 (June 2014). One leading consultancy estimated load on open-loop prepaid products for that year at over \$242 billion. Mercator Advisory Group, *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014-2017* (Nov. 2014).

Finally, proposed § 1005.19(b)(4)(iii) would have stated that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make quarterly submissions to the Bureau until the issuer notifies the Bureau that it is withdrawing all agreements it previously submitted to the Bureau. Proposed comment 19(b)(4)-5 would have also referred to Regulation Z comment 58(c)(5)-5 for additional guidance on an issuer's option to withdraw its agreements submitted to the Bureau.

Proposed § 1005.19(b)(4) mirrored the provisions regarding the de minimis exception in Regulation Z § 1026.58(c)(5), except for the lower proposed de minimis threshold figure. Proposed comments 19(b)(4)-1 to -5 mirrored Regulation Z comments 58(c)(5)-1 to -5, although proposed comments 19(b)(1)-2 to -5 were shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding the de minimis exception as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts. In addition, the references to the private label credit card exception in Regulation Z comment 58(c)(5)-1 were removed as the Bureau did not believe that exception was relevant in the prepaid card context, as discussed above.

#### *Comments Received*

The Bureau received comments from several credit unions, a credit union trade association, and consumer groups regarding this portion of the proposal. The credit unions and the trade association indicated that they appreciated the Bureau's proposal to include a de minimis threshold but argued that the proposed de minimis threshold was too low and that overregulating prepaid accounts will negatively impact the dynamic and growing market. These commenters urged the Bureau to raise the threshold to 10,000 open accounts, which they believed would help alleviate burden, especially for small credit unions.

The consumer groups requested that the Bureau either lower the threshold or eliminate the proposed de minimis exception altogether. Responding to the argument about the impact to small issuers, one consumer group stated that small issuers can have some of the highest fees and need public scrutiny. This commenter also stated that submitting agreements to the Bureau is not time-consuming and should not overburden small issuers. Another consumer group argued that the threshold should be lowered to 500 “active” accounts, which the commenter defined as any account with a transaction in the prior quarter. This commenter also stated that large banks with ample resources should not be permitted to qualify for a de minimis exception, regardless of the number of accounts they have.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(4) with several revisions explained below. The Bureau has modified § 1005.19(b)(4)(i) to make clear that whether an issuer qualifies for the de minimis exception is determined by the number of open prepaid accounts it has as of the last day of the calendar quarter. Despite changing the submission requirement from quarterly to rolling, the Bureau believes it is appropriate to keep the de minimis exception on a quarterly schedule so that issuers have a measurable time frame to determine whether they qualify for the exception. Final § 1005.19(b)(4)(i) provides that an issuer is not required to submit any prepaid account agreements to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. Final § 1005.19(b)(4)(i) makes clear that if the issuer has 3,000 or more open prepaid accounts as of the last day of the calendar quarter, the issuer must submit to the Bureau its prepaid account agreements no later than 30 days after the last day of that calendar quarter. The Bureau has eliminated proposed § 1005.19(b)(4)(ii), which would have explained an issuer’s obligation to make quarterly submissions to the Bureau if it ceased to

qualify for the de minimis exception, because this concept is now addressed in final § 1005.19(b)(4)(i). The Bureau is finalizing § 1005.19(b)(4)(iii), renumbered as § 1005.19(b)(4)(ii), which provides that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. In addition, the Bureau has removed the term “business” from the phrase “last business day” from the regulatory text of final § 1005.19(b)(4) and its related commentary to simplify the de minimis exception. The Bureau has also made several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) requiring submission to the Bureau on a rolling basis.

The Bureau declines to modify the proposed threshold of 3,000 open prepaid accounts, as requested by some commenters. A more recent version of the public data described above continues to indicate that none of the top 100 Visa and MasterCard credit card issuers (ranked by dollar amount of outstandings, and which covers both consumer and commercial credit cards) come close to falling below the 10,000 Regulation Z de minimis threshold. Those issuers (when combined with Discover and American Express, which are the two largest U.S. issuers that are not MasterCard or Visa issuers) now amount to more than 93 percent of total general purpose credit card loans outstanding.<sup>540</sup> The smallest credit card issuers in this top-100 list, based on

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<sup>540</sup> HSN Consultants, Inc., *The Nilson Report, Issue 1081*, at 1, 8, 10-11 (Feb. 2016), and HSN Consultants, Inc., *The Nilson Report, Issue 1083*, at 10-11 (Mar. 2016). Public data for the next tranche of credit card issuers, *i.e.*, issuers 101-150, does not include account volume, but it does include outstandings volume. The lowest outstandings for an issuer in this third 50 cohort are more than 60 percent of the outstandings for the smallest issuer by total account volume in the top-100. See HSN Consultants, Inc., *The Nilson Report, Issue 1090*, at 9 (July 2016). As the smallest issuer by total account volume in the top-100 exceeded the de minimis threshold by several factors, the available indications are that the third 50 cohort would not fall below the de minimis threshold either.

total accounts and total active accounts, exceed the de minimis threshold by a factor of between two (for active accounts) and nearly three (for total accounts).

In comparison, the same public source now indicates that three of the top 50 Visa and MasterCard prepaid account issuers would fall below a 10,000 threshold, and two of these fall below the 3,000 threshold.<sup>541</sup> Furthermore, as noted above, the data in this report includes a number of other types of prepaid products beyond commercial cards that are outside this final rule's definition of prepaid account, such as healthcare and rebates/rewards, creating the likelihood that additional top-50 prepaid issuers would fall below a de minimis threshold of 10,000 open prepaid accounts.<sup>542</sup> Although it remains not straightforward to calculate exactly how much of the market these top-50 prepaid issuers represent, available indications are that it is significantly below the 93 percent accounted for by the top-100 credit card issuers.<sup>543</sup> As noted in the proposal, the de minimis threshold is meant to exempt issuers based on the number of open accounts they have, not on their asset size. Therefore, larger entities (based on asset size) with fewer than 3,000 open accounts as of the last day of the calendar quarter would qualify for the de minimis exception, whereas smaller entities (based on asset size) with 3,000 or more open accounts as of the last day of the calendar quarter would not qualify.

The Bureau has made several changes to the commentary explaining the de minimis exception. Specifically, the Bureau is finalizing comment 19(b)(4)-1, which explains that the de minimis exception in final § 1005.19(b)(4) is distinct from the product testing exception in final

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<sup>541</sup> HSN Consultants, Inc., *The Nilson Report, Issue 1091*, at 8-9 (July 2016). One issuer had 3,000 cards in circulation, another had 2,000, and a third had only 1,000.

<sup>542</sup> *Id.* at 8. One issuer was reported to have 13,000 cards in circulation and another had 14,000.

<sup>543</sup> Nilson reports that the top-50 prepaid issuers accounted for some \$145 billion in purchase volume in 2015. HSN Consultants, Inc., *The Nilson Report, Issue 1091*, at 1, 8-9 (July 2016). One leading consultancy has projected load on open-loop prepaid products for that year at over \$280 billion. See Mercator 12th Annual Market Forecasts at 8.

§ 1005.19(b)(5), as proposed. The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with a product test for a prepaid account program with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

The Bureau is also finalizing comment 19(b)(4)-2, with several modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example of an issuer that qualifies for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)-2 for additional guidance because the Bureau believes it is clearer to include an example that specifically addresses the de minimis exception for prepaid accounts.

Furthermore, the Bureau is finalizing comment 19(b)(4)-3, with modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example illustrating how an issuer determines whether it qualifies for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)-3 for additional guidance because the Bureau believes it is clearer to include an example that explains how an issuer determines whether it qualifies for the de minimis exception for prepaid accounts. The Bureau has also removed from final comment 19(b)(4)-3 the word “business” from the phrase “last business day,” as explained above.

In addition, the Bureau is finalizing comment 19(b)(4)-4 with modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example illustrating how an issuer determines whether it ceases to qualify for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)-4 for additional guidance

because the Bureau believes it is clearer to include an example that explains how an issuer determines whether it ceases to qualify for the de minimis exception for prepaid accounts. The Bureau has also removed from final comment 19(b)(4)-4 the word “business” from the phrase “last business day,” as explained above.

Finally, the Bureau is finalizing comment 19(b)(4)-5 with modifications for clarity and consistency with the revisions to § 1005.19(b)(1) and (4). This comment does not refer to Regulation Z comment 58(c)(5)-5 for additional guidance because the Bureau believes it is clearer to include an example regarding the issuer’s option to withdraw agreements when it qualifies for the de minimis exception for prepaid accounts. Thus, final comment 19(b)(4)-5 explains that if an issuer qualifies for the de minimis exception, the issuer has two options. The issuer may either notify the Bureau that it is withdrawing the agreements and cease making rolling submissions to the Bureau or not notify the Bureau and continue making rolling submissions to the Bureau as required by final § 1005.19(b).

#### *19(b)(5) Product Testing Exception*

##### *The Bureau’s Proposal*

The Bureau proposed § 1005.19(b)(5) to provide a product testing exception to the requirement to submit prepaid account agreements to the Bureau. Proposed § 1005.19(b)(5) mirrored the provisions regarding the product testing exception in Regulation Z § 1026.58(c)(7).

Proposed § 1005.19(b)(5)(i) would have provided that an issuer is not required to submit to the Bureau a prepaid account agreement if, as of the last business day of the calendar quarter, the agreement: (A) is offered as part of a product test offered to only a limited group of consumers for a limited period of time; (B) is used for fewer than 3,000 open prepaid accounts; and (C) is not offered to the public other than in connection with such a product test.

Proposed § 1005.19(b)(5)(ii) would have provided that if an agreement that previously qualified for the product testing exception ceases to qualify, the issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Finally, proposed § 1005.19(b)(5)(iii) would have provided that if an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

#### *Comments Received*

Two consumer groups commented on the Bureau's proposed product testing exception. One of the consumer groups requested that the product testing exception be limited to three months and not be available to a payroll card account program if substantially all of a company's employees are enrolled in that program. The other consumer group stated that the exception should only be granted in response to the Bureau's review.

#### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(5) with several revisions discussed below. The Bureau has modified § 1005.19(b)(5)(i) to make clear that whether an agreement qualifies for the product testing exception is determined based on whether it meets certain criteria as of the last day of the calendar quarter. Despite changing the submission requirement from quarterly to rolling, the Bureau believes it is appropriate to keep the product testing exception on a quarterly schedule so that issuers have a measurable time frame to determine whether they qualify for the exception. Final § 1005.19(b)(5)(i) provides that an issuer is not required to submit a prepaid account agreement to the Bureau if as of the last day

of the calendar quarter the agreement is offered as part of a product test offered to only a limited group of consumers for a limited period of time; is used for fewer than 3,000 open prepaid accounts; and is not offered other than in connection with such a product test. Final § 1005.19(b)(5)(i) makes clear that if an agreement fails to meet the product testing criteria set forth in final § 1005.19(b)(5)(i)(A) through (C) as of the last day of the calendar quarter, the issuer must submit to the Bureau that agreement no later than 30 days after the last day of that calendar quarter. The Bureau has eliminated proposed § 1005.19(b)(5)(ii), which would have explained an issuer's obligation to make quarterly submissions to the Bureau if an agreement ceased to qualify for the product testing exception, because this concept is now addressed in final § 1005.19(b)(5)(i). Furthermore, the Bureau is finalizing § 1005.19(b)(5)(iii), renumbered as final § 1005.19(b)(5)(ii), which provides that if an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement. In addition, the Bureau has removed the term "business" from the phrase "last business day" from final § 1005.19(b)(5)(i) to simplify the product testing exception. The Bureau has also made several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) requiring submission to the Bureau on a rolling basis.

The Bureau believes that requiring issuers to submit agreements that would qualify for the product testing exception would provide little benefit at this time. Specifically, consumers would not benefit from comparison shopping as the agreements would only be offered to discrete, targeted groups for a limited period of time. For similar reasons, the submission of these agreements would only minimally assist the Bureau's market monitoring efforts. In

addition, the Bureau understands that preparing and submitting agreements used for a small number of prepaid accounts in connection with a product test could result in administrative burden to issuers that would likely not be justified by the consumer benefit at this time.

The Bureau declines to add to additional requirements or modifications to this portion of the final rule, as requested by some commenters. The Bureau does not believe it is necessary at this time to disallow a payroll card account program from qualifying for the product testing exception if most of a company's employees are enrolled in that program, as suggested by one commenter. The Bureau also declines to limit the product testing exception to three months, as requested by another commenter, because efforts to test new prepaid account strategies and products can vary significantly, and the Bureau does not have the necessary data at this time to determine what an appropriate time frame would be. The Bureau notes, however, that this exception is intended for the testing of new products and strategies that spans a limited period of time, and the Bureau expects issuers will avail themselves of the exception only when their agreements meet the specific criteria set forth in final § 1005.19(b)(5). Finally, the Bureau also declines to grant the product testing exception only in response to the Bureau's review, as recommended by a commenter, because it does not believe it is necessary to do so at this time. However, the Bureau intends to monitor industry practices in this area and will consider modifications in future rulemakings, if warranted.

#### *19(b)(6) Form and Content of Agreements Submitted to the Bureau*

Section 1005.19(b)(6) sets forth the form and content requirements for prepaid account agreements submitted to the Bureau. The Bureau is finalizing § 1005.19(b)(6) largely as proposed, with several modifications as discussed below.

*19(b)(6)(i) Form and Content Generally*

The Bureau proposed § 1005.19(b)(6)(i) to provide that each prepaid account agreement must contain the provisions of the agreement and the fee information in effect as of the last business day of the preceding calendar quarter. Proposed comment 19(b)(6)-1 would have provided the following example to aid in determining the “as of” date of an agreement: On June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers to the public. The change in that fee will become effective on August 1. If the issuer submits the agreement to the Bureau on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower out-of-network ATM withdrawal fee because that lower fee was not in effect on June 30, the last business day of the preceding calendar quarter. Proposed comment 19(b)(6)-1 was similar to Regulation Z comment 58(c)(8)-1.

Proposed § 1005.19(b)(6)(i) would have also stated that agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number. Proposed § 1005.19(b)(6)(i) would have also stated that the following would not be deemed to be part of the agreement for purposes of proposed § 1005.19, and therefore are not required to be included in submissions to the Bureau: (1) ancillary disclosures required by State or Federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act; (2) solicitation or marketing materials; (3) periodic statements; and (4) documents that may be sent to the consumer along with the prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security. Finally, proposed § 1005.19(b)(6)(i) would have required that agreements must be presented in a clear and legible font.

Proposed § 1005.19(b)(6)(i) generally mirrored the provisions in Regulation Z § 1026.58(c)(8)(i) regarding the form and content of agreements that would be submitted to the Bureau. This provision would have excluded, however, two additional items listed in Regulation Z § 1026.58(c)(8)(i)(C) that are not deemed to be part of a credit card agreement—ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements, and offers for credit insurance or other optional products and other similar advertisements—because the Bureau did not believe these items were relevant in the prepaid account context.

The Bureau received no comments specifically addressing § 1005.19(b)(6)(i) and is therefore finalizing it as proposed, with modifications for consistency with the revisions to proposed § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. The Bureau notes that final § 1005.19(b)(6)(i) is not intended to provide an exhaustive list of the ancillary State and Federal law disclosures that are not deemed to be part of an agreement under final § 1005.19. As indicated by the use of the term “such as,” the listed disclosures are merely examples of “ancillary disclosures required by Federal or State law.” The Bureau does not believe it is feasible to include in this paragraph a comprehensive list of all such disclosures, as such a list would be extensive and would change as State and Federal laws and regulations are amended. The Bureau notes that an issuer would not be prohibited by this or any other provision of § 1005.19 from choosing to include these items in submitted agreements.

The Bureau received comments from several consumer groups and one credit union trade association regarding the Bureau’s request for comment about whether issuers should be required to post agreements on their websites in an electronic format that is readily usable by the general

public, or whether issuers should be required to provide agreements using, for example, a machine-readable text format, such as JSON or XML, that could be used by the Bureau or third parties to more easily create comparison shopping tools.<sup>544</sup> The consumer groups argued that agreements should be submitted in a machine-readable text format because this format would allow researchers and other third parties to analyze information more easily and create comparison shopping tools. The credit union trade association disagreed, however, arguing that requiring agreements to be submitted in a format other than PDF would impose substantial software engineering fees on issuers. The Bureau appreciates the comments it received and continues to believe that it is important for issuers to submit agreements in a machine-readable format for these agreements to be useful to both the Bureau in its market monitoring efforts and to the consumers and other parties reviewing agreements on the Bureau's website in the future. The Bureau will provide technical specifications that will include details regarding appropriate file formats that the Bureau expects issuers will use when submitting new agreements and amended agreements following a substantive change.

The Bureau also received comments from several consumer groups and a labor organization requesting that in addition to including with each submission the names of the bank issuer, program manager, and branding entity (such as an employer, organization, institution of higher education), and other names that might be associated with a prepaid account (such as the entity that provides customer support), agreements should be searchable by such information. One of these commenters explained that many issuers use marketing or other affinity related names that make it difficult for a consumer to know which entity issued the prepaid account.

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<sup>544</sup> The Bureau solicited comment on this issue in the section-by-section analysis of proposed § 1005.19(b)(2); however, the Bureau believes it is more appropriate to discuss this issue here in the section-by-section analysis § 1005.19(b)(6)(i), regarding the requirements for the form and content of the agreements submitted to the Bureau.

The Bureau has considered these comments will consider incorporating such search functionality into its website.

The Bureau is finalizing comment 19(b)(6)-1 substantially as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1). In addition, the Bureau has removed from final comment 19(b)(6)-1 the reference to “offers to the public” and leaving only the term “offers” to reflect the changes to § 1005.19(a)(5) as discussed. Specifically, final comment 19(b)(6)-1 explains that agreements submitted to the Bureau must contain the provisions of the agreement and fee information currently in effect. For example, on June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers. The change in that fee will become effective on August 1. The issuer must submit and post the amended agreement with the decreased out-of-network ATM withdrawal fee to the Bureau by August 31 as required by final § 1005.19(b)(2) and (c).

*19(b)(6)(ii) Fee Information*

The Bureau proposed § 1005.19(b)(6)(ii) to provide that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. The agreement or addendum thereto would have been required to contain all of the fee information, which was defined by proposed § 1005.19(a)(3) as the information listed for the long-form fee disclosure in proposed § 1005.18(b)(2)(ii).

Proposed § 1005.19(b)(6)(ii) deviated from the provisions governing pricing information in Regulation Z § 1026.58(c)(8)(ii) in that the proposed language would have permitted, but did not require, prepaid account fee information to be provided in an addendum to the prepaid account agreement. Proposed § 1005.19(b)(6)(ii) also omitted the provisions contained in Regulation Z § 1026.58(c)(8)(ii)(B) and (C) that address how to disclose pricing information that

varies from one cardholder to another (such as APRs) and how to disclose variable rates and margins. Because prepaid account fees and terms currently do not vary between consumers based on creditworthiness or other factors in the same way that credit card account pricing and other terms do, the Bureau did not believe these provisions were either applicable or necessary with respect to prepaid account agreements. The Bureau likewise did not propose an equivalent to Regulation Z § 1026.58(c)(8)(iii) which allows for an optional variable terms addendum that allows provisions other than those related to pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness, State of residence or other factors to be set forth in a single addendum separate from the pricing information addendum. The Bureau likewise did not propose a comment equivalent to that of Regulation Z comment 58(c)(8)-2 regarding pricing information, nor that of Regulation Z comment 58(c)(8)-4 regarding the optional variable terms addendum.

With credit cards, issuers offer a range of terms and conditions and issuers may make those terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. In Regulation Z, pricing information is required to be set out in a separate pricing information addendum, regardless of whether pricing information is also contained in the main text of the agreement. The Board concluded that it could be difficult for consumers to find pricing information if it is integrated into the text of the credit card agreement. The Board believed that requiring pricing information to be attached as a separate addendum would ensure that this information is easily accessible to consumers.<sup>545</sup> The Bureau did not believe that prepaid account agreements vary in the same manner.

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<sup>545</sup> 75 FR 7658, 7769 (Feb. 22, 2010).

Proposed comment 19(b)(6)-2, which is largely similar to Regulation Z comment 58(c)(8)-3, would have explained that fee agreement variations do not constitute separate agreements. Fee information that may vary from one consumer to another depending on the consumer's State of residence or other factors would have been required to be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the fee information would not have constituted separate agreements for purposes of proposed § 1005.19. For example, an issuer offers two types of prepaid accounts that differ only with respect to the monthly fee. The monthly fee for one type of account is \$4.95, while the monthly fee for the other type of account is \$0 if the consumer regularly receives direct deposit to the prepaid account. The provisions of the agreement and fee information for the two types of accounts are otherwise identical. Under the proposal, the issuer should not submit to the Bureau one agreement with fee information listing a \$4.95 monthly fee and another agreement with fee information listing a \$0 monthly fee. Instead, the issuer should submit to the Bureau one agreement with fee information listing possible monthly fees of \$4.95 or \$0, including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

The Bureau received comments from several consumer groups requesting that fee information be searchable separately from the terms and conditions. These commenters argued that consumers and other parties reviewing agreements on the Bureau's website will only want to compare fee schedules and that many will only be interested in the short form disclosures, which should include most of the relevant fees.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(6)(ii) as proposed, with modifications for consistency with the revisions to § 1005.19(b)(1) to change the time

period in which issuers must submit agreements to the Bureau from quarterly to rolling. The Bureau continues to believe that permitting issuers to submit fee information either in a prepaid account agreement or in a single addendum to that agreement provides issuers flexibility in submitting the fee information, while ensuring that consumers and other users of the database have access to such information. For example, for some issuers, requiring fee information to be provided in a separate addendum to the agreement might increase the administrative burden related to submitting a separate document to the Bureau.

In addition, the Bureau continues to believe that, unlike credit card issuers, prepaid account issuers do not typically offer a range of terms and conditions or make those terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. Therefore, the Bureau does not believe it would be difficult for consumers to find fee information if it is integrated into the text of the agreement.

The Bureau is finalizing comment 19(b)(6)-2 with several modifications to explain that issuers are not permitted to disclose fee information that varies from one consumer to another by providing a range of the possible fee variations; rather, issuers must disclose such fee information by setting forth all the possible variations. Upon further consideration, the Bureau believes that providing a range of possible fee variations would not present a clear picture of what the actual fees are and therefore would not be as helpful to the Bureau in its market monitoring, or to consumers or third parties in the future when prepaid account agreements are posted to the Bureau's website. Therefore, final comment 19(b)(6)-2 explains that fee information that may vary from one consumer to another depending on the consumer's State of residence or other factors must be disclosed by setting forth all the possible variations. The Bureau has removed from final comment 19(b)(6)-2 the explanation that two agreements that

differ only with respect to variations in the fee information do not constitute separate agreements, as the Bureau does think the comment is necessary. The Bureau has also revised the example in final comment 19(b)(6)-2 to explain that if an issuer offers a prepaid account with a monthly fee of \$4.95 or \$0 if the consumer regularly receives direct deposit to the prepaid account, the issuer must submit to the Bureau one agreement with fee information listing the possible monthly fees of \$4.95 or \$0 and including an explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

*19(b)(6)(iii) Integrated Agreement*

The Bureau proposed § 1005.19(b)(6)(iii) to prohibit issuers from providing provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addendum). Changes in provisions or fee information would have been required to be integrated into the text of the agreement, or the optional fee information addendum, as appropriate. Proposed comment 19(b)(6)-3 would have provided the following example illustrating this requirement: It would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document dated January 1, 2015, four subsequent change-in-terms notices, and two addenda showing variations in fee information. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and a single optional addendum displaying variations in fee information.

Proposed § 1005.19(b)(6)(iii) was similar to Regulation Z § 1026.58(c)(8)(iv) in that they both prohibit providing agreements and fee (or pricing) information to the Bureau in the form of change-in-terms notice or riders, but the Bureau modified the proposed language to reflect that prepaid account fee information may, but is not required to be, provided in an optional fee

information addendum. Proposed comment 19(b)(6)-3 was similar to Regulation Z comment 58(b)-5.

The Bureau received no comments on this aspect of the proposal and is therefore finalizing § 1005.19(b)(6)(iii) as proposed with minor revisions for clarity. The Bureau continues to believe that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of the agreements posted on the Bureau's website. In addition, the Bureau believes that prepaid account issuers customarily incorporate revised terms into their prepaid account agreements on a regular basis.

In addition, the Bureau believes that, unlike credit card agreements, a single prepaid account agreement does not typically contain a variety of variable terms predicated on the consumer's credit worthiness or other factors. With respect to Regulation Z § 1026.58(c)(8)(iv), the Board believed that there could potentially be significant burden on issuers for updating credit card agreements following changes in terms because of the potential variety in terms offered under a single agreement.<sup>546</sup> The Bureau does not believe a similar burden exists for prepaid account agreements because a single prepaid account agreement would not contain a variety of variable terms predicated on the consumer's credit worthiness or other factors. Furthermore, the Bureau does not believe that prepaid account issuers modify the terms of prepaid account agreements as frequently as credit card issuers do. Therefore, the Bureau does not believe this requirement would significantly burden issuers.

The Bureau is finalizing comment 19(b)(6)-3 substantially as proposed, with revisions to simplify the example that explains that an issuer would not be permitted to submit to the Bureau

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<sup>546</sup> See 75 FR 7658, 7770 (Feb. 22, 2010).

an agreement in the form of a terms and conditions document and subsequently submit a change-in-terms notice or an addendum to indicate amendments to the previously submitted agreement.

### *Bureau Posting of Prepaid Account Agreements*

#### *The Bureau's Proposal*

The Bureau proposed § 1005.19(b)(7) to provide that the Bureau shall receive prepaid account agreements submitted by prepaid account issuers pursuant to proposed § 1005.19(b) and shall post such agreements on a publicly available website established and maintained by the Bureau. There is no equivalent to proposed § 1005.19(b)(7) in Regulation Z § 1026.58 as the Bureau's posting of credit card agreements it receives is directed by TILA section 122(d).<sup>547</sup>

#### *Comments Received*

The Bureau received several comments from consumer groups, State government agencies, and industry, including industry and credit union trade associations and credit unions, regarding the proposal to post prepaid account agreements to the Bureau's publicly available website.<sup>548</sup> The industry commenters opposed this portion of the proposal, arguing that it is unnecessary and would provide little to no consumer benefit. These commenters argued that consumers would not likely visit the Bureau's website to compare prepaid account agreements, especially when consumers can obtain agreements from other sources, such as the issuer's website or otherwise prior to acquisition. These commenters also expressed concern that the version of an agreement on the Bureau's website might differ from the version on the issuer's website, causing consumer confusion.

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<sup>547</sup> 15 U.S.C. 1632(d).

<sup>548</sup> Commenters generally addressed the public posting requirements in proposed § 1005.19(b) and (c) together. There are thus some overlaps between the comments summarized here and those in the section-by-section analysis of § 1005.19(c) below.

Furthermore, as discussed in the section-by-section analysis of § 1005.19(a)(8) above, several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, urged the Bureau to exclude agreements that are not offered to the public (such as payroll card, government benefit, and campus card accounts) from being posted to the Bureau's publicly available website. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the Bureau's website, overwhelm consumers, and cause confusion because consumers might not understand which agreement applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. These commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General supported a requirement to post all agreements, including agreements that are not offered to the public, on the Bureau's publicly available website because they believed it would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they said would result in more informed consumer decisions. One consumer group argued

that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by market participants.

With respect to publicly posting agreements that are not offered to the public, one consumer group asserted that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once a card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts.

One trade association argued that the Bureau lacks authority to post prepaid account agreements to its website. This commenter argued that EFTA is concerned specifically with EFTs, not bank accounts generally or non-electronic transactions, such as cash and check deposits, which are features of prepaid accounts. This commenter also argued that EFTA focuses on the rights, liabilities, and responsibilities of participants with regard to EFTs, not the consumer's ability to shop for bank accounts or understand the cost of the accounts. This

commenter further stated that if EFTA was intended to ensure that consumers could understand the costs of their prepaid accounts and to be able to shop, EFTA would require the disclosure of all fees, not just charges associated with EFTs and certain ATM fees. Furthermore, this commenter argued that the Bureau's authority under section 1022 of the Dodd-Frank Act to monitor risk for consumers in financial products and to gather information regarding financial service markets does not allow the Bureau to post agreements on its website. Regarding the Bureau's authority under section 1032(a) of the Dodd-Frank Act, this commenter stated that consumers will already have the ability to understand the costs, benefits, and risks associated with prepaid accounts by obtaining the information from the issuer's website or otherwise prior to acquisition, and therefore, posting the agreements on the Bureau's website is unnecessary. This commenter further stated that, if Congress had intended for issuers to submit agreements to the Bureau (as it did for credit card agreements under TILA), it would have specifically required it in the Dodd-Frank Act.

#### *The Final Rule*

Upon further consideration, the Bureau believes it is unnecessary to finalize § 1005.19(b)(7). Consistent with its request for comment, the Bureau intends to publish on its website in the future the agreements that issuers have submitted pursuant to final § 1005.19(b). Given that the requirement speaks to the Bureau's actions and not to regulated entities, however, there is no need to finalize the provision through regulatory text.

The Bureau continues to believe that posting prepaid accounts agreements that are offered will benefit consumers, as it will allow consumers to more easily compare terms of prepaid accounts currently in the marketplace as well as facilitate third parties' analysis of prepaid accounts and the development of online shopping tools. The Bureau believes it is

important to publicly post the agreements of all prepaid accounts, including accounts whose agreements are not offered to the general public, such as payroll cards, government benefit, and campus card accounts, because publicly posting these agreements will encourage competition and increase transparency. Regarding agreements that are not offered to the public, the Bureau agrees with one of the commenters that consumers can still compare these agreements with other wage payment options, despite not being able to choose their program. The Bureau also agrees with another commenter that publicly posting these agreements will allow employers, government agencies, and nonprofit organizations, and other entities considering a prepaid account program to see and compare the various terms offered in the market.

As discussed above, the Bureau proposed and is finalizing § 1005.19 pursuant to its authority in section 1022(c)(4) of the Dodd-Frank Act. Under section 1022(c)(3) of the Dodd-Frank Act, the Bureau “shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year,” and “may make public such information obtained by the Bureau under this section as is in the public interest.” As discussed above, the Bureau is requiring submission of this information to the Bureau under section 1022(c)(1) of the Dodd-Frank Act, which directs the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services, and section 1022(c)(4), which provides the Bureau with authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

### *19(c) Posting of Agreements Offered to the General Public*

#### *The Bureau's Proposal*

The Bureau proposed § 1005.19(c) to require an issuer to post and maintain on its publicly available website the prepaid account agreements that the issuer would be required to submit to the Bureau under proposed § 1005.19(b). Agreements posted pursuant to proposed § 1005.19(c) would have been required to conform to the form and content requirements for agreements submitted to the Bureau specified in proposed § 1005.19(b)(6)(i)(B) through (D) and would have been permitted to be posted in any electronic format that is readily usable by the general public. Agreements posted pursuant to proposed § 1005.19(c) would have been required to be accurate and updated whenever changes are made. Agreements would have been required to be placed in a location that is prominent and readily accessible by the public and without submission of personally identifiable information.

Regulation Z § 1026.58(d)(1) requires credit card issuers to update the agreements posted on their websites at least as frequently as the quarterly schedule required for submission of agreements to the Bureau, but permits an issuer to update its agreements more frequently if it so chooses. For Regulation Z, the Board considered a consumer group comment requesting that the online agreement be updated within a specific period of time no greater than 72 hours. The Board declined to adopt such a requirement because it believed that the burden to card issuers of updating agreements in such a short time would outweigh the benefit. In addition, the Board noted that if a consumer applies or is solicited for a credit card, the consumer will receive the updated disclosure under existing rules in Regulation Z subpart B.<sup>549</sup> The Bureau believed that prepaid account issuers generally update their agreements posted online as changes are made.

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<sup>549</sup> 75 FR 7658, 7772 (Feb. 22, 2010).

The Bureau did not believe that prepaid account issuers would face the same burdens as credit card issuers in updating prepaid account agreements posted online because the terms of such agreements do not vary in the same manner as credit card agreement terms, which may offer a variety of rates and fees depending on the creditworthiness of the consumer. Thus, for prepaid account agreements, the Bureau proposed in § 1005.19(c)(3) that prepaid account agreements posted only be accurate and that issuers update their agreements whenever changes are made.

Proposed comment 19(c)-1 would have explained that an issuer's obligation to post and maintain prepaid account agreements on its website pursuant to proposed § 1005.19(c) is distinct from that of § 1005.7, which requires an issuer to provide certain disclosures at the time a consumer contracts for an EFT service or before the first EFT is made involving the consumer's account, as well as the change-in-terms notice required under § 1005.8(a). This requirement would have also been distinct from that of proposed § 1005.18(b)(2)(ii), which would have required issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, would have required posting of the long form disclosure on the issuer's website. If, for example, an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under proposed § 1005.19(b)(4), the issuer would not have been required to post and maintain any agreements on its website under proposed § 1005.19(c). The issuer would have still been required to provide each individual consumer with access to his or her specific prepaid account agreement under proposed § 1005.19(d), discussed below, by posting and maintaining the agreement on the issuer's website or by providing a copy of the agreement upon the consumer's request. The issuer may have also been required to post the long

form disclosure required by proposed § 1005.18(b)(2)(ii) online as well, depending on the methods by which the issuer offers prepaid accounts to consumers.

Proposed comment 19(c)-2 would have explained that if an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party website, the issuer would have been considered to maintain that website for purposes of proposed § 1005.19. Such a third-party website would have been deemed to be maintained by the issuer for purposes of proposed § 1005.19(c) even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party website would have been able to comply with proposed § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party website in accordance with proposed § 1005.19(c).

Proposed § 1005.19(c) was similar to Regulation Z § 1026.58(d), but did not include provisions regarding private label credit cards, as discussed above. Specifically, the Bureau did not propose an equivalent to the provision addressing the website to be used for posting private label credit card agreements in Regulation Z § 1026.58(d)(1) as well as Regulation Z § 1026.58(d)(4) requiring quarterly updates of credit card agreements posted on card issuers' websites, as discussed above. Proposed comment 19(c)-1 was similar to Regulation Z comment 58(d)-1, although the Bureau had modified it to distinguish the requirement in proposed § 1005.19(c) from other disclosure-related obligations in Regulation E. Proposed comment

19(c)-2 would have mirrored Regulation Z comment 58(d)-2, although the Bureau had modified both it and proposed comment 19(c)-1 to remove the portions discussing the private label credit card exception. An equivalent to Regulation Z comment 58(d)-3, regarding private label credit card plans, was likewise omitted.

### *Comments Received*

The Bureau received comments from consumer groups, State government agencies, and industry commenters (including trade associations, credit unions, a program manager, and a payment network) regarding the proposed posting requirement in § 1005.19(c).<sup>550</sup> The industry commenters argued that the proposed posting requirement would burden industry and provide little to no consumer benefit. These commenters explained that the proposed requirement would be problematic for issuers as they would have to constantly update their website with new and revised agreements. One of the credit unions argued that the requirement would be an intrusion into its business practices, but also stated that issuers already post agreements online without direction from the Bureau. Several commenters expressed concern that the version of an agreement on the Bureau's website might differ from the version on the issuer's website, causing consumer confusion.

Furthermore, as discussed in the section-by-section analysis of § 1005.19(a)(8) above, several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, urged the Bureau to exclude agreements that are not offered to the public (such as payroll card, government benefit, and campus card accounts) from the requirement in proposed § 1005.19(c)

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<sup>550</sup> These commenters generally addressed the public posting requirements in proposed § 1005.19(b) and (c) together. There are thus some overlaps between the comments summarized here and those in the section-by-section analysis of § 1005.19(b) under *Bureau Posting of Prepaid Account Agreements* above.

to post agreements to the issuer's publicly available website. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the issuer's website, overwhelm consumers, and cause confusion because consumers might not understand which agreement applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. These commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General supported a requirement to post all agreements, including agreements that are not offered to the public, on the issuer's public website because they believed it would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they stated would result in better informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by some market participants.

With respect to publicly posting agreements that are not offered to the public, one consumer group explained that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once the card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with wage other payment options, such as a checking account, direct deposit, and other prepaid accounts.

Regarding whether the Bureau should specify a timeframe for updating agreements posted on the issuer's website, one credit union requested that the Bureau not designate a timeframe, and one consumer group requested that the Bureau require issuers to post agreements within seven business days of issuing the agreement.

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.19(c) generally as proposed, with several modifications. The Bureau has revised § 1005.19(c)(1) to exclude prepaid account agreements that are not offered to the general public from the requirement that issuers post agreements to their publicly available websites. In addition, the Bureau has revised

§ 1005.19(c)(3) to clarify that an issuer must post on its publicly available website and update the posted agreements as frequently as the issuer is required to submit new and amended agreements to the Bureau pursuant to § 1005.19(b). The Bureau has also made several minor revisions for clarity and consistency.

The Bureau continues to believe that the general requirement to post prepaid account agreements on the issuer's publicly available website will increase transparency in the terms of these agreements and the amounts of the fees assessed against the prepaid accounts. The increased transparency will allow the public and consumers to become better informed about these accounts, which will likely encourage competition and improve fees in the various markets. Furthermore, the public posting of agreements will allow consumers to compare the terms and fees among various agreements. In addition, the Bureau does not believe this general requirement will be problematic for issuers, as posting agreements on the issuer's website is consistent with industry practice today.

The Bureau is persuaded, however, that posting to the issuer's publicly available website agreements that are not offered to the general public may impose unnecessary administrative burden and have little consumer benefit. The Bureau understands that issuers of payroll card, government benefit, campus card, and other types of accounts whose agreements are not offered to the general public could potentially have thousands of agreements to post and maintain on their publicly available websites, which could take a considerable amount of time and resources to set up and maintain without necessarily being easy for consumers to navigate. In addition, the Bureau believes that consumers who use these types of accounts would not likely visit the issuer's general website to access their individual agreements. The Bureau notes that issuers of these accounts are still required to provide each individual consumer with access to his or her

specific prepaid account agreement under § 1005.19(d), discussed below, and to submit the agreements to the Bureau under § 1005.19(b) (unless the de minimis exception under final § 1005.19(b)(4) or the product testing exception under final § 1005.19(b)(5) applies). In contrast, the Bureau believes that there are benefits to consumers and third parties in having agreements not available to the general public posted all in one place on the Bureau's website. See the section-by-section analysis of § 1005.19(a)(8) above.

The Bureau is finalizing comments 19(c)-1 and -2 generally as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(c) discussed above.

Final comment 19(c)-1 explains the differences between final § 1005.19(c) and other provisions in § 1005.19, as well as other requirements elsewhere in of Regulation E, and clarifies that, for agreements that are not offered to the general public, the issuer is not required to post and maintain the agreements on its publicly available website, but is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d). This comment also clarifies the requirements for issuers that are not required to submit agreements to the Bureau because they qualify for the de minimis exception under § 1005.19(b)(4) or the agreements qualify for the product testing exception under § 1005.19(b)(5). In addition, this final comment does not contain the proposed explanation that an issuer that is not required to submit agreements to the Bureau may be required to post the long form disclosure required by proposed § 1005.18(b)(2)(ii) online, depending on the methods by which the issuer offers prepaid accounts to consumers, as the Bureau does not believe it is necessary to include this clarification in commentary.

Final comment 19(c)-2 explains that, if an issuer offers an agreement to the general public as defined by § 1005.19(a)(6), that issuer must post that agreement on a publicly available

website it maintains. If an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party website, the issuer is considered to maintain that website for purposes of § 1005.19. Such a third-party website is deemed to be maintained by the issuer for purposes of § 1005.19(c) even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party website can comply with § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party website in accordance with § 1005.19(c).

#### *19(d) Agreements for All Open Accounts*

##### *19(d)(1) Availability of an Individual Consumer's Prepaid Account Agreement*

###### *The Bureau's Proposal*

The Bureau proposed § 1005.19(d)(1) to provide that, with respect to any open prepaid account, unless the prepaid account agreement is provided to the Bureau pursuant to proposed § 1005.19(b) and posted to the issuer's publicly available website pursuant to proposed § 1005.19(c), an issuer must either post and maintain the consumer's agreement on its website, or promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. Agreements posted pursuant to proposed § 1005.19(d) would have been permitted to be housed on a portion of the issuer's website that is available to consumers once they have logged into their accounts. If the issuer makes an agreement available upon request, the issuer would

have been required to provide the consumer with the ability to request a copy of the agreement by telephone. The issuer would have been required to send to the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request.

Proposed comment 19(d)-1, which was similar to Regulation Z comment 58(e)-1, would have provided examples illustrating the requirements of proposed § 1005.19(d)(1). An issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under proposed § 1005.19(b)(4) would still have been required to provide consumers with access to their specific agreements under proposed § 1005.19(d). Similarly, an agreement that is no longer offered to the public would not have been required to be submitted to the Bureau under proposed § 1005.19(b), but would still have been required to be provided to the consumer to whom it applies under proposed § 1005.19(d).

The Board believed that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's website might be substantial for some issuers, particularly smaller institutions with limited information technology resources, and thus gave issuers the option of providing copies of agreements in response to cardholders' requests. The ability to provide agreements in response to a request made via telephone or website would ensure that cardholders still be able to obtain copies of their credit card agreements promptly.<sup>551</sup>

The Bureau did not know whether similar challenges are faced by prepaid account issuers, particularly for issuers that would qualify for the de minimis or product testing exceptions. The Bureau thus proposed to similarly allow prepaid account issuers to satisfy the

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<sup>551</sup> See 74 FR 54124, 54192 (Oct. 21, 2009).

requirements of proposed § 1005.19(d)(1) by providing a copy of a consumer's prepaid account agreement to the consumer upon the consumer's request.

Regulation Z § 1026.58(e)(1) requires a credit card issuer to accept cardholders' requests for copies of their credit card agreements via the issuer's website as well as by telephone. The Bureau believed that prepaid account issuers would generally post prepaid account agreements to their websites pursuant to proposed § 1005.19(d)(1)(i), even if the agreement is posted in a location that is only accessible to prepaid account consumers after they have logged in to their accounts. The Bureau thus expected that few, if any, issuers would be required to provide agreements in response to a consumer's request pursuant to proposed § 1005.19(d)(1)(ii). The Bureau therefore did not believe it was necessary to require issuers to receive requests via their websites, although issuers could certainly allow consumers to make requests in that manner if they so choose.

Regulation Z § 1026.58(e)(1)(ii) also requires credit card issuers to allow cardholders to request copies of their agreements by calling a readily available telephone line the number for which is displayed on the issuer's website and clearly identified as to its purpose. Regulation Z comment 58(e)-2 provides additional clarification as to what is required to satisfy the "readily available telephone line" standard. Because the Bureau proposed to require prepaid account issuers to provide telephone numbers for a variety of other purposes,<sup>552</sup> the Bureau did not believe it was necessary to provide the same level of specificity regarding the telephone number to be used to request a copy of a prepaid account agreement pursuant to proposed § 1005.19(d)(1)(ii) nor to provide a comment equivalent to that of Regulation Z comment 58(e)-2.

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<sup>552</sup> See, e.g., proposed § 1005.18(b)(7), which would have required disclosure of a telephone number on the prepaid account access device, to be used to contact the financial institution about the prepaid account.

Regulation Z § 1026.58(e)(1) also allows a credit card issuer, in response to such a cardholder's request for a copy of the cardholder's agreement, to provide that agreement to the cardholder electronically, such as by posting a copy of the agreement to its website in a location that is accessible by the cardholder. Because the Bureau expected that few, if any, issuers would be required to provide agreements upon request pursuant to proposed § 1005.19(d)(1)(ii), it did not appear to be necessary or useful to allow an issuer to post a prepaid account agreement to a consumer's online account in response to a consumer's request. The Bureau thus did not propose to permit issuers to provide copies of prepaid account agreements electronically in response to consumers' requests, except as permitted in proposed § 1005.19(d)(2)(vi), discussed below. In addition, a provision corresponding to Regulation Z § 1026.58(e)(2), containing a special provision for issuers without interactive websites, was not included in proposed § 1005.19, as the Bureau was not aware of any prepaid issuers that do not maintain websites (or do not use a third-party service provider to maintain such a website) from which consumers can access specific information about their individual prepaid accounts and thus does not believe such a provision is necessary for prepaid accounts. The Bureau did not propose an equivalent to Regulation Z comment 58(e)-3, which provides examples regarding the deadline for providing copies of requested agreements, as the Bureau did not believe such examples were necessary given the more limited ways that issuers are permitted to respond to requests under proposed § 1005.19(d)(1)(ii).

Regulation Z § 1026.58(e)(2) provides that the card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. The Board originally proposed requiring issuers to respond to such a request within 10 business days, but

some commenters contended that 10 business days would not provide sufficient time to respond to a request. The commenters noted that they would be required to integrate changes in terms into the agreement and providing pricing information, which, particularly for older agreements that may have had many changes in terms over the years, could require more time. The Board believed it would be reasonable to provide more time for an issuer to respond to a cardholder's request for a copy of the credit card agreement, and thus allowed for 30 days in the final rule.<sup>553</sup>

The Bureau did not believe that issuers would face the same challenges in integrating changes in terms into prepaid account agreements in the same manner as with credit card agreements. The Bureau believed that requiring issuers to provide prepaid account agreements within five business days would give issuers adequate time to respond to requests while providing consumers with prompt access to their prepaid account agreements.

#### *Comments Received*

The Bureau received comments from several industry and consumer group commenters on this aspect of the proposal. The commenters generally supported a requirement to provide consumers with access to their individual prepaid account agreements. One industry trade association and one issuing bank argued that an issuer should be required to post and maintain the consumer's payroll card agreement on a portion of the issuer's website that is available to the consumer once he or she has logged into his or her account. These commenters suggested that the Bureau provide a statement on its dedicated prepaid account website directing consumers of payroll cards to visit their issuer's website for a copy of their agreement and to submit a complaint to the Bureau if the consumer has trouble obtaining it (similar to what is included on the Bureau's website for credit card agreements).

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<sup>553</sup> 75 FR 7658, 7773 (Feb. 22, 2010).

One consumer group urged the Bureau to require issuers to both post prepaid account agreements on the issuer's website and make agreements available in paper form upon the consumer's request, not one or the other. This commenter also requested that the Bureau require issuers to post a consumer's agreement on a password protected section of their website, even if the agreement is identical to the one currently offered to the public. This commenter explained that consumers who obtained their accounts in the past will not know that their agreements are the same as those currently offered. This commenter also stated that the "my account" area of the website is also where consumers will logically search for their agreements. In addition, this commenter urged the Bureau to make clear that issuers may not charge consumers a fee for requesting a copy of their agreement.

One program manager requested that the Bureau strike proposed § 1005.19(d) in its entirety from this final rule. This commenter argued that consumers would need to sort through thousands of agreements—each containing multiple pages—without knowing which account is applicable to their programs. This commenter stated that consumers will not likely seek out a multi-page agreement in order to compare the features of the program most important to that consumer. This commenter also stated that it does not feel comfortable making agreements, which they explained contain proprietary and confidential information, available to the public and subject to the scrutiny of competitors in the marketplace. This commenter stated that employers and other clients with whom the commenter has negotiated certain terms would not be comfortable with their competitors' ability to see the terms that resulted from private, business-to-business negotiations. This commenter argued that the risks of exposing sensitive proprietary and confidential information outweighs any potential benefit to consumers. This commenter requested that the Bureau instead require issuers to provide consumers with access to their

individual, tailored account agreement via the issuer's website, after the consumer's identity has been verified through their login credentials. This commenter stated that this approach would offer a more meaningful outcome and process for consumers since consumers would gain easy access to the exact agreement applicable to their programs.<sup>554</sup>

### *The Final Rule*

For the reasons set forth herein, the Bureau is finalizing § 1005.19(d) substantially as proposed, with one revision for clarity. Specifically, final § 1005.19(d) provides that with respect to any open prepaid account, an issuer must either post and maintain the consumer's agreement on its website, or promptly provide a copy of the consumer's agreement to the consumer upon request.

The Bureau continues to believe that it would not be appropriate to apply the de minimis exception, the product testing exception, or the exception for accounts not currently offered to the general public to the requirement that issuers provide consumers with access to their specific prepaid account agreement through the issuer's website. The Bureau believes that the benefit of increased transparency of providing individual consumers with access to their specific prepaid account agreements is substantial regardless of the number of open accounts an issuer has and regardless of whether an agreement continues to be offered by the issuer or is offered as part of a product test. In addition, the Bureau believes that requiring issuers to provide prepaid account agreements within five business days gives issuers adequate time to respond to requests while providing consumers with prompt access to their prepaid account agreements. The Bureau is

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<sup>554</sup> The Bureau notes that this commenter's concerns were likely in reference to the Bureau's proposed posting requirements in § 1005.19(b)(1) and (c), as proposed § 1005.19(d) would have permitted issuers to provide consumers access to their individual agreements after logging in to their online accounts. However, the Bureau included this comment here because the issuer specifically requested that the Bureau to strike proposed § 1005.19(d) from this final rule.

adopting new comment 19(d)-2, discussed below, to explain the requirements for sending an agreement.

The Bureau declines to modify the provision to require issuers to post an individual consumer's prepaid account agreement on the issuer's website *and* make the agreement available in paper form upon the consumer's request, as suggested by a consumer group commenter. The Bureau believes that the administrative burden associated with posting each consumer's agreement on the issuer's website might be substantial for some issuers, particularly smaller institutions with limited information technology resources. Therefore, the final rule allows issuers to provide written copies of agreements in response to consumers' requests. The ability to provide agreements in response to a request made via telephone ensures that consumers are still able to obtain copies of their agreements promptly. For similar reasons, the Bureau declines to require issuers to post a consumer's agreement on a password protected section of their website, as suggested by a commenter, although issuers may certainly choose to do so for the convenience of their customers. Related, the Bureau reminds issuers that neither they nor their service providers are permitted to charge consumers a fee for requesting a copy of their prepaid account agreement pursuant to § 1005.19(d).

The Bureau is finalizing comment 19(d)-1 largely as proposed, with several modifications for consistency with the revisions to § 1005.19(d)(1) discussed above and to clarify that an issuer that is not required to post on its website agreements not offered to the general public must still provide consumers with access to their specific agreements under final § 1005.19(d).

The Bureau is adopting new comment 19(d)-2 to clarify the requirement for providing a consumer a copy of the consumer's agreement no later than five business days after the issuer

receives the consumer's request. Specifically, this comment explains that, if the issuer mails the agreement, the agreement must be posted in the mail five business days after the issuer receives the consumer's request. If the issuer hand delivers or provides the agreement electronically, the agreement must be hand delivered or provided electronically five business days after the issuer receives the consumer's request. For example, if the issuer emails the agreement, the email with the attached agreement must be sent no later than five business days after the issuer receives the consumer's request.

#### *19(d)(2) Form and Content of Agreements*

The Bureau proposed § 1005.19(d)(2) to address the form and content requirements for agreements provided to consumers pursuant to proposed § 1005.19(d)(1). Proposed § 1005.19(d)(2)(i) would have stated that, except as otherwise provided in proposed § 1005.19(d), agreements posted on the issuer's website pursuant to proposed § 1005.19(d)(1)(i) or sent to the consumer upon the consumer's request pursuant to proposed § 1005.19(d)(1)(ii) must conform to the form and content requirements for agreements submitted to the Bureau as specified in proposed § 1005.19(b)(6). Proposed § 1005.19(d)(2)(ii) would have provided that if the issuer posts an agreement on its website pursuant to proposed § 1005.19(d)(1)(i), the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer. Proposed § 1005.19(d)(2)(iii) would have stated that agreements posted or otherwise provided pursuant to proposed § 1005.19(d) may contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized persons.

Proposed § 1005.19(d)(2)(iv) would have stated that agreements posted or otherwise provided pursuant to proposed § 1005.19(d) must set forth the specific provisions and fee information applicable to the particular consumer. Proposed § 1005.19(d)(2)(v) would have provided that agreements posted pursuant to proposed § 1005.19(d)(1)(i) must be accurate and updated whenever changes are made. Agreements provided upon consumer request pursuant to proposed § 1005.19(d)(1)(ii) would have been required to be accurate as of the date the agreement is mailed or electronically delivered to the consumer. Proposed § 1005.19(d)(2)(vi) would have stated that agreements provided upon the consumer's request pursuant to proposed § 1005.19(d)(1)(ii) must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

Proposed § 1005.19(d)(2) was generally similar to Regulation Z § 1026.58(e)(3), except that it contained modifications to reflect the changes in proposed § 1005.19(d)(1) regarding the methods in which prepaid account agreements may be provided to consumers pursuant to proposed § 1005.19(d). Proposed § 1005.19(d)(2) did not, however, include the provision contained in Regulation Z § 1026.58(e)(3)(iv) that requires agreements for all open accounts that are posted to a card issuer's website or otherwise provided to consumers to contain complete and accurate provisions and pricing information as of a date no more than 60 days prior to the date on which the agreement is posted to the card issuer's website pursuant to Regulation Z § 1026.58(e)(1)(i) or the date the cardholder's request is received under Regulation Z § 1026.58(e)(1)(ii) or (e)(2). As described above, the Bureau did not believe that updating prepaid account agreements is as complex as for credit card agreements, nor that prepaid account agreements are modified as frequently as credit card agreements may be. Therefore, the Bureau did not believe that prepaid account issuers should be permitted to provide agreements to

consumers that are as much as 60 days out of date. Instead, pursuant to proposed § 1005.19(d)(2)(v), the Bureau proposed to require that agreements posted online be accurate and updated when changes are made, and that agreements provided upon the consumer's request be accurate as of the date the agreement is mailed or electronically delivered to the consumer.

The Bureau received no comments on this aspect of the proposal. Accordingly, the Bureau is finalizing § 1005.19(d)(2) substantially as proposed, with modifications for consistency with the revisions to § 1005.19(c)(3). The Bureau has also made a revision to proposed § 1005.19(d)(2)(v) to make clear that agreements provided upon a consumer's request must be accurate as of the date the agreement is sent to the consumer, rather than the date the agreement is mailed or electronically delivered to the consumer. The Bureau believes it is clearer to use the term "sent" in final § 1005.19(d)(2) and to explain in final comment 19(d)-2, discussed above, the methods in which a consumer may send an agreement to the consumer. Therefore, in addition to requiring that agreements posted pursuant to § 1005.19(d)(1)(i) must be updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to § 1005.19(b)(2), final § 1005.19(d)(2)(v) states that agreements provided upon consumer request pursuant to § 1005.19(d)(1)(ii) must be accurate as of the date the agreement is sent to the consumer.

With respect to the statement in final § 1005.19(d)(2)(iii) regarding agreements containing personally identifiable information relating to the consumer, the Bureau cautions that this is permissible only if the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized parties. The Bureau understands that issuers will include a consumer's name and address when mailing agreements. However, the Bureau expects

issuers to protect personally identifiable information relating to the consumer as appropriate, or not to include such information in the agreements if it is not necessary to do so.

*19(e) E-Sign Act Requirements*

The Bureau proposed § 1005.19(e) to state that, except as otherwise provided in proposed § 1005.19, issuers may provide prepaid account agreements in electronic form under proposed § 1005.19(c) and (d) without regard to the consumer notice and consent requirements the E-Sign Act. Because TILA section 122(d) specifies that a credit card issuer must provide access to cardholder agreements on the issuer's website, the Board did not believe that the requirements of the E-Sign Act applied to the regulations now contained at Regulation Z § 1026.58.<sup>555</sup> The Bureau proposed § 1005.19(e) for ease of administration of these requirements and for consistency with Regulation Z § 1026.58(f).

The Bureau received several comments from industry supporting the proposal to provide agreements in electronic form without complying with the E-Sign consent requirements. One consumer group recommended the Bureau require compliance with the E-Sign Act for prepaid account information. This commenter explained that a consumer giving E-Sign consent and providing an email address does not necessarily mean the consumer has regular access to the internet or a computer.

The Bureau continues to believe that it is appropriate to waive the requirement that issuers obtain E-Sign consent from consumers in order to provide prepaid account agreements in electronic form pursuant to § 1005.19(c) and (d), and thus the Bureau is finalizing § 1005.19(e) as proposed.

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<sup>555</sup> See 74 FR 54124, 54193 (Oct. 21, 2009).

### *19(f) Effective Date*

The Bureau proposed, in general, a nine month effective date for its rulemaking on prepaid accounts, with an additional three months for certain disclosure-related obligations. Comments regarding the proposed effective date generally are discussed in the detail in the section-by-section analysis of § 1005.18(h) above and in part VI below.

With regard to application of the proposed effective date to the requirements of § 1005.19 in particular, the Bureau received comments from several industry and trade association commenters, arguing that nine months would be insufficient to make the proposed changes. Several commenters expressed concern that issuers would need additional time to comply with the proposed submission and posting requirements pursuant to proposed § 1005.19(b) and (c), respectively, to implement the necessary system and operational changes. These commenters explained that submitting and posting prepaid account agreements would require issuers to develop a process of maintaining inventory for the agreements, create a process to update them on a quarterly basis, and develop a periodic monitoring process to ensure accuracy of these agreements. In addition, these commenters explained that the posting requirement would also require issuers to create a location on their websites for the posting of agreements.

The Bureau is adopting an effective date of October 1, 2017 for this final rule generally, which is reflected in new § 1005.19(f)(1), which states that except as provided in new § 1005.19(f)(2), the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017.

The Bureau is adopting new § 1005.19(f)(2) to establish a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b). An issuer must submit to the Bureau no later than

October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. The Bureau continues to work to develop a streamlined electronic submission process, which it expects will be fully operational before final § 1005.19(b) becomes effective on October 1, 2018. The Bureau expects to provide technical specifications regarding the electronic submission process in advance of that date. Issuers will have no submission obligations under this provision until the Bureau has issued technical specifications addressing the form and manner for submission of agreements.

In addition, new § 1005.19(f)(3) provides that nothing in new § 1005.19(f)(2) shall affect the requirements to post prepaid account agreements on an issuer's website pursuant to final § 1005.19(c) and (d) or the requirement to provide a copy of the consumer's agreement to the consumer upon request pursuant to final § 1005.19(d).

The Bureau is adopting new comment 19(f)-1 to further explain that, if an issuer offers a prepaid account agreement on October 1, 2018, the issuer must submit the agreement to the Bureau, as required by § 1005.19(b), no later than October 31, 2018, which is 30 days after October 1, 2018. After October 1, 2018, issuers must submit on prepaid account agreements or notifications of withdrawn agreements to the Bureau within 30 days after offering, amending, or ceasing to offer the agreements.

The Bureau is also adopting new comment 19(f)-2 to explain that, during the delayed agreement submission period set forth in new § 1005.19(f)(2), an issuer must post agreements on its website as required by final § 1005.19(c) and (d)(1)(i) using the agreements it would have otherwise submitted to the Bureau under final § 1005.19(b) and must provide a copy of the consumer's agreement to the consumer upon request pursuant to final § 1005.19(d)(1)(ii). For purposes of § 1005.19(c)(2) and (d)(2), agreements posted by an issuer on its website must

conform to the form and content requirements set forth in final § 1005.19(b)(6). For purposes of final § 1005.19(c)(3) and (d)(2)(v), amended agreements must be posted to the issuer's website no later than 30 days after the change becomes effective as required by final § 1005.19(b)(2).

Prior to the October 1, 2018 effective date for the submission requirement in final § 1005.19(b), the Bureau will issue technical specifications addressing the form and manner for submission of agreements. The Bureau intends to publish a notice in the *Federal Register* to inform issuers when its streamlined electronic submission process is operational in order to onboard all issuers in advance of the October 1, 2018 effective date.

The Bureau reminds credit card issuers that while final § 1005.19(h) provides a delayed effective date of October 1, 2018 to submit prepaid account agreements to the Bureau, the requirement to submit credit card agreements under Regulation Z § 1026.58 for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan becomes effective with the rest of this final rule on October 1, 2017.

#### *Appendix A-5 Model Clauses for Government Agencies (§ 1005.15(e)(1) and (2))*

Existing appendix A-5 provides model language for government agencies that offer accounts for distributing government benefits to consumers electronically; this model language reflects the modifications made to certain Regulation E provisions by existing § 1005.15. The Bureau proposed to relabel appendix A-5 as *Model Clauses for Government Benefit Accounts (§ 1005.15(e)(1) and (2))* and to revise the heading of paragraph (a) for clarity. The Bureau also proposed to revise the text of paragraph (a) of appendix A-5, which currently explains to consumers how to obtain information about account balances and account histories, to note that the consumer's balance information, along with an 18 month history of the consumer's account

transactions, was available online. The Bureau also proposed to revise the paragraph regarding a written transaction summary to correspond with the proposed revised language for prepaid accounts in paragraph (a) of appendix A-7, to state that the consumer had a right to at least 18 months of written history of account transactions by calling or writing to the agency (or its designee). The paragraph would have also stated that the consumer would not be charged a fee for such information unless the consumer requested it more than once per month. The paragraph would have retained the existing optional bracketed language stating that the consumer could also request such a history by contacting his or her caseworker.

The Bureau similarly proposed to revise paragraph (b) of appendix A-5, which sets forth model clauses regarding disclosure of error resolution procedures for government agencies that provide alternative means of obtaining account information. The Bureau proposed to revise the section citation in the paragraph heading, and to revise the first paragraph of paragraph (b) to correspond with the proposed revised language for prepaid accounts in paragraph (b) of appendix A-7. Specifically, the Bureau proposed to remove the sentence stating that the agency must hear from the consumer no later than 60 days after the consumer learns of the error, and to add language stating that the agency must allow the consumer to report an error until 60 days after the earlier of the date the consumer electronically accessed his or her account, if the error could be viewed in the electronic history, or the date the agency sent the first written history on which the error appeared. The paragraph would have also stated that the consumer could request a written transaction history at any time by calling or writing, or optionally by contacting the consumer's caseworker.

The Bureau did not receive any comments specifically regarding the proposed changes to appendix A-5. As discussed in the section-by-section analyses of §§ 1005.15(d) and 1005.18(c)

below, however, the Bureau is revising the proposed time periods that apply to a consumer's right to obtain account information. Under the final rule, consumers will have the right to access up to 12 months of account history online, instead of the 18 months of account history in the proposed rule. In addition, consumers will have the right to request at least 24 months of written transaction history, instead of the 18 months set forth in the proposed rule. The Bureau is revising appendix A-5 to reflect these changed time periods and to make certain other conforming changes, but is otherwise finalizing appendix A-5 as proposed.

*Appendix A-7 Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))*

Existing appendix A-7 provides model clauses for financial institutions that offer payroll card accounts; these clauses reflect the modifications made by the Payroll Card Rule to certain Regulation E provisions in existing § 1005.18. To reflect the proposed expansion of § 1005.18 to cover prepaid accounts, the Bureau proposed to revise the heading for existing appendix A-7 as well as the heading for paragraph (a) of appendix A-7. The Bureau also proposed to revise paragraph (a) of appendix A-7, which currently explains to consumers how to obtain account information for payroll card accounts, to change the term payroll card account to prepaid account, and to state that at least 18 months of electronic and written account transaction history is available to the consumer, rather than 60 days, as proposed in § 1005.18(c)(1)(ii) and (iii). The Bureau also proposed to add a sentence at the end of paragraph (a) of appendix A-7 to inform consumers that they could not be charged for requesting such written account transaction history, unless requests were made more than once per month. As discussed above, the Bureau proposed to allow financial institutions to assess a fee or charge for subsequent requests for written account information made in a single calendar month, in proposed comment 18(c)-3.i.

The Bureau similarly proposed to revise the heading of paragraph (b), and to revise the text of paragraph (b) of appendix A-7, which currently sets forth model clauses regarding disclosure of error resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information, to change the term payroll card account to prepaid account and to renumber the section citation in the heading.

The Bureau also proposed to add a new paragraph (c) at the end of appendix A-7, for use by a financial institution that chooses, as explained in proposed comment 18(e)-4, not to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for prepaid accounts with respect to which it had not completed its collection of consumer identifying information and identity verification.

This model language would have stated that it was important for consumers to register their prepaid accounts as soon as possible and that until a consumer registered the prepaid account, the financial institution was not required to research or resolve errors regarding the consumer's account. To register an account, the consumer was directed to a website and telephone number. The model language would have explained that the financial institution would ask for identifying information about the consumer (including full name, address, date of birth, and Social Security Number or government-issued identification number), so that it could verify the consumer's identity. Once the financial institution had done so, it would address the consumer's complaint or question as described earlier in appendix A-7.<sup>556</sup>

The Bureau did not receive any comments specifically regarding the proposed revisions to appendix A-7. The Bureau is, however, making several revisions to the substantive provisions in § 1005.18(c) and (e) that correspond to the disclosures set forth in appendix A-7, and is

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<sup>556</sup> The Bureau tested a version of this proposed model language with consumers. *See* ICF Report I at 23.

revising appendix A-7 to reflect those changes. First, as discussed in the section-by-section analysis of § 1005.18(c) above, the Bureau is revising the proposed time periods that apply to a consumer's right to obtain account information. Under the final rule, consumers will have the right to access up to 12 months of account history online, instead of the 18 months of account history in the proposed rule. In addition, consumers will have the right to request at least 24 months of written transaction history, instead of the 18 months set forth in the proposed rule. The Bureau is revising paragraph (a) of appendix A-7 to reflect these changed time periods.

Second, under the final rule, the Bureau is no longer requiring a financial institution to provide 24 months of written account transaction history upon request, as required under § 1005.18(c)(1)(iii), for prepaid accounts (other than payroll card accounts or government benefit accounts) with respect to which the financial institution has not completed its consumer identification and verification process. To reflect this exception, the Bureau is adding bracketed language clarifying that the language in appendix A-7 informing consumers of their right to request 24 months of written account transaction history only applies to accounts that have been or can be registered with the financial institution.

Third, the Bureau is making several revisions to § 1005.18(e)(3), which, as proposed, would have limited a financial institution's obligation to provide limited liability and error resolution for accounts with respect to which the financial institution had not completed its collection of consumer identifying information and identity verification. Under the final rule, financial institutions must provide limited liability and error resolution protections for all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, for accounts with respect to which the financial institution has not completed its identification and verification

process (or for which the financial institution has no such process), the financial institution is not required to provisionally credit the consumer's account in the event the financial institution takes longer than 10 or 20 business days, as applicable, to investigate and determine whether an error occurred.

To reflect these changes, the Bureau is revising paragraphs (b) and (c) of appendix A-7 as follows. The Bureau is revising the language in paragraph (b) describing a consumer's right to receive provisional credit in certain circumstances to reflect that, under the final rule, an account must be registered with the financial institution in order to be eligible for provisional credit. The Bureau is also revising paragraph (c), which under the final rule is only applicable to prepaid accounts that have a customer identification and verification process but for which the process is not completed before the account is opened (*i.e.*, when the consumer must take an affirmative step to register the account after acquisition). Specifically, paragraph (c) is revised to reflect that, under the final rule, failure to register an account with the financial institution will not jeopardize a consumer's right to have an error investigated and resolved. Rather, as revised, final paragraph (c) explains that a consumer may not receive provisional credit while an error claim is pending on a prepaid account that has not been registered.

The Bureau is otherwise adopting appendix A-7 as proposed.

*Appendix A-10 Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§§ 1005.15(c) and 1005.18(b))*

The Bureau proposed Model Forms A-10(a) through (d) and (f) and Sample Forms A-10(e) and (g) in appendix A in relation to the disclosure requirements set forth in proposed § 1005.15(c)(2) and proposed § 1005.18(b). Proposed Model Form A-10(a) would have set forth the short form disclosure for government benefit accounts as described in proposed

§ 1005.15(c)(2). Proposed Model Form A-10(b) would have set forth the short form disclosure for payroll card accounts as described in proposed § 1005.18(b)(2)(i)(A). Proposed Model Form A-10(c) would have set forth the short form disclosure for prepaid accounts that could offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(9). Proposed Model Form A-10(d) would have set forth the short form disclosure for prepaid accounts that would not offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(9). Proposed Model Form A-10(f) would have set forth the short form disclosure for prepaid accounts that offer multiple service plans and choose to disclose them on one short form disclosure as described in proposed § 1005.18(b)(3)(iii)(B)(1). Proposed Sample Form A-10(e) would have set forth the long form disclosure for prepaid accounts as described in proposed § 1005.18(b)(3)(iii)(A). Proposed Sample Form A-10(g) would have set forth the long form disclosure for prepaid accounts that offer multiple service plans as described in proposed § 1005.18(b)(3)(iii)(B)(2).

The Bureau did not receive any comments regarding the proposed model and sample forms with respect to appendix A-10 specifically. The Bureau received many comments regarding its proposed pre-acquisition disclosure regime in general as well as regarding its specific proposed requirements for the short form and long form disclosures. For a general discussion of the pre-acquisition disclosure regime and the content and format of the short form and long form disclosures the Bureau is adopting in this final rule, see the section-by-section analysis of § 1005.18(b) above. For discussion of the specific requirements in the final rule for the short form and long form disclosures, see the section-by-section analyses above under § 1005.18(b) for each of the specific elements of the disclosures.

The Bureau is finalizing appendix A-10 generally as proposed, with revisions to reflect changes made to the regulatory text of the short form and long form disclosure requirements in final § 1005.(c) and § 1005.18(b). In addition, the Bureau has revised the order of the model and sample forms in the final rule to include all short form disclosures together as Model Forms A-10(a) through (e) and the long form disclosure as Sample Form A-10(f). The Bureau has also removed the proposed sample long form disclosure for prepaid accounts that offer multiple service plans to provide greater flexibility to industry to develop its own designs. Moreover, the Bureau believes that Sample Form A-10(f) provides a sufficient template from which to design a long form for multiple service plans.

Thus, the Bureau is finalizing Model Forms A-10(a) through (e) and Sample Forms A-10(f) in appendix A in relation to the disclosure requirements set forth in the final rule in final § 1005.15(c) and § 1005.18(b). Model Form A-10(a) sets forth the short form disclosure for government benefit account programs as described in final § 1005.15(c). Model Form A-10(b) sets forth the short form disclosure for payroll card account programs as described in final § 1005.18(b), including the additional content specific to payroll card accounts set forth in final § 1005.18(b)(2)(xiv). Model Form A-10(c) sets forth a general short form disclosure for prepaid account programs for which overdraft/credit features may be offered as described in final § 1005.18(b)(2)(x) and that are eligible for FDIC deposit insurance as described in final § 1005.18(b)(2)(xi). Model Form A-10(d) sets forth an alternate version of a general short form disclosure for prepaid account programs that do not offer an overdraft/credit feature as described in final § 1005.18(b)(2)(x) and that are not eligible for FDIC deposit insurance as described in final § 1005.18(b)(2)(xi). Model Form A-10(e) sets forth the short form disclosure for prepaid account programs that offer multiple service plans and choose to disclose those multiple service

plans on one short form disclosure pursuant to final § 1005.18(b)(6)(iii)(B)(2). Sample Form A-10(f) sets forth the long form disclosure for prepaid account programs as described in final § 1005.18(b)(4).

*Appendix A—Model Disclosure Clauses and Forms*

The Bureau is updating comment -2 in the commentary to appendix A (Appendix A—Model Disclosure Clauses and Forms). Pursuant to existing comment -2, financial institutions and remittance transfer providers have the option of using the model disclosure clauses provided in appendix A to facilitate compliance with the disclosure requirements enumerated in the comment. The comment also explains how the use of the appropriate clauses provided in appendix A will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of EFTA, provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively. In this final rule, the Bureau is updating the enumerated disclosure requirements in comment -2 to reflect changes to the numbering of § 1005.15 and § 1005.18 in the final rule and to add the provisions for new disclosure requirements included in the final rule.

The Bureau also is updating existing comment -3 in the commentary to appendix A (Appendix A—Model Disclosure Clauses and Forms). Pursuant to comment -3, financial institutions may use clauses of their own design in conjunction with the Bureau's model clauses in appendix A. The Bureau is adding a sentence to comment -3 to clarify that the alterations set forth in the comment apply, unless otherwise expressly addressed in the rule. The Bureau is adding this sentence to clarify the alterations permitted under existing comment -3 may not apply to certain disclosures pursuant to this final rule. For example, alternations permitting deletion of

inapplicable services does not apply to the short form disclosures required by § 1005.18(b)(2).  
*See* comment 18(b)(2)-1.

*Subpart B—Requirements for Remittance Transfers*

On February 7, 2012, the Bureau published a final rule implementing section 1073 of the Dodd-Frank Act, which added section 919 to EFTA to establish consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries.<sup>557</sup> Among other things, EFTA section 919 requires the following protections for covered transactions sent by remittance transfer providers: (i) the provision of disclosures prior to and at the time of payment by the sender of the transfer; (ii) cancellation and refund rights; and (iii) the investigation and remedy of errors by providers. It also establishes liability standards for providers for the acts of their agents. The final rule implemented these provisions in new subpart B of Regulation E.

A remittance transfer is the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider, regardless of whether the sender holds an account with the provider, and regardless of whether the transaction is also an EFT, as defined in § 1005.3(b).<sup>558</sup> A designated recipient is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.<sup>559</sup> A sender is a consumer in a State who primarily for personal, family, or household

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<sup>557</sup> 77 FR 6194 (Feb. 7, 2012). This rule was subsequently amended. *See* 77 FR 40459 (July 10, 2012), 77 FR 50244 (Aug. 20, 2012), 78 FR 6025 (Jan. 29, 2013), 78 FR 30662 (May 22, 2013), 78 FR 49365 (Aug. 14, 2013), and 79 FR 55970 (Sept. 18, 2014) (collectively, the Remittance Rule).

<sup>558</sup> § 1005.30(e).

<sup>559</sup> § 1005.30(c).

purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.<sup>560</sup>

In order to assess whether a consumer is a sender or whether an authorized recipient is a designated recipient, the location of where the funds are sent from and the location of where the funds are sent to are determinative. If the transfer is sent from an account (*e.g.*, a consumer transfers \$100 out of the consumer's checking account) or to an account (*e.g.*, a consumer sends \$100 in cash to a family's member's bank account in a foreign country), the location of the account determines where the funds are being, as applicable, sent from or sent to. To illustrate, existing comment 30(c)-2.ii explains that if a recipient's account is located in a State, the funds will not be received at a location in a foreign country.<sup>561</sup>

With respect to products such as prepaid cards (other than prepaid cards that were already accounts under Regulation E) and digital wallets; however, the Remittance Rule does not treat those products as accounts.<sup>562</sup> Because these products were not previously considered to be accounts as defined in § 1005.2(b) of current Regulation E, the Remittance Rule directs that one must look at where the funds are being sent from to determine if a consumer is a sender and where the funds are being sent to in order to determine if the person receiving the funds is a designated recipient. In other words, the location of the consumer sending the funds determines where the funds are being sent from, and the location of the person receiving the funds determines where the funds are received. To illustrate, existing comment 30(c)-2.iii explains that

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<sup>560</sup> § 1005.30(g).

<sup>561</sup> An account located on a U.S. military installation that is physically located in a foreign country is located in a State. *See* comments 30(c)-2.ii and 30(g)-1.

<sup>562</sup> 77 FR 6194, 6207 (explaining that where the funds that can be accessed by a prepaid card are held does not determine whether funds are being sent to a designated recipient because a prepaid card is generally not considered to be an account as defined in § 1005.2(b)).

if a consumer in a State purchases a prepaid card, the remittance transfer provider has sufficient information to conclude that funds are to be received in a foreign country if the provider sends the prepaid card to a specified recipient in a foreign country.

As the Bureau noted in the proposal, the definition of prepaid account would mean that certain prepaid products such as GPR cards and certain digital wallets would be considered accounts under Regulation E. Yet, the Bureau also noted that it did not intend to change how the Remittance Rule applied to prepaid products. Accordingly, the Bureau sought comments on whether additional clarification or guidance is necessary with respect to the Remittance Rule. Although the Bureau did not receive comments on this aspect of the proposal, the Bureau believes that to facilitate compliance, it is necessary to clarify that for prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from. Accordingly, this final rule contains clarifying and conforming revisions to comments 30(c)-2.ii and 30(g)-1 to clarify that transfers involving a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account) are not transfers from an account or to an account. For the same reason, this final rule also amends § 1005.32(a), as discussed in greater detail below.

#### *Section 1005.30 Remittance Transfer Definitions*

As amended, comment 30(c)-2.ii explains that for transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in a location physically outside of any State depends on whether the provider at the time the transfer is requested has information indicating that funds are to be received in a foreign country. In addition, for transfers to all other accounts, whether funds are to be received at a location physically outside of any State depends on where the account is

located. If the account is located in a State, the funds will not be received at a location in a foreign country. Further, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then they are located in a State.

Further, comment 30(g)-1, as amended, explains that for transfers sent from a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), whether the consumer is located in a State depends on the location of the consumer. If the provider does not know where the consumer is at the time the consumer requests the transfer from the consumer's prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer. For transfers from all other accounts belonging to a consumer, whether a consumer is located in a State depends on where the consumer's account is located. Additionally, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then they are located in a State.

The Bureau additionally proposed making conforming changes to existing comment 30(g)-3. Comment 30(g)-3 references the regulatory citation for *bona fide* trust account in § 1005.2(b)(3). The Bureau proposed renumbering the regulatory citation for *bona fide* trust account, changing it from § 1005.2(b)(3) to § 1005.2(b)(2), because the Bureau proposed to set forth the definition of prepaid account in new § 1005.2(b)(3). The Bureau also proposed minor changes to comment 30(g)-3 to streamline the text of the comment without altering its meaning. The Bureau did not receive any comments on these proposed changes, and the Bureau is adopting comment 30(g)-3 as proposed.

*Section 1005.32 Estimates*

*32(a) Temporary Exception for Insured Institutions*

The Remittance Rule generally requires that a remittance transfer provider must disclose to a sender the actual exchange rate, fees, and taxes that will apply to a remittance transfer, and the actual amount that the designated recipient of the remittance transfer will receive. However, subpart B sets forth four exceptions to this general rule. These exceptions permit providers to disclose estimates instead of actual amounts. EFTA section 919 provides two such exceptions. The exception at issue in § 1005.32(a) is a temporary exception for insured institutions with respect to remittance transfers a sender sends from the sender's account with the institution, as long as the provider cannot determine the exact amounts for reasons beyond its control. When the Bureau made the determination to extend the temporary exception to July 20, 2020, the Bureau's determination was limited to accounts under existing Regulation E. In other words, GPR cards and digital wallets that will become accounts under this final rule were not included in the scope of the temporary exemption. Accordingly, the Bureau is amending § 1005.32(a) to set forth that for purposes of § 1005.32(a), a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account. This amendment is intended to continue the current application of the Remittance Rule to prepaid products.

The Bureau adopts these clarifying and conforming amendments in subpart B pursuant to its authority under EFTA sections 904(a). EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish the rights, liabilities, and

responsibilities of participants in electronic fund and remittance transfer systems and to provide individual consumer rights.<sup>563</sup>

## *Regulation Z*

### *Overview of the Bureau's Proposed Approach to Regulation Z*

In developing the proposal, the Bureau considered whether and how to regulate credit features offered in connection with prepaid accounts. Specifically, the Bureau considered potential transactions where consumers are allowed to overdraw their prepaid accounts through a fee-based overdraft service, to draw credit from a separate overdraft line of credit using a prepaid card,<sup>564</sup> or to push credit funds into a specified prepaid account to cover transactions for which there are insufficient or unavailable funds. As explained in more detail below, the Bureau proposed generally to treat all three product structures as “credit cards” that access “open-end (not home-secured) credit plans” under Regulation Z, and thus to subject them to the credit card protections set forth in Regulation Z. In addition and as explained above, the Bureau also proposed to revise existing provisions in Regulation E regarding compulsory use (proposed § 1005.10(e)(1)) and to adopt other rules specific to prepaid accounts that offer credit features (proposed §§ 1005.12(a) and 1005.18(b)(2)(i)(B)(9), (b)(2)(ii)(B) and (g)) to provide consumers with greater control over how they enroll in a credit feature and pay any credit balances associated with their prepaid accounts, and also to prevent evasion of the Regulation Z protections.

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<sup>563</sup> EFTA section 902(b).

<sup>564</sup> This final rule's Regulation Z provisions reference credit features accessed through a prepaid *card*. The final rule's Regulation E provisions, by contrast, largely refer to prepaid *accounts*, and, separately, to access devices for prepaid accounts.

The proposal would have provided guidance on when the following devices related to prepaid accounts would be “credit cards”: (1) prepaid cards; and (2) account numbers that are not prepaid cards that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. With respect to credit features accessed by prepaid cards, the proposal would have covered a broad range of credit plans as credit card accounts under Regulation Z when they were accessed by prepaid cards. Under the proposal, this would have applied where credit is being “pulled” by a prepaid card, such as when the consumer uses the prepaid card at point of sale to access an overdraft plan to fund a purchase. In the proposal, the Bureau intended broadly to capture a prepaid card as a credit card when it directly accessed a credit plan, regardless of whether that credit plan was structured as a separate credit plan or as a negative balance to the prepaid account.

In addition, the proposal also would have included certain account numbers that are not prepaid cards as “credit cards” under Regulation Z when the account number could access a credit plan that only allows deposits directly into particular prepaid accounts specified by the creditor. This proposal language would have covered credit plans that are not accessed directly by prepaid cards but are structured as “push” accounts. The Bureau proposed to cover these account numbers for push accounts as credit cards because of concerns that these types of credit plans could act as substitutes for credit plans directly accessed by prepaid cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to account numbers for the credit

account were designed to prevent this type of evasion of the rules applicable to prepaid cards that are credit cards.

In proposing to subject all three product structures to the rules for credit cards, the Bureau recognized that it would be consciously departing from existing regulatory structures that apply in the checking account context, where overdraft services structured as a negative balance on a checking account generally are governed by a limited opt-in regime under Regulation E and other forms of credit are subject to more holistic regulation under Regulation Z. As discussed further below, the final rule maintains the major thrust of the proposal by generally treating prepaid cards that access overdraft credit features as credit cards subject to Regulation Z. The final rule thus extends the credit card rules to credit features that can be accessed in the course of a transaction conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers regardless of whether access is structured through a “pull” or “push” arrangement. However, the final rule excludes situations in which prepaid account issuers are only providing certain incidental forms of credit without charging credit-related fees (such as in so-called “force pay” transactions) as well as situations in which a consumer chooses to link a prepaid card to a credit feature offered by a third party that has no business relationship with the prepaid account issuer. The final rule also excludes situations where the prepaid card only can access a credit feature outside the course of a transaction conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau has also revised various elements of the proposed rule and provided additional clarity regarding operational practices to promote transparency and facilitate compliance for credit features offered in connection with prepaid accounts that are subject to the credit card rules under Regulation Z.

### *Comments Received*

The majority of the comments received by the Bureau in response to this rulemaking concerned the Bureau's proposed approach to regulating credit features offered in connection with prepaid accounts. In general, most consumer groups urged the Bureau to ban overdraft services in connection with prepaid products, arguing that the overdraft fees and accumulating debt can be harmful (many individual consumers also commented in support of additional protections for overdraft services on prepaid cards, as discussed below). They argued that prepaid consumers are often more vulnerable than users of traditional deposit accounts or do not anticipate having to deal with credit on their prepaid accounts. They argued further that prepaid accounts should remain true to their name—prepaid—and similarly that prepaid consumers who wish to use credit should do so deliberately, and not inadvertently through overdraft transactions. In addition, consumer groups advocating a ban also argued that the financial incentives of an overdraft business model would become increasingly hard to resist for the issuers of prepaid accounts, most of whom do not currently offer overdraft services, and that the Bureau should remove these incentives through a regulatory prohibition on prepaid overdrafts.

For similar reasons, several consumer groups also advocated for a specific ban on overdraft features in connection with government benefit accounts and payroll card accounts, and one consumer group further advocated for a ban on overdraft features offered in connection with student cards. Several consumer groups argued that, if the Bureau did not adopt a ban on prepaid overdraft, any credit offered in connection with a prepaid account should be regulated as a credit card under Regulation Z and should be required to be offered separately from the prepaid account.

In contrast, most industry commenters (as well as some individual consumer commenters, as discussed below) generally objected to the Bureau adopting regulations that would limit credit features on prepaid accounts.<sup>565</sup> In particular, these commenters stated that overdraft for prepaid accounts should function as it does for other types of deposit accounts with linked debit cards—*i.e.*, subject to the current Regulation E opt-in framework for overdraft. Several members of Congress likewise argued that prepaid overdraft should be regulated under the Regulation E opt-in approach. These industry and government commenters argued that to the extent the Bureau seeks to treat prepaid accounts as transaction account substitutes, such products should be subject to the same regulatory requirements (and exceptions) as those accounts, including opt-in requirements for overdraft services.

Some industry commenters that objected to the Bureau's Regulation Z approach, including trade associations, a credit union, and a program manager that offers overdraft on certain of its prepaid accounts, disputed the Bureau's proposed interpretation of the relevant Regulation Z provisions and expressed concern that the Bureau's proposed interpretation of certain credit-related definitions in Regulation Z would have broader implications for traditional overdraft services on checking accounts.

Several industry commenters argued that, if the Bureau finds that the current Regulation E opt-in approach is insufficient to regulate prepaid overdraft, the Bureau should consider other alternatives that would be preferable—and simpler—than a regime that subjects prepaid overdraft to credit card rules under Regulation Z. For example, several commenters, including a trade association and a credit union issuer, suggested that the Bureau consider a cap on overdraft

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<sup>565</sup> One industry commenter, an issuing bank, urged the Bureau to ban overdraft features on prepaid accounts, though unlike the consumer group commenters who took the same position, this commenter argued that, absent a ban, the Bureau should regulate prepaid overdraft under Regulation E.

fees, while others suggested that the Bureau impose a cap on the amount that any account may be overdrawn. Other commenters, including several members of Congress, urged the Bureau to put in place a set of requirements to limit overdraft credit features offered in connection with prepaid accounts, which would essentially mirror the structure of a program offered today by one industry participant. That program includes a maximum overdraft amount, limitations on the number of monthly overdrafts per account, and a cooling-off period for frequent overdrafters. A law firm writing on behalf of a coalition of prepaid issuers advocated for a similar structure, including a limit on the amount of an overdraft fee so it cannot exceed the dollar amount of the overdraft or prohibiting overdraft fees on transactions below a certain dollar threshold, together with an overdraft fee cap. An industry trade association likewise suggested that the Bureau adopt caps on overdraft amounts and fees, and also suggested that these be augmented by a limit on the number of times an overdraft fee could be charged in a given period, as well as requirements to provide detailed disclosures informing the consumer how the overdraft features work. Several industry commenters, including one credit union service organization, suggested that the Bureau adopt a dollar limit below which overdrafts occurring in connection with a prepaid account would be excluded from the definition of credit under Regulation Z and instead covered by the Regulation E opt-in regime.

Some industry commenters argued that their customers want—or even need—access to short-term credit in connection with their GPR cards. Several trade association commenters similarly stated that consumers want access to credit features on prepaid cards. These commenters expressed concern that subjecting overdraft credit on prepaid accounts to Regulation Z credit card rules would cut off consumers’ access to short-term credit. The Bureau also

received comments from several members of Congress stating that their constituents use and depend upon credit features attached to prepaid cards.

As noted above, the Bureau received around 6,000 comments from consumers who use prepaid products currently offering overdraft services. The Bureau understands that these letters were coordinated as part of a letter-writing campaign organized by a program manager that offers overdraft on certain of its prepaid accounts. These consumers voiced support for their overdraft services. Some noted, for example, that the overdraft fees charged on their prepaid accounts were less than the overdraft fees charged by banks, and that their overdraft services allowed them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs. By contrast, the Bureau also received comments from consumers opposed to prepaid overdraft features. As part of a letter-writing campaign organized by a consumer group, the Bureau received largely identical comments from approximately 56,000 consumers generally in support of the proposal—particularly related to the requirement under Regulation Z credit card rules to assess consumers’ ability to pay before offering credit attached to prepaid cards—and urging the Bureau to finalize strong credit provisions in the final rule so that consumers can avoid hidden fees and unexpected debt.

In addition to these comments about the Bureau’s general approach to regulating credit offered in connection with prepaid accounts, the Bureau also received numerous comment letters from industry and consumer groups on the specifics of this part of the proposal. Most industry commenters were concerned that the proposed regime would sweep in far more products than the Bureau intended by covering situations where credit is extended to cover so-called “force pay” transactions. Force pay transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the

prepaid account to cover the transaction at settlement. Industry commenters were nearly universally concerned that force pay transactions would trigger coverage under the proposal even when the only fee charged in connection with the overdrawn transaction is a fee, such as a per transaction fee, that would be charged regardless of whether the transaction is paid from a positive balance on the prepaid account or overdraws the account. Industry commenters said requiring prepaid account issuers to waive neutral per transaction fees in order to avoid triggering the credit card rules on force pay transactions would be more complicated than the Bureau anticipated in the proposal and would impose substantial compliance costs. These commenters indicated that similar issues may also arise with other transaction-specific fees, such as currency conversion fees assessed on force pay transactions.

The Bureau also received industry comments that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is being offered by an unrelated third party. These commenters were concerned that unrelated third-party creditors may not be aware that their credit features are being used as overdraft credit features with respect to prepaid accounts. If unrelated third-party creditors were subject to the proposal, commenters said these creditors would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This would have been true even if the creditors were already subject to the credit card rules in their own right because the proposal contained a number of provisions that would have applied only to prepaid cards that are credit cards and would not have applied to credit card accounts generally. On the other hand, several consumer groups supported the proposal to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

One industry commenter expressed concern that the proposal would trigger the credit card rules in situations in which a prepaid card could be used only to complete standalone loads or transfers of credit from a separate credit feature to the prepaid account, but not to access credit in the course of a transaction conducted with the prepaid card. This commenter noted that there are several circumstances in which consumers can consciously load value to their prepaid accounts using a debit card or credit card, where this load is not occurring as part of an overdraft feature in connection with the prepaid account. Specifically, in this scenario, the consumer does not access credit automatically in the course of a transaction conducted with the prepaid card, but rather uses the credit or debit card to make a one-time load outside the course of any particular transaction. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

On the other hand, several consumer group commenters suggested that the Bureau should apply the credit card rules to any credit plan from which credit is transferred to prepaid cards, rather than limiting application only to certain “push” arrangements as proposed (where a prepaid account is the only account designated by the creditor as a destination for the credit provided). Similarly, another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid card accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

## *Overview of the Final Rule's Amendments to Regulation Z*

In the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with the prepaid card (except for very limited incidental credit, as described below). The reasons for this are explained further below, but to facilitate understanding, this subsection first gives an overview of the coverage decisions and structure of the final rule. As the Bureau noted in the proposal and as discussed below, the provisions addressing credit features in connection with a prepaid account in the final rule are not intended to alter treatment of overdraft services or products on checking accounts under Regulation Z.

The final rule sets forth the rules for when a prepaid card is a credit card under Regulation Z in new § 1026.61. The Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. While Regulation E provides protections for the asset account of a prepaid account, the Bureau believes separate protections are necessary under Regulation Z for certain overdraft credit features in connection with prepaid accounts.

New § 1026.61(b) generally requires that such credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to such separate credit features if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise

completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

To effectuate these provisions and provide compliance guidance to industry, the Bureau is also revising certain other credit card provisions as a result of new § 1026.61. For example, the final rule provides guidance in new § 1026.4(b)(11) and related commentary on how the definition of finance charge applies to covered separate credit features accessible by hybrid prepaid-credit cards. In addition, the Bureau notes that, pursuant to the final rule, accounts that are “hybrid prepaid-credit cards” will be subject to the credit card protections in Regulation Z, as well as all other applicable provisions of Regulation Z. This includes, for example, Regulation Z’s requirement that creditors retain evidence of compliance with Regulation Z.<sup>566</sup>

As discussed in the section-by-section analysis of § 1026.61 below, the final rule provides certain exclusions from coverage for prepaid cards that access credit in certain situations. Specifically, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a credit card with respect to a credit feature that does not meet both conditions stated above, namely that the credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party (*i.e.*, that is not the prepaid account issuer, its affiliate, or its business partner). Such credit

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<sup>566</sup> See § 1026.25.

features are defined as “non-covered separate credit features.” Under the final rule, a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z in its own right, depending on the terms and conditions of the product.

In addition, under new § 1026.61(a)(4) a prepaid card also is not a credit card when the prepaid card only accesses credit that is incidental to certain transactions in the form of a negative balance on the asset account where the prepaid account issuer does not charge credit-related fees for the credit. This exception is intended to exempt three types of credit so long as the prepaid account issuer generally does not charge credit-related fees for the credit: (1) credit related to “force pay” transactions; (2) a de minimis \$10 payment cushion; and (3) a delayed load cushion where credit is extended while a load of funds from an asset account is pending. Under the final rule, this type of credit generally is subject to Regulation E, instead of Regulation Z.<sup>567</sup> For example, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.12(a) above, Regulation E’s provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. Also, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, although this incidental credit generally is governed by Regulation E, the Bureau is exempting this incidental credit from the opt-in rule in final § 1005.17. For the reasons discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, the Bureau is adding new § 1005.17(a)(4) to provide that credit accessed from an overdraft credit feature that is exempt from Regulation Z under

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<sup>567</sup> With respect to such credit, the final rule provides that a prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges as described in new comment 4(b)(11)-1.iii.

§ 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17.

The Bureau notes that the final rule does not adopt proposed provisions that would have made certain credit account numbers that were used to push credit onto a prepaid card into credit cards as described above. Instead, the Bureau in the final rule addresses the evasion concerns discussed in the proposal and raised by consumer group commenters through the definition of “hybrid prepaid-credit card” as discussed below. The Bureau will continue to monitor the market for potential evasion of the provisions addressing hybrid prepaid-credit cards, and will consider further modifications in future rulemakings if necessary.

*Consideration of extension of existing exemptions for prepaid overdraft services.* The Bureau has carefully considered the comments submitted by all interested stakeholders addressing the regulatory framework and implementation of the rule under a Regulation Z approach, and has decided to finalize its proposal to depart from the regulatory framework that applies to overdraft services on checking accounts, which was created by the Board through previous rulemakings. As discussed further separately below, the Bureau believes that the credit card rules under Regulation Z provide a more appropriate and protective regulatory framework for overdraft features on prepaid accounts.

The Board, acting in the late 1960s, decided to subject overdraft lines of credit in connection with traditional deposit accounts to Regulation Z requirements for open-end credit, while carving ad hoc “courtesy” overdraft services on traditional deposit accounts out from Regulation Z through operation of the definitions of the terms “creditor” and “finance charge.” A creditor is generally defined under Regulation Z to mean a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more

than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.<sup>568</sup> In 1969, however, the Board adopted an exclusion to the definition of finance charge for “charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing.”<sup>569</sup> Under the exception, the fees charged for the overdrafts are not “finance charges” under Regulation Z, and thus a financial institution extending credit is not a “creditor” under Regulation Z because it is not charging a finance charge and is not structuring the repayment of the credit by written agreement in more than four installments.<sup>570</sup> Rather, overdraft services are not subject to Regulation Z credit protections. While the Board later issued rules under Regulation E to specify disclosure requirements and to require an opt-in process for certain types of overdraft transactions, these rules generally provide fewer protections for consumers on an ongoing basis than does Regulation Z.

The Bureau believes that this existing patchwork approach should not be extended to prepaid accounts, both because the historical justification for the regulatory treatment of checking account overdraft services under Regulation Z does not apply to prepaid accounts and

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<sup>568</sup> See § 1026.2(a)(17)(i). The term “creditor” also includes a card issuer, which is a person that issues credit cards, when that person extends credit accessed by the credit card. See § 1026.2(a)(17)(iii) and (iv). Regulation Z defines the term “credit card” to mean any card, plate, or other single credit device that may be used from time to time to obtain credit. See § 1026.2(a)(15). A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. See § 1026.2(a)(15)(iii). In addition to being creditors under TILA and Regulation Z, card issuers also generally must comply with the credit card rules in the FCBA and in the Credit CARD Act (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G. See generally §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12 and 1026.51 through 1026.60.

<sup>569</sup> See § 1026.4(c)(3).

<sup>570</sup> In addition, the commentary to the definition of “credit card” explains that a debit card is not a credit card where there is no credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft. See comment 2(a)(15)-2.ii.A. The Board adopted this commentary to exclude overdraft services from becoming subject to Regulation Z when they are accessed by a debit card, consistent with the exclusion for overdraft charges from the definition of finance charge where there is no written agreement to extend credit and charge a fee, as described above. See 75 FR 7657, 7664 (Feb. 22, 2010).

because there are notable differences between how prepaid accounts and checking accounts function. At the time the Board established the Regulation Z exemption, bounce-protection programs (as overdraft services were known) were necessarily check-based because checks and cash were—at that time—consumers’ only ways of accessing funds in their deposit accounts. Further, a financial institution’s decision whether to pay a given check that triggered an overdraft was at that time necessarily manual, or ad-hoc, because computers (and automated credit decision-making) were only in their infancy. Typically, a consumer’s institution (the “paying bank,” which is equivalent to the card-issuing bank in a card transaction) cannot authorize or decline a purchase by check when the consumer seeks to make payment (*i.e.*, while at the merchant). As the Board noted in 2009, institutions that historically provided overdraft coverage for check transactions on an ad-hoc basis often provided a benefit to consumers, insofar as paying the check was often a preferable outcome to a bounced, returned check which could trigger an NSF fee, additional fees imposed by merchants, and even potential criminal liability for passing bad checks.<sup>571</sup> With relatively low fees and low incidence, the programs were therefore considered a minor “courtesy” service that enabled consumers to avoid both the embarrassment of bouncing checks and the attendant costs.

However, the account structure and logistics for prepaid accounts have never matched those for checking accounts that existed in 1969. Checking accounts generally allow consumers to write checks and present them to payees without first receiving authorization from their financial institution. Checking accounts also allow incoming debit ACH transactions without preauthorization. These types of transactions are relevant for two reasons. First, the exact

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<sup>571</sup> 77 FR 59033, 59033 (Nov. 17, 2009); *see also generally* Fed. Deposit Ins. Corp., FIL-81-2010, *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance* (Fin. Inst. Letter, Nov. 24, 2010), available at <https://www.fdic.gov/news/news/financial/2010/fil10081.html>.

timing of the check clearance and incoming ACH process can be difficult for the consumer to predict. For instance, it may sometimes take several days or longer for a check to be presented and funds to be withdrawn from the consumer's account, while other times checks may be presented faster. Uncertainty around the timing of check and ACH presentment may lead to inadvertent overdrafts. Second, where this occurs, there is a benefit to the consumer in paying the transaction rather than declining the transaction and exposing the consumer not only to NSF fees but to bounced check fees and late payment fees charged by the payee.

By contrast, the vast majority of prepaid account transactions are preauthorized, which means that the merchant seeks authorization from the financial institution before providing goods or services to the consumer.<sup>572</sup> In such cases, the consumer is not at risk of having a payment rejected after a transaction has already occurred and the consumer will not be subjected to NSF and merchant fees; rather, the financial institution can simply reject the transaction before the purchase occurs if there are insufficient funds in the account.<sup>573</sup> This is true for point-of-sale transactions as well as online bill pay transactions completed via ACH initiated from the prepaid account to the biller (or even with mailed, pre-authorized checks). Thus, a consumer using a prepaid account is less like the checking account customer that the Board focused on in creating the exemption for overdraft—a consumer being extended a courtesy in order to avoid potentially harsher repercussions—and instead is like any other consumer using credit to purchase goods or services.

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<sup>572</sup> An exception is third-party ACH debits, which could be submitted without prior authorization from the financial institution. However, an informal review by the Bureau of major GPR card programs indicates that most will not accept incoming ACH debits or that, by contract, cardholders are not permitted to establish them.

<sup>573</sup> The Bureau is aware that, in some instances, a transaction will be authorized when the account balance is positive but will ultimately settle when the account balance is negative, because for some types of transactions the final settlement amount may be higher than the authorization amount (*e.g.*, at restaurants because tips are sometimes added after authorization).

There are several additional reasons why the Bureau believes the existing treatment of checking account overdraft would be inappropriate as applied to prepaid accounts. As stated in the proposal, a substantial portion of consumers holding prepaid accounts have had difficult experiences with overdraft services on traditional checking accounts.<sup>574</sup> In general, prepaid consumers are disproportionately unbanked or underbanked.<sup>575</sup> Some studies have also shown they are more likely to have limited education, and are often unemployed or recipients of public benefits.<sup>576</sup> Although the size of this group is not clear, the Bureau believes that some users of prepaid products do vary, in some degree, from users of traditional deposit accounts.

Moreover, as noted in the proposal, financial institutions deliberately market prepaid accounts to consumers as products that are safer and easier to use than comparable products with credit features, in particular checking accounts with overdraft. Specifically, many companies market prepaid accounts to consumers as products that increase consumers' financial control by

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<sup>574</sup> 2014 Pew Survey at 7-8 (noting both that “Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage” and that “Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees.”). Separately, one major issuer estimated that 80 percent of its GPR card customers earn less than \$50,000. See Kate Fitzgerald, *Green Dot Chief Sees Prepaid Mobile Payments As Company's Next Challenge* (May 7, 2012), available at <http://www.isoandagent.com/news/Green-Dot-Chief-Sees-Prepaid-Mobile-Payments-As-Company's-Next-Challenge-3010590-1.html> (explaining that “single mothers in their late 30s and early 40s comprise 55 percent of [one major prepaid card company's] target market, with most of them earning less than \$50,000 annually.”). Similarly, others have informed Bureau staff that the average credit score of prepaid account users is far below average.

<sup>575</sup> In its report on unbanked and underbanked consumers, the FDIC explained that households are identified as “unbanked” if they answered “no” to the question, “Do you or does anyone in your household currently have a checking or savings account?” The FDIC further explained that “underbanked households are defined as those households that have a checking and/or a savings account and had used non-bank money orders, non-bank check cashing services, non-bank remittances, payday loans, rent-to-own services, pawn shops, or refund anticipation loans (RALs) in the past 12 months.” See FDIC, *2011 FDIC National Survey of Unbanked and Underbanked Households* (2011), available at [https://www.fdic.gov/householdsurvey/2012\\_unbankedreport.pdf](https://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf). For discussion of prepaid consumers' background, see 2012 FRB Kansas City Study at 11-12 (although the report also notes no correlation due to income or education; possibly due to the different types of use by prepaid consumers).

<sup>576</sup> 2011 FDIC Survey at 16, 18, 40; see also Nat'l Council of La Raza, *Perspectives on Prepaid Cards from Low-Income Hispanic Tax Filers*, at 1-2 (2011), available at [http://www.nclr.org/images/uploads/publications/perspectives\\_on\\_prepaid\\_cards\\_\(3\).pdf](http://www.nclr.org/images/uploads/publications/perspectives_on_prepaid_cards_(3).pdf).

preventing overspending and the incurring of debt.<sup>577</sup> Relatedly, the Bureau also believes that many of these consumers, and even many consumers who continue to maintain separate checking accounts, choose to purchase prepaid products because of their promise to allow consumers to control their spending. Indeed, many participants in the Bureau’s pre-proposal consumer testing emphasized control as a primary reason they used prepaid cards.<sup>578</sup> Other studies have similarly found that a primary reason consumers use prepaid cards is that they want increased control over their finances and want to avoid incurring debt and related fees.<sup>579</sup>

The Bureau believes the final rule’s approach with respect to overdraft credit features on prepaid accounts will help preserve the unique character of prepaid accounts as a safe alternative to products that offer credit features, in conformance with the expectations of most prepaid consumers. This treatment is in contrast to the historical evolution of checking accounts, where overdraft services have been common across almost all such accounts and consumers often expect such services to be offered in connection with checking accounts.

Further, unlike with respect to checking accounts where overdraft services have been structured to fit a unique and separate regulatory regime for several decades, the Bureau is regulating prepaid overdraft services on a largely blank slate. Checking accounts and their

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<sup>577</sup> See, e.g., Network Branded Prepaid Card Ass’n, *Prepaid Card Benefits*, <http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx> (last visited Oct. 1, 2016) (“For many Americans, prepaid cards serve as a tool with which to more effectively budget their spending. With a prepaid card, consumers avoid the risk of overspending or overdraft, thus avoiding the interest, fees, and potential negative credit score implications of traditional credit cards. And for parents, prepaid cards provide tools to maintain control over their teens’ or college students’ spending.”); see also *Examining Issues in the Prepaid Card Market*, Hearing before the Subcomm. on Fin. Inst. and Consumer Prot., S. Comm. on Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Dan Henry, C.E.O., NetSpend Holdings, Inc.) (“Our customers are typically working Americans who want control . . .”).

<sup>578</sup> See ICF Report I at 5.

<sup>579</sup> See Bretton Woods, Inc., *A Comparative Cost Analysis of Prepaid Cards, Basic Checking Accounts and Check Cashing*, at 4 (Feb. 2012), available at <http://bretton-woods.com/media/3e145204f3688479ffff832afffd524.pdf> (noting that 74 percent of prepaid users like the fact they cannot overspend or overdraft the most about prepaid cards); 2014 Pew Survey at 14 ex.12 (noting that the top two reasons consumers claim to use prepaid cards related to avoiding credit card debt (67 percent) and helping them not spend more money than they actually have (66 percent)).

pricing structures have evolved over the last several decades under compliance frameworks that were developed in accordance with existing regulations, exceptions to those regulations, and other agencies' guidance. In contrast, very few prepaid products currently offer overdraft services or other associated credit features. Most prepaid account programs do not have such a feature and, as a result, prepaid issuers would have to implement a new compliance regime in any event were they to decide to add such features.

Similarly, the Bureau is concerned that if it were to extend the exception for overdraft services in connection with checking accounts to prepaid accounts, financial institutions offering overdraft on prepaid accounts would come to rely heavily on back-end pricing like overdraft fees, while eliminating or reducing front-end pricing, as has occurred with overdraft services on checking accounts. Indeed, although there are few prepaid providers currently offering overdraft services, one commenter provided data that suggests that the fee revenue attributable to overdraft fees for those prepaid providers who do offer overdraft have come to make up a significant portion of their revenue.<sup>580</sup>

The Bureau believes such pricing structures can result in less transparent pricing for consumers. By labeling overdraft credit features offered on prepaid products as credit subject to the disclosure requirements of Regulation Z, the Bureau believes that the resulting product will be better understood and managed as credit by consumers to the extent some prepaid accountholders decide they want to access such credit.

Because it has elected to treat overdraft credit features offered on prepaid accounts as credit cards under Regulation Z, the Bureau declines to adopt additional restrictions or

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<sup>580</sup> According to the office of a State Attorney General, overdraft fees and declined balance fees may comprise a substantial portion of the fee-based revenue for financial institutions offering payroll card programs, stating that, in its survey of 38 employers' payroll card programs, overdraft fees comprised over 40 percent of the fees assessed by those vendors that charge them.

requirements in Regulation E for prepaid accounts offering overdraft credit, as some industry commenters suggested. As summarized above, some industry commenters suggested that, to the extent the Bureau was concerned that Regulation E’s opt-in regime was not sufficiently robust to address the perceived consumer harms associated with prepaid overdraft, the Bureau could impose additional, prepaid-specific restrictions within Regulation E to, for example, limit the amount of prepaid overdraft fees, limit the amount by which a prepaid account could be overdrawn, or limit the number of times a prepaid account could be overdrawn during a given period. The Bureau declines to adopt this approach. For the reasons discussed below, the Bureau believes that the credit card rules provide a comprehensive existing framework that provides substantial benefits to consumers, and that it is more appropriate under these circumstances to adopt that framework than to create additional novel requirements in Regulation E.

With respect to the comment that the Bureau should adopt a dollar limit below which overdrafts occurring in connection with a prepaid account would be excluded from the definition of credit under Regulation Z and instead be covered by the Regulation E opt-in regime, the Bureau is concerned that allowing consumers to incur substantial debt in connection with an account that most do not intend to use as a credit account may pose a risk to those consumers by compromising their ability to manage and control their finances.<sup>581</sup> Thus, while the final rule would permit a financial institution to offer an incidental “payment cushion” of \$10 without triggering the rules governing credit cards under Regulation Z so long as the issuer does not impose credit-related fees, the Bureau believes that the provision of a higher dollar amount of

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<sup>581</sup> See also the section-by-section analyses of §§ 1026.2(a)(14) and 1026.61(a)(4) below.

credit in connection with a prepaid account should be subject to full credit card protections unless otherwise excluded under the final rule.

*Treatment of prepaid overdraft services under the credit card rules in Regulation Z.* The Bureau has concluded that the open-end credit regime established under Regulation Z is an appropriate and fitting regime for the treatment of overdraft credit features offered in connection with prepaid accounts. The term “open-end credit” is defined to mean consumer “credit” extended by a creditor under a “plan” in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a “finance charge” from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. As explained in the proposal, the Bureau has analyzed whether it is reasonable to interpret “credit” to include when overdrafts are paid in relation to prepaid accounts. The Bureau continues to believe it is. The Bureau also believes that overdraft services, overdraft lines of credit, and similar products that could be offered in connection with prepaid accounts can be regulated by Regulation Z as a “plan” where the consumer is contractually obligated to repay the debt, even if the creditor retains, by contract, the discretion not to extend credit.

The Bureau has further evaluated whether such a plan satisfies the three prongs necessary to establish the plan as an open-end (not home-secured) credit plan under Regulation Z. The first prong asks whether overdraft services, including those offered in connection with prepaid accounts, can be plans under which the creditor reasonably contemplates repeated transactions. Every prepaid overdraft service that charges a fee of which the Bureau is aware contemplates and approves repeated transactions. The second prong of the definition asks whether the creditor

may impose a finance charge from time to time on an outstanding unpaid balance.<sup>582</sup> The Bureau believes that overdraft fees and other charges on credit features offered in conjunction with prepaid accounts easily meet the general definition of finance charge. The Bureau believes that fees levied for overdraft services or other credit features on prepaid accounts—such as interest charges, transaction charges, service charges, and annual or other periodic fees to participate in the credit program—generally constitute finance charges, because they are directly payable by the consumer and imposed directly by the creditor as a condition of the extension of credit. Lastly, the Bureau believes that automated overdraft services for prepaid accounts generally will be structured such that the credit line for the plan will generally replenish to the extent that any outstanding balance is repaid, thus satisfying the final prong of the definition of open-end credit. Insofar as the Bureau has determined that the three prongs of an open-end credit plan are met, it finds that an overdraft service on a prepaid account is an open-end credit plan much like an overdraft line of credit or other similar products linked to prepaid accounts.

The Bureau also believes that covering overdraft services offered in connection with prepaid accounts under Regulation Z aligns with TILA’s purpose to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.<sup>583</sup> The Bureau believes that regulation of prepaid account overdraft services as open-end (not home-secured) credit will serve to accomplish the stated purpose of TILA by requiring creditors and other persons to explain the terms of overdraft services to consumers in the context of Regulation Z, protect consumers from

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<sup>582</sup> See § 1026.2(a)(20)(ii).

<sup>583</sup> TILA section 102(a), 15 U.S.C. 1601(a).

high fees during the first year (through Regulation Z's fee harvester provision) and from harms arising from various billing and improper credit card practices, and give consumers strong tools to manage their credit relationships.

Finally, the Bureau believes that Regulation Z's credit card provisions, particularly as augmented by some tailored provisions that the Bureau is adopting specifically for the prepaid context, provide substantially more consumer protections than other existing regulatory regimes. These include greater protections around pricing, protections around creditors taking payments from consumers' accounts, and regulations to govern the process by which consumers make an initial decision to select a credit feature. For example, regulations implementing the Credit CARD Act impose a number of restrictions concerning credit pricing. These include restrictions on the fees that an issuer can charge during the first year after an account is opened, and limits on the instances in which and the amount of such fees that issuers can charge as penalty fees when a consumer makes a late payment or exceeds his or her credit limit. The Credit CARD Act also restricts the circumstances under which issuers can increase interest rates on credit cards and establishes procedures for doing so. The Bureau believes that applying the Credit CARD Act provisions to overdraft features in connection with prepaid accounts would promote transparent pricing for prepaid accountholders.

In addition, application of the Fair Credit Billing Act and Credit CARD Act requirements, including the FCBA's no-offset provision,<sup>584</sup> along with application of the compulsory use provision in Regulation E § 1005.10(e)(1) to overdraft credit features offered in connection with prepaid accounts, will allow consumers to retain control over the funds in their prepaid accounts if a credit card feature becomes associated with those accounts because they

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<sup>584</sup> TILA section 169; 15 U.S.C. 1666h(a).

will be able to control when and how debts are repaid.<sup>585</sup> The application of these provisions would mean that with respect to overdraft credit features subject to this final rule, card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements for the credit feature are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the covered separate credit feature held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date, (pursuant to the consumer's signed, written agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances on the covered separate credit feature other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking website following a cash reload to the asset account). Card issuers also would be prohibited from extending credit without assessing the consumer's ability to pay, and must comply with special rules regarding the extension of credit to persons under the age of 21.

Furthermore, by not permitting financial institutions to accept applications for an overdraft credit feature until 30 days after registration of the prepaid account,<sup>586</sup> the Bureau believes the final rule will prevent consumers from being pressured to make a decision on overdraft credit when acquiring the prepaid account, such as when they purchase a GPR card at a retail location with an incentive to encourage consumers to sign up for overdraft, and protect

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<sup>585</sup> See § 1026.12(d). This provision implements TILA section 169, which Congress added to TILA when it enacted the FCBA. The provision prohibits card issuers from taking any action to offset a cardholder's indebtedness arising from a consumer credit card transaction against the cardholder's funds held with the issuer, unless such action was previously authorized in writing by the cardholder in accordance with a plan whereby the cardholder agrees to permit the issuer periodically to deduct the debt from the cardholder's deposit account.

<sup>586</sup> See § 1026.61(c).

them from incurring credit-related fees in the period during which they are getting accustomed to the features and uses of their account. It will also allow consumers time to decide whether the basic prepaid account is a good fit for them before deciding whether to layer on a separate credit feature that may be more difficult to walk away from.

The Bureau takes seriously concerns that the proposed approach could have had unintended consequences for all prepaid issuers in circumstances where they do not intend to extend credit as well as for credit that prepaid consumers receive through other channels. Specifically, to address commenters' concerns about coverage as a result of a prepaid issuer paying force pay transactions, the final rule clarifies that a prepaid card is not a credit card when the prepaid card accesses credit that is incidental to certain transactions in the form of a negative balance on the asset account where the prepaid account issuer generally is not charging credit-related fees for the credit. In addition, the Bureau is sensitive to concerns that, by subjecting credit offered in connection with prepaid cards to Regulation Z's credit card regime, this rulemaking may reduce access to some forms of credit. For that reason, under the final rule, a separate credit feature will not be covered if it is offered by an unrelated third party that is not the prepaid account issuer, its affiliates, or its business partners. This is true even if the separate credit feature is providing funds to the prepaid account to cover transactions for which there would not otherwise be sufficient funds. In addition, a separate credit feature is not covered under the final rule if it cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions even if the credit feature is offered by the prepaid account issuer, its affiliates, or its business partners. As noted above, the Bureau anticipates that credit plans in both of these latter scenarios will be subject to Regulation Z in their own right, but

has concluded that they should not be subject to heightened regulation as a result of this final rule.

The Bureau also declines to issue a ban on overdraft. Very few existing products offer credit features in connection with prepaid accounts. As such, the Bureau does not believe such a blanket prohibition is necessary or appropriate to address the potential consumer harm in this market at this time and in light of the other consumer protections that the final rule provides. Indeed, the Bureau believes that the final rule, unlike an outright ban on prepaid overdraft, which several consumer groups and one issuing bank suggested, appropriately balances the need to address consumers' need and demand for credit with the need to protect against consumer harm.

Finally, and as noted above, the Bureau received several comments from industry expressing concern that the Bureau's proposed interpretation of certain credit-related definitions in Regulation Z could impact the status of overdraft features accessed in connection with deposit accounts. As the Bureau noted in the proposal, the provisions addressing prepaid overdraft in the final rule are not intended to alter existing provisions that apply to deposit account overdraft, including exemptions for overdraft services from Regulation Z and Regulation E's compulsory use provision. The Bureau continues to study deposit account overdraft services on checking accounts and will propose any further regulatory consumer protections in that rulemaking initiative.<sup>587</sup> In addition to that initiative, the Bureau notes that it recently issued a Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans (Payday NPRM).<sup>588</sup> The Bureau proposed excluding credit card accounts under an open-end (not home-secured) consumer credit plan from coverage under the Payday NPRM pursuant to

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<sup>587</sup> See CFPB's Unified Agenda for Spring 2016, *available at* <http://www.consumerfinance.gov/about-us/blog/spring-2016-rulemaking-agenda/>.

<sup>588</sup> See 81 FR 47864 (July 22, 2016).

proposed § 1041.3(e)(3).<sup>589</sup> The Bureau notes that under this final rule, a covered separate credit feature is a credit card account under an open-end (not home-secured) consumer plan under Regulation Z and accordingly, would be exempt from coverage for purposes of the Payday NPRM.

*The implications of the Bureau's approach to credit products offered in conjunction with prepaid accounts for Military Lending Act compliance.* As discussed above, the DOD recently issued a final rule expanding the scope of the coverage of its regulation (32 CFR part 232) that implements the MLA to include a broad range of open-end and closed-end credit products, including open-end (not home-secured) credit card accounts that are subject to Regulation Z.<sup>590</sup> Under the MLA and the implementing regulation, a creditor generally may not apply a MAPR greater than 36 percent in connection with an extension of consumer credit to a military service member or dependent. For covered credit card accounts, any credit-related charge that is a finance charge under Regulation Z (as well as certain other charges) would be included in calculating the MAPR for a particular billing cycle and the MAPR for that billing cycle could not exceed 36 percent.<sup>591</sup> In addition, the rule includes a limited exemption for credit card accounts—until October 3, 2017, consumer credit covered by the MLA and the implementing regulation will not include credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.

Thus, starting October 3, 2017, fees levied for credit features (including overdraft services) on a hybrid prepaid-credit card held by military service members or their dependents would, as a result of the MLA and the Bureau's final rule on prepaid accounts in combination,

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<sup>589</sup> *See id.* at 48168.

<sup>590</sup> 80 FR 43560 (July 22, 2015).

<sup>591</sup> 32 CFR 232.4(b).

generally be included in calculating the MAPR for a billing cycle unless excluded under the reasonable bona fide fee exception.

The Bureau sought comment on the consequences, if any, from the combined effect of the two rules with respect to overdraft services and credit features on prepaid accounts held by military service members. With the exception of generalized comments acknowledging the potential overlap outlined above, commenters did not provide any specific feedback in response to this request.

*Other implications of the Bureau's approach to credit products offered in conjunction with prepaid accounts: Multipurpose cards and card network rules.* The Bureau's approach to credit features in connection with prepaid products would result in a single plastic card or other access device functioning either as a prepaid card or as a credit card, depending on the balance in the asset account at the time of a transaction that the consumer makes. For example, if the asset account balance is sufficient to fund the transaction, the card could function as a prepaid card; if not, the card could function as a credit card. The final rule includes a number of provisions to promote consumer understanding, facilitate clear application of the various potentially applicable regulatory regimes, and address other challenges that may arise due to the multipurpose nature of the card product. For example, the Bureau is amending the provision in Regulation Z that addresses the relationship between the Regulation E and Z error resolution regimes to clarify the applicability of those regimes to an extension of credit incident to an EFT when a transaction accesses both funds in the prepaid account and credit from the overdraft credit feature.<sup>592</sup>

The Bureau sought comment on these specific amendments and whether further amendments or guidance would be appropriate. The Bureau also sought comment on consumer

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<sup>592</sup> See the section-by-section analysis of § 1026.13(i) below.

and industry experiences with similar multipurpose products historically, and whether they yield useful lessons for further refining the Bureau’s proposal with regard to prepaid cards. The Bureau did not receive any specific comments in response to these requests.

Finally, the Bureau notes that card network rules may treat a card differently depending on whether it accesses an asset account or a credit account. In the proposal, the Bureau noted that its proposal could result in an increase in the number of cards that can access both an asset account and a credit account, and the Bureau requested comment on any card network rule issues that might arise from its proposal to treat most credit plans accessed by prepaid cards, for which finance charges are imposed, as open-end credit accessed by a credit card under Regulation Z. The Bureau did not receive any specific comments in response to this request.

#### *Subpart A—General*

#### *Section 1026.2 Definitions and Rules of Construction*

#### *2(a) Definitions*

#### *Overview of Final Changes to Definitions*

As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section above and in the section-by-section analysis of § 1026.61 below, the Bureau is adopting a new definition of “hybrid prepaid-credit card” in new § 1026.61<sup>593</sup> to describe the circumstances in which the Bureau has decided to regulate prepaid cards<sup>594</sup> as credit cards under Regulation Z when they can access credit offered in connection with a prepaid account. The Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when

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<sup>593</sup> Throughout the section-by-section analyses of Regulations E and Z, the term “hybrid prepaid-credit card” refers to a hybrid prepaid-credit card as defined in new § 1026.61.

<sup>594</sup> New § 1026.61(a)(5)(vii) defines “prepaid card” to mean “any card, code, or other device that can be used to access a prepaid account.” The term “prepaid card” includes a prepaid account number. *See* new comment 61(a)(5)(vii)-1. Consistent with final Regulation E, new § 1026.61(a)(5)(v) defines “prepaid account” to mean “a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3).”

they access certain specified types of credit. A number of supporting definitions that help to distinguish hybrid prepaid-credit cards from prepaid cards that are not credit cards under Regulation Z are provided in new § 1026.61 as described further below.

The Bureau is making conforming changes to general Regulation Z definitions in both existing §§ 1026.2 and 1026.4 to effectuate and reflect these distinctions. For example, the Bureau is making amendments to the definition of “credit card” in existing § 1026.2(a)(15)(i) and related commentary to make clear that the term “credit card” includes a hybrid prepaid-credit card. The Bureau also is making several amendments to the commentary relating to several other terms that are defined in existing § 1026.2 that pertain to the general regulation of credit and credit cards under Regulation Z. Specifically, the Bureau is amending the commentary regarding such terms as “card issuer” in existing § 1026.2(a)(7), “open-end credit” in existing § 1026.2(a)(20), and “credit card account under an open-end (not home-secured) consumer credit plan” in existing § 1026.2(a)(15)(ii). Finally, the Bureau also is amending the definition of “finance charge” in existing § 1026.4 and related commentary with respect to credit features accessible by hybrid prepaid-credit cards and with respect to other credit features that are accessible by prepaid cards that are not credit cards under Regulation Z. These changes are briefly summarized below before the more detailed discussion of specific amendments to specific subparagraphs of existing §§ 1026.2 and 1026.4, and their related commentary.

*Definition of “credit card.”* Regulation Z defines the term “credit card” in current § 1026.2(a)(15)(i) to mean “any card, plate, or other single credit device that may be used from time to time to obtain credit.” As discussed below, the Bureau is adopting a new definition of “hybrid prepaid-credit card” in new § 1026.61 which sets forth the circumstances in which a prepaid card is a credit card under Regulation Z. Accordingly, the Bureau is amending the

general definition of “credit card” in existing § 1026.2(a)(15)(i) to state expressly that a prepaid card that is a hybrid prepaid-credit card as defined in new § 1026.61 is a credit card under Regulation Z. *See also* new § 1026.61(a)(1) and new comment 2(a)(15)-2.i.F. As described in new § 1026.61(a)(1), a prepaid card that is not a “hybrid prepaid-credit card” is not a credit card for purposes of Regulation Z. *See also* new comment 2(a)(15)-2.ii.D.

More specifically, as discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as “non-covered separate credit features,” as discussed in the section-by-section analysis of § 1026.61(a)(2). Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit.<sup>595</sup> A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4).

*Definition of “card issuer.”* The term “card issuer” is generally defined in existing § 1026.2(a)(7) to mean “a person that issues a credit card or that person’s agent with respect to the card.” Under the general rules applicable to credit cards, card issuers are subject to certain direct regulation in their own right, and a card issuer that extends credit is a creditor under Regulation Z even if it does not meet the general definition of “creditor” under existing § 1026.2(a)(17)(i). Because under the final rule a hybrid prepaid-credit card is a credit card under Regulation Z, a prepaid account issuer is a “card issuer” under existing § 1026.2(a)(7) when it issues a hybrid prepaid-credit card. In addition, to further apply these concepts in the

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<sup>595</sup> Throughout the section-by-section analyses of Regulations E and Z, the term “incidental credit” is used to refer to credit that meets the conditions of new § 1026.61(a)(4).

prepaid context, the Bureau is amending the commentary to existing § 1026.2(a)(7) to reflect that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, an affiliate or business partner offering the credit feature (if applicable) also is a “card issuer” under Regulation Z. Accordingly, under existing § 1026.2(a)(17)(iii) and (iv), the person offering the covered separate credit feature accessible by a hybrid prepaid-credit card (whether that person is a prepaid account issuer, its affiliate, or its business partner) also is a creditor under Regulation Z.

*Definition of “open-end credit” and “credit card account under an open-end (not home-secured) consumer credit plan.”* As discussed further below, certain credit card rules only apply to credit card accounts under an open-end (not home-secured) consumer credit plan as defined in existing § 1026.2(a)(15)(ii). This definition in turn hinges largely on whether a credit card can access “open-end credit” as defined in existing § 1026.2(a)(20). The term “open-end credit” is defined to mean consumer “credit” extended by a “creditor” under a “plan” in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a “finance charge” from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

The Bureau believes that a covered separate credit feature accessible by a hybrid prepaid-credit card generally will meet the definition of “open-end credit,” and is amending the regulation text and commentary to facilitate the classification of a covered separate credit feature accessible by a hybrid prepaid-credit card as “open-end credit” and a “credit card account under an open-end (not home-secured) consumer credit plan.” A person that is offering a covered separate credit feature involving open-end (not home-secured) credit that is accessible by a

hybrid prepaid-credit card will be subject to Regulation Z's open-end (not home-secured) rules and credit card rules in subparts B and G.

The open-end (not home-secured) rules in subpart B include account-opening disclosures, periodic statement disclosures, change-in-terms notices, provisions on promptly crediting payments, and billing error resolution procedures. The credit card rules in subpart B include provisions that restrict the unsolicited issuance of credit cards, limit the liability for unauthorized use of credit cards, and prohibit the offset of the credit card debt against funds held in asset accounts by the card issuer. The credit card rules in subpart G include provisions that prohibit credit card issuers from extending credit without assessing the consumer's ability to pay and restrict the amount of required fees that an issuer can charge during the first year after a credit card account is opened. Application of the particular rules is discussed further below.

*Definition of finance charge.* As discussed above, whether a creditor may impose a finance charge from time to time on an outstanding balance is one of the elements that helps determine coverage as open-end credit. As discussed above, certain credit card rules apply only to open-end credit that is accessible by a credit card. The term "finance charge" generally is defined in existing § 1026.4(a) to mean "the cost of consumer credit as a dollar amount." It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. It generally does not include any charges of a type payable in a comparable cash transaction. Currently, certain fees or charges are specifically excluded from the term "finance charge" as part of the exclusion for overdraft services on checking accounts as discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above. For example, existing § 1026.4(c)(3) excludes charges imposed by a financial institution for paying items that

overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. In addition, existing § 1026.4(c)(4) excludes fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

The Bureau is amending existing § 1026.4 and its commentary to provide that the exclusion in existing § 1026.4(c)(3) does not apply to credit offered in connection with a prepaid account as defined in new § 1026.61 and that the exclusion in existing § 1026.4(c)(4) does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. As discussed further below, these amendments help to effectuate application of certain credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. In addition, the Bureau is adding new provisions to final § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and charges constitute “finance charges” related to credit offered in connection with a prepaid account. All of these changes are discussed in more detail below in the section-by-section analysis of § 1026.4.

#### *2(a)(7) Card Issuer*

As discussed above, the final rule contains additional guidance on the definition of “card issuer” with respect to credit offered in connection with prepaid accounts. TILA section 103(o) defines the term “card issuer” as any person who issues a credit card, or the agent of such person with respect to such a card.<sup>596</sup> Consistent with the TILA definition, Regulation Z defines the term “card issuer” in existing § 1026.2(a)(7) as “a person that issues a credit card or that person’s agent with respect to the card.” The Regulation further defines the term “credit card” in existing

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<sup>596</sup> 15 U.S.C. 1602(o).

§ 1026.2(a)(15)(i) to mean “any card, plate, or other single credit device that may be used from time to time to obtain credit.” Card issuers must comply with certain provisions in Regulation Z as applicable. *See* existing §§ 1026.12 and 1026.60; for card issuers offering a “credit card account under an open-end (not home-secured) consumer credit plan,” *see, e.g.*, existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 through 1026.59. In addition, under existing § 1026.2(a)(17)(iii) and (iv), card issuers that extend credit are considered creditors for purposes of Regulation Z.

As noted above, under TILA and Regulation Z, the definition of “card issuer” means both a person who issues a credit card as well as the person’s agent with respect to the card. Comment 2(a)(7)-1 currently provides guidance on the term “agent” for purposes of the definition of “card issuer.” Specifically, current comment 2(a)(7)-1 provides that because agency relationships are traditionally defined by contract and by State or other applicable law, Regulation Z generally does not define agent. Nonetheless, current comment 2(a)(7)-1 provides that merely providing services relating to the production of credit cards or data processing for others does not make one the agent of the card issuer. In contrast, current comment 2(a)(7)-1 also provides that a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

#### *The Bureau’s Proposal*

Proposed comment 2(a)(15)-2.i.F would have provided that the term “credit card” generally includes a prepaid card that is a single device that may be used from time to time to

access a credit plan.<sup>597</sup> Under the proposal, a person that issues a prepaid card that is a credit card would have been a “card issuer” under existing § 1026.2(a)(7).

The proposal also would have amended existing comment 2(a)(7)-1 to provide specific guidance on the term “agent” for purposes of existing § 1026.2(a)(7) where a credit plan offered by a third party is accessed by a prepaid card that is a credit card. Under the proposal, the language of existing comment 2(a)(7)-1 would have been moved to proposed comment 2(a)(7)-1.i. In addition, the Bureau proposed to add comment 2(a)(7)-1.ii that would have built on the last sentence of current comment 2(a)(7)-1 and provided that with respect to a prepaid card that is a credit card where the card accesses a credit plan that is offered by a third party, a party offering the credit plan that is accessed by the card would have been an agent of the person issuing the prepaid card and thus, would have been a card issuer with respect to the prepaid card that is a credit card.

Under proposed comment 2(a)(15)-2.i.F, the Bureau would have excluded from the regulation as a credit card situations in which a prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Consistent with this approach, proposed comment 2(a)(7)-2 would have explained that a person is not a card issuer where a prepaid card only accesses credit meeting this description.

### *Comments Received*

Two industry trade associations indicated that the Bureau should limit the expansion of the term “agent” to creditors that have a direct agreement with the prepaid account issuer so that

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<sup>597</sup> The term “prepaid card” would have been defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a “prepaid account” as that term would have been defined in proposed § 1026.2(a)(15)(vi). Proposed § 1026.2(a)(15)(vi) would have defined the term “prepaid account” to mean a prepaid account as defined in Regulation E proposed § 1005.2(b)(3).

the third-party creditor is in a position to know that it has obligations under Regulation Z with respect to the prepaid card that is a credit card. Several consumer groups supported the proposed rule to consider a third party that offers an open-end credit plan accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z. They believed that this provision would help avoid evasion by third-party credit plans linked to prepaid cards. One consumer group commenter indicated that if the prepaid account issuer contracts with a third party to market credit to account holders, the Bureau should provide that both companies are classified as card issuers that must comply with the rules. This commenter indicated that without this safeguard, an affiliated third party could offer credit accessed by the prepaid card that would not be subject to the proposed rules.

#### *The Final Rule*

Consistent with the general approach in § 1026.61, the Bureau is limiting the circumstances in which an unaffiliated third party that can extend credit through a separate credit feature is considered an “agent” of a prepaid account issuer relative to the proposal. As discussed in more detail below, the Bureau is moving the existing language of current comment 2(a)(7)-1 to new comment 2(a)(7)-1.i. In addition, the Bureau is adding new comment 2(a)(7)-1.ii to provide that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer, as those terms are defined in new § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

In contrast, if a person offers a credit feature accessible by a prepaid card that does not meet the definition of a hybrid prepaid-credit card under new § 1026.61, such a person is not a

“card issuer” under final § 1026.2(a)(7) with respect to the prepaid card. Accordingly, the Bureau is not finalizing language that it had proposed in comment 2(a)(7)-2 to effectuate the narrower exclusion contemplated under the proposal. Instead, the Bureau is adopting new language in final comment 2(a)(7)-2 consistent with new § 1026.61 with regard to treatment of prepaid cards that are not hybrid prepaid-credit cards as discussed in that section. Each scenario is discussed further below.

#### *Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards*

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(i) defines a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. If both conditions are met, the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(a)(5)(i) and (iii) and their related commentary define “affiliate” and “business partner” respectively. Under new § 1026.61(a)(5)(i), an affiliate is any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*). Under new § 1026.61(a)(5)(iii), a business partner is a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature, where the person or its affiliate has an “arrangement”

with a prepaid account issuer or its affiliate. New comment 61(a)(5)(iii)-1 describes two types of “arrangements” that would make such a person that can extend credit a “business partner” of the prepaid account issuer under new § 1026.61(a)(5)(iii). As described in new comment 61(a)(5)(iii)-1.i, the first arrangement is where the unaffiliated person that can extend credit, or its affiliate, has an agreement with the prepaid account issuer, or its affiliate, that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a separate credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 61(a)(5)(iii)-1.i provides, however, that the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

Second, new comment 61(a)(5)(iii)-1.ii provides that an unaffiliated person that can extend credit through a separate credit feature is a business partner of the prepaid account issuer if (1) the prepaid account issuer or its affiliate has a business, marketing, or promotional agreement or other arrangement with the person that can extend credit, or its affiliate, where the agreement or arrangement provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person who is extending credit, or that the credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and (2) at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P

transfers. In this case, this requirement is satisfied even if there is no specific agreement between the parties that the card can access the separate credit feature, as described above under new comment 61(a)(5)(iii)-1.i. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the separate credit feature is effectuated through a card network or payment network.

The Bureau is amending the commentary to existing § 1026.2(a)(7)'s definition of card issuer to effectuate coverage of these relationships. Specifically, under the final rule, the Bureau is moving the existing language of current comment 2(a)(7)-1 to new comment 2(a)(7)-1.i. In addition, the Bureau is adding new comment 2(a)(7)-1.ii to provide that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card where that credit feature is offered by an affiliate or business partner of the prepaid account issuer, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card. Consistent with the general existing definition of card issuer, the Bureau believes that it is appropriate to consider a prepaid account issuer's affiliate or business partner to be an "agent" of the prepaid account issuer because, in those cases, there is a sufficient connection between the parties such that the affiliate or business partner should know that its credit feature is accessible by a prepaid card as an overdraft credit feature for the prepaid account.

The Bureau notes that current comment 2(a)(7)-1 provides that a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card. With regard to hybrid prepaid-credit cards, the final rule incorporates and expands upon this concept of when a person is an agent of a card

issuer. The Bureau believes that the new, more expansive language provides additional clarity as to when there is an agent relationship in the prepaid context and, therefore, prevents circumvention of the final rules applicable to covered separate credit features accessible by hybrid prepaid-credit cards as defined by new § 1026.61 that are offered by the prepaid account issuer's affiliates or business partners.

In particular, the Bureau is concerned that without new comment 2(a)(7)-1.ii, prepaid account issuers could structure arrangements with their affiliates or business partners to avoid an agency relationship under State law. Such a result could frustrate the operation of certain consumer protections provided in the final rule. In addition, without considering the person that can extend credit through the covered separate credit feature to be an agent of the prepaid account issuer (and thus considering both the prepaid account issuer and the person that can extend credit to be "card issuers"), it may not be clear whether the person that can extend credit through the covered separate credit feature or the prepaid account issuer must comply with particular provisions in Regulation Z. For example, existing § 1026.51(a) provides that a card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations. In cases where the prepaid account issuer's affiliate or business partner offers the covered separate credit feature accessible by the hybrid prepaid-credit card, it would not be clear what obligations under existing § 1026.51(a), if any, apply to the prepaid account issuer (who is a "card issuer" but who is not offering the credit card account) and what obligations, if any, apply to the affiliate or business partner (who is offering the credit card account but is not a card

issuer) if the affiliate or business partner were not a card issuer under final § 1026.2(a)(7) with respect to the hybrid prepaid-credit card.

Accordingly, under the final rule, new comment 2(a)(7)-1.ii provides that with respect to a prepaid card that is a hybrid prepaid-credit card that can access a covered separate credit feature offered by an affiliate or business partner as those terms are defined in new § 1026.61, the affiliate or business partner offering the credit feature that is accessible by the hybrid prepaid-credit card is an agent of the prepaid account issuer and thus, is a card issuer with respect to the hybrid prepaid-credit card. As a result, in the example above related to existing § 1026.51(a), the affiliate or business partner would be a “card issuer” for purposes of that provision and would be required to comply with it.

Nonetheless, as discussed in more detail below and in the section-by-section analysis of § 1026.61(a)(2), the Bureau has decided to provide that a prepaid card is not a hybrid prepaid-credit card with respect to a credit feature that is offered by a third party that is not an affiliate or business partner of a prepaid account issuer, even if the consumer decides to link his or her prepaid card to the credit feature offered by the third party. This type of credit feature is a “non-covered separate credit feature” as defined in new § 1026.61(a)(2)(ii). The Bureau does not believe that it is appropriate to subject such an unrelated third party to the provisions in the final rule applicable to hybrid prepaid-credit cards. In this case, there is not a sufficient connection between the prepaid account issuer and the unrelated third party, and the unrelated third party may not know that its separate credit feature is functioning as an overdraft credit feature with respect to the prepaid account.

Accordingly, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid

prepaid-credit card with respect to the non-covered separate credit feature discussed above. However, as described in new § 1026.61(a)(2)(ii), the unrelated third party that offers the non-covered separate credit feature typically will be subject to Regulation Z in its own right based on the terms and conditions of the separate credit feature, independent of the connection to the prepaid account.

*Credit Features That Are Not Accessible by Hybrid Prepaid-Credit Cards*

As discussed above, the Bureau proposed to exclude from the regulation as a credit card situations in which a prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and the credit is not payable by written agreement in more than four installments. Consistent with this approach, proposed comment 2(a)(7)-2 would have explained that a person is not a card issuer where a prepaid card only accesses credit meeting this description. As discussed above, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. Accordingly, the Bureau is not finalizing language that it had proposed in comment 2(a)(7)-2 to effectuate the narrower exclusion contemplated under the proposal. Instead, the Bureau is adopting new language in final comment 2(a)(7)-2 consistent with new § 1026.61 with regard to prepaid cards that are not hybrid prepaid-credit cards, as discussed in that section. Specifically, final comment 2(a)(7)-2 provides cross-references to new § 1026.61(a), new comment 61(a)(2)-5.iii, and new comment 61(a)(4)-1.iv for guidance on the applicability of Regulation Z in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards. The Bureau's intent is to assure that where the prepaid card is not a hybrid prepaid-credit card with respect to a credit feature, the person that is offering the credit

feature is not deemed to be a card issuer under final § 1026.2(a)(7) with respect to the prepaid card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. With respect to separate credit features, there are two circumstances, described in new § 1026.61(a)(2)(ii), where a prepaid card is not a hybrid prepaid-credit card when it accesses a separate credit feature. The first is where the prepaid card cannot be used to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second is where the separate credit feature is offered by an unrelated third party, rather than the prepaid account issuer, its affiliate, or its business partner. In addition, under new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

#### *2(a)(14) Credit*

TILA section 103(f) defines the term “credit” as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.<sup>598</sup> Consistent with the definition of credit in TILA, Regulation Z defines “credit” in existing § 1026.2(a)(14) to mean “the right to

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<sup>598</sup> 15 U.S.C. 1602(f).

defer payment of debt or to incur debt and defer its payment.” Under existing § 1026.2(a)(17)(i), a person is a creditor if the person regularly extends consumer “credit” that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. Under existing § 1026.2(a)(17)(iii), the term “creditor” also includes any card issuer (which is a person that issues credit cards or the person’s agent) that extends credit even if no finance charge is imposed and repayment is not permitted in more than four installments.

#### *The Bureau’s Proposal*

Proposed comment 2(a)(14)-3 would have provided that credit, for purposes of existing § 1026.2(a)(14), includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also would have included a paid transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Thus, the proposed definition would have included a situation where the consumer has sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is authorized, but insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid.

#### *Comments Received*

Several commenters, including industry trade associations, a program manager, and a credit reporting agency, asserted that overdraft credit does not meet the definition of “credit” because, with respect to overdraft credit, there is no “right to defer payment” and/or “no right to incur debt.” One industry trade association and one issuing bank requested that the Bureau

clarify that the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes is not intended to imply any similar treatment under State laws. Several industry commenters suggested that the Bureau should consider a dollar threshold below which overdraft transactions would not be covered as “credit” under Regulation Z. For example, one credit union service organization urged the Bureau to set a threshold of \$250 for when negative balances on the prepaid account are considered credit, such that negative balances on the prepaid account exceeding \$250 in magnitude would meet the definition of “credit” and negative balances on the prepaid account of \$250 in magnitude or below would not be “credit” under Regulation Z.

#### *The Final Rule*

##### *Definition of Credit*

As discussed in more detail below, the Bureau is adopting new comment 2(a)(14)-3 as proposed with technical revisions to simplify the language of the comment and to be consistent with new § 1026.61. This comment provides that credit includes authorization of a transaction on an asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on an asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. Credit also includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the

transaction is settled. The comment also includes a cross-reference to new § 1026.61 and related commentary on the applicability of this regulation to credit extended in connection with a prepaid account.

The Bureau continues to believe that new comment 2(a)(14)-3 reflects a straightforward interpretation of the statutory term “credit.” The Bureau believes that plain language of the definition of “credit” in TILA covers the situation when a consumer makes a transaction that exceeds the funds in the consumer’s account and a person elects to cover the transaction by advancing funds to the consumer. Nothing in the statutory definition (or elsewhere in TILA) exempts overdraft services, including those that may be offered in connection with a prepaid account. By authorizing or paying a transaction where the consumer does not have sufficient or available funds in the asset feature of the prepaid account to cover the amount of the transaction when the transaction is authorized or paid, the person is allowing the consumer to incur a debt with the person where payment of that debt is not immediate. Thus, the person, in extending overdraft funds, has provided the consumer with “the right . . . to incur debt and defer its payment.”

The Bureau further emphasizes that the final rule does not change how overdraft services on accounts other than prepaid accounts are treated under Regulation Z. As discussed in more detail in the *Overview of the Final Rule’s Amendments to Regulation Z* section, with respect to overdraft services on checking accounts, while a person that is providing overdraft services generally would be providing credit under TILA and Regulation Z, the person generally does not meet the definition of “creditor” for purposes of Regulation Z because of certain exclusions to the definition of finance charge under final § 1026.4(c)(3). Thus, under this final rule, with respect to overdraft services on checking accounts, a financial institution that does not agree in

writing to pay the items and does not structure the repayment of the credit by written agreement in more than four installments would not be a “creditor” with respect to the overdraft service under the general definition of creditor set forth in § 1026.2(a)(17)(i), even if the institution charges a fee for paying the overdraft item, because the fee would not be a “finance charge.” In addition, a person does not become a card issuer or a creditor by issuing a debit card that accesses an overdraft service. Specifically, existing comment 2(a)(15)-2.ii.A provides that a debit card is not a credit card if there is no credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft. Thus, a person does not become a card issuer under existing § 1026.2(a)(7) and does not become a creditor under existing § 1026.2(a)(17)(iii) or (iv) by issuing a debit card that accesses an overdraft service. The final rule does not change the provisions in Regulation Z effectuating this treatment of overdraft services on accounts other than prepaid accounts.

#### *Definition of Credit Under State Laws*

As discussed above, one industry trade association and one issuing bank requested that the Bureau clarify that the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes is not intended to imply any similar treatment under State laws. The Bureau does not provide any specific guidance on how the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes may impact State laws. The State law itself will determine whether, and the extent to which, the State law is impacted by the treatment of overdrafts in connection with prepaid accounts as credit under Regulation Z.

#### *Threshold Amount of Negative Balance*

As discussed above, several industry commenters suggested that the Bureau should consider a dollar threshold below which overdraft transactions would not be covered as “credit”

under Regulation Z. For example, one credit union service organization urged the Bureau to set a threshold of \$250 for when overdraft funds are considered “credit” under Regulation Z, where negative balances on the prepaid account exceeding \$250 in magnitude would meet the definition of “credit” and negative balances on the prepaid account of \$250 in magnitude or below would not be “credit” under Regulation Z. The Bureau does not adopt such an approach. The Bureau is concerned that allowing consumers to incur substantial debt in connection with a prepaid account that most consumers do not intend to use as a credit account may pose a risk to those consumers by compromising their ability to manage and control their finances. Thus, while new § 1026.61(a)(4) would permit a prepaid account issuer to offer an incidental “payment cushion” of \$10 without triggering the rules governing credit cards under Regulation Z so long as the issuer generally does not impose credit-related fees, the Bureau believes that the provision of a higher dollar amount of credit in connection with a prepaid account should be subject to full credit card protections unless otherwise excluded under new § 1026.61(a)(4).

*2(a)(15)*

*2(a)(15)(i) Credit Card*

TILA section 103(l) defines “credit card” to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.<sup>599</sup> Regulation Z defines the term “credit card” in existing § 1026.2(a)(15)(i) to mean “any card, plate, or other single credit device that may be used from time to time to obtain credit.” Current comment 2(a)(15)-2 provides examples of devices that are credit cards and devices that are not credit cards. A person that issues credit cards or the person’s agent is a “card issuer” and must comply with certain credit card provisions in Regulation Z, as applicable. *See* existing

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<sup>599</sup> 15 U.S.C. 1602(l).

§§ 1026.12 and 1026.60; for card issuers offering a “credit card account under an open-end (not home-secured) consumer credit plan,” *see, e.g.*, existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 through 1026.59. Any card issuer that extends credit also is a creditor under Regulation Z and must comply with certain disclosure and other requirements in Regulation Z, as discussed in the section-by-section analysis of § 1026.2(a)(17) below. The proposal would have provided guidance on when the following devices related to prepaid accounts are “credit cards:” (1) prepaid cards, as defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a “prepaid account,” as defined in proposed § 1026.2(a)(15)(vi) consistent with proposed Regulation E; and (2) account numbers that are not prepaid cards that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor but does not allow consumers to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor, as defined in proposed § 1026.2(a)(15)(vii). Each of these circumstances is discussed in more detail below.

#### *Hybrid Prepaid-Credit Cards*

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by prepaid cards generally would have been credit card accounts under Regulation Z. In particular, proposed comment 2(a)(15)-2.i.F would have provided that the term “credit card” includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. A prepaid card that is solely an account number would have been a credit

card if it satisfied the requirements of proposed comment 2(a)(15)-2.i.F. The proposal would have revised existing comment 2(a)(15)-2.ii.C that provides guidance on when account numbers are credit cards. The proposal would have revised existing comment 2(a)(15)-2.ii.C to provide that the current guidance for when a prepaid card is a credit card is set forth in proposed comment 2(a)(15)-2.i.F, rather than in comment 2(a)(15)-2.ii.C. As discussed below and in more detail in the section-by-section analysis of § 1026.61, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card under Regulation Z (*i.e.*, a hybrid prepaid-credit card). See the section-by-section analysis of § 1026.61 for a detailed description of the proposal to define prepaid cards as credit cards, the comments received on the proposal to define prepaid cards as credit cards, and the circumstances in which the final rule defines a prepaid card as a hybrid prepaid-credit card.

The Bureau is making conforming revisions to existing § 1026.2(a)(15)(i) to provide that the term “credit card” includes a hybrid prepaid-credit card, as defined in § 1026.61. In addition, the Bureau is revising new comment 2(a)(15)-2.i.F from the proposal to provide that the term “credit card” includes a prepaid card that is a hybrid prepaid-credit card, as defined in new § 1026.61. The Bureau also is adding new comment 2(a)(15)-2.ii.D to provide that the term “credit card” does not include a prepaid card that is not a hybrid prepaid-credit card, as defined in new § 1026.61. The Bureau also is revising existing comment 2(a)(15)-2.ii.C that provides guidance on when account numbers are credit cards. The Bureau is revising this comment to provide that the rules in new § 1026.61 and related commentary determine when a hybrid prepaid-credit card that solely is an account number is a credit card, as discussed in new comment 61(a)(1)-2.

As discussed above, if a person issues a prepaid card that is a hybrid prepaid-credit card, the person is a “card issuer” under final § 1026.2(a)(7) with respect to the prepaid card. In addition, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, an affiliate or business partner offering the credit feature (if applicable) also is a “card issuer” under final § 1026.2(a)(7). Under existing § 1026.2(a)(17)(iii) and (iv), the person also is a “creditor” if the card issuer extends credit under a covered separate credit feature accessible by the hybrid prepaid-credit card as described above. If the card issuer extends open-end (not home-secured) credit, the person generally would need to comply with the open-end (not home-secured) rules set forth in subpart B and the credit card rules set forth in subparts B and G. As discussed in the section-by-section analysis of § 1026.2(a)(20) below, the Bureau believes that prepaid account issuers, their affiliates, or their business partners that offer covered separate credit features accessible by hybrid prepaid-credit cards will be creditors offering open-end (not home-secured) credit under Regulation Z. See the section-by-section analysis of § 1026.2(a)(17) below for a discussion of situations in which a creditor may not be offering open-end credit in relation to a prepaid account.

#### *Account Numbers That Are Not Prepaid Cards*

Currently, under comment 2(a)(15)-2.ii.C, an account number for a credit plan is a credit card when that account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card. However, if the account number also can access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the internet), the account

number is a credit card, regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction.

*The Bureau's proposal.* The Bureau proposed not to follow the current guidance in existing comment 2(a)(15)-2.ii.C in the context of credit accessed in connection with prepaid accounts. Instead, proposed § 1026.2(a)(15)(vii) would have included within the definition of credit card an “account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.” As used in the proposal, this term would have meant an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

Proposed comment 2(a)(15)-2.i.G would have provided that these account numbers were credit cards under the proposal. In addition, the proposal would have revised existing comment 2(a)(15)-2.ii.C to provide that the current guidance for when an account number is a credit card under Regulation Z would not have applied to these account numbers, as described in proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)-2.i.G. Proposed comment 2(a)(15)-5 would have provided additional guidance on these account numbers. Specifically, proposed comment 2(a)(15)-5 would have provided that a credit plan that permits a consumer to deposit directly extensions of credit into a checking account would not constitute a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Nonetheless, under proposed comment 2(a)(15)-5, a credit plan accessible by a consumer through checks or in-person withdrawals would have constituted a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts

specified by the creditor, so long as the credit plan allowed deposits directly into particular prepaid accounts specified by the creditor but did not allow the consumer to deposit directly extensions of credit into other asset accounts.

With respect to account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the proposed rule would have covered credit plans that are not accessed directly by prepaid cards but are structured as “push” accounts. For example, such a credit plan may allow a consumer to use an account number to request an extension of credit be deposited directly into a particular prepaid account specified by the creditor when the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card. In the proposal, the Bureau expressed concern that these types of credit plans could act as substitutes for credit plans directly accessible by a prepaid card. The Bureau did not, however, propose to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

*Comments received.* Consumer group commenters indicated that the proposal with respect to push accounts was too limited. Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid

accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

One issuing bank and one law firm writing on behalf of a coalition of prepaid issuers did not support subjecting push accounts to credit card rules. These industry commenters indicated that the Board should leave in place the rule currently in Regulation Z that determines when an account number for a credit plan is a credit card. One of these industry commenters indicated that attempting to cover push accounts as credit card accounts under the proposal would create an overly complex regulatory regime to address the perceived risk of circumvention or evasion of the rules for overdraft plans set forth in the proposal. This commenter believed the Bureau has better tools (*e.g.*, its unfair, deceptive, or abusive acts or practices authority) to address circumvention or evasion, as well as the other risks of consumer harms discussed in the proposal.

One industry trade association commenter indicated that it would be inappropriate to treat the line of credit (or its associated account number) as a credit card when the consumer has the choice of whether to use the line of credit to cover specified overdrafts or to use the line of credit funds for other purposes. This commenter believed that the consumer's ability to choose how to use the line of credit makes it clear that the line of credit is a general use line of credit and not a substitute for an overdraft line of credit.

*The final rule.* Upon review of the comments and its own analysis, the Bureau has decided not to adopt the proposal to provide that an account number for a credit account would

be a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In proposing these provisions, the Bureau was concerned that a prepaid account issuer and a creditor could design arrangements to circumvent the proposed rules in Regulation Z applicable to prepaid cards that are credit cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to credit account numbers were designed to prevent this type of evasion.

The Bureau is addressing this type of evasion by generally covering a prepaid card as a credit card (*i.e.*, “hybrid prepaid-credits card”) when the card can access a separate credit feature that functions as an overdraft credit feature and is offered by a prepaid account issuer, its affiliate, or its business partner. Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature. In this case, as described in new comment 61(a)(2)-1.ii, the prepaid card

is a hybrid prepaid-credit card with respect to the covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

In addition, as described in new comment 61(a)(2)-1.iii, a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, as discussed above, regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that consumers will benefit from the application of the credit card rules generally to a credit account that functions as an overdraft credit feature in connection with a prepaid account when that overdraft feature is offered by a prepaid account issuer, its affiliate, or its business partner, regardless of whether the credit account can be used exclusively as an overdraft credit feature. In addition, the Bureau is concerned about potential evasion if the provisions applicable to overdraft credit features could be avoided simply by providing other uses for the credit account.

The Bureau believes that the provisions in the final rule described above with respect to a covered separate credit feature adequately capture situations where a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner functions as an overdraft credit feature in relation to a prepaid account. Thus, the Bureau believes that it is no longer

necessary to treat a credit account number as a credit card to capture situations when the credit account may function as an overdraft credit feature in relation to the prepaid account. As a result, the Bureau has not adopted proposed § 1026.2(a)(15)(vii) and proposed comments 2(a)(15)-2.i.G and 2(a)(15)-5. The Bureau also has not adopted proposed revisions to existing comment 2(a)(15)-2.ii.C related to account numbers described in proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)-2.i.G. The Bureau proposed changes to other provisions in Regulation Z and related commentary to provide guidance on how these provisions would apply to such account numbers, which would have been credit cards under the proposal. The Bureau has not adopted these proposed changes to provisions in Regulation Z related to these account numbers.<sup>600</sup> The Bureau also proposed changes to certain provisions in Regulation E and related commentary to provide guidance on how these Regulation E provisions would apply to such account numbers. The Bureau has not adopted these proposed changes to provisions in Regulation E related to these account numbers.<sup>601</sup>

As discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is

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<sup>600</sup> Specifically, the proposal would have revised or added the following provisions in Regulation Z related to these account numbers: §§ 1026.2(a)(15)(ii)(C)(2) and (vii); 1026.4(b)(2)(ii), (c)(3), and (4); 1026.7(b)(11)(ii)(A)(2); 1026.12(d)(3)(ii) and (h) (renumbered in the final rule as § 1026.61(c)); 1026.60(a)(5)(iv); and comments 2(a)(15)-2.i.G, 2(a)(15)-2.ii.C, 2(a)(15)-3.ii, 2(a)(15)-4.ii, 2(a)(15)-5, 2(a)(20)-2.iii, 2(a)(20)-4.ii, 4(a)-4.iv, 4(b)(2)-1.ii through iv, 4(c)(3)-1, 5(b)(2)(ii)-4, 8(b)-1.vi, 10(a)-2.ii, 12(c)(1)-1.i, 12(d)(3)-3, 13(a)(3)-2.ii, 13(i)-1, 52(a)(2)-3, 52(b)(2)(i)-7, 57(a)(1)-1, 57(a)(5)-1, 57(b)-3, 57(c)-7, and 60(b)(8)-5. The final rule does not adopt the proposed changes to these provisions related to these account numbers.

<sup>601</sup> The proposal would have made changes to existing § 1005.10(e)(1) and comments 10(e)(1)-2 and -3 and added proposed § 1005.18(g)(1) and comments 18(g)-1 and -2 related to these account numbers. The final rule does not adopt the proposed provisions related to these account numbers.

another way to access the credit. Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution, as or has a business relationship with, the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit.

As discussed above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

## *Debit Cards*

Comment 2(a)(15)-2.i.B currently provides guidance on when a debit card is a credit card, and the comment provides examples of credit cards that include “a card that accesses both a credit and an asset account (that is, a debit-credit card).” Proposed § 1026.2(a)(15)(iv) would have defined the term “debit card” for purposes of Regulation Z to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.” The proposed definition of “debit card” also would have specified that it does not include a prepaid card. Because the term “debit card” under the proposal would not have included all cards that access asset accounts, existing comment 2(a)(15)-2.i.B would have been revised to be consistent with the proposed definition of debit card. Specifically, proposed comment 2(a)(15)-2.i.B would have been revised to provide that the term “credit card” includes a debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). This comment also would have been revised to provide a cross-reference to existing comment 2(a)(15)-2.ii.C for guidance on whether a debit card that is solely an account number is a credit card. No substantive changes were intended to the current rules for when debit cards are credit cards under existing § 1026.2(a)(15)(i).

The Bureau did not receive specific comment on this proposed definition. The Bureau is adopting the definition of “debit card” as proposed with one technical revision to provide a cross-reference to the definition of “prepaid account” in new § 1026.61. The Bureau also is adopting the changes to existing comment 2(a)(15)-2.i.B as proposed.

*2(a)(15)(ii) Credit Card Account Under an Open-End (Not Home-secured) Consumer Credit Plan*

Regulation Z defines the term “credit card account under an open-end (not home-secured) consumer credit plan” in existing § 1026.2(a)(15)(ii) to mean “any open-end credit account that is accessed by a credit card, except: (A) [a] home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or (B) [a]n overdraft line of credit that is accessed by a debit card or an account number.” As discussed above, certain requirements in the Credit CARD Act, which are generally set forth in subpart G, apply to card issuers offering a credit card account under an open-end (not home-secured) consumer credit plan. *See, e.g.*, existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 to 1026.59.

The proposal would have clarified that the exception in current § 1026.2(a)(15)(ii)(B) regarding overdraft lines of credit accessed by a debit card or account number would not have applied to open-end credit plans accessed by prepaid cards that would have been credit cards under the proposal. The proposed definition of “debit card” in proposed § 1026.15(a)(2)(iv) would have excluded a prepaid card.<sup>602</sup> Thus, the exception in existing § 1026.2(a)(15)(ii)(B) would not have applied to overdraft lines of credit that are accessed by a prepaid card. In addition, the proposal would have revised existing § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. The proposal also would have moved the exception for overdraft lines of credit that are accessed by account numbers from existing § 1026.2(a)(15)(ii)(B) to proposed § 1026.2(a)(15)(ii)(C). The proposal also would have amended proposed § 1026.2(a)(15)(ii)(C) and existing comment 2(a)(15)-4 to provide that

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<sup>602</sup> Proposed § 1026.2(a)(15)(iv) would have defined the term “debit card” for purposes of Regulation Z to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.” The proposed definition of “debit card” also would have specified that it does not include a prepaid card.

the exception would not have applied to an overdraft line of credit that is accessed by an account number where the account number is a prepaid card that is a credit card.

The Bureau did not receive specific comments on the proposed changes to existing § 1026.2(a)(15)(ii) and related commentary. The Bureau is revising existing § 1026.2(a)(15)(ii) and existing comment 2(a)(15)-4 as proposed with revisions consistent with § 1026.61.<sup>603</sup> Consistent with the proposal, the Bureau is revising existing § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. Consistent with the proposal, the Bureau is defining “debit card” in new § 1026.2(a)(15)(iv) to exclude a prepaid card.<sup>604</sup> Thus, under the final rule, the exception in final § 1026.2(a)(15)(ii)(B) does not apply to overdraft lines of credit that are accessible by a hybrid prepaid-credit card as that term is defined in new § 1026.61. In addition, consistent with the proposal, the Bureau is moving the exception for overdraft lines of credit that are accessed by account numbers from existing § 1026.2(a)(15)(ii)(B) to new § 1026.2(a)(15)(ii)(C) and is revising that provision. The Bureau is amending new § 1026.2(a)(15)(ii)(C) and existing comment 2(a)(15)-4 to provide that the exception does not apply to a covered separate credit feature accessible by an account number where the account number is a hybrid prepaid-credit card as defined in new § 1026.61. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit

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<sup>603</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Thus, under proposed § 1026.2(a)(15)(ii)(C) and proposed comment 2(a)(15)-4, the exception in proposed § 1026.2(a)(15)(ii)(C) would not have applied to credit plans that would have been accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.2(a)(15)(ii)(C) and comment 2(a)(15)-4 related to these account numbers.

<sup>604</sup> Consistent with the proposal, new § 1026.2(a)(15)(iv) defines the term “debit card” for purposes of Regulation Z to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account as defined in § 1026.61.” The definition of “debit card” specifies that it does not include a prepaid card as defined in § 1026.61.

feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Generally, to be a “credit card account under an open-end (not home-secured) consumer credit plan,” the credit must be “open-end credit,” as defined in existing § 1026.2(a)(20), that is not home-secured and the open-end (not home-secured) credit plan must be accessible by a “credit card,” as defined in final § 1026.2(a)(15)(i). As discussed in the section-by-section analysis of § 1026.2(a)(20) below, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of “open-end credit” and that credit will not be home-secured.<sup>605</sup> In addition, under the final rule, a prepaid card that is a hybrid prepaid-credit card as discussed in new § 1026.61 is a credit card under Regulation Z with respect to the covered separate credit feature. Thus, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of “credit card account under an open-end (not home-secured) consumer credit plan” in final § 1026.2(a)(15)(ii).<sup>606</sup> These covered separate credit features will be subject to the disclosure and credit card provisions set forth in subpart B and G.

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<sup>605</sup> As discussed in more detail below in the section-by-section analysis of § 1026.2(a)(17), a person is not a creditor that is extending open-end credit where the person offers a covered separate credit feature accessible by a hybrid prepaid-credit card and a finance charge is not imposed in connection with the credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such a person would still be subject to certain Regulation Z requirements under certain circumstances.

<sup>606</sup> The Bureau plans to monitor the development of covered separate credit features accessible by hybrid prepaid-credit cards after the final rule becomes effective.

### *2(a)(15)(iii) Charge Card*

Regulation Z defines the term “charge card” in existing § 1026.2(a)(15)(iii) to mean “a credit card on an account for which no periodic rate is used to compute a finance charge.”

Current comment 2(a)(15)-3 provides guidance on how the term “charge card” is used throughout the regulation. In particular, the current comment provides that, in general, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. This comment also explains that under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term “charge card” is, however, distinguished from “credit card” or “credit card account under an open-end (not home-secured) consumer credit plan” in existing §§ 1026.6(b)(2)(xiv), 1026.7(b)(11) and (b)(12), 1026.9(e) and (f), 1026.28(d), 1026.52(b)(1)(ii)(C), and 1026.60, and Appendices G-10 through G-13. See also the discussion in the section-by-section analysis of § 1026.2(a)(20) below relating to charge card accounts as open-end credit.

The proposal would have revised existing comment 2(a)(15)-3 in a number of ways to accommodate the proposed inclusion of some forms of prepaid cards as charge cards. First, the existing text of the comment would have been placed in proposed comment 2(a)(15)-3.i and a new comment 2(a)(15)-3.ii would have been added. Specifically, proposed comment 2(a)(15)-3.ii would have explained that a prepaid card is a charge card if it also is a credit card where no periodic rate is used to compute the finance charge. This proposed comment also would have explained that, unlike other charge cards, a prepaid card that is a charge card that accesses a credit card account under an open-end (not home-secured) consumer credit plan would be

subject to the requirements in proposed § 1026.7(b)(11)(i)(A), which would have required payment due dates to be disclosed on periodic statements for a credit card account under an open-end (not home-secured) consumer credit plan. See the section-by-section analysis of § 1026.7(b)(11) below. Thus, under proposed § 1026.5(b)(2)(ii)(A), for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer of a prepaid card that meets the definition of a charge card would have been required to adopt reasonable procedures designed to ensure that (1) periodic statements for the charge card account accessed by the prepaid card that is a charge card are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to proposed § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment on the charge card account received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

Under the proposal, the existing language in comment 2(a)(15)-3 (which would have been renumbered as proposed comment 2(a)(15)-3.i) would have been revised to be consistent with new proposed comment 2(a)(15)-3.ii and the definition of “charge card.” Currently, the first sentence of comment 2(a)(15)-3 provides that, generally, charge cards are cards used in connection with an account on which an outstanding balance cannot be carried from one billing cycle to another and is payable when a periodic statement is received. This sentence would have been revised to be more consistent with the definition of charge card in existing § 1026.2(a)(15)(iii) to state that charge cards are credit cards where no periodic rate is used to compute the finance charge; no substantive change would have been intended by this proposed revision. In addition, the last sentence of the existing comment would have been revised to cross-reference new proposed comment 2(a)(15)-3.ii.

The Bureau did not receive specific comments on the proposed changes to comment 2(a)(15)-3. Consistent with the proposal, the final rule places the language of current comment 2(a)(15)-3 in new comment 2(a)(15)-3.i and revises that language as proposed. The Bureau also is adding a new comment 2(a)(15)-3.ii as proposed, with revisions to clarify the intent of the language and to be consistent with new § 1026.61.<sup>607</sup>

Specifically, new comment 2(a)(15)-3.ii provides that a hybrid prepaid-credit card, as defined in new § 1026.61, is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 2(a)(15)-3.ii also explains that, unlike other charge card accounts, the requirements in final § 1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under final § 1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid

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<sup>607</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(15)-3.ii would have provided that such an account number is a charge card if it accesses a credit card account where no periodic rate is used to compute the finance charge. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 2(a)(15)-3.ii related to these account numbers.

prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to final § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

#### *2(a)(15)(iv) Debit Card*

Although current Regulation Z and its commentary use the term “debit card,” that term is not defined. Generally, under existing comment 2(a)(15)-2.i.B, the term “debit card” refers to a card that accesses an asset account. Specifically, existing comment 2(a)(15)-2.i.B provides as an example of a credit card: “A card that accesses both a credit and an asset account (that is, a debit-credit card).” In addition, existing comment 2(a)(15)-2.ii.A provides that the term credit card does not include a debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

Under the proposal, different rules generally would have applied in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account (which would have been defined in proposed § 1026.2(a)(15)(vi) to match the definition under proposed Regulation E § 1005.2(b)(3)) or a card or device that accesses another type of asset account. To assist compliance with the regulation, the proposal would have defined “debit card” for purposes of Regulation Z in proposed § 1026.2(a)(15)(iv) to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.” The proposed definition of “debit card” would have specified that it does not include a

prepaid card. Proposed § 1026.2(a)(15)(v) would have defined “prepaid card” to mean “any card, code, or other device that can be used to access a prepaid account” and would have defined “prepaid account” in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in proposed Regulation E § 1005.2(b)(3). Proposed comment 2(a)(15)-6 would have provided that the term “prepaid card” in proposed § 1026.2(a)(15)(v) would have included any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code. The proposed comment would have provided that the phrase “credit accessed by a prepaid card” means any credit that is accessed by any card, code, or other device that also can be used to access a prepaid account.

The Bureau did not receive specific comment on the proposed definition of “debit card.” The Bureau is adopting the definition of “debit card” in new § 1026.2(a)(15)(iv) as proposed with one technical revision to cross-reference the definition of “prepaid account” in new § 1026.61.<sup>608</sup> In addition, the Bureau is adopting the definitions of “prepaid account” and “prepaid card” as proposed, renumbered as new § 1026.61(a)(5)(v) and new § 1026.61(a)(5)(vii) respectively. The Bureau also is adopting comment 2(a)(15)-6 with revisions to provide guidance on the definition of “prepaid card,” renumbered as new comment 61(a)(5)(vii)-1. See the section-by-section analysis of § 1026.61(a)(5) below for a discussion of the “prepaid account” and “prepaid card” definitions and related commentary.

#### *2(a)(17) Creditor*

Certain disclosure requirements and other requirements in TILA and Regulation Z generally apply to creditors. TILA section 103(g) generally defines the term “creditor” to mean a person who both (1) regularly extends, whether in connection with loans, sales of property or

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<sup>608</sup> As in the proposal, this definition of “debit card” does not apply to Regulation E, including the rules that apply to debit cards that access checking accounts with overdraft services.

services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required; and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement.<sup>609</sup> Also, for purposes of certain disclosure provisions in TILA that relate to account-opening disclosures, and periodic statement disclosures, for open-end credit plans, the term “creditor” includes a card issuer whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required.<sup>610</sup>

Consistent with TILA, Regulation Z generally defines the term “creditor” in existing § 1026.2(a)(17)(i) to include a “person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.” Under existing § 1026.2(a)(17)(v) and existing comment 2(a)(17)(i)-4, for open-end credit, a person regularly extends consumer credit if it had more than 25 accounts outstanding in the preceding calendar year. If a person did not meet this numerical standard in the preceding calendar year, the numerical standards must be applied to the current calendar year. In addition, under existing § 1026.2(a)(17)(iii) and (iv), the term “creditor” includes a card issuer (which is a person that issues a credit card or its agent) that extends credit. For purposes of subpart B, under existing § 1026.2(a)(17)(iii), a person also is a “creditor” if the person is a card issuer that extends credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. Thus, under existing

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<sup>609</sup> 15 U.S.C. 1602(g).

<sup>610</sup> *Id.*

Regulation Z as generally structured, card issuers that only meet this narrow definition of creditor (*i.e.*, extend credit that is not subject to a finance charge and is not payable in more than four installments) generally are subject to the open-end (not home-secured) rules and the credit card rules in subpart B, but generally need not comply with the credit card rules in subpart G, except for the credit card disclosures required by existing § 1026.60.

### *The Bureau's Proposal*

The Bureau's proposal generally would have applied this existing framework to the prepaid context. Thus, under the proposal, a card issuer that issues a prepaid card that is a credit card (or its agent) that extends open-end (not home-secured) credit would have met the general definition of "creditor" because the person charges a finance charge and would have been subject to the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subparts B and G. Under existing § 1026.2(a)(17)(iv), a card issuer that issues a prepaid card that is a credit card (or its agent) that extends closed-end (not home-secured) credit would have met the general definition of "creditor" where the person charges a finance charge or extends credit payable by written agreement in more than four installments. Such person would have been subject to the closed-end provisions in subpart C and, certain open-end (not home-secured) disclosure rules in subpart B, and the credit card rules in subpart B. A card issuer that issues a prepaid card that is a credit card (or its agent), extends credit (not home-secured), and charges a fee described in § 1026.4(c), but does not charge a finance charge and does not extend credit payable by written agreement in more than four installments, would have been a "creditor" under existing § 1026.2(a)(17)(iii) and would have been subject to the open-end (not home-secured) disclosure rules and the credit card rules in subpart B.

Proposed comment 2(a)(15)-2.i.F, however, would have provided that a prepaid card is not a credit card when the prepaid card only accesses credit that (1) is not subject to a finance charge; (2) is not subject to fees described in § 1026.4(c); and (3) is not payable by written agreement in more than four installments. The Bureau would have clarified in proposed comment 2(a)(17)(iii)-2 that existing § 1026.2(a)(17)(iii) does not apply to a person that is extending credit that is accessed by a prepaid card where the credit meets these same three restrictions. In this case, under the proposal, the prepaid card would not have been a credit card and therefore the person issuing the card would not have been a card issuer. Prepaid account issuers that satisfied this exclusion still would have been subject to Regulation E's requirements, such as error resolution, and limits on liability for unauthorized use.

#### *Comments Received and the Final Rule*

The Bureau did not receive comment on this aspect of the proposal, other than those related to general comments from industry not to cover overdraft plans offered on prepaid accounts under Regulation Z and instead cover these overdraft plans under existing Regulation E § 1005.17. See the *Overview of the Final Rule's Amendments to Regulation Z* section for a discussion of those comments. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card under Regulation Z. Under final § 1026.2(a)(15)(i), a prepaid card is a credit card under Regulation Z when it is a "hybrid prepaid-credit card" as defined in new § 1026.61. See also new § 1026.61(a), and new comment 2(a)(15)-2.i.F. The Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate

subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. The term “covered separate credit feature” is defined in new § 1026.61(a)(2)(i) to mean a separate credit feature accessible by a hybrid prepaid-credit card as described in new § 1026.61(a)(2)(i). Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as “non-covered separate credit features,” as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer

generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

Consistent with the proposal, the Bureau generally applies the existing framework for the definition of “creditor” to the prepaid context. Thus, a card issuer of a hybrid prepaid-credit card (or its agent) that extends credit under a covered separate credit feature is a “creditor” under existing § 1026.2(a)(17). The card issuer must comply with different provisions in Regulation Z depending on the type of credit extended. Under existing § 1026.2(a)(17)(iii), a card issuer of a hybrid prepaid-credit card (or its agent) that extends open-end (not home-secured) credit (and thus charges a finance charge for the credit) in connection with the covered separate credit feature is a “creditor” for purposes of the rules governing open-end (not home-secured) credit plans in subpart B in connection with the covered separate credit feature. The card issuer also must comply with the credit card rules set forth in subparts B and G with respect to the covered separate credit feature and the hybrid prepaid-credit card. Under existing § 1026.2(a)(17)(iii), a card issuer of a hybrid prepaid-credit card (or its agent) that extends credit (not home-secured) through the covered separate credit feature that is not subject to a finance charge and is not payable in more than four installments generally is a “creditor” for purposes of the open-end (not home-secured) rules in subpart B with respect to the covered separate credit feature. The card issuer also generally must comply with the credit card rules in subpart B with respect to the covered separate credit feature and the hybrid prepaid-credit card, but generally need not comply with the credit card rules in subpart G, except for the credit card disclosures required by existing

§ 1026.60 and the provisions in new § 1026.61.<sup>611</sup> Under existing § 1026.2(a)(17)(iv), a card issuer of a hybrid prepaid-credit card (or its agent) that extends closed-end (not home-secured) credit through the covered separate credit feature, and charges a finance charge or extends credit payable by written agreement in more than four installments is a “creditor” for purposes of the closed-end provisions in subpart C and certain open-end (not home-secured) disclosure rules in subpart B. The card issuer also generally must comply with the credit card rules in subpart B with respect to the covered separate credit feature and the hybrid prepaid-credit card, but generally need not comply with the credit card rules in subpart G except for the provisions in § 1026.61.

With respect to guidance on the definition of “creditor” related to prepaid cards that are not hybrid prepaid-credit cards, the Bureau is revising new comment 2(a)(17)(iii)-2 from the proposal and is adding new comment 2(a)(17)(i)-8 to cross-reference new § 1026.61(a), new comment 61(a)(2)-5.iii and new comment 61(a)(4)-1.iv for guidance on the applicability of Regulation Z to prepaid cards that are not hybrid prepaid-credit cards.

#### *2(a)(20) Open-End Credit*

TILA section 103(j) defines the term “open-end credit plan” to mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.<sup>612</sup> Regulation Z defines the term “open-end credit” in existing § 1026.2(a)(20) to mean consumer “credit” extended by a “creditor” under a “plan” in

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<sup>611</sup> As discussed in the section-by-section analysis of § 1026.2(a)(15)(ii) above, certain requirements in the Credit CARD Act, which are generally set forth in subpart G, only apply to card issuers offering a credit card account under an open-end (not home-secured) consumer credit plan.

<sup>612</sup> See 15 U.S.C. 1602(j).

which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a “finance charge” from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. Thus, to have open-end credit under Regulation Z, there must be (1) consumer “credit;” (2) that is extended under a “plan;” (3) where the person extending the credit may impose a “finance charge” from time to time on an outstanding unpaid balance; (4) the person extending the credit is a “creditor;” (5) the person extending credit reasonably contemplates repeated transactions; and (6) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

With respect to a credit accessed by a prepaid card that would have been a credit card under the proposal, the proposal would have provided additional guidance on the meaning of the following three terms used in the definition of “open-end credit:” (1) “credit;” (2) “plan;” and (3) “finance charge.” For a discussion of the proposal and the final rule related to the term “credit,” see the section-by-section analysis of § 1026.2(a)(14) above. The term “plan” is discussed below. For a discussion of the proposal and the final rule related to the term “finance charge,” see below and the section-by-section analysis of § 1026.4.

#### *Definition of “Plan”*

*The Bureau’s proposal.* The term “plan” currently is discussed in current comment 2(a)(20)-2, which provides in relevant part that the term “plan” connotes a contractual arrangement between the creditor and the consumer. The proposal would have revised current comment 2(a)(20)-2 to provide additional guidance on what constitutes a plan with respect to

credit extended through paying overdrafts in connection with prepaid accounts. Under the proposal, a new comment 2(a)(20)-2.ii would have provided that with respect to credit accessed by a prepaid card, a plan would mean a program where the consumer is obligated contractually to repay any credit extended by the creditor. The proposal would have provided that a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Under the proposal, such a program would have constituted a plan notwithstanding that the creditor retains discretion not to pay such transactions, the creditor does not pay transactions once the consumer has exceeded a certain amount of credit, or the creditor only pays transactions where there were sufficient or available funds to cover the amount of the transaction at the time the transaction was authorized but not sufficient or available funds to cover the amount of the transaction at the time the transaction is paid.

To accommodate the proposed changes, the proposal also would have made several technical revisions to comment 2(a)(20)-2. Specifically, the first sentence of the existing language in comment 2(a)(20)-2 would have been moved to proposed comment 2(a)(20)-2.i, and the remaining language of the existing comment would have been moved to proposed comment 2(a)(20)-2.iv.

*Comments received and the final rule.* The Bureau did not receive specific comment on the proposed changes to comment 2(a)(20)-2. Consistent with the proposal, the Bureau is moving the first sentence of the existing language in comment 2(a)(20)-2 to new comment 2(a)(20)-2.i. The Bureau also is moving the remaining language of the existing comment to new comment 2(a)(20)-2.iii.

The Bureau also is modifying the proposed language in new comment 2(a)(20)-2.ii to be consistent with the provisions set forth in § 1026.61.<sup>613</sup> Specifically, the final rule does not adopt an example contained in proposed comment 2(a)(20)-2.ii where credit is accessed by a prepaid card where the credit is extended on the prepaid account as a negative balance. As discussed in the section-by-section analysis of § 1026.61(b) below, a negative balance feature accessible by a prepaid card triggers application of the credit card rules under the final rule for purposes of coverage except as provided in new § 1026.61(a)(4). However, new § 1026.61(b) requires that an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account (except as provided in new § 1026.61(a)(4)) must be structured as a separate subaccount or account, distinct from the prepaid asset account, in order to facilitate transparency and compliance with various elements of Regulation Z. Such a separate credit feature is defined as a “covered separate credit feature” under new § 1026.61(a)(2)(i). Accordingly, the Bureau is revising new comment 20(a)(2)-2.ii from the proposal to discuss a situation where a hybrid prepaid-credit card accesses a “covered separate credit feature” under new § 1026.61(a)(2)(i) rather than credit in the form of a negative balance on the asset account that would violate new § 1026.61(b).

Specifically, under the final rule, new comment 2(a)(20)-2.ii provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, a plan includes a program under which a creditor routinely extends credit where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of

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<sup>613</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(20)-2.iii would be added to provide guidance on when depositing credit proceeds into a prepaid account would be considered extending credit under a plan. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt proposed comment 2(a)(20)-2.iii related to these account numbers.

credit from a covered separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. The comment also cross-references new § 1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

With respect to the programs described above, the Bureau believes these programs are plans notwithstanding that, for example, the person offering the program reserves the right not to extend credit on individual transactions. The Bureau believes that the person's reservation of such discretion in connection with covered separate credit features accessible by hybrid prepaid-credit cards does not connote the absence of an open-end credit plan. If consumers using covered separate credit features accessible by hybrid prepaid-credit cards must agree to repay the debt created by an overdraft or advance, a contractual arrangement between the creditor and the consumer exists. The Bureau notes that credit card issuers similarly reserve the right to reject individual transactions, and thus the Bureau believes that automated overdraft services are comparable.

*Finance Charge Imposed from Time to Time on an Outstanding Unpaid Balance*

*The Bureau's proposal.* In Regulation Z, credit will not meet the definition of "open-end credit" unless the person extending the credit may impose a "finance charge" from time to time

on an outstanding unpaid balance. Existing comment 2(a)(20)-4 provides that the requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. This comment also provides that a plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance.

The term “finance charge” generally is defined in existing § 1026.4 to mean “the cost of consumer credit as a dollar amount” and it includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. The term does not include any charge of a type payable in a comparable cash transaction.

The proposal would have revised various components of the definition of finance charge in existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the proposal from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of “finance charge,” as applied in the prepaid context, to assure broad coverage of the credit card rules to credit plans accessed by prepaid cards that would have been credit cards under the proposal and to better reflect the full cost of credit. Consistent with this approach, the proposal also would have added proposed comment 2(a)(20)-4.ii to state that with respect to credit accessed by a prepaid card (including a prepaid card that is solely an account number), any service, transaction, activity, or carrying charges imposed on a credit account, and any such charges imposed on a prepaid account related to an extension of credit, carrying a credit balance, or credit availability,

generally would be finance charges. Such charges would have included periodic participation fees for the credit plan and transaction charges imposed in connection with a credit extension. In addition, proposed comment 2(a)(20)-4.ii would have provided that with respect to that credit, such service, transaction, activity, or carrying charges would constitute finance charges imposed from time to time on an outstanding unpaid balance if there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. The proposal also would have moved the existing language of comment 2(a)(20)-4 to proposed comment 2(a)(20)-4.i.

*Comments received and the final rule.* The Bureau did not receive specific comments on the proposed changes to existing comment 2(a)(20)-4. Consistent with the general approach in the proposal, the Bureau is revising various components of the definition of finance charge in existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of “finance charge,” as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adding a new § 1026.4(b)(11) and related commentary to provide guidance as to the application of Regulation Z to covered separate credit features accessible by hybrid prepaid-credit cards. In particular, § 1026.4(b)(11) and related commentary describe how to treat charges that may be imposed on the separate credit subaccount or account as compared to charges that may be imposed on the prepaid asset feature. The commentary to new § 1026.4(b)(11) also provides guidance as to the treatment of fees imposed on the prepaid account in relation to credit features accessible by prepaid cards that are not credit cards under the final rule.

The Bureau is adopting changes to the commentary concerning the prong of the open-end credit definition in existing § 1026.2(a)(20) concerning the creditor's ability to impose finance charges from time to time on an outstanding unpaid balance, consistent with the general approach adopted in final §§ 1026.4 and new 1026.61. Specifically, the Bureau is moving the existing language of comment 2(a)(20)-4 to new comment 2(a)(20)-4.i. The Bureau also is adding new comment 2(a)(20)-4.ii but revises this comment from the proposal to reflect changes from the proposal set forth in the final rule under final §§ 1026.4 and new 1026.61.<sup>614</sup> Specifically, new comment 2(a)(20)-4.ii provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, any service, transaction, activity, or carrying charges imposed on the separate credit feature, and any such charges imposed on the asset feature of the

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<sup>614</sup> The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(20)-4.ii would have been added to provide guidance on when finance charges imposed on credit accounts accessed by those account numbers would have satisfied the requirement for "open-end credit" that the creditor may impose a "finance charge" from time to time on an outstanding unpaid balance. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 2(a)(20)-4.ii related to these account numbers.

prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit, generally are finance charges, as described in existing § 1026.4(a) and new § 1026.4(b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature, any service, transaction, activity, or carrying charges that are finance charges under final § 1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance, as described in existing § 1026.2(a)(20), if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated.

The Bureau does not anticipate that there will be a specific amount financed for covered separate credit features accessible by hybrid prepaid-credit cards. Instead, the Bureau anticipates that the credit lines on covered separate credit features generally will be replenishing. In such cases, an amount financed for the credit feature could not be calculated because the creditor will not know at the time the credit feature is established the amount of credit that will be extended. Thus, to the extent that any finance charge may be imposed on such a credit feature, the credit feature will meet this criterion.

The Bureau believes that it is appropriate to consider covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards to meet this criterion of open-end credit. Under the Bureau's interpretation, a finance charge may be imposed time to time on an outstanding unpaid balance when any finance charge (including transaction fees or participation fees that are finance charges) may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by the hybrid prepaid-credit card. In

contrast, if the Bureau were to interpret narrowly the criterion of open-end credit that a finance charge may be imposed time to time on an outstanding unpaid balance and include only finance charges resulting from periodic rates, covered separate credit features accessible by hybrid prepaid-credit cards that are charge card accounts instead would constitute closed-end credit. Under existing § 1026.2(a)(17)(iv), a card issuer offering such a charge card account would be a “creditor” for purposes of, and would need to comply with, the closed-end disclosure provisions in subpart C as well as certain open-end (not home-secured) disclosures rules in subpart B.

The Bureau believes that receiving closed-end disclosures for these types of accounts would be confusing to consumers because the disclosures would be different from those disclosures received in connection with other open-end credit card accounts. Where the transactions otherwise would appear to be part of an open-end plan based on repeated transactions and replenishing credit, the Bureau believes that consumers would be better protected and better informed if such transactions were treated as open-end plans in the same way as their other credit card accounts. In addition, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card where that credit feature is a charge card account, the Bureau believes that complying with the closed-end credit rules would be difficult for card issuers (for example, at point of sale) because closed-end disclosures specific to each credit extension would need to be provided prior to each transaction. Thus, the Bureau is retaining the current interpretation in existing comment 2(a)(20)-4 that a finance charge is considered to be imposed from time to time on an outstanding unpaid balance, as described in existing § 1026.2(a)(20), if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated. This means that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the

definition of “open-end credit” if any finance charge may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card.

The Bureau also notes that persons that offer covered separate credit features accessible by hybrid prepaid-credit cards where no finance charge may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by the hybrid prepaid-credit card still would be subject to certain Regulation Z provisions. See the section-by-section analysis of § 1026.2(a)(17) above.

#### *Section 1026.4 Finance Charge*

TILA section 106(a) provides generally that the term “finance charge” in connection with any consumer credit transaction is the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction.<sup>615</sup>

Regulation Z generally defines the term “finance charge” in existing § 1026.4(a) to mean “the cost of consumer credit as a dollar amount.” It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. However, certain fee or charges are specifically excluded from the current definition of “finance charge,” including as described in existing § 1026.4(c)(3) and (4) respectively: (1) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously

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<sup>615</sup> 15 U.S.C. 1605(a).

agreed upon in writing; and (2) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

As discussed in more detail below, the proposal would have revised various components of the definition of finance charge in existing § 1026.4 and its commentary as applied to credit offered in connection with a prepaid account to (1) distinguish credit provided in connection with prepaid accounts addressed by the proposal from overdraft services on checking accounts, which is subject to a different rulemaking; and (2) broaden the definition of “finance charge,” as applied in the prepaid context, to assure broad coverage of the credit card rules to credit plans accessed by prepaid cards that would have been credit cards under the proposal and to better reflect the full cost of credit.

Specifically, the proposal would have provided that existing § 1026.4(c)(3)’s exclusion of fees imposed in connection with overdraft services on checking accounts from the definition of finance charge would not have applied to credit accessed by a prepaid card. It also would have exempted credit accessed by a prepaid card from the exclusion in existing § 1026.4(c)(4) for participation fees. As discussed in more detail in the section-by-section analyses of § 1026.4(a) and (b) below, the proposal also would have made other modifications to general finance charge precepts as applied to credit offered in connection with prepaid cards, to assure broad coverage of the credit card rules to such credit.

As discussed in more detail below, consistent with the goals of the proposal in relation to the definition of “finance charge,” the Bureau is revising the definition of “finance charge” with regard to the covered separate credit features accessible by hybrid prepaid-credit cards as defined under new § 1026.61 to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from overdraft services on checking accounts, which is subject to a

different rulemaking process; and (2) broaden the definition of “finance charge,” as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. The Bureau also is adding language to the definition of “finance charge” in existing § 1026.4 and related commentary to provide greater guidance regarding the treatment of fees that are charged to the separate credit subaccount or account accessible by a hybrid prepaid-credit card, as compared to fees charged to the prepaid asset feature. Finally, the Bureau has added commentary to § 1026.4 to provide guidance as to the application of the definition of “finance charge” to credit features accessible by prepaid cards that are not credit cards under the final rule.

As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to such a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a

separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” The hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as “non-covered separate credit features,” as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in more detail below, the Bureau is amending existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from the overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of “finance charge,” as applied in the prepaid

context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. Specifically, the final rule provides that the exclusion in existing § 1026.4(c)(3) for certain charges in connection with overdraft services on checking accounts does not apply to credit offered in connection with a prepaid account and that the exclusion in existing § 1026.4(c)(4) for participation fees does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

In addition, the Bureau is amending existing § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and charges constitute “finance charges” related to credit offered in connection with a prepaid account. For example, with regard to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau has added new § 1026.4(b)(11) and related commentary to address the classification of fees as finance charges depending on whether those fees are imposed on the covered separate credit feature or on the asset feature of the prepaid account. Specifically, new § 1026.4(b)(11) provides that the following fees generally are finance charges with respect to such covered separate credit features and asset features: (1) any fee or charge, such as interest rates and service, transaction, activity, or carrying charges, imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account; and (2) any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

The commentary to new § 1026.4(b)(11) also provides guidance with regard to the treatment of fees imposed on the prepaid account in relation to credit features accessible by prepaid cards that are not hybrid prepaid-credit cards. For example, with regard to non-covered separate credit features, the final rule provides that new § 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the non-covered credit feature is evaluated in its own right under the general rules set forth in existing § 1026.4 to determine whether these fees or charges are finance charges. In addition, with respect to these non-covered separate credit features, fees or charges on the asset feature of the prepaid account are not finance charges under existing § 1026.4 with respect to the non-covered separate credit feature. The commentary also provides that with respect to incidental credit that is provided via a negative balance on the prepaid account under new § 1026.61(a)(4), fees that can be imposed on the prepaid account under § 1026.61(a)(4) are not finance charges under final § 1026.4.

#### *4(a) Definition*

Under Regulation Z, the term “finance charge” generally is defined in existing § 1026.4(a) to mean “the cost of consumer credit as a dollar amount.” It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

With regard to credit card accounts, generally all transaction fees imposed on the account are treated as finance charges, even if the creditor imposes comparable transaction fees on asset accounts. Existing comment 4(a)-4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under existing § 1026.4(a). (Transaction charges that

are imposed on checking accounts or other transaction accounts are discussed in the section-by-section analyses of § 1026.4(b) and (b)(11) below.) Specifically, existing comment 4(a)-4 provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example, any charge imposed on a credit cardholder by a card issuer for the use of an ATM to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge, regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. In addition, any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States with a foreign merchant, or in a foreign currency, is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. This comment essentially provides that debit card transactions are not considered “comparable cash transactions” to credit card transactions with respect to transaction charges imposed by a card issuer on a credit cardholder when those fees are imposed on the credit card account.

The proposal would have added proposed comment 4(a)-4.iii to provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card is a finance charge regardless of whether the card issuer imposes the same, greater, or lesser charge on the withdrawal of funds from a prepaid account.

The Bureau received substantial comment on the circumstances in which fees imposed on a prepaid account should be considered finance charges under § 1026.4. These comments are discussed in the section-by-section analysis of § 1026.4(b)(11) below. As discussed in the section-by-section analysis of § 1026.4(b)(11), new § 1026.4(b)(11) and related commentary set

forth guidance regarding the circumstances in which a fee is a finance charge for credit offered in connection with a prepaid account. Thus, the Bureau is not revising existing comment 4(a)-4 to include the proposed prepaid card example discussed above.<sup>616</sup> Instead, the final rule revises existing comment 4(a)-4 to provide that comment does not apply to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61. The comment also is revised to cross-reference new §§ 1026.4(b)(11) and 1026.61 for guidance on the circumstances in which a fee is a finance charge in connection with a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card.

#### *4(b) Examples of Finance Charges*

##### *4(b)(2)*

Existing § 1026.4(b) provides examples of the types of charges that are finance charges, except if those charges are specifically excluded under existing § 1026.4(c) through (e). In particular, existing § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges. However, the Board added a partial exception to this example stating that any charge imposed on a checking or other transaction account, such a service or transaction account charge, is only a finance charge to the extent that the charge exceeds the charge for a similar account without a credit feature. Existing comment 4(b)(2)-1 similarly provides that a checking or transaction account charge imposed in connection

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<sup>616</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 4(a)-4 would have been revised to provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by such an account number is a finance charge regardless of whether the card issuer imposes the same, greater, or lesser charge on the withdrawal of funds from a prepaid account. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 4(a)-4 related to these account numbers.

with a credit feature is a finance charge under existing § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for a checking or transaction account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under existing § 1026.4(b)(2). For purposes of existing § 1026.4(b)(2), a per transaction fee imposed on a checking account with a credit feature (*i.e.*, overdraft line of credit where the financial institution has agreed in writing to pay an overdraft) can be compared with a fee imposed for paying or returning each item on a similar account without a credit feature. Thus, if a per transaction fee imposed on a checking account with a credit feature for accessing credit does not exceed the fee for paying an overdraft or NSF fee on the checking account with no credit feature, the per transaction fee imposed on the checking account with the credit feature is not a finance charge under existing § 1026.4(b)(2).

The proposal would have set forth a different rule for when fees imposed on prepaid accounts would have been finance charges than the standard set forth in existing § 1026.4(b)(2). Specifically, proposed § 1026.4(b)(2)(ii) would have provided that any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability would have been a finance charge where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card, regardless of whether the creditor imposes the same, greater, or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended. Proposed comment 4(b)(2)-1.ii through iv, would have clarified the rule set forth in proposed § 1026.4(b)(2)(ii). The existing language in § 1026.4(b)(2) would have been moved to proposed § 1026.4(b)(2)(i). The existing language in comment 4(b)(2)-1 would have been moved to proposed comment 4(b)(2)-1.i.

The Bureau received substantial comments on the circumstances in which fees imposed on prepaid accounts should be considered finance charges under § 1026.4. These comments are discussed in the section-by-section to § 1026.4(b)(11) below. As discussed in the section-by-section analysis of § 1026.4(b)(11), new § 1026.4(b)(11) and related commentary set forth guidance regarding the circumstances in which a fee is a finance charge for credit offered in connection with a prepaid account. Thus, the Bureau has not adopted proposed § 1026.4(b)(2)(ii) and the changes to comment 4(b)(2)-1 as proposed.<sup>617</sup> Instead, the Bureau is revising § 1026.4(b)(2) and comment 4(b)(2)-1 to provide that final § 1026.4(b)(2) does not apply to prepaid accounts as defined in § 1026.61. In addition, the Bureau is adding new comment 4(b)(2)-2 to state that fees or charges related to credit offered in connection with prepaid accounts as defined in § 1026.61 are discussed in new §§ 1026.4(b)(11) and 1026.61, and related commentary.

#### *4(b)(11)*

##### *The Bureau's Proposal*

As discussed in the section-by-section analyses of § 1026.4(a) and (b)(2) above, the Bureau proposed § 1026.4(b)(2) and comments 4(a)-4.iii and 4(b)(2)-1.ii through iv to provide guidance regarding when a fee imposed in relation to credit accessed by a prepaid card would have been a finance charge under § 1026.4.

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<sup>617</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(b)(2)(ii) and comment 4(b)(2)-1.ii through iv would have set forth the rule for when a fee imposed on a prepaid account is a finance charge in connection with credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(b)(2)(ii) and comment 4(b)(2)-1.ii through iv related to these account numbers.

Proposed comment 4(a)-4.iii would have set forth guidance on when transaction fees imposed on credit card accounts accessed by prepaid cards would have been considered finance charges under the proposal. Specifically, this comment would have provided that any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card is a finance charge regardless of whether the card issuer imposes the same, greater, or lesser charge on the withdrawal of funds from a prepaid account.

Proposed § 1026.4(b)(2)(ii) and proposed comment 4(b)(2)-1.ii through iv would have provided guidance on when service, transaction, activity, and carrying charges imposed on a prepaid account in connection with credit accessed by a prepaid card would have been a finance charge under the proposal. Specifically, proposed § 1026.4(b)(2)(ii) would have provided that any charge imposed on the prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability would have been a finance charge where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card, regardless of whether the creditor imposes the same, greater, or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended.

Under proposed comment 4(b)(2)-1.ii, transaction fees imposed on a prepaid account for credit extensions would have been finance charges, regardless of whether the creditor imposes the same, greater, or lesser per transaction fee to withdraw funds from the prepaid account. To illustrate, assume a \$1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. Under the proposal, the \$1.50 transaction

charge would have been a finance charge when the prepaid card accesses credit, notwithstanding that a \$1.50 transaction charge also is imposed on transactions that solely access funds in the prepaid account.

In addition, under proposed comment 4(b)(2)-1.ii, a fee imposed on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card would have been a finance charge regardless of whether the creditor imposes the same, greater, or lesser monthly service charge to hold the prepaid account. For example, assume a creditor imposes \$5 monthly service charge on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card. Under the proposal, the \$5 monthly service charge would have been a finance charge regardless of whether the creditor imposes the same, greater, or lesser monthly service charge to hold the prepaid account.

In the proposal, the Bureau recognized that if a prepaid account issuer imposes a per transaction fee on a prepaid account for any transactions authorized or settled on the prepaid account, the prepaid account issuer would need to waive that per transaction fee imposed on the prepaid account when the transaction accesses credit to take advantage of the exception for when a prepaid card would not be a credit card under the proposal.

Proposed comment 4(b)(2)-1.iii would have provided that examples of charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability include (1) transaction fees for credit extensions; (2) fees for transferring funds from a credit account to a prepaid account; (3) a daily, weekly, or monthly (or other periodic) fee assessed each period a prepaid account is in “overdraft” status, or would be in overdraft status but for funds supplied by a linked line of credit; (4) a daily, weekly, or monthly (or other periodic) fee assessed each period a line of credit accessed by a prepaid card has an

outstanding balance; and (5) participation fees or other fees that the consumer is required to pay for the issuance or availability of credit.

Proposed comment 4(b)(2)-1.iv would have provided that proposed § 1026.4(b)(2)(ii) would not apply to: (1) transaction fees imposed on the prepaid account that are imposed only on transactions that solely access funds in the prepaid account (and are not imposed on transactions that either are funded in whole or in part from credit); (2) fees for opening or holding the prepaid account; and (3) other fees, such as cash reload fees and balance inquiry fees, that are not imposed on the prepaid account because the consumer engaged in a transaction that is funded in whole or in part by credit, for holding a credit plan, or for carrying a credit balance. These fees would not have been considered charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability even if there were not sufficient funds in the prepaid account to pay the fees at the time they were imposed on the prepaid account. Nonetheless, under the proposal, any negative balance on the prepaid account, whether from fees or other transactions, would have been a credit extension, and if a fee were imposed for such credit extension, the fee would have been a finance charge under proposed § 1026.4(b)(2)(ii). For example, if a cash-reload fee were imposed on the prepaid account and an additional charge were imposed on the prepaid account for a credit extension because there were not sufficient funds in the prepaid account to pay the cash reload fee when it was imposed on the prepaid account, the additional charge would have been a transaction charge imposed on a prepaid account in connection with an extension of credit and would have been a finance charge under proposed § 1026.4(b)(2)(ii).

The Bureau received substantial comment on the circumstances in which fees imposed in connection with credit accessed by a prepaid card should be considered finance charges under

§ 1026.4. As discussed below, in response to comments received, the Bureau is revising substantially from the proposal the circumstances in which a fee or charge imposed with respect to credit extended in connection with a prepaid account is a finance charge under § 1026.4.

#### *Comments Received*

Many industry commenters raised concerns regarding the breadth of fees that would be considered finance charges under the proposal. Many industry commenters were concerned that even though they did not intend to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as forced pay-transactions as discussed in the section-by-section analysis of § 1026.61 below. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. These commenters were concerned that they could not charge certain fees on the prepaid account, or would have to waive certain fees, for the prepaid card not to be considered to be a credit card under the proposal. In particular, proposed comment 2(a)(15)-2.i.F would have provided that the term “credit card” includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except for when the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Under the proposal, for a prepaid card not to be a credit card when it accesses a credit plan, the credit accessed by the prepaid card could not be subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and any credit accessed could not be payable by written agreement in more than four installments.

Many industry commenters indicated that certain fees should not be considered finance charges in connection with credit accessed by a prepaid card, and thus, a prepaid account issuer could continue to charge these fees on the prepaid account without the prepaid card becoming a credit card under the proposal.

For example, several commenters, including an industry trade association, an issuing bank, a program manager, and a digital wallet provider, indicated that consistent with existing § 1026.4(b)(2), a fee that is imposed on a prepaid account in both credit and cash transactions should not be a finance charge when the fee is imposed on a prepaid account. They argued that these fees are exempt from the definition of finance charge under the “comparable cash transaction” exception. Existing § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges. However, existing § 1026.4(b)(2) contains a partial exception to this example stating that for any charge imposed on a checking or other transaction account, such a service or transaction account charge, is only a finance charge to the extent that the charge exceeds the charge for a similar account without a credit feature.

In addition, several commenters, including an industry trade association, an issuing bank, a program manager, and a digital wallet provider, indicated that the term “finance charge” should not include per transaction fees charged on a prepaid account for an extension of credit that are the same amount as the fee that would be charged for transactions paid entirely with funds available in the prepaid account. These industry commenters were concerned that a prepaid account issuer would need to waive per transaction fees charged for credit extensions even if they were the same amount as the fee charged for transactions it paid entirely with funds available in the prepaid account to avoid charging a finance charge under the proposal. As

discussed above, under the proposal, all per transaction fees for credit transactions were finance charges. Thus, under the proposal, a prepaid account issuer would need to waive per transaction fees imposed on the prepaid account for credit transactions for the prepaid card not to be a credit card under the proposal.

Two industry trade associations indicated that the term “finance charge” should only include fees or charges arising from the fact that the transaction is an overdraft and specifically exclude other fees or charges that are wholly unrelated to the fact that the transaction is an overdraft, such as a fee for a balance inquiry at an ATM. These two commenters argued that such unrelated fees or charges should not be “finance charges” even if they are imposed when the prepaid account balance is negative. Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a “finance charge” simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

Several consumer groups commented on this aspect of the proposal. One consumer group commenter indicated that per transaction fees for credit extensions imposed on prepaid accounts should be finance charges even if they are the same amount as the fee charged for transactions paid entirely with funds available in the prepaid account. This consumer group commenter indicated that if a prepaid account issuer wanted to avoid charging a finance charge on the prepaid account, the cleanest solution is the one the Bureau proposed: simply waive the fee. Another consumer group commenter indicated that any fee or charge that occurs when credit is accessed should be considered a finance charge.

### *The Final Rule*

The Bureau is amending existing § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and charges constitute “finance charges” related to credit offered in connection with a prepaid account. First, the Bureau provides guidance on the definition of finance charge in relation to covered separate credit features accessible by a hybrid prepaid-credit cards. Second, the Bureau also provides guidance on the definition of finance charge in relation to credit features accessible by prepaid cards that are not hybrid prepaid-credit cards. Starting with the first category, as described above, the Bureau generally intends the final rule to regulate prepaid cards as credit cards when they can access overdraft credit features offered by the prepaid account issuer, its affiliates, or its business partners (except as provided in new § 1026.61(a)(4)). Such credit features are generally required under new § 1026.61(b) to be structured as a separate subaccount or account, distinct from the prepaid asset account, to facilitate transparency and compliance with Regulation Z. To effectuate this decision and provide compliance guidance to industry, new § 1026.4(b)(11) and its related commentary specify rules for distinguishing when particular types of fees or charges that are imposed on the covered separate credit feature or on the asset feature on a prepaid account, which are both accessible by a hybrid prepaid-credit card, are finance charges under Regulation Z. Specifically, new § 1026.4(b)(11) provides that the following fees generally are finance charges with respect to such covered separate credit features and asset features: (1) any fee or charge, such as interest rates and service, transaction, activity, or carrying charges, imposed on the covered separate credit feature, regardless of whether the credit feature is structured as a credit subaccount of the prepaid account or a separate credit account; and (2) any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of

the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. These provisions are discussed in more detail in the section-by-section analyses of § 1026.4(b)(11)(i) and (ii).

The commentary to new § 1026.4(b)(11) also provides guidance regarding credit features that are accessible by prepaid cards that are not credit cards under the final rule. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 4(b)(11)-1.i provides that the rules for classification of fees or charges as finance charges in connection with a covered separate credit feature and the asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card are specified in

§ 1026.4(b)(11) and related commentary. This guidance is discussed in more detail in the section-by-section analyses of § 1026.4(b)(11)(i) and (ii). As discussed in more detail below, new comment 4(b)(11)-1.ii and iii sets forth guidance on when fee or charges are finance charges under § 1026.4 when these fees or charges are imposed in connection with credit features that are accessible by prepaid cards that are not credit cards.<sup>618</sup>

*Non-covered separate credit features.* With respect to separate credit features, as noted above, under § 1026.61(a)(2)(ii), there are two circumstances in which new § 1026.61 provides that a prepaid card is not a hybrid prepaid-credit card when it accesses a separate credit feature. The first is where the prepaid card cannot be used to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second is where the separate credit feature is offered by an unrelated third party, rather than the prepaid account issuer, its affiliate, or its business partner.

New § 1026.61(a)(2)(ii) defines a separate credit feature that does not meet these two conditions as a “non-covered separate credit feature.” As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z in its own right, depending on the terms and conditions of the product.

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<sup>618</sup> One industry commenter noted the proposed definition of “finance charge” in connection with prepaid accounts and raised questions about the impact these proposed changes would have in terms of obligations to notify consumers of adverse actions under the Equal Credit Opportunity Act and Regulation B. The Bureau believes that it has addressed these concerns in the final rule by providing additional guidance on the type of fees that are “finance charges” with respect to covered separate credit features accessible by hybrid prepaid-credit cards. In addition, the final rule also excludes prepaid cards from being covered as credit cards under Regulation Z when they access non-covered separate credit features as defined in new § 1026.61(a)(2)(ii), or access incidental credit as a negative balance on the prepaid account as set forth in new § 1026.61(a)(4).

New comment 4(b)(11)-1.ii provides that new § 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in existing § 1026.4 determine whether these fees or charges are finance charges. In addition, fees or charges on the asset feature of the prepaid account are not finance charges under final § 1026.4 with respect to the non-covered separate credit feature.

*Overdraft credit features excepted under § 1026.61(a)(4).* As described in new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card (and is not a credit card under Regulation Z) where the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. Specifically, under this exception, the prepaid account issuer (1) must have a general policy and practice of declining to authorize transactions made with the card where there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transactions or to only authorize such negative balance transactions in circumstances related to payment cushions and delayed load cushions; and (2) must not charge any credit-related fees as defined in new § 1026.61(a)(4) for any credit extended through a negative balance on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, such credit features will not trigger coverage of the credit card rules.

With respect to what “credit-related fees” will cause such a credit feature to fall outside the scope of the new § 1026.61(a)(4) exclusion, new § 1026.61(a)(4)(ii)(B) provides that with respect to prepaid accounts that are accessible by the prepaid card, the prepaid account issuer may not charge the following fees or charges on the asset feature of the prepaid account: (1) any

fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This would not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available; (2) any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or (3) any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

This language in new § 1026.61(a)(4)(ii)(B) allows a prepaid account issuer to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account. New § 1026.61(a)(4)(ii)(C) also makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in new § 1026.61(a)(4)(ii)(B) as discussed above.

Thus, in order to qualify for the exception in new § 1026.61(a)(4), a prepaid account issuer generally may not charge additional fees or higher fees when credit is extended on the

asset feature of the prepaid account or there is a negative balance on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. Provided it meets this limitation and the other requirements of new § 1026.61(a)(4), the prepaid account issuer will not be a “card issuer” under final § 1026.2(a)(7) and thus the credit card rules in Regulation Z do not apply to such a credit feature.

In addition, new comment 4(b)(11)-1.iii provides that fees charged on the asset feature of the prepaid account in accordance with new § 1026.61(a)(4)(ii)(B) are not finance charges. This ensures that a prepaid account issuer is not a “creditor” under the general definition of “creditor” set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

The Bureau believes that many of the concerns raised by industry commenters as discussed above with respect to the definition of “finance charge” have been addressed by creating new § 1026.61(a)(4) and its treatment of credit-related charges in new § 1026.61(a)(4)(ii)(B) and new comment 4(b)(11)-1.iii. As discussed above, many industry commenters were concerned that even though they did not intend to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as force pay transactions as discussed in the section-by-section analysis of § 1026.61 below. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. Because of these concerns, many industry commenters urged that that the Bureau not consider certain fees to be finance charges, and thus, a prepaid account issuer could continue to charge these fees on the prepaid account without making the prepaid card also a credit card under the proposal.

For example, several commenters, including an industry trade association, an issuing bank, a program manager, and a digital wallet provider, indicated that the term “finance charge” should not include per transaction fees charged on a prepaid account for an extension of credit that are the same amount as the fee that would be charged for transactions paid entirely with funds available in the prepaid account. These industry commenters also were concerned that if they generally charged the same per transaction fee for all transactions paid using a prepaid account, regardless of whether the transaction is paid entirely with funds available in the prepaid account or is paid in whole or in part with credit, a prepaid account issuer would need to waive those per transaction fees for transactions resulting in an overdraft for a prepaid card not to be a credit card under the proposal. Also, two industry trade associations indicated that the term “finance charge” should only include fees or charges arising from the fact that the transaction is an overdraft and specifically exclude other fees or charges that are wholly unrelated to the fact that the transaction is an overdraft, such as a fee for a balance inquiry at an ATM. These two commenters argued that such unrelated fees or charges should not be “finance charges” even if they are imposed when the prepaid account balance is negative. Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a “finance charge” simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

The final rule addresses these concerns in a number of ways, so long as the types of credit provided are limited to the narrow types addressed in new § 1026.61(a)(4). First, new § 1026.61(a)(4) does not require a prepaid account issuer to waive per transaction fees imposed on the asset feature of the prepaid account if the amount of the per transaction fee imposed for transactions involving credit is not higher than the amount of the fee that is imposed for

transactions that only access funds in the asset feature of the prepaid account. Second, under the exception in new § 1026.61(a)(4), the final rule provides that if a fee is not a fee enumerated in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may still debit these fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed. Third, the final rule clarifies that under this exception, a prepaid account issuer may charge a fee to hold the prepaid account, so long as the amount of the fee or charge imposed on the asset feature of the prepaid account is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

In addition, as discussed above, new comment 4(b)(11)-1.iii provides that fees charged on the asset feature of the prepaid account in accordance with new § 1026.61(a)(4)(ii)(B) are not finance charges. This ensures that a prepaid account issuer is not a “creditor” under the general definition of “creditor” set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

*4(b)(11)(i)*

New § 1026.4(b)(11)(i) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, any fee or charge described in final § 1026.4(b)(1) through (10) imposed on the covered separate credit feature is a finance charge, regardless of whether the separate credit feature is structured as a credit subaccount of the prepaid account or a separate credit account. Fees would be excluded from the definition of finance charge if they are described in final § 1026.4(c) through (e), as applicable, although as discussed in more detail below, the Bureau is narrowing certain of these existing exclusions as they are applied to credit

in connection with prepaid accounts. This approach is similar to the approach to the definition of “finance charge” that currently applies to credit card accounts generally, except the Bureau is narrowing certain exclusions contained in § 1026.4(c)(3) and (4) as discussed in the section-by-section analysis of § 1026.4(c) below.

Comment 4(b)(11)(i)-1 provides further guidance on this framework. Specifically, it provides that any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. This comment also provides that transaction charges that are imposed on the asset feature of a prepaid account are subject to new § 1026.4(b)(11)(ii) and related commentary, instead of new § 1026.4(b)(11)(i).

New comment 4(b)(11)(i)-1 also clarifies that the treatment of transaction fees on the separate covered credit feature is consistent with the treatment of transaction fees on a credit card account, as specified in existing comment 4(a)-4. As discussed in more detail in the section-by-section analysis of § 1026.4(a) above, existing comment 4(a)-4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under § 1026.4(a).<sup>619</sup> Specifically, existing comment 4(a)-4 provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account, such as a checking or savings account. For example, any charge imposed on a credit cardholder by a card issuer for the use of an ATM to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its

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<sup>619</sup> Transaction charges that are imposed on checking accounts or other transaction accounts (other than prepaid accounts) are discussed in the section-by-section analysis of § 1026.4(b) above, and transaction charges imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card are discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) below.

debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. In addition, any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States with a foreign merchant, or in a foreign currency, is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. This comment essentially provides that debit card transactions are not considered “comparable cash transactions” to credit card transactions with respect to transaction charges imposed by a card issuer on a credit cardholder when those fees are imposed on the credit card account.

In the supplemental information accompanying the rule that adopted this comment, the Board noted the inherent complexity of distinguishing transactions that are “comparable cash transactions” to credit card transactions from transactions that are not.<sup>620</sup> For example, the Board discussed the case where a card issuer imposes a transaction fee on the credit card account for a cash advance obtained through an ATM. The Board found that a transaction fee for a cash advance obtained through an ATM would not always be a finance charge if fees that are imposed on debit cards offered by the credit card issuer were considered in applying the “comparable cash transaction” exception. In particular, whether the transaction fee for the cash advance is a finance charge would depend on whether the credit card issuer provided asset accounts and offered debit cards on those accounts and whether the fee exceeds the fee imposed for a cash advance transaction through an ATM on such asset accounts. The Board believed this type of distinction was not helpful for consumers in understanding transaction fees imposed on their credit card accounts. Thus, the Board adopted existing comment 4(a)-4, which provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of

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<sup>620</sup> 74 FR 5244, 5263 (Jan. 29, 2009).

whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account, such as a checking or savings account. The Board noted that it was not revising existing comment 4(b)(2)-1, which states that if a checking or transaction account charge imposed on an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge. The Board further noted that existing comment 4(b)(2)-1 addresses situations distinct from those addressed by comment 4(a)-4.

With respect to whether a per transaction charge imposed on the covered separate credit feature accessible by a hybrid prepaid-credit card should be a finance charge, the Bureau believes that it is appropriate to follow the same rules that generally apply to credit cards, as set forth in existing comment 4(a)-4. Thus, consistent with existing comment 4(a)-4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, transaction charges that are imposed on the asset feature of a prepaid account are subject to new § 1026.4(b)(11)(ii) and related commentary, instead of new § 1026.4(b)(11)(i).  
*4(b)(11)(ii)*

In contrast to the rule for fees imposed on a covered separate credit feature accessible by a hybrid prepaid-credit card, new § 1026.4(b)(11)(ii) provides that any fee or charge imposed on the asset feature of a prepaid account is a finance charge only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. Fees described in final § 1026.4(c) through (e), as applicable, are excluded from the definition of finance charge, although, as discussed in more detail below, the Bureau is

narrowing certain of these existing exclusions as they are applied to credit offered in connection with prepaid accounts.

The Bureau's approach with regard to fees charged on an asset feature accessible by a hybrid prepaid-credit card is consistent with the comparable cash exception to the definition of finance charge. This approach is similar to the existing approach that Regulation Z takes outside the credit card context in exempting fees from the definition of finance charge if they are comparable to fees charged on a checking or other asset account for transactions that do not involve a credit feature as discussed in final § 1026.4(b)(2), although there are important distinctions as discussed below.

Compared to the proposed approach, the Bureau believes that the approach adopted in the final rule with respect to the asset feature will make it easier for both prepaid account issuers and for consumers to track and understand how the separate credit feature and asset features operate in connection with a hybrid prepaid-credit card. The Bureau is concerned that excluding all fees charged on an asset feature from the definition of finance charge would invite prepaid account issuers to structure their programs in ways that make it very difficult for consumers to analyze the true cost of credit on a hybrid prepaid-credit card. At the same time, the Bureau recognizes that certain fees charged in conjunction with the operation of the prepaid asset feature are not driven by credit use, and that it is useful to both prepaid account issuers and consumers to differentiate those fees from other charges. The Bureau believes that new § 1026.4(b)(11)(ii) appropriately balances these considerations by providing that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, fees or charges imposed on the asset feature of the prepaid account are finance charges only to the extent that the amount of the fee or charge exceeds comparable fees

or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

### *Comparable Fees*

While the Bureau's approach with regard to charges imposed on an asset feature accessible by a hybrid prepaid-credit card is somewhat similar to the rule provided in existing § 1026.4(b)(2) with regard to when transaction fees, service fees, and carrying fees imposed on checking and other transaction accounts are finance charges under Regulation Z, the final rule differs in one particularly important respect: It provides detailed guidance in new comment 4(b)(11)(ii)-1 regarding how fees on prepaid accounts without a covered separate credit feature should be compared to fees imposed on prepaid accounts with a covered separate credit feature accessible by a hybrid prepaid-credit card. This guidance is more detailed and more restrictive than the guidance provided under final § 1026.4(b)(2) with regard to checking and transaction accounts other than prepaid accounts.

In developing these rules, as set forth in new § 1026.61(a)(2)(i)(B) and new comment 61(a)(2)-4.ii, the Bureau was conscious that there were two potentially distinct types of credit extensions that could occur on a covered separate credit feature accessible by a hybrid prepaid-credit card. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's website to load funds from the covered

separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Because the two scenarios involve different sets of activities, the range of fees triggered is also likely to be different. As discussed in more detail below, new comment 4(b)(11)(ii)-1 therefore provides separate guidance on the comparable fees under new § 1026.4(b)(11)(ii) with respect to each of the two types of credit extensions.

New comment 4(b)(11)(ii)-1.i explains that new comment 4(b)(11)(ii)-1.ii and iii provides guidance with respect to comparable fees under § 1026.4(b)(11)(ii) for these two types of credit extensions on a covered separate credit feature. New comment 4(b)(11)(ii)-1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In addition, new comment 4(b)(11)(ii)-1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 4(b)(11)(ii)-1.ii and iii are discussed in more detail below.

*Credit extensions from the covered separate credit feature within the course of a transaction.* New comment 4(b)(11)(ii)-1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Specifically, new comment 4(b)(11)(ii)-1.ii provides that where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing such a

transaction, any per transaction fees imposed on the asset feature of the prepaid account, including load and transfer fees, for such credit from the credit feature should be compared to the per transaction fees for each transaction to access funds in the asset feature of a prepaid account that is in the same prepaid account program but does not have such a credit feature. Thus, per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of new § 1026.4(b)(11)(ii).

To illustrate these principles, new comment 4(b)(11)(ii)-1.ii sets forth several examples explaining when a finance charge is imposed on the asset feature of a prepaid account in situations in which credit is accessed from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New comment 4(b)(11)(ii)-1.ii.A provides the following example: Assume that a prepaid account issuer charges \$0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of prepaid accounts. Also, assume that the prepaid account issuer charges \$0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the \$0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge because it is a comparable fee to the \$0.50 per transaction fee imposed on the prepaid account without a covered separate credit feature.

Nonetheless, as described in new comment 4(b)(11)(ii)-1.ii.B, in this example, if the prepaid account issuer instead charged \$1.25 on the asset feature of a prepaid account for each

transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the additional \$0.75 is a finance charge.

As another example set forth in new comment 4(b)(11)(ii)-1.ii.C, assume a prepaid account issuer charges \$0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of prepaid accounts. Assume also that the prepaid account issuer charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of \$1.75 per transaction) must be compared to the \$0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the \$1.25 excess is a finance charge.

New comment 4(b)(11)(ii)-1.ii.D provides another example. Under this example, assume a prepaid account issuer charges both a \$0.50 fee for each transaction that accesses funds in the asset feature of prepaid accounts without a covered separate credit feature, and charges a load fee of \$1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature. Assume also that the prepaid account issuer charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program when the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of \$1.75 per transaction) must be compared to the \$0.50 per transaction fee to access funds in the asset feature of the prepaid

account without a covered separate credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source (in this example, the \$1.25 fee to load funds from another asset account) are not comparable for purposes of new § 1026.4(b)(11)(ii). Accordingly, the \$1.25 excess is a finance charge.

The Bureau also notes that the per transaction fee for a credit extension in the course of a transaction from a covered separate credit feature cannot be compared to a fee for declining to pay a transaction that is imposed on a prepaid account without such a credit feature in the same prepaid account program.

The Bureau believes that the above standard for determining comparable fees with respect to fees or charges imposed on the asset feature of prepaid accounts accessible by hybrid prepaid-credit cards will help prevent evasion of the rules set forth in the final rule with respect to hybrid prepaid-credit cards. The Bureau believes that many prepaid cardholders who wish to use covered separate credit features may not have other deposit accounts or savings accounts from which they can transfer funds to prevent an overdraft on the prepaid account in the course of authorizing, settling, or otherwise completing a transaction to obtain goods or services, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that a per transaction fee for credit drawn or transferred from a covered separate credit feature accessible by a hybrid prepaid-credit card during the course of a transaction should be allowed to be compared with a per transaction fee for a service that many prepaid cardholders who wish to use covered separate credit features may not be able to use.

The Bureau is concerned that if it permitted such a comparison, card issuers could charge a substantial fee to transfer funds from the checking account or savings account during the course of a transaction using the prepaid account (which many prepaid cardholders who wish to

use covered separate credit features may not be able to use as a practical matter) and then charge that same substantial per transactions fees for credit drawn or transferred from the covered separate credit feature during the course of a transaction without such fees being considered a finance charge. This could allow the prepaid account issuer to avoid charging a finance charge and avoid the application of the Credit CARD Act provisions that are generally set forth in subpart G, such as the restriction on fees set forth in § 1026.52. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to per transaction fees imposed on prepaid accounts for transactions that access funds in the prepaid account in the same prepaid account program that does not have a covered separate credit feature. All prepaid accountholders can use prepaid accounts to make transactions that access available funds in the prepaid account, so these types of transactions will be available to all prepaid accountholders.

*Credit extensions from a covered separate credit feature outside the course of a transaction.* New comment 4(b)(11)(ii)-1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers, as discussed above.

New comment 4(b)(11)(ii)-1.iii provides that load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of new § 1026.4(b)(11)(ii).

New comment 4(b)(11)(ii)-1.iii provides examples to illustrate this guidance. New comment 4(b)(11)(ii)-1.iii.A provides the following example: Assume a prepaid account issuer charges a \$1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the \$1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature (in this example, the \$1.25 fee to load funds from the non-covered separate credit feature) are not comparable for purposes of new § 1026.4(b)(11)(ii).

In a second example described in new comment 4(b)(11)(ii)-1.iii.B, assume that a prepaid account issuer charges a \$1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the \$1.25 fee imposed on the asset feature of the prepaid account with a

covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (in this example, the \$1.25 fee to load funds from the separate asset account) are not comparable for purposes of new § 1026.4(b)(11)(ii).

As an initial matter, the Bureau believes that it is appropriate to compare fees imposed to load or transfer credit from a covered separate credit feature outside the course of transactions conducted with the card to fees, if any, for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts with no covered separate credit feature because those direct deposits also occur outside the course of transactions conducted with the card that access funds in the prepaid account. Thus, the Bureau believes that these two types of situations are comparable because they both occur outside the course of transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers.

The Bureau recognizes that there may be other types of loads or transfers of asset funds or credit that can occur outside the course of a transaction, including loads or transfers of funds from other asset accounts, such as checking accounts or savings accounts, or loads or transfers of credit from other credit accounts that are not covered separate credit features. Nonetheless, the Bureau believes that many prepaid accountholders who wish to use covered separate credit features may not have other asset accounts, such as checking accounts or savings accounts, or other credit accounts, from which they can draw or transfer asset funds or credit for deposit into the prepaid account outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that

load or transfer fees for credit from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction should be allowed to be compared with a load or transfer fees from an asset account, or non-covered separate credit feature, outside the course of a transaction.

The Bureau is concerned that if it did so, card issuers could charge a substantial fee to load or transfer funds from the checking account or savings account or a non-covered separate credit feature (which many prepaid cardholders who wish to use covered separate credit features may not be able to use as a practical matter) and then charge that same substantial fee for load or transfer fees for credit loaded or transferred from the covered separate credit feature outside the course of a transaction without that fee being a finance charge. This could allow the prepaid account issuer to avoid charging a finance charge and avoid the application of the Credit CARD Act provisions that are generally set forth in subpart G, such as the restriction on fees set forth in § 1026.52. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. The Bureau believes that such direct deposit methods commonly are offered on most types of prepaid accounts and that most prepaid accountholders who wish to use covered separate credit features are able to avail themselves of these methods.<sup>621</sup>

*Relation to Regulation E § 1005.18(g)*

New comment 4(b)(11)(ii)-2 provides a cross-reference to a related provision in final Regulation E § 1005.18(g). As discussed in more detail in the section-by-section analysis of Regulation E § 1005.18(g) above, this provision only permits a financial institution to charge the

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<sup>621</sup> The Bureau understands that prepaid account issuers currently offering overdraft services condition consumer eligibility on receipt of a regularly-occurring direct deposit in excess of a specified threshold.

same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature that are in the same prepaid account program.

#### *4(c) Charges Excluded from the Finance Charge*

Existing § 1026.4(c) provides a list of charges that are excluded from the definition of finance charge under § 1026.4. The charges listed in existing § 1026.4(c) include: (1) application fees charged to all applicants for credit, whether or not credit is actually extended; (2) charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence; (3) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (4) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

The proposal would have provided that the exclusion from the definition of finance charge in existing § 1026.4(c)(3) for overdraft services on checking accounts would not have applied to credit accessed by a prepaid card. It also would have provided that the exclusion for participation fees in existing § 1026.4(c)(4) would not apply to credit accessed by a prepaid card.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, many industry commenters urged the Bureau to provide that the exception in § 1026.4(c)(3) applies to overdraft credit accessed in connection with prepaid accounts. One credit union

service organization also indicated that the Bureau should provide that the exception in existing § 1026.4(c)(4) should apply to annual and other periodic fees to hold a credit plan in connection with a prepaid account.

Several consumer group commenters stated that the exception in § 1026.4(c)(1) for application fees for credit features should not apply to credit accessed by prepaid cards. One consumer group commenter urged that the exceptions in existing § 1026.4(c)(2) for late fees, over the limit fees, and returned payment fees should not apply to credit accessed by prepaid cards. This commenter expressed concern that prepaid account issuers might use such fees as a back-end method of credit pricing, and stated that the Bureau should either include these fees in definition of “finance charge” or make clear that they cannot be charged on prepaid accounts.

As discussed in more detail below, the Bureau is amending existing § 1026.4 and its commentary to provide that the exclusion in existing § 1026.4(c)(3) does not apply to credit offered in connection with a prepaid account and that the exclusion in existing § 1026.4(c)(4) does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

The Bureau has not adopted any changes to the exception in existing § 1026.4(c)(1) related to application fees, or to the exception in existing § 1026.4(c)(2) related to late fees, over the limit fees, returned check fees, and other fees for delinquency, default, or a similar occurrence. The Bureau believes these changes are outside the scope of the proposal and does not believe that these changes are warranted at this time. The Bureau will continue to monitor whether changes to these exceptions with respect to covered separate credit features accessible by hybrid prepaid-credit cards are needed.

4(c)(3)

Existing § 1026.4(c)(3) provides that the term “finance charge” does not include charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section above, the Board developed this exception to the term “finance charge” to carve out fees imposed by financial institutions for checks or other items that overdraw an account so that ad hoc overdraft plans would not be subject to Regulation Z.

As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section, the Bureau intended generally that, under its proposal, Regulation Z would apply to credit accessed by prepaid cards that are credit cards. Thus, the Bureau proposed to revise existing § 1026.4(c)(3) and existing comment 4(c)(3)-1 to specify that this provision would not have applied to credit accessed by a prepaid card. As a result, under the proposal, charges imposed by a financial institution for paying items that overdraw a prepaid account would have been finance charges even if the payment of the item and the imposition of the charge were not previously agreed upon in writing, and the financial institution extending such an overdraft would have been a creditor.

As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section, many industry commenters indicated that the Bureau should provide that the exception in existing § 1026.4(c)(3) applies to overdraft credit accessed in connection with prepaid accounts. For the reasons discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section, the Bureau is revising existing § 1026.4(c)(3) and existing comment 4(c)(3)-1 to provide that the exception in that paragraph does not apply to credit offered in connection with a prepaid

account as defined in § 1026.61.<sup>622</sup> The Bureau also is adding new comment 4(c)(3)-2 to cross-reference new comment 4(b)(11)-1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

The Bureau notes that existing § 1026.4(c)(3) focuses on written agreements in determining whether charges imposed by a financial institution for paying items that overdraw an account are finance charges. As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that whether overdraft credit structured as a negative balance on a prepaid account is covered under Regulation Z should not turn on whether there is an agreement to extend such overdraft credit. Instead, new § 1026.61(a)(4) sets forth the circumstances in which overdraft credit structured as a negative balance on a prepaid account can be excluded from Regulation Z. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, the Bureau provides that a prepaid card is not a hybrid prepaid-credit card (and is not a credit card under Regulation Z) where the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. If the conditions of the exception in new § 1026.61(a)(4) are met, the prepaid account issuer will not be a “card issuer” under final § 1026.2(a)(7) and thus the credit card rules in Regulation Z do not apply to such overdraft credit features. In addition, new comment 4(b)(11)-1.iii provides that fees charged on the asset feature of the prepaid account in accordance with the exception in new § 1026.61(a)(4) are not finance charges. This ensures that the prepaid account issuer is not a “creditor” under the general

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<sup>622</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(c)(3) and comment 4(c)(3)-1 would have provided that the exception set forth in § 1026.4(c)(3) would not have applied to credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(c)(3) and comment 4(c)(3)-1 related to these account numbers.

definition of “creditor” set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

*4(c)(4)*

Existing § 1026.4(c)(4) provides that the term “finance charge” does not include fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. Existing comment 4(c)(4)-1 explains that the participation fees described in existing § 1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and such a fee may not be treated as a participation fee.

The Bureau proposed to amend existing § 1026.4(c)(4) and existing comment 4(c)(4)-1 to provide that this exception would not have applied to credit accessed by a prepaid card. One credit union service organization indicated that the Bureau should provide that the exception in existing § 1026.4(c)(4) should apply to annual and other periodic fees to hold a credit plan in connection with a prepaid account. This commenter argued that defining the maintenance fee as a finance charge is confusing to consumers, and it is not what consumers expect “finance charges” to be. One consumer group supported the Bureau’s proposal to include participation fees within the definition of “finance charge” in Regulation Z when those fees are charged in connection with credit on prepaid cards. This commenter argued that participation fees have been used to disguise the cost of credit. This commenter suggested that including participation fees in the definition of “finance charge” would prevent these evasions.

The Bureau is adopting proposed § 1026.4(c)(4) with revisions to be consistent with new § 1026.61. Specifically, the Bureau is amending existing § 1026.4(c)(4) to provide that this exception does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.<sup>623</sup>

The Bureau believes that the exception in existing § 1026.4(c)(4) is not dictated by TILA's definition of "finance charge." Rather, the Board added this exception to existing § 1026.4(c)(4) in 1981 based on an interpretation letter that the Board had previously issued.<sup>624</sup> In the interpretation letter, the Board excluded annual fees for membership in a credit plan from the definition of "finance charge" because these fees are not imposed incident to or as a condition of any specific extension of credit.<sup>625</sup> Nonetheless, the Bureau believes that the term "finance charge" in TILA is broad enough to reasonably include periodic fees for participation in a credit plan under which a consumer may obtain credit because those fees would be incident to the extension of credit. Without paying the periodic fees for access to the credit plan, the consumer could not use the credit plan to access credit.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau intends generally to cover covered separate credit features accessible by hybrid prepaid-credit cards as "open-end credit" under Regulation Z. The Bureau believes these credit features should be "open-end credit" even if the only fees charged for the plan are annual or

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<sup>623</sup> The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(c)(4) would have provided that the exception set forth in § 1026.4(c)(4) would not have applied to credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(c)(4) related to these account numbers.

<sup>624</sup> 46 FR 20848, 20855 (Apr. 7, 1981).

<sup>625</sup> 36 FR 16050 (Aug. 19, 1971).

other periodic fees for participation in the credit plan. See the section-by-section analysis of § 1026.2(a)(20) above for a discussion of the finance charge criterion for the definition of “open-end credit.” The Bureau believes that annual or other periodic fees that are charged for participation in covered separate credit features accessible by hybrid prepaid-credit cards could be significant costs to consumers, even if interest or transaction fees are not charged with respect to the credit features, and thus the protections in Regulation Z that apply to open-end credit, including those in subpart G, should apply to covered separate credit features that charge an annual or other periodic fee to access the plan and otherwise meet the definition of “open-end credit.”

The Bureau especially believes that the protections in Regulation Z subpart G that generally apply to open-end credit that is accessible by a credit card will be beneficial to consumers using such credit features. For example, existing § 1026.51 prohibits credit card issuers from extending credit without assessing the consumer’s ability to pay, with special rules regarding the extension of credit to persons under the age of 21. In addition, existing § 1026.52(a) restricts the amount of fees (including annual or other periodic fees to access the plan) that an issuer can charge during the first year after an account is opened, such that the fees generally cannot exceed 25 percent of the initial credit limit. These provisions will provide important protections to consumers to help ensure that consumers using covered separate credit features accessible by hybrid prepaid-credit cards where only annual or other periodic fees are imposed for participation in the credit feature do not become overextended in using credit, and that the periodic fees imposed during the first year generally do not exceed more than 25 percent of the initial credit line.

Thus, the Bureau is revising existing § 1026.4(c)(4) and existing comment 4(c)(4)-1 to

provide that the exception for participation fees from the definition of “finance charge” does not apply in relation to a covered separate credit feature accessible by a hybrid prepaid-credit card, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. The Bureau also is adding new comment 4(c)(4)-3 to cross-reference new comment 4(b)(11)-1 for guidance on when fees imposed in connection with credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

As discussed above, the Bureau is amending existing § 1026.4(c)(4) to provide that the exclusion in that paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. This change to existing § 1026.4(c)(4) is limited to fees to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card, rather than covering all credit in connection with a prepaid account. The Bureau intends to preserve existing § 1026.4(c)(4) with respect to non-covered separate credit features for which a participation fee is charged. Thus, the exclusion of participation fees from the definition of finance charge in final § 1026.4(c)(4) would still apply with respect to participation fees imposed on non-covered separate credit features, as applicable.

When a prepaid account issuer offers incidental credit, new § 1026.61(a)(4) generally does not allow credit-related fees to be charged for the incidental credit, including fees or charges for holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. Thus, if a prepaid account issuer did charge these participation fees, it would fall outside the scope of new § 1026.61(a)(4) and would become subject to the general rules for hybrid prepaid-credit cards including new § 1026.4(c)(4). This prepaid account issuer would be subject to new § 1026.61(b) and thus must structure the credit feature as a covered separate credit feature, as well as being subject to new § 1026.4(c)(4).

### *Subpart B—Open-End Credit*

The provisions in subpart B generally apply to a “creditor,” as defined in existing § 1026.2(a)(17), that extends “open-end credit,” as defined in existing § 1026.2(a)(20). As set forth in existing § 1026.2(a)(17)(iii) and (iv), the provisions of subpart B also generally apply to card issuers that extend credit. These card issuers generally would be “creditors” for purposes of subpart B. These provisions generally require that such creditors must provide account-opening disclosures and periodic statement disclosures. These provisions also set forth rules for the treatment of payments and credit balances as well as procedures for resolving credit billing errors. While most of the provisions in subpart B apply generally to open-end credit, as described below, some of the provisions only apply to a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term is defined in existing § 1026.2(a)(15)(ii). In addition, subpart B also sets forth, in existing § 1026.12, provisions applicable to credit card transactions; those provisions generally apply to a “card issuer” as defined in existing § 1026.2(a)(7).

As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used

from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as “non-covered separate credit features,” as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of “open-end credit” and that credit will not be home-secured. See the section-by-section analysis of the definition of “open-end-credit” in § 1026.2(a)(20), the definition of “finance charge” in § 1026.4, and the definition of “hybrid prepaid-credit card” in § 1026.61(a).

In addition, as discussed in the section-by-section analyses of §§ 1026.2(a)(7), (a)(15)(i) and (ii), and 1026.61(a), a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) credit plan is a “credit card account under an open-end (not home-secured) consumer credit plan” under final § 1026.2(a)(15)(ii) and the person issuing the hybrid prepaid-credit card (and the person offering the covered separate credit feature) are “card issuers” under final § 1026.2(a)(7). For a discussion of how card issuers would still be subject to certain provisions in subpart B if they extend credit that is not “open-end credit,” see the section-by-section analysis of § 1026.2(a)(17) above.

The Bureau is revising subpart B to provide guidance on how certain provisions in subpart B apply to covered separate credit features accessible by hybrid prepaid-credit cards. Specifically, the final rule provides additional guidance regarding: (1) disclosure requirements applicable to account opening in final § 1026.6; (2) disclosure requirements applicable to periodic statements in final §§ 1026.5, 1026.7, and 1026.8; (3) treatment of payment requirements as set forth in final § 1026.10; and (4) billing error procedures in final § 1026.13.

The Bureau also is revising certain provisions that apply to credit card transactions in final § 1026.12 to provide guidance on how those provisions apply to credit card transactions that are made from a covered separate credit feature accessible by a hybrid prepaid-credit card.

Specifically, the final rule provides additional guidance on: (1) unsolicited issuance of a credit card in final § 1026.12(a); (2) the right of a cardholder to assert claims or defenses against a card issuer in final § 1026.12(c); and (3) the prohibition on offsets by a card issuer in final § 1026.12(d).

To facilitate compliance, the Bureau also is clarifying that with respect to a non-covered separate credit feature that is accessible by a prepaid card, as defined in new § 1026.61, fees or charges imposed on the asset feature of the prepaid account are not “charges imposed as part of the plan” under final § 1026.6(b)(3) with respect to the non-covered separate credit feature, and thus these fees or charges are not required to be disclosed under Regulation Z with respect to the non-covered separate credit feature. In addition, the Bureau is clarifying that fees or charges that are not charges imposed as part of the plan are not subject to the offset restrictions set forth in final § 1026.12(d). As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(4)(ii) and (f)(1) above, fees or charges imposed on the asset feature of the prepaid account are required to be disclosed under Regulation E.

#### *Section 1026.5 General Disclosure Requirements*

##### *5(b) Time of Disclosures*

##### *5(b)(2) Periodic Statements*

##### *5(b)(2)(ii) Timing Requirements*

TILA sections 127(b) and 163, which are implemented in existing § 1026.5(b)(2), set forth the timing requirements for providing periodic statements for open-end credit accounts and credit card accounts.<sup>626</sup> Existing § 1026.5(b)(2)(i) provides that a creditor that extends open-end credit or credit accessible by a credit card generally is required to provide a periodic statement,

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<sup>626</sup> 15 U.S.C. 1637(b) and 1666b; *see also* 15 U.S.C. 1602(g).

as required by existing § 1026.7, for each billing cycle at the end of which an account has a debit or credit balance of more than \$1 or on which a finance charge has been imposed.

Existing § 1026.5(b)(2)(ii)(A) provides that for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that: (1) periodic statements for those accounts are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to existing § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment. See the section-by-section analysis of § 1026.2(a)(15)(ii) above for a discussion of the term “credit card account under an open-end (not home-secured) consumer credit plan.”

TILA sections 127(b)(12) and (o), which are implemented in existing § 1026.7(b)(11)(i)(A), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan.<sup>627</sup> Existing § 1026.7(b)(11)(i)(A) provides that for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement the due date for a payment. In addition, the due date disclosed must be the same day of the month for each billing cycle.

Although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are open-end credit, the Board, in implementing these provisions, set forth in existing § 1026.7(b)(11)(i)(A) that the payment due date requirement in existing § 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card

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<sup>627</sup> 15 U.S.C. 1637(b)(12), (o).

accounts. Thus, as explained in existing comment 5(b)(2)(ii)-4.i, the requirement in existing § 1026.5(b)(2)(ii)(A)(I) to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement does not apply to charge card accounts. In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.<sup>628</sup> Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to charge card account, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be appropriate to apply the payment due date disclosure in existing § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

#### *The Bureau's Proposal*

The proposal would have amended existing § 1026.7(b)(11)(ii)(A) to provide that the due date disclosure does apply to periodic statements provided solely for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card and the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under the proposal, the due date disclosure in proposed § 1026.7(b)(11)(i)(A) would have applied to periodic statements provided for a credit card account under an open-end (not home-secured) consumer credit plan, including a charge card account, where the account is accessed by

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<sup>628</sup> 75 FR 7658 at 7672-7673, Feb. 22, 2010.

a credit card that is a prepaid card. Thus, as a technical revision, the proposal would have revised existing comment 5(b)(2)(ii)-4.i to reflect the proposed changes to existing § 1026.7(b)(11) that the due date requirement would apply to a charge card account accessed by a prepaid card that is a charge card where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan.

#### *Comments Received*

One industry trade association indicated that the Bureau should not subject prepaid cards that are charge cards to rules that do not apply to other types of charge cards but did not specify why this specific proposal was not necessary.

#### *The Final Rule*

The Bureau is modifying comment 5(b)(2)(ii)-4.i as proposed with technical revisions to clarify the intent of the comment and to be consistent with new § 1026.61. As discussed in the section-by-section analysis of § 1026.7(b)(11) below, the final rule provides that the due date disclosure set forth in final § 1026.7(b)(11)(i)(A) applies to periodic statements provided for a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card account where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, as a technical revision, the final rule revises comment 5(b)(2)(ii)-4.i to state that the exception from the disclosure requirements in final § 1026.7(b)(11) for charge card accounts does not apply to covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in new § 1026.61.<sup>629</sup> As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2)

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<sup>629</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 5(b)(2)(ii)-4.i would be revised to reflect the

below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analyses of §§ 1026.7(b)(11) and 1026.12(d)(3) below, the Bureau believes that it is important to provide strong protections to prepaid accountholders to ensure that they can control when and if funds are swept from their accounts to repay credit extended through a covered separate credit feature. In particular, the Bureau believes that for all covered separate credit features—including charge card accounts—accessible by a hybrid prepaid-credit card, where these credit features are credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer should be required to adopt reasonable procedures designed to ensure that periodic statements for these credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement, pursuant to final § 1026.7(b)(11)(i)(A). As discussed in more detail in the section-by-section analyses of §§ 1026.7(b)(11) and 1026.12(d)(3), the Bureau believes that this requirement, along with changes to the offset prohibition in final § 1026.12(d)(3), will ensure that the due date of the covered separate credit feature accessible by a hybrid prepaid-credit card is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent TILA’s offset prohibition.

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proposed changes to § 1026.7(b)(11) that the due date requirement does apply to charge card accounts accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 5(b)(2)(ii)-4.i related to these account numbers.

As discussed in more detail in the section-by-section analysis of § 1026.12(d)(3) below, the Bureau is concerned that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, some card issuers may attempt to circumvent the prohibition on offsets by both specifying that each transaction on the covered separate credit feature is due on the date on which funds are subsequently deposited into the account and obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt from the prepaid account when deposits are received into the prepaid account. The Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may rely significantly on obtaining a consumer's written authorization of daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders who choose to rely on covered separate credit features. The Bureau also believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may be able to obtain a consumer's written authorization to debit the prepaid account more easily than for other types of credit card accounts because consumers may believe that, in order to obtain credit, they must provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

#### Section 1026.6 Account-Opening Disclosures

TILA section 127(a) requires creditors to provide consumers with information about key credit terms before opening an open-end account or a credit card account, such as rates and fees that may be assessed on the account.<sup>630</sup> This TILA provision is implemented in existing § 1026.6.

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<sup>630</sup> 15 U.S.C. 1637(a); *see also* 15 U.S.C. 1602(g).

Existing § 1026.6(b) sets forth the account-opening disclosures that must be provided with respect to open-end credit or credit card accounts that are not home-secured. Under existing § 1026.6(b)(1) and (2), certain account-opening disclosures must be disclosed in a tabular format. These disclosures include: (1) the APRs applicable to the account for purchases, cash advances, and balance transfers; (2) any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit account, including any fee based on account activity or inactivity; (3) any non-periodic fees related to opening the account, such as one-time membership or participation fees; (4) any minimum or fixed finance charge that could be imposed during a billing cycle; (5) any transaction charge imposed on purchases, cash advances or balance transfers; (6) any late payment fees, over the limit fees, or returned payment fees; (7) whether a grace period on transactions applies; (8) the name of the balance computation method used to determine the balance for each feature on the credit account; (9) any fees for required insurance, debt cancellation, or debt suspension coverage; and (10) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the credit account, disclosures about the available credit that will remain after those fees are imposed.

Existing § 1026.6(b)(3) sets forth general disclosure requirements about costs imposed as part of the plan. Specifically, existing § 1026.6(b)(3) provides that a creditor must disclose, to the extent applicable: (1) for charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined; and (2) for finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge.

Existing § 1026.6(b)(3)(ii) provides that charges imposed as part of the plan are: (1) finance charges identified under existing § 1026.4(a) and (b); (2) charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law; (3) taxes imposed on the credit transaction by a State or other governmental body, such as documentary stamp taxes on cash advances; (4) charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment; (5) charges imposed for terminating a plan; and (6) charges for voluntary credit insurance, debt cancellation, or debt suspension.

Existing § 1026.6(b)(3)(iii) provides that charges that are not imposed as part of the plan include: (1) charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system; (2) a charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature; and (3) charges under § 1026.4(e) which are disclosed as specified.

Existing § 1026.5(b)(1) provides that charges imposed as part of the plan that must be disclosed in the account-opening table under existing § 1026.6(b)(2) must be provided before the first transaction is made under the plan. Charges that are imposed as part of the plan and are not required to be disclosed under existing § 1026.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them.

The proposal did not contain proposed changes to existing § 1026.6(b)(2) and (3). Nonetheless, the Bureau believes that additional guidance is needed with respect to these disclosure requirements given the changes that the final rule makes to the existing definition of “finance charge” in § 1026.4 with respect to credit offered in connection with prepaid accounts. As discussed in the section-by-section analysis of § 1026.4(b)(11) above, the final rule provides guidance on when fees or charges imposed on prepaid accounts are finance charges under final § 1026.4. Consistent with the changes to the definition of “finance charge” in the final rule, the final rule also provides guidance with respect to the disclosure requirements in § 1026.6(b)(2) and (3).

As discussed below, to ensure compliance with the disclosure requirements in final § 1026.6(b)(2) and (3), with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the final rule provides guidance on how the account-opening disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of the prepaid account. Specifically, the final rule provides that, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, fees or charges imposed on the asset feature of the prepaid account are not “charges imposed as part of the plan” with respect to the covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. Thus, these fees or charges are not required to be disclosed in the account-opening disclosures pursuant to final § 1026.6(b)(2) and (3) with respect to the covered separate credit feature. As discussed in the section-by-section analyses of Regulation E

§ 1005.18(b)(4)(ii) and (f)(1) above, these fees or charges are required to be disclosed under Regulation E.

In addition, a non-covered separate credit feature may be subject to the provisions in § 1026.6(b)(2) and (3) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. To facilitate compliance, the Bureau also is clarifying that fees or charges imposed on the asset feature of the prepaid account are not “charges imposed as part of the plan” with respect to the non-covered separate credit feature. Thus, these fees or charges are not required to be disclosed under final § 1026.6(b)(2) and (3) with respect to that non-covered separate credit feature.

#### *Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards*

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

With regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the Bureau is adding new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1 to provide guidance on when a fee or charge imposed on the asset feature of the prepaid account is considered a “charge imposed as part of the plan” under final § 1026.6(b)(3) with respect to the covered separate credit feature. Specifically, new § 1026.6(b)(3)(iii)(D) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-

credit card, as defined in new § 1026.61, the term “charges imposed as part of the plan” does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

New comment 6(b)(3)(iii)(D)-1.i provides an example of the rule set forth in new § 1026.6(b)(3)(iii)(D). For example, assume a prepaid account issuer charges a \$0.50 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a \$0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the \$0.50 fees are comparable. Thus, the \$0.50 fee for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of a transaction conducted with the card is not a charge imposed as part of the plan. However, in this example, if the prepaid account issuer imposes a \$1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, the \$0.75 excess is a charge imposed as part of the plan with respect to the covered separate credit feature.

New comment 6(b)(3)(iii)(D)-1.i also states that this \$0.75 excess also is a finance charge under new § 1026.4(b)(11)(ii). New comment 6(b)(3)(iii)(D)-1.ii cross-references new comment 4(b)(11)(ii)-1 for additional illustrations of when a prepaid account issuer is charging comparable per transaction fees or load or transfer fees on the asset feature of the prepaid account.

The Bureau believes that without this clarification, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, certain fees imposed on the asset feature of the prepaid account that are not finance charges still could be considered charges imposed as part of the plan under existing § 1026.6(b)(3)(ii) with respect to the covered separate credit feature. Specifically, existing § 1026.6(b)(3)(ii)(D) provides that the term “charges imposed as part of the plan” includes “charges for which the payment, or nonpayment, affect the consumer’s access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.” Existing comment 6(b)(3)(ii)-2.i provides that charges for which the payment or nonpayment affect the consumer’s access to the plan include “fees for using a card at a creditor’s ATM to obtain a cash advance.”

The Bureau is concerned that without the clarification in new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, existing § 1026.6(b)(3)(ii)(D) and existing comment 6(b)(3)(ii)-2.i could be read to include per transaction fees imposed on the asset feature of the prepaid account as “charges imposed as part of the plan” with respect to the covered separate credit feature when those fees are imposed for transactions that involve credit extensions from a covered separate credit feature, even if the fee is not a finance charge under new § 1026.4(b)(11)(ii). As a result, any per transaction fees for those transactions would be disclosed under both Regulations Z and E, even if the fee is not a finance charge under new § 1026.4(b)(11)(ii). For example, assume a prepaid account issuer charges \$0.50 on prepaid accounts for each transaction that accesses funds in the asset balance of the prepaid account without a covered separate credit feature accessible by a hybrid prepaid-

credit card. Also, assume that the prepaid account issuer charges \$0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the \$0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge under new § 1026.4(b)(11)(ii).

Nonetheless, if these per transaction fees were “charges imposed as part of the plan” under existing § 1026.6(b)(3)(ii) with respect to the covered separate credit feature, these per transaction fees would need to be disclosed in the Regulation Z account-opening table required by existing § 1026.6(b)(1) and (2) with respect to the covered separate credit feature. In addition, these per transaction fees would need to be disclosed on the Regulation Z periodic statement for the covered separate credit feature in any billing cycles in which they were imposed as set forth in existing § 1026.7(b)(6).

If disclosure of these per transaction fees were required under Regulation Z, these disclosures would duplicate Regulation E disclosures of the fees that are required under the Regulation E final rule. Pursuant to final Regulation E § 1005.18(b)(4) and (f)(1), these per transaction fees must be disclosed in the long form pre-acquisition disclosure and in the initial disclosures for the prepaid account, respectively, because they are imposed on the asset feature of the prepaid account. In addition, under existing Regulation E § 1005.9(b), these per transaction fees must also be disclosed on the Regulation E periodic statement or on the written and electronic transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1) because these fees are imposed on the asset feature of the prepaid account. *See also* final Regulation E § 1005.18(c)(4).

New § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1 make clear that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a “charge imposed as part of the plan” for purposes of Regulation Z with respect to the covered separate credit feature if the fee or charge is not a finance charge under new § 1026.4(b)(11)(ii). As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii), the Bureau believes that to the extent that a prepaid account issuer is charging the same comparable fee on the asset balance of a prepaid account with a covered separate credit feature as the fee that it charges on a prepaid account in the same prepaid account program without such a credit feature, the fee is not being charged for credit and thus, is not a finance charge. As such, the Bureau believes that these fees are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the covered separate credit feature.

Consistent with new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the Bureau also is adding new commentary to § 1026.6(b)(2) regarding the disclosure of fees imposed on the asset feature of the prepaid account in the account-opening table. Specifically, new comment 6(b)(2)-1 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a creditor is required to disclose under existing § 1026.6(b)(2) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under final § 1026.6(b)(3) to the

extent those fees or charges fall within the categories of fees required to be disclosed under existing § 1026.6(b)(2). For example, assume a creditor imposes a \$1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a \$0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the \$0.75 excess is a “charge imposed as part of the plan” under § 1026.6(b)(3) and must be disclosed as a transaction fee for purchases under § 1026.6(b)(2)(iv) in the account-opening table. New comment 6(b)(2)-2 clarifies that a creditor is not required to disclose in the account-opening table under final § 1026.6(b)(2) any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3).

To ease compliance risk and burden and for other reasons, with regard to a covered separate credit feature and an asset feature that are both accessible by a hybrid prepaid-credit card, the Bureau expects that prepaid account issuers will choose not to impose finance charges on the asset feature of the prepaid account. Instead, the Bureau expects that prepaid account issuers will choose to charge comparable fees on the asset feature of a prepaid account with a linked covered separate credit feature as those charged on prepaid accounts in the same prepaid account program that are not linked to a covered separate credit feature. The Bureau expects that prepaid account issuers will choose to impose finance charges on the credit feature itself, and not on the asset feature of the prepaid account.

As noted above, if a prepaid account issuer does impose finance charges on the asset feature of the prepaid account, as described in new § 1026.4(b)(11)(ii), these finance charges

must be disclosed under both Regulations Z and E as applicable. In that case, the prepaid account issuer must coordinate the disclosures under Regulations Z and E and must provide these disclosures in a way that ensures that consumers understand the fees that could be imposed. Nonetheless, as discussed above, the Bureau believes that most prepaid account issuers will choose to avoid imposing finance charges on the asset feature of the prepaid account in order to avoid compliance issues and risks related to providing disclosures with respect to these fees under both Regulations E and Z.

#### *Non-Covered Separate Credit Features*

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

A non-covered separate credit feature may be subject to the provisions in § 1026.6(b)(2) and (3) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. With respect to non-covered separate credit features that are subject to § 1026.6, to facilitate compliance with the disclosure requirements in final § 1026.6(b)(2) and (3), the final rule provides guidance on how the disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of a prepaid account in relation to non-covered separate credit features accessible by prepaid cards. Specifically, new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)-1 provide that with regard to a non-covered separate credit feature accessible by a prepaid card as defined in new § 1026.61, the term “charges imposed as part of the plan” does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 6(b)(3)(iii)(E)-1 also cross-references new comment 4(b)(11)-1.ii.B that provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature. New comment 6(b)(2)-2 provides that a creditor is not required to disclose in the account-opening table under final § 1026.6(b)(2) any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3). Thus, none of the fees or charges imposed on the asset feature of the prepaid account would be required to be disclosed under final § 1026.6(b) with respect to the non-covered separate credit feature.

As discussed above in relation to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that without this clarification, certain fees or charges imposed on the asset feature of the prepaid account that are not finance charges with respect to the non-covered separate credit features still could be considered fees imposed as part of the plan

under existing § 1026.6(b)(3)(ii). Specifically, existing § 1026.6(b)(3)(ii)(D) provides that the term “charges imposed as part of the plan” includes “charges for which the payment, or nonpayment, affect the consumer’s access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.” The Bureau is concerned that without this clarification, existing § 1026.6(b)(3)(ii)(D) could be read to include a load or transfer fee imposed on the asset feature of the prepaid account as a “charge imposed as part of the plan” with respect to a non-covered separate credit feature when the fee is imposed for a transaction where credit is drawn or transferred from a non-covered separate credit feature, even if the fee is not a finance charge with respect to the non-covered separate credit feature. Without this clarification, the load or transfer fees for those transactions would need to be disclosed under both Regulations Z and E, even if the fee or charge is not a finance charge under § 1026.4.

New § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)-1 make clear that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are charges imposed as part of the plan with respect to the non-covered separate credit feature for purposes of Regulation Z. Under new comment 4(b)(11)-1.ii.B, these fees or charges are not finance charges with respect to the non-covered separate credit feature. The Bureau believes that because fees or charges that are imposed on the asset feature of the prepaid account are not finance charges under final § 1026.4 with regard to a non-covered separate credit feature, these fees or charges are more appropriately disclosed on the Regulation E disclosures, and they should not be disclosed as well on the Regulation Z disclosures with respect to non-covered separate credit features.

## *Section 1026.7 Periodic Statement*

### *7(b) Rules Affecting Open-End (not Home-Secured) Plans & 7(b)(13) Format Requirements*

TILA section 127(b) identifies information about an open-end account or credit card account that must be disclosed when a creditor is required to provide periodic statements.<sup>631</sup>

TILA section 127(b) is implemented in existing § 1026.7.

The periodic statement requirements in existing § 1026.7 generally apply to a “creditor” as defined in existing § 1026.2(a)(17) that extends “open-end credit” as defined in existing § 1026.2(a)(20). The periodic statement requirements in existing § 1026.7 also generally apply to card issuers that extend credit, as set forth in existing § 1026.2(a)(17)(iii) and (iv). These card issuers generally are considered “creditors” for purposes of the periodic statement requirements.

Existing § 1026.7(b) sets forth the content requirements for periodic statements given with respect to open-end plans or credit card accounts that are not home-secured. Generally, under existing § 1026.7(b), such periodic statements must include, among other things, information about: (1) the amount of the balance outstanding at the beginning of the billing cycle; (2) any credit to the account during the billing cycle, such as payments; (3) any credit transactions that occurred during a billing cycle, described in accordance with existing § 1026.8; (4) the APRs that may be used to compute interest charges during the billing cycle; (5) the amount of the balance to which an APR was applied and an explanation of how that balance was determined; (6) the amount of each “charge imposed as part of the plan” incurred during the billing cycle; (7) the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges; (8) the closing date of the billing cycle and the account balance outstanding on that date; and (9) the due date for a

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<sup>631</sup> 15 U.S.C. 1637(b); *see also* 15 U.S.C. 1602(g).

payment with respect to a credit card account under an open-end (not home-secured) consumer credit plan.

As discussed above, any “charge imposed as part of the plan,” as that term is defined in existing § 1026.6(b)(3), must be disclosed on the Regulation Z periodic statement if it was incurred during the billing cycle. If the charges imposed as part of the plan are interest charges, these charges must be itemized by type of transaction, and the total interest charges that were imposed during the billing cycle and year to date must also be disclosed. If the charges imposed as part of the plan are fees other than interest charges, these fees must be itemized by type, and the total fee charges that were imposed during the billing cycle and year to date must be disclosed.

Existing § 1026.7(b)(13) requires that certain disclosures on the Regulation Z periodic statement must be disclosed on the front of the first page of the periodic statement. Existing comment 7(b)(13)-1 explains that some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. This existing comment provides that for purposes of providing disclosures on the front of the first page of the periodic statement pursuant to existing § 1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.

Existing § 1026.5(a)(1)(iii) also provides that certain disclosures required by subpart B, including periodic statements required under § 1026.7, may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

The periodic statement requirements in final § 1026.7(b) apply to covered separate credit features accessible by hybrid prepaid-credit cards because card issuers that extend credit under

those credit features are “creditors” that are subject to the periodic statement requirements in final § 1026.7, pursuant to existing § 1026.2(a)(17)(iii) or (iv). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

#### *Periodic Statements under Regulations E and Z*

Under the proposal, under Regulation E, periodic statements would have been required under existing § 1005.9(b) to disclose non-credit transactions on the prepaid account, unless the financial institution complied with proposed § 1005.18(c). Specifically, in lieu of providing periodic statements required under § 1005.9(b), proposed § 1005.18(c)(1) would have permitted a financial institution to make available to the consumer: (1) the consumer’s account balance through a readily available telephone line; (2) an electronic history of the consumer’s account transactions, such as through a website, that covers at least 18 months preceding the date the consumer electronically accesses the account; and (3) a written history of the consumer’s account transactions that is provided promptly in response to an oral or written request and that covers at least 18 months preceding the date the financial institution receives the consumer’s request.

In addition, under the proposal, a creditor would have been required to provide a Regulation Z periodic statement with respect to credit features accessed by prepaid cards that are credit cards because card issuers that extend credit under those credit features would have been

“creditors” that are subject to the periodic statement requirements in proposed § 1026.7(b), pursuant to existing § 1026.2(a)(17)(iii) or (iv).

One industry trade association urged the Bureau not to impose a Regulation Z periodic statement requirement in addition to the Regulation E statement requirement. This commenter believed that dual statements would add to consumer confusion. This commenter believed that the Regulation E statement requirements should be modified to disclose the finance charge and payment information that otherwise would be included in a Regulation Z statement.

One consumer group commenter indicated that a periodic statement under Regulation Z should be required, and supported allowing a financial institution to combine the Regulations E and Z periodic statements, so long as the combined periodic statement meets the requirements of both regulations.

Under the final rule, a creditor is required to provide a Regulation Z periodic statement under final § 1026.7(b) with respect to a covered separate credit feature that is accessible by a hybrid prepaid-credit card because card issuers that extend credit under those credit features are “creditors” that are subject to the periodic statement requirements in final § 1026.7(b), pursuant to existing § 1026.2(a)(17)(iii) or (iv).<sup>632</sup> The Bureau does not believe that modifying the Regulation E periodic statement requirement in existing § 1005.9(b) or the requirement to provide electronic and written account transaction histories pursuant to the periodic statement alternative in final § 1005.18(c)(1) to include disclosures pertaining to a covered separate credit feature accessible by a hybrid prepaid-credit card would benefit consumers. As discussed in the

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<sup>632</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Under the proposal, Regulation Z periodic statements would have been required with respect to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z.

section-by-section analysis of § 1026.61(b) below, new § 1026.61(b) prohibits an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account from being structured as a negative balance to the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). Instead, a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a “covered separate credit feature” under new § 1026.61(a)(2)(i).

The Bureau believes that retaining the requirement to provide a Regulation Z periodic statement with respect to such an overdraft credit feature that is structured as a separate credit feature will reinforce for consumers that this credit feature is separate from the asset feature of the prepaid account.

As discussed above, existing § 1026.7(b)(13) requires that certain disclosures on the Regulation Z periodic statement must be disclosed on the front of the first page of the periodic statement. Existing comment 7(b)(13)-1 explains that some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. This existing comment provides that for purposes of providing disclosures on the front of the first page of the periodic statement pursuant to existing § 1026.7(b)(13), the first page of such a combined statement is the page on which credit transactions first appear. To facilitate compliance, the Bureau is amending comment 7(b)(13)-1 to provide that the guidance in this comment also applies to financial institutions that provide information about prepaid accounts and account activity in connection with covered separate credit features accessible by

hybrid prepaid-credit cards as defined in § 1026.61 on one periodic statement. This revision to final comment 7(b)(13)-1 clarifies that if a financial institution elects to provide a periodic statement under existing Regulation E § 1005.9(b) to a holder of the prepaid account, the financial institution is permitted to combine the Regulation E and Regulation Z periodic statements. In this case, the financial institution must satisfy the requirements of both Regulation E and Regulation Z in providing the combined statement. If a financial institution instead elects to follow the periodic statement alternative set forth in final Regulation E § 1005.18(c)(1), the financial institution still is required to provide Regulation Z periodic statements in writing pursuant to final § 1026.7. Under existing § 1026.5(a)(1)(iii), financial institutions are permitted to provide the Regulation Z periodic statements in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

#### *Charges Imposed As Part of the Plan*

Existing § 1026.7(b)(6) provides that a creditor must disclose on the Regulation Z periodic statement, among other things, information about the amount of each “charges imposed as part of the plan,” as that term is defined in existing § 1026.6(b)(3), if the charge was incurred during the billing cycle. If the charges imposed as part of the plan are interest charges, these charges must be itemized by type of transaction, and the total interest charges that were imposed during the billing cycle and year to date must also be disclosed. If the charges imposed as part of the plan are fees other than interest charges, these charges must be itemized by type, and the total fee charges that were imposed during the billing cycle and year to date must be disclosed.

*Covered separate credit features accessible by hybrid prepaid-credit cards.* As discussed in the section-by-section analysis of § 1026.6(b)(3) above, the Bureau is adding guidance in new § 1026.6(b)(3)(iii)(D) and new comment 61(b)(3)(iii)(D)-1 on whether fees or charges imposed

on the asset feature of a prepaid account are “charges imposed as part of the plan” under final § 1026.6(b)(3) with respect to a covered separate credit feature where the credit feature and the asset feature are both accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Under the final rule, new § 1026.6(b)(3)(iii)(D) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, the term “charges imposed as part of the plan” with respect to the covered separate credit feature does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii) with respect to the covered separate credit feature. As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) above, the Bureau believes that to the extent that a prepaid account issuer charges the same comparable fee on the asset balance of a prepaid account with a covered separate credit feature as the fee that it charges on a prepaid account in the same prepaid account program without such a credit feature, the fee is not related

to credit, and thus, is not a finance charge. As such, the Bureau believes that these fees are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the covered separate credit feature. Thus, as discussed in the section-by-section analysis of § 1026.6 above, the Bureau is excluding these fees or charges from the term “charges imposed as part of the plan” with respect to covered separate credit features under new § 1026.6(b)(3)(iii)(D). Because these fees or charges are not charges imposed as part of the plan, these fees or charges are not required to be disclosed on the Regulation Z periodic statement under existing § 1026.7(b)(6) with respect to the covered separate credit feature.

The fees or charges imposed on the asset feature of the prepaid account must be disclosed on the Regulation E periodic statement pursuant to existing § 1005.9(b), or on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1). See the section-by-section analysis of Regulation E § 1005.18(c)(1) above.

*Non-covered separate credit features.* As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided not to regulate a prepaid card as a credit card under Regulation Z when it accesses credit from certain credit features. For example, under § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to

Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

As discussed in the section-by-section analysis of § 1026.6 above, to facilitate compliance with the disclosure requirements in final § 1026.6(b)(2) through (3) for non-covered separate credit features that are subject to existing § 1026.6, the final rule provides guidance on how the disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of a prepaid account in relation to non-covered separate credit features accessible by prepaid cards. Specifically, new § 1026.6(b)(3)(iii)(E) and new comment 61(b)(3)(iii)(E)-1 provide that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in new § 1026.61, the term “charges imposed as part of the plan” does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 6(b)(3)(iii)(E)-1 also cross-references new comment 4(b)(11)-1.ii.B, which provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.6 above, the Bureau believes that these fees or charges are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the non-covered separate credit feature. Thus, as discussed in the section-by-section analysis of § 1026.6 above, the Bureau is excluding these fees or charges from the term “charges imposed as part of the plan” with respect to non-covered separate credit features under new § 1026.6(b)(3)(iii)(E). Because these fees or charges are not charges imposed as part of the plan, these fees or charges are not required to be disclosed on the Regulation Z periodic statement under existing § 1026.7(b)(6) with respect to the non-covered

separate credit feature that are subject to final § 1026.7. As discussed above, fees or charges imposed on the asset feature of the prepaid account must be disclosed on the Regulation E periodic statement under existing § 1005.9(b) or on the electronic and written account transaction histories provided to consumers pursuant to the periodic statement alternative set forth in final Regulation E § 1005.18(c)(1). *See also* final Regulation E § 1005.18(c)(4).

#### *Paper Periodic Statements*

One consumer group commenter indicated that the Bureau should prohibit creditors from making consumers consent to electronic communications a condition of a credit feature and from charging fees for providing paper periodic statements under Regulation Z. The consumer group commenter indicated that while it believes that this prohibition should apply to all credit cards and open-end credit, the commenter was particularly concerned that prepaid cardholders whose cards are linked to credit will be coerced into accepting electronic communications even if paper would serve them better.

The Bureau believes the change is beyond the scope of the proposal, and the change is not warranted at this time. Thus, the Bureau is not including changes to Regulation Z on these issues as part of the final rule. The Bureau will monitor this issue with respect to prepaid cardholders who link covered separate credit features accessible by hybrid prepaid-credit cards to their prepaid accounts.

#### *7(b)(11) Due Date; Late Payment Costs*

TILA sections 127(b)(12) and (o), which are implemented in existing § 1026.7(b)(11)(i), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan.<sup>633</sup> Under existing

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<sup>633</sup> 15 U.S.C. 1637(b)(12), (o).

§ 1026.7(b)(11)(i), for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer generally must provide on each periodic statement: (1) the due date for a payment, and the due date disclosed must be the same day of the month for each billing cycle; and (2) the amount of any late payment fee and any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of a late payment. Existing § 1026.7(b)(11)(ii) provides, however, that the requirements of existing § 1026.7(b)(11)(i) do not apply to the following: (1) periodic statements provided solely for charge card accounts; and (2) periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

As also noted in the section-by-section analysis of § 1026.5(b)(2)(ii) above, although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are open-end credit from the requirement to disclose the due date on each periodic statement, the Board in implementing these provisions set forth in existing § 1026.7(b)(11)(ii)(A) provided that the payment due date requirement and other disclosures set forth in existing § 1026.7(b)(11)(i) do not apply to periodic statements provided solely for charge card accounts. In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.<sup>634</sup> Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to

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<sup>634</sup> 75 FR 7658 at 7672-7673, Feb. 22, 2010.

charge card accounts, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be appropriate to apply the payment due date disclosure in existing § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

The proposal would have amended existing § 1026.7(b)(11)(ii)(A) to provide that the due date disclosure does apply to periodic statements provided solely for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card. Thus, under the proposal, the due date disclosure in proposed § 1026.7(b)(11)(i)(A) would have applied to periodic statements provided for a credit card account under an open-end (not home-secured) consumer credit plan, including a charge card account, where the account is accessed by a credit card that is a prepaid card.

One industry trade association indicated that the Bureau should not subject prepaid cards that are charge cards to rules that do not apply to other types of charge cards but did not specify why this specific proposal was not necessary.

The Bureau is adopting § 1026.7(b)(11)(ii)(A) as proposed, with revisions to be consistent with new § 1026.61. Specifically, final § 1026.7(b)(11)(ii)(A) provides that the due date disclosure does apply to periodic statements provided for covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards, as defined in § 1026.61, where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan.<sup>635</sup> Thus, under the final rule, the due date disclosure in final

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<sup>635</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.7(b)(11)(ii)(A)(2) would have provided that the due date disclosure set forth in § 1026.7(b)(11)(i)(A) does apply to periodic statements provided solely for charge card accounts where the charge card accounts are accessed by such account numbers. For the reasons set forth in the

§ 1026.7(b)(11)(i)(A) applies to periodic statements provided for covered separate credit features accessible by hybrid prepaid-credit cards, including charge card accounts, where the covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that this due date requirement, the requirement in final § 1026.5(b)(2)(ii)(A), and the changes to the offset prohibition in final § 1026.12(d)(3), will ensure that the due date of a covered separate credit feature accessible by a hybrid prepaid-credit card that is a credit card account under an open-end (not home-secured) consumer credit plan is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent the offset prohibition.

As discussed in more detail in the section-by-section analysis of § 1026.12(d)(3) below, the Bureau is concerned that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, including charge card accounts, that are credit card accounts under an open-end (not home-secured) consumer credit plan, some card issuers may attempt to circumvent the prohibition on offsets by specifying that each transaction on the covered separate credit feature is due on the date on which funds are subsequently deposited into the account, and obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt when

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section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.7(b)(11)(ii)(A)(2) related to these account numbers.

deposits are received into the prepaid account to help ensure that the debt is repaid. The Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may rely significantly on obtaining a consumer's written authorization of daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders who choose to use covered separate credit features. The Bureau also believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may be able to obtain a consumer's written authorization to debit the prepaid account for the credit card debt more easily than for other types of credit card accounts because consumers may believe that, in order to obtain credit, they have no alternative but to provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

The revisions adopted in final § 1026.7(b)(11), along with the changes adopted in final § 1026.5(b)(2)(ii)(A), in the offset provisions in final § 1026.12(d)(3), and in the compulsory use provisions in final Regulation E § 1005.10(e)(1), would mean, respectively, that with respect to covered separate credit features that are accessible by hybrid prepaid-credit cards, including charge card accounts, that are credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers: (1) would be required to adopt reasonable procedures designed to ensure that periodic statements for the covered separate credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the covered separate credit feature held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written

agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances on the covered separate credit feature other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking website following a cash reload to the asset account).

#### *Section 1026.8 Identifying Transactions on Periodic Statements*

TILA section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle.<sup>636</sup> The statute calls for the Bureau to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished.

Existing § 1026.8 sets forth the requirements for how issuers must describe each credit transaction on the periodic statement. Existing § 1026.8 generally provides that a creditor must identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing certain information. Existing § 1026.8(a) sets forth the requirements for describing a “sale credit” transaction on the periodic statement. A “sale credit” generally means a credit transaction involving the sale of property or services. Existing § 1026.8(b) sets forth the requirements for describing a “nonsale credit” transaction on the periodic statement. A “nonsale credit” transaction generally means a credit transaction that does not involve the sale of property or services. The final rule provides guidance on how creditors may comply with the requirements in final § 1026.8(a) and (b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

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<sup>636</sup> 15 U.S.C. 1637(b)(2).

### *8(a) Sale Credit*

Existing § 1026.8(a) provides that for each credit transaction involving the sale of property or services, the creditor generally must disclose the amount and date of the transaction, and either: (1) a brief identification of the property or services purchased, for creditors and sellers that are the same or related; or (2) the seller's name and the city and State or foreign country where the transaction took place. The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, internet, or telephone order. Existing comment 8(a)-1 provides that the term "sale credit" refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor.

### *The Bureau's Proposal*

Under the proposal, sale credit would have included credit transactions where a prepaid card that is a credit card is used to obtain goods or services from a merchant. Thus, under the proposal, any time a prepaid card that was a credit card was used to obtain goods or services from a merchant and the transaction in whole or in part was funded with credit, the credit transaction would have been disclosed as "sale credit" under proposed § 1026.8(a) rather than as nonsale credit under proposed § 1026.8(b).

Existing comment 8(a)-2 provides guidance on how to disclose the amount of the credit transaction if sale transactions are not billed in full on any single statement. The proposal would have moved the existing language of comment 8(a)-2 to proposed comment 8(a)-2.i. The proposal also would have added comment 8(a)-2.ii to provide that the term "sale credit" includes

a purchase in which the consumer uses a prepaid card that is a credit card to obtain goods or services from a merchant and the transaction is wholly or partially funded by credit, whether or not the merchant is the card issuer or creditor. Proposed comment 8(a)-2.ii also would have provided guidance on how to disclose the amount of the credit transaction for purposes of certain prepaid transactions. Proposed comment 8(a)-2.ii would have set forth guidance on how to disclose a transaction at point of sale where credit is accessed by a prepaid card that is a credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit, such as cash back given to the cardholder. In this situation, proposed comment 8(a)-2.ii would have provided that the creditor must disclose the amount of credit as “sale credit” under existing § 1026.8(a), including the portion of the transaction that involves credit that is not for a purchase of goods or services.

Proposed comment 8(a)-2.ii also would have provided that if a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer’s prepaid account and partially funded by credit, the amount to be disclosed under existing § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction. For example, assume that a cardholder makes a \$50 purchase with the prepaid card but only has \$20 in funds in the prepaid account. The \$30 of credit would have been disclosed on the Regulation Z periodic statement. Under the Regulation E proposal, the amount of the transaction that is funded from the prepaid account would have been disclosed either on the Regulation E periodic statement or on the electronic and written histories of account transactions pursuant to the periodic statement alternative set forth in proposed Regulation E § 1005.18(c)(1)(ii).

### *Comments Received*

The Bureau solicited comment on whether the Bureau should consider a disclosure that would appear on the Regulation Z periodic statement that would notify consumers when a particular transaction is funded partially through the prepaid account and partially funded through credit so that consumers would know to look at the Regulation E periodic statement or account history for additional information related to that transaction.

One consumer group commenter indicated that the Bureau should require that the entire transaction be disclosed on both the Regulation Z periodic statement and the Regulation E periodic statement under § 1005.9(b) (or on the electronic and written account transaction histories pursuant to the periodic statement alternative under proposed § 1005.18(c)(1)), indicating on each statement that only part of the transaction came from each account. This commenter believed that consumers who are trying to identify transactions would be confused if the amount listed on each statement does not match the transaction amount.

### *The Final Rule*

The final rule moves proposed comment 8(a)-2.ii to new comment 8(a)-9 and revises this guidance as discussed below. The Bureau also is revising existing comment 8(a)-1 to provide a cross-reference to new comment 8(a)-9 for guidance on when credit accessible by a hybrid prepaid-credit card from a covered separate credit feature must be disclosed on the Regulation Z periodic statement as sale credit or nonsale credit.

New comment 8(a)-9 provides guidance on when credit accessible by a hybrid prepaid-credit card from a covered separate credit feature must be disclosed on the Regulation Z periodic statement as sale credit or nonsale credit. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid

prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 8(a)-9 recognizes that a card issuer with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card may structure the overdraft credit feature in two ways to cover situations where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time of authorization or settlement to cover the amount of the transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. With respect to the first way, new comment 8(a)-9.i explains that the covered separate credit feature could be structured such that a consumer can use a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature, and \$15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase.

New comment 8(a)-9.i provides that such a transaction is a “sale credit” under final § 1026.8(a). In this example, the \$15 credit transaction will be treated as “sale credit” under final § 1026.8(a).

With respect to the second way, new comment 8(a)-9.ii explains that a covered separate

credit feature accessible by a hybrid prepaid-credit card could be structured where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is transferred from the covered separate credit feature into the asset feature of the prepaid account to cover the amount of the purchase. For example, again, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, the \$15 is transferred from the covered separate credit feature to the asset feature, and a transaction of \$25 is debited from the asset feature of the prepaid account.

New comments 8(a)-9.ii provides that such a transaction is a “nonsale credit” under final § 1026.8(b). In this example, the \$15 credit transaction is treated as “nonsale credit” under § 1026.8(b). The Bureau notes, however, that while this type of credit transaction is disclosed as “nonsale credit” under final § 1026.8(b) on the Regulation Z periodic statement, this transaction is still considered a transaction made with the card to purchase goods or services under final § 1026.12(c) and would be subject to final § 1026.12(c). See the section-by-section analysis of § 1026.12(c) below.

The Bureau believes that for disclosure purposes under final §§ 1026.7(b)(2) and 1026.8, it is appropriate to distinguish these two ways in which a creditor may structure a covered separate credit feature accessible by a hybrid prepaid-credit card. The Bureau believes that this distinction will help consumers better recognize and understand the credit transactions when they are disclosed on the Regulation Z periodic statement. The Bureau believes that this is particularly true when a transaction involves situations where the hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds

from the asset feature of the consumer's prepaid account, and partially paid with credit from a covered separate credit feature.

As discussed above, a credit transaction will be disclosed as "sale credit" on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without transferring funds into the asset feature of the prepaid account. New comment 8(a)-9.iii provides for these types of transactions, if a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account and partially funded by credit from the covered separate credit feature, the amount to be disclosed under final § 1026.8(a) as a "sale credit" is the amount of the credit extension, not the total amount of the purchase transaction.

For example, again, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature, and \$15 of credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without any transfer of funds into the asset feature of the prepaid account. The \$15 credit transaction is disclosed as "sale credit" on the Regulation Z periodic statement, and the \$10 part of the transaction is disclosed on the Regulation E periodic statement under existing Regulation E § 1005.9(b), or alternatively, on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1).

In this example, because the credit transaction is treated as "sale credit" under existing § 1026.8(a), the following information regarding the credit portion of the transaction (the \$15

credit portion, in the example above) generally will be disclosed on the Regulation Z periodic statement: (1) the amount of the transaction; (2) the date of the transaction; (3) the merchant's name; and (4) the merchant's location. In this example, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), similar information will be disclosed on the Regulation E periodic statement, or alternatively, the electronic and written account transaction histories regarding the portion of the transaction that involves asset funds (\$10 in the above example), namely: (1) the amount of the transaction; (2) the date of the transaction; (3) the merchant's name; and (4) the merchant's location. The Bureau believes that because both parts of the transaction are disclosed consistently on the Regulation Z and Regulation E periodic statements (or on the electronic and written account transaction histories provided to consumers pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1)), a consumer will be better able to match up the two parts of the transaction. Thus, the Bureau does not believe that it is necessary in this case to disclose both portions of the transaction on each periodic statement, as suggested by a consumer group commenter as discussed above.

The Bureau recognizes that for purchases of goods or services that involve overdrafts on asset accounts that are executed via debit cards, the credit transaction may be disclosed as nonsale credit. In particular, comment 8(b)-1.iii provides that nonsale credit includes the use of an overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services. In a 1981 rulemaking implementing the Truth in Lending Simplification and Reform Act, the Board indicated that several commenters requested clarification regarding whether a creditor should identify a transaction as sale or nonsale credit when a consumer uses a debit card with an overdraft feature to purchase goods, and in doing so, activates the overdraft. The Board expressed its belief that the credit portions of such

transactions could be viewed as cash advances, and therefore permitted the credit portions to be disclosed as nonsale credit at the creditor's option even though a purchase is involved.<sup>637</sup> As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau is not intending to revise rules in Regulation Z that apply to overdraft plans accessed by debit cards. Nonetheless, for transactions discussed above with respect to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that disclosing the credit transaction as sale credit would be more helpful to consumers than disclosing the transaction as nonsale credit because consumers would receive the seller's name, and the city and State or foreign country where the transaction took place.

If the credit transaction were treated as nonsale credit, the consumer would not receive the information about the seller's name and address. As discussed above, the Bureau believes that the information about the seller's name and address may be useful to consumers in identifying the credit transactions where a hybrid prepaid-credit card is used to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without transferring funds into the asset feature of the prepaid account. As discussed above, the Bureau also notes that under Regulation E, on the periodic statement, or the electronic and written account transaction histories under the periodic statement alternative, a transaction that involves a withdrawal from the prepaid account at point of sale must include the merchant's name and location. Thus, as discussed above, with respect to a single transaction that involves both a withdrawal from the prepaid account and an extension of credit, disclosing such a credit transaction as sale credit could help consumers match up the part

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<sup>637</sup> 46 FR 20848, 20861 (Apr. 7, 1981).

of the transaction that appears on the Regulation Z periodic statement with the part of the transaction that appears on the Regulation E periodic statement or account transaction history.

On the other hand, as set forth in new comments 8(a)-9.ii and 8(b)-1.vi a credit transaction is disclosed as “nonsale credit” under final § 1026.8(b) on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is transferred from the covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, again assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of \$25 is debited from the asset feature of the prepaid account.

In this example, the following information must be disclosed under § 1026.8(b) on the Regulation Z periodic statement with respect to the portion of the transaction that involves credit (\$15 in this example): (1) a brief identification of the transaction; (2) the amount of the transaction; and (3) at least one of the following dates: the date of the transaction; the date the transaction was debited to the consumer’s account; or if the consumer signed the credit document, the date appearing on the document.

Also, in this example, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), the following information will be given on the Regulation E periodic statement (or alternatively, the electronic and written account transaction histories) regarding the transfer of credit into the asset feature of the prepaid account (the \$15 transfer from the covered separate credit feature): (1) the type of transfer and type of account from which funds were transferred;

(2) the amount of the transfer; and (3) the date the transfer was credited to the consumer's account. In addition, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), the following information will be provided on the Regulation E periodic statement (or alternatively, the electronic and written account transaction histories) regarding the \$25 debit to the asset feature: (1) the amount of the transaction; (2) the date of the transaction; and (3) the merchant's name and location.

The Bureau believes that this information on the Regulation Z and E periodic statements (or alternatively, on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1)) will allow consumers to understand better the connection between outgoing transfers from covered separate credit features that are shown on the Regulation Z periodic statements and the incoming transfers that are shown on the Regulation E periodic statements (or alternatively, the electronic and written account transaction histories). The Regulation E periodic statement or account transaction histories also will show information about the purchase transaction made with the card. In the example above, the entire amount of the transaction (\$25 purchase transaction) will be shown on the Regulation E periodic statement or the account transaction histories.

*Transactions that partially involve the purchase of goods or services and partially involves other credit.* New comment 8(a)-9.iii also provides that if a transaction is "sale credit" as described above, for a transaction at point of sale conducted using a hybrid prepaid-credit card that accesses credit from a covered separate credit feature where the transaction partially involves the purchase of goods or services and partially involves other credit, such as cash back given to the cardholder, the creditor must disclose the entire amount of the credit as sale credit, including the part of the transaction that does not relate to the purchase of goods or services.

The Bureau understands that creditors may not be able to identify separately the amount of the credit transaction that relates to the purchase of goods or services at a merchant and the amount of the credit transaction that relates to other types of credit, such as cash back given to the cardholder. In this case, the card issuer may only be able to determine the total amount of credit extended for that transaction. To ensure that consumers are better able to recognize credit transactions disclosed on periodic statements, new comment 8(a)-9.iii requires that a creditor disclose the entire amount of the credit transaction as “sale credit” under final § 1026.8(a). Under this approach, a creditor must disclose the entire amount of the credit transaction, the date of the transaction, and the merchant’s name and location on the Regulation Z periodic statement. The Bureau believes such information is sufficient to allow a consumer to identify a transaction, even where part of the amount of the transaction is for cash back or other forms of credit given to the cardholder at point of sale. For these types of transactions, the Bureau anticipates that the cardholder will associate the entire credit transaction, including the cash back portion of the credit, with the merchant’s name.

#### *8(b) Nonsale Credit*

Existing § 1026.8(b) provides that for each credit transaction not involving the sale of property or services, the creditor generally must disclose a brief identification of the transaction; the amount of the transaction; and at least one of the following dates: (1) the date of the transaction; (2) the date the transaction was debited to the consumer’s account; or (3) if the consumer signed the credit document, the date appearing on the document. Existing comment 8(b)-1 provides that the term “nonsale credit” refers to any form of loan credit, including, for example: (1) a cash advance; (2) an advance on a credit plan that is accessed by overdrafts on a checking account; (3) the use of a “supplemental credit device” in the form of a check or draft or

the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services; and (4) miscellaneous debits to remedy mispostings, returned checks, and similar entries.

The proposal would have added an additional example to existing comment 8(b)-1 to provide guidance on when credit transactions are “nonsale credit” when credit is accessed by a prepaid card that is a credit card. First, proposed comment 8(b)-1.v would have explained that “nonsale credit” includes an advance at an ATM on a credit plan that is accessed by a prepaid card that is a credit card. This proposed comment also would have clarified that if a prepaid card that is a credit card is used to obtain an advance at an ATM and the transaction is partially funded by the consumer’s prepaid account and partially funded by a credit extension, the amount to be disclosed under proposed § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

The proposal also would have made technical revisions to two comments—existing comment 8(b)-1.ii and existing comment 8(b)-2—which would have provided guidance regarding overdraft credit plans in order to make clear that these comments do not apply to overdraft credit plans related to prepaid accounts.

The Bureau did not receive any specific comments on this aspect of the proposal. The Bureau is adopting new comment 8(b)-1.v as proposed, with revisions to be consistent with new § 1026.61.<sup>638</sup> New comment 8(b)-1.v provides that an advance at an ATM on a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 is an example of

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<sup>638</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 8(b)-1.vi would have explained that “nonsale credit” includes an advance on a credit plan accessed by such an account number. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed comment 8(b)-1.vi related to these account numbers.

nonsale credit under § 1026.8(b). This comment also provides that if a hybrid prepaid-credit card is used to obtain an advance at an ATM and the transaction is partially paid with funds from the asset feature of the prepaid account and partially paid with a credit extension from the covered separate credit feature, the amount to be disclosed under final § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

As discussed in more detail in the section-by-section analysis of § 1026.8(a), the Bureau also is adding new comment 8(b)-1.vi to provide that a credit transaction will be disclosed as “nonsale credit” under final § 1026.8(b) on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase, as described in new comment 8(a)-9.ii. In this scenario, the amount to be disclosed under final § 1026.8(b) is the amount of the credit extension, not the total amount of the purchase transaction.

Consistent with the proposal, the final rule also adopts final comments 8(b)-1.ii and comment 8(b)-2 as proposed with revisions to specify that the term “prepaid account” is defined in new § 1026.61.

### *Section 1026.10 Payments*

#### *10(a) General Rule*

TILA section 164(a), which is implemented in existing § 1026.10(a), provides that payments received from an obligor under an open-end consumer credit plan or a credit card account by the creditor shall be posted promptly to the obligor’s account as specified in

regulations of the Bureau.<sup>639</sup> Existing § 1026.10(a) generally provides that a creditor for open-end credit or a credit card account shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in § 1026.10(b). Existing comment 10(a)-2 provides guidance on the term "date of receipt" as used in existing § 1026.10(a). Specifically, existing comment 10(a)-2 provides that the "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. Existing comment 10(a)-2.ii provides an example illustrating the date of receipt for payments related to payroll deduction plans. Specifically, existing comment 10(a)-2.ii provides that in a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

The proposal would have amended this comment to reference proposed changes that would have been added to proposed § 1026.12(d)(3) related to the prohibition on offsets. As discussed in more detail in the section-by-section analysis of § 1026.12(d) below, existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Nonetheless, existing § 1026.12(d)(3) provides that the prohibition on offsets does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from

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<sup>639</sup> 15 U.S.C. 1666c; *see also* 15 U.S.C. 1602(g).

a deposit account held with the card issuer (subject to the limitations in existing § 1026.13(d)(1)). With respect to credit cards that are also prepaid cards, the proposal would have added proposed § 1026.12(d)(3)(ii) to define “periodically” to mean no more frequently than once per calendar month. Thus, under proposed § 1026.12(d)(3), with respect to such credit card accounts that would have been accessed by a prepaid card that is a credit card, a card issuer would have been permitted to deduct automatically all or a part of the cardholder’s credit card debt from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so.

The proposal would have revised existing comment 10(a)-2.ii to explain that proposed § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by prepaid cards that are credit cards, from automatically deducting credit card account payments from a prepaid account or other deposit account held by the card issuer more frequently than once per calendar month. In a payroll deduction plan in which funds are deposited to a prepaid account held by the creditor, and from which payments are made on a monthly basis to a credit card account accessed by a prepaid card that is a credit card, payment would have been considered to be received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

The Bureau did not receive comment on this aspect of the proposal. The Bureau is adopting revisions to existing comment 10(a)-2.ii as proposed, with technical revisions to clarify

the intent of the provision and to be consistent with new § 1026.61.<sup>640</sup> Final comment 10(a)-2.ii explains that in a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. The comment also explains that final § 1026.12(d)(3)(ii) defines “periodically” to mean no more frequently than once per calendar month for payments made periodically from a deposit account, such as prepaid account, held by a card issuer to pay credit card debt incurred with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 that is held by the card issuer. In a payroll deduction plan in which funds are deposited to a prepaid account held by the card issuer, and from which payments are made on a monthly basis to a covered separate credit feature accessible by a hybrid prepaid-credit card that is held by the card issuer, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new

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<sup>640</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have revised comment 10(a)-2.ii to explain that § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by such account numbers, from automatically deducting credit card account payments from a prepaid account or other deposit account held by the card issuer more frequently than once per calendar month. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 10(a)-2.ii related to these account numbers.

§ 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

#### *10(b) Specific Requirements for Payments*

Existing § 1026.10(b) generally sets forth certain rules related to how creditor must handle payments received from consumers. Existing § 1026.10(b)(1) generally provides that a creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments. Nonetheless, existing comment 10(b)-1 explains that a creditor may be prohibited from specifying payment by preauthorized EFT and cross-references EFTA section 913.

As a technical revision, the proposal would have amended this comment to cross-reference Regulation E § 1005.10(e), which implements EFTA section 913. The Bureau did not receive any comments on this proposed revision. Consistent with the proposal, the final rule adopts final comment 10(b)-1 to explain that a creditor may be prohibited from specifying payment by preauthorized EFT and to cross-reference both EFTA section 913 and Regulation E § 1005.10(e).

#### *Section 1026.12 Special Credit Card Provisions*

Existing § 1026.12 contains special rules applicable to credit cards and credit card accounts, including conditions under which a credit card may be issued, liability of cardholders for unauthorized use, cardholder rights to assert merchant claims and defenses against the card issuer, and the prohibition on offsets by issuers.

#### *12(a) Issuance of Credit Cards*

TILA section 132, which is implemented by existing § 1026.12(a), generally prohibits a person from issuing credit cards except in response to a request or application. Section 132

explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards.<sup>641</sup>

Existing § 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card. As discussed in more detail below, the final rule provides guidance on how the prohibition on issuing unsolicited credit cards applies to hybrid prepaid-credit cards that can access covered separate credit features.

*12(a)(1)*

#### *Addition of a Credit Feature*

Under the proposal, a prepaid card could not have accessed automatically a credit feature that would make the prepaid card into a credit card at the time the card is purchased by the consumer at point of sale. A card issuer could have added a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

The proposal would have modified existing comment 12(a)(1)-2 specifically to explain that the addition of a credit card feature to an existing prepaid card constitutes "issuance" for purposes of unsolicited issuance under existing § 1026.12(a). Specifically, the existing comment 12(a)(1)-2 provides that if the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card. The proposal would have revised existing comment 12(a)(1)-2 to provide guidance relating to prepaid cards. Specifically, proposed comment 12(a)(1)-2 would have provided that if the consumer has a non-

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<sup>641</sup> 15 U.S.C. 1642.

credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. The proposal also would have added an example related to prepaid cards. Specifically, the proposal would have added proposed comment 12(a)(1)-2.ii to provide that allowing a prepaid card to access a credit plan that would make the card into a credit card under § 1026.2(a)(15)(i) would constitute issuance of a credit card. The existing example relating to check guarantee cards would have been moved to proposed comment 12(a)(1)-2.i.

The Bureau did not receive any specific comments on the proposed revisions to existing comment 12(a)(1)-2. The Bureau is adopting comment 12(a)(1)-2 as proposed, with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule revises existing comment 12(a)(1)-2 to provide that if the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. The final rule also moves the existing example related to check guarantee cards to final comment 12(a)(1)-2.i. The final rule also adds a new example in final comment 12(a)(1)-2.ii to provide that issuance of a credit card includes allowing a prepaid card to access a covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in new § 1026.61 with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

### *Issuance of a Non-Credit Card*

Existing comment 12(a)(1)-7.i explains that a non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan.<sup>642</sup> The comment states that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Existing comment 12(a)(1)-7.ii provides as an example, that a purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. The comment further explains that an issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The comment also states that the issuer violates the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

Under the proposal, the current language of existing comment 12(a)(1)-7.i and ii would have been moved to proposed comment 12(a)(1)-7.i.A and B respectively and would have been limited to the issuance of non-credit cards that are not prepaid cards. The proposal also would have added comment 12(a)(1)-7.ii to provide guidance on when the issuance of a prepaid card would be viewed as the issuance of a credit card. Specifically, proposed comment 12(a)(1)-7.ii would have provided that existing § 1026.12(a)(1) would not apply to the issuance of a prepaid card where an issuer does not connect the card to any credit plan that would make the prepaid card into a credit card at the time the card is issued and only opens a credit card account, or

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<sup>642</sup> The Bureau notes that a prepaid card is an access device under Regulation E, as that term is defined in existing Regulation E § 1005.2(a)(1), and is subject to the issuance rules set forth in existing Regulation E § 1005.5. See also the commentary to final § 1005.18(a).

provides an application or solicitation, to open a credit or charge card account, that would be accessed by that card in compliance with proposed § 1026.12(h) (which has been moved to new § 1026.61(c) in the final rule). As discussed in more detail in the section-by-section analysis of § 1026.61(c) below, the Bureau proposed to add § 1026.12(h) to require a card issuer to wait at least 30 days after the prepaid account has been registered before opening a credit card account for the holder of the prepaid account that will be accessed by the prepaid card, or providing a solicitation or an application to the holder of the prepaid account to open a credit or charge card account that will be accessed by the prepaid card. Proposed comment 12(a)(1)-7.ii also would have explained that a credit feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h).

Proposed comment 12(a)(1)-7.ii further would have explained, however, that an issuer does not make a prepaid card into a credit card simply by providing the disclosures required by proposed Regulation E § 1005.18(b)(2)(i)(B)(9) and (ii)(B) with the prepaid card. As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(2)(x) and (4)(vii) above, under the proposal, a financial institution would have been required to provide certain disclosures about credit card accounts that may be offered in connection with prepaid accounts. Under the proposal, a financial institution would have been required to disclose in the short form and long form disclosures provided in connection with the prepaid account certain information about any credit plan that may be offered at any point to the holder of the prepaid account where the credit plan would be accessed by a credit card that also is a prepaid card. These disclosures would have enabled consumers to shop more effectively for prepaid accounts by informing them of both whether a credit card account may be offered in connection with the prepaid account and some of the terms of such a credit card account. Proposed comment 12(a)(1)-7.ii would have

provided guidance that providing these disclosures would not have violated the rule against unsolicited issuance of a credit card because, otherwise, selling such cards in retail locations or otherwise providing them on an unsolicited basis to consumers would violate Regulation Z if these required disclosures were included with the prepaid card.

The Bureau did not receive any specific comments on proposed comment 12(a)(1)-7.ii. As technical revisions, consistent with the proposal, the final rule moves the current language of existing comment 12(a)(1)-7.i and ii to final comment 12(a)(1)-7.i.A and B respectively and limits this language to the issuance of non-credit cards that are not prepaid cards.

The Bureau also is adopting new comment 12(a)(1)-7.ii as proposed, with revisions to be consistent with new § 1026.61. New comment 12(a)(1)-7.ii provides that existing § 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any covered separate credit feature that would make the prepaid card into a hybrid prepaid-credit card as defined in § 1026.61 at the time the card is issued and only opens a covered separate credit feature, provides an application or solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 in compliance with new § 1026.61(c). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 12(a)(1)-7.ii also clarifies that a covered separate credit feature may be

added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with new § 1026.61(c). This comment clarifies that an issuer does not make a prepaid card into a hybrid prepaid-credit card simply by providing the disclosures required by Regulation E § 1005.18(b)(2)(x), (4)(iv), and (vii) with the prepaid card. In addition, the comment provides a cross-reference to existing § 1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in § 1026.61 may be issued as a replacement or substitute for another hybrid prepaid-credit card. The comment also provides a cross-reference to existing Regulation E § 1005.5 and final § 1005.18(a), and related commentary, that govern the issuance of access devices under Regulation E.

*12(a)(2)*

Existing § 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card. Existing comments 12(a)(2)-5 and -6 provide guidance on the exception to the unsolicited issuance rule when a card is issued as a renewal of, or substitute for, an accepted credit card.

Specifically, existing comment 12(a)(2)-5 (the so-called "one for one" rule) provides that an accepted card generally may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances. Existing comment 12(a)(2)-6 provides, however, two exceptions to this general "one for one" rule. First, existing comment 12(a)(2)-6.i provides that the unsolicited issuance rule in existing § 1026.12(a) does not prohibit the card issuer from replacing a debit/credit card with a credit card and another card

with only debit functions (or debit functions plus an associated overdraft capability) because the latter card could be issued on an unsolicited basis under Regulation E. Existing comment 12(a)(2)-6.ii also provides that existing § 1026.12(a) does not prohibit a card issuer from replacing an accepted card with more than one renewal or substitute card, provided that: (1) no replacement card accesses any account not accessed by the accepted card; (2) for terms and conditions required to be disclosed in account-opening disclosures under existing § 1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change-in-terms notice is required under existing § 1026.9(c); and (3) under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

Under the proposal, the example in existing comment 12(a)(2)-6.ii would have been moved to proposed comment 12(a)(2)-6.iii. The proposal also would have added comment 12(a)(2)-6.ii to explain that the one-for-one rule would not prevent an issuer from replacing a single card that is both a prepaid card and a credit card with two cards—one card that is a credit card and another card that is a separate prepaid card, where the latter card is not a credit card. In addition, under the proposal, the example in comment 12(a)(2)-6.i related to debit cards would have been revised for clarity; no substantive changes would have been intended.

The Bureau did not receive comments on the proposed revision to existing comment 12(a)(2)-6. The Bureau is adopting this comment as proposed, with revisions as discussed below. First, the Bureau is revising the example in existing comment 12(a)(2)-6.i related to debit cards for clarity; no substantive changes are intended. Second, the Bureau is moving existing comment 12(a)(2)-6.ii to final comment 12(a)(2)-6.iii.

Third, the Bureau is adopting comment 12(a)(2)-6.ii as proposed with revisions to use consistent terminology with new § 1026.61. Specifically, the Bureau is adding new comment 12(a)(2)-6.ii to provide that the one-for-one rule does not prevent an issuer from replacing a single card that is both a prepaid card and a credit card with two cards—one card that is a credit card and one card that is a separate prepaid card where the latter card is not a hybrid prepaid-credit card as defined in new § 1026.61. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

*12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer*

Under TILA section 170, as implemented in existing § 1026.12(c), a cardholder may assert against the card issuer a claim or defense for disputes as to goods or services purchased in a consumer credit transaction with a credit card. The claim or defense applies only as to unpaid balances for the goods or services and any finance or other charges imposed on that amount if the merchant honoring the card fails to resolve the dispute. The right is further limited generally to disputes exceeding \$50 for purchases made in the consumer's home State or within 100 miles of the cardholder's address.<sup>643</sup>

Existing comment 12(c)-3 and existing comment 12(c)(1)-1 provides guidance on the types of transactions that are covered by existing § 1026.12(c) and the types of transactions that are not covered. Existing comment 12(c)(1)-1 provides that the consumer may assert claims or

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<sup>643</sup> See 15 U.S.C. 1666i.

defenses only when the goods or services are “purchased with the credit card.” This could include mail, internet, or telephone orders, if the purchase is charged to the credit card account.

*The Bureau’s Proposal*

The proposal would have amended existing comment 12(c)(1)-1 and added proposed comment 12(c)-5 to explain that existing § 1026.12(c) would apply when goods or services are purchased using a credit card that also is a prepaid card. Proposed comment 12(c)-5 also would have provided guidance on how existing § 1026.12(c) applies to transactions at point of sale where a prepaid card that is a credit card is used to obtain goods or services from a merchant, and the transaction is partially funded by the consumer’s prepaid account and partially funded by credit. For these types of transactions, proposed comment 12(c)-5 would have provided that the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of existing § 1026.12(c), and it also would have provided that the amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

Existing comments 12(c)-3 and 12(c)(1)-1.iv provide that the provisions in existing § 1026.12(c) generally do not apply to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. Existing comment 12(c)(1)-1.ii also provides that the provisions in existing § 1026.12(c) do not apply to the purchase of goods or services using a check accessing an overdraft account and a credit card used solely for identification of the consumer. On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line. The Board adopted these exceptions in 1981 as part of implementing the Truth in

Lending Simplification and Reform Act.<sup>644</sup> In the supplemental information provided with that rulemaking, the Board indicated that it had decided to exempt check guarantee cards and debit cards when used to draw on an overdraft line because of serious operational problems cited by commenters as arising from applying the claims and defenses provisions to check guarantee and debit card transactions. The proposal would not have revised these provisions, except to revise existing comment 12(c)(1)-1.ii to specify that the comment does not apply to an overdraft line in connection with a prepaid account.

#### *Comments Received*

The Bureau did not receive comments from industry on proposed comments 12(c)(1)-1 and 12(c)-5. With respect to split-tender transactions discussed above, two consumer group commenters urged the Bureau to use its authority under TILA section 105 to extend the claim and defenses provision to the amount of the transaction that is funded from the prepaid account. They believed that doing so would help reduce consumer confusion.

#### *The Final Rule*

The Bureau is adopting proposed comments 12(c)(1)-1 and 12(c)-5 with revisions.<sup>645</sup> Consistent with the proposal, final comment 12(c)(1)-1 provides that the provisions in existing § 1026.12(c) apply to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature, as defined in new § 1026.61. In addition, new comment 12(c)-5 is revised from the proposal to clarify that existing § 1026.12(c) applies to

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<sup>644</sup> 46 FR 20848, 20865 (Apr. 7, 1981); *see also* 46 FR 50288, 50313 (Oct. 9, 1981).

<sup>645</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed 12(c)(1)-1.i would have provided that the provision in § 1026.12(c) would not apply to an advance on a credit plan accessed by such an account number. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 12(c)(1)-1.i related to these account numbers.

purchases made with a hybrid prepaid-credit card that accesses a covered separate credit feature, regardless of whether the covered separate credit feature is structured such that credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the purchase transaction made with the hybrid prepaid-credit card, or whether the covered separate credit feature is structured such that credit is directly drawn from the covered separate credit feature to cover the amount of the purchase transaction made with the hybrid prepaid-credit card.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analysis of § 1026.8(a) above, the Bureau recognizes that a card issuer with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card may structure the credit feature in two ways to cover situations where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time of authorization or settlement to cover the amount of the transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. First, the covered separate credit feature could be structured such that a consumer can use a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the

consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature, and \$15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase.

Second, the covered separate credit feature accessible by a hybrid prepaid-credit card could be structured such that when a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, credit is transferred from the covered separate credit feature into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the \$15 is transferred from the covered separate credit feature to the asset feature, and a transaction of \$25 is debited from the asset feature of the prepaid account.

The Bureau is adding new comment 12(c)-5.i to provide that both of these situations would be examples of a consumer using a hybrid prepaid-credit card to access a covered separate credit feature to purchase property or services. This is true even though the latter situation (where credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the purchase transaction) is disclosed as nonsale credit under final § 1026.8(b).

Consistent with the proposal, the Bureau has not exempted from the provisions of existing § 1026.12(c) credit extended for purchases made with hybrid prepaid-credit cards. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that covered separate credit features that are accessible by hybrid prepaid-credit

cards generally should be subject to the provisions in Regulation Z that apply to credit features accessible by credit cards.

Consistent with the proposal, the Bureau also is adding new comment 12(c)-5.ii to provide that for a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account and partially paid with credit from the covered separate credit feature, the amount of the purchase transaction that is funded by credit is subject to the requirements of existing § 1026.12(c). The amount of the transaction funded from the prepaid account is not subject to the requirements of existing § 1026.12(c).

With respect to split-tender transactions where a purchase with the hybrid prepaid-credit card is partially paid with funds from the asset feature of the prepaid account and partially paid with credit from the covered separate credit feature, the Bureau is not using its adjustment authority under TILA section 105 to extend the claims and defenses provision in existing § 1026.12(c) to the amount of the transaction that is funded from the asset feature of the prepaid account. In split-tender transactions, the Bureau believes that the provision in existing § 1026.12(c) should only apply to the amount of the transaction that is paid with credit and is accessed by the hybrid prepaid-credit card when it is acting as a credit card to access the covered separate credit feature.

For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau also is retaining the existing exemptions contained in existing comments 12(c)-3 and 12(c)(1)-1.ii and iv related to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. Existing comments 12(c)-3 and 12(c)(1)-1.iv provide that the provisions in existing § 1026.12(c) generally do not apply to

purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. In addition, existing comment 12(c)(1)-1.ii also provides that the provisions in existing § 1026.12(c) do not apply to the purchase of goods or services by using a check accessing an overdraft account and a credit card used solely for identification of the consumer. Consistent with the proposal, the Bureau is revising the example in existing comment 12(c)(1)-1.ii to specify that the comment does not apply to covered separate credit features accessible by hybrid prepaid-credit cards.

*12(d) Offsets by Card Issuer Prohibited*

TILA section 169 generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer. Nonetheless, a card issuer would not violate this provision if the card issuer periodically deducts all or a portion of a consumer's credit card debt from the consumer's deposit account, if the periodic deductions are in accordance with a preauthorized written authorization by the consumer and the card issuer does not deduct payment for any portion of the outstanding balance that is in dispute.<sup>646</sup> This TILA section also provides that the prohibition described above does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.<sup>647</sup> TILA section 169 is implemented by § 1026.12(d).

Existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a

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<sup>646</sup> 15 U.S.C. 1666h(a).

<sup>647</sup> 15 U.S.C. 1666h(b).

consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Existing § 1026.12(d)(2) provides that the prohibition on offsets in existing § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under State or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: (1) obtain or enforce a consensual security interest in the funds; (2) attach or otherwise levy upon the funds; or (3) obtain or enforce a court order relating to the funds. Existing § 1026.12(d)(3) provides that the prohibition on offsets set forth in existing § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in existing § 1026.13(d)(1)).

Congress added the offset provision in TILA section 169 as part of the Fair Credit Billing Act.<sup>648</sup> In adding this offset provision, Congress was concerned that

Funds in these accounts can be attached without any recourse to the courts and in spite of any valid legal defense the cardholder may have against the bank. Banks which issue cards and also have the cardholder's funds on deposit may thus obtain a unique leverage over the consumer. Other creditors would have to apply to a court before being permitted to attach funds in a borrowers' deposit account.<sup>649</sup>

#### *12(d)(1) General Rule*

Existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

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<sup>648</sup> Public Law 93-495, 88 Stat. 1500 (Oct. 28, 1974).

<sup>649</sup> S. Rep. No. 93-278, at 9 (June 28, 1973).

### *The Bureau's Proposal*

The proposal would have provided that the term “credit card” includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Thus, under the proposal, the offset provision in existing § 1026.12(d) would have applied to credit plans that are accessed by prepaid cards that are credit cards under the proposal. The proposal also would have added proposed comment 12(d)-1 to make clear that for purposes of the prohibition on offsets in existing § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer’s prepaid account and the term deposit account includes a prepaid account.

Existing comment 12(d)(1)-2 provides that if the consumer tenders funds as a deposit (to a checking account, for example) held by the card issuer, the card issuer may not apply the funds to repay indebtedness on the consumer’s credit card account. The proposal would have amended this comment to provide guidance on the tender of funds as a deposit to a prepaid account. Specifically, this comment would have been revised to specify that if the card issuer receives funds designated for the consumer’s prepaid account with the issuer, such as by means of an ACH deposit or cash reload, the card issuer may not automatically apply the funds to repay indebtedness on the consumer’s credit card account. As a technical revision, the proposal also would have added the title “General rule” to existing § 1026.12(d)(1); no substantive change would have been intended by this addition.

### *Comments Received*

Several commenters, including industry trade associations and issuing banks, opposed applying the offset provision to overdrafts on prepaid accounts. One of these commenters indicated that applying the offset provision to overdraft credit features accessed by prepaid cards would deny consumers the ability to access short-term credit in connection with prepaid accounts. Another of these industry commenters believed that when a prepaid account user overdraws his account, the consumer likely intends funds subsequently deposited into the prepaid account to satisfy the overdraft. This industry commenter believed that the offset provision would prevent a consumer from achieving that expected outcome and could mislead prepaid account users into thinking they have more funds available than they actually do. Another of these industry commenters indicated that the offset prohibition would increase the cost of credit to consumers. This commenter indicated that the offset prohibition would make it more difficult for creditors to recover debts owed to them. This commenter indicated the longer and more difficult it is for creditors to recover debts, the more costly it is for consumers to access credit.

Several consumer groups supported application of the offset provision to prepaid cards that would have been credit cards under the proposal. One consumer group commenter urged the Bureau to make clear that payroll deduction plans are covered by the offset prohibition.

### *The Final Rule*

Consistent with the proposal, the final rule adds the title “General rule” to existing § 1026.12(d)(1); no substantive change is intended. The Bureau also is adopting comments 12(d)-1 and 12(d)(1)-2 as proposed with revisions to refer to § 1026.61 for the definition of “prepaid account.”

Pursuant to the final rule, the offset prohibition in existing § 1026.12(d) applies to covered separate credit features accessible by hybrid prepaid-credit cards because these credit features are credit card accounts under the final rule.<sup>650</sup> As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed above, several commenters, including industry trade associations and issuing banks, opposed applying the offset provision to overdrafts on prepaid accounts. One of these commenters indicated that applying the offset provision to overdraft credit features accessed by prepaid cards would deny consumers the ability to access short-term credit in connection with prepaid accounts. One industry commenter indicated that the offset prohibition would increase the cost of credit to consumers by making it more difficult for creditors to recover debts owed to them. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that covered separate credit features accessible by hybrid prepaid-credit cards should receive the important protections that apply to credit card accounts generally under Regulation Z, including the offset prohibitions in final

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<sup>650</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card where that account number accesses a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The proposal would have applied the offset prohibition in § 1026.12(d) to credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the offset prohibition does not apply to accounts simply because they are accessed by these account numbers because under the final rule, these account numbers are not credit cards.

§ 1026.12(d). The Bureau also believes that additional protections with respect to the offset provision in final § 1026.12(d) are needed with respect to covered separate credit features accessible by hybrid prepaid-credit cards, as discussed in the section-by-section discussion of § 1026.12(d)(2) and (3). The Bureau believes that the requirements in final § 1026.12(d), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), are important protections that will allow consumers to retain control over the funds in their prepaid accounts if a covered separate credit feature becomes associated with those accounts because they will be able to control when and how debts are repaid.

As discussed above, one industry commenter believed that when a prepaid account user overdraws his account, the consumer likely intends funds subsequently deposited into the prepaid account to satisfy the overdraft. This industry commenter believed that the offset provision would prevent a consumer from achieving that expected outcome and could mislead prepaid account users into thinking they have more funds available than they actually do. The Bureau believes that the Regulation Z account-opening disclosures and periodic statement disclosures, as well as explanations of contractual terms that card issuers typically provide to consumers, will help ensure that consumers understand the terms of their covered separate credit features, including how to make payments on the credit card accounts.

As discussed above, one consumer group commenter urged the Bureau to make clear that payroll deduction plans are covered by the offset prohibition. The Bureau has not added any additional guidance in final § 1026.12(d) or its related commentary regarding the applicability of the offset provision to payroll deduction plans. The Bureau does not believe that special guidance related to payroll deduction plans is necessary. The Bureau believes that under the

current offset provision (and the final rule), the offset provision would apply to payroll deductions that are deposited into a consumer's asset account that is held by the credit card issuer. Nonetheless, the offset provision does not apply if the payroll deductions are deposited into a consumer's asset account that is held with the employer or with a person other than the credit card issuer. The offset provision also would not apply to payroll deductions that are used directly to pay a covered separate credit feature that is accessible by a hybrid prepaid-credit card where payroll deduction funds are never deposited into a consumer's asset account with the credit card issuer.

*12(d)(2) Rights of the Card Issuer*

TILA section 169(a) generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer.<sup>651</sup> TILA section 169(b) provides, however, that the prohibition on offset does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.<sup>652</sup>

Implementing TILA section 169, existing § 1026.12(d)(2) provides that that the prohibition on offsets in existing § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under State or Federal law to attach or otherwise levy upon the funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally. Existing § 1026.12(d)(2) also provides two additional methods for obtaining funds that the Board found were not prohibited by the prohibition on offsets in TILA section 169.

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<sup>651</sup> 15 U.S.C. 1666h(a).

<sup>652</sup> 15 U.S.C. 1666h(b).

Specifically, existing § 1026.12(d)(2) provides that the prohibition on offsets in existing § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under State or Federal law to use either of the following two methods if the same method is constitutionally available to creditors generally: (1) obtain or enforce a consensual security interest in the funds; or (2) obtain or enforce a court order relating to the funds.

The Board adopted these additional two methods in 1981 as part of its rulemaking to implement the Truth in Lending Simplification and Reform Act.<sup>653</sup> In the supplemental information to that rulemaking, with respect to the method related to security interests, the Board stated its belief that TILA section 169 was not intended to apply to the granting of security interests in cardholders' deposit accounts. In addition, the Board imposed certain limitations on the use of security interests that it believed would prevent circumvention of the offset prohibition because: (1) only consensual security interests are permitted, and thus the cardholder must affirmatively agree to grant the security interest; (2) the security interest can be enforced only through procedures by which other creditors could enforce their security interests in the same funds; and (3) any security interest granted to secure credit card indebtedness will be disclosed in the card issuer's initial disclosures to the cardholder. The Board considered but rejected limiting the amount of the security interest to a specified amount, reasoning that other third-party creditors are not required to do so. The Board believed that these requirements should eliminate the possibility of unfair surprise to consumers and of unfair advantage for depository institutions over other creditors that Congress sought to avoid in enacting TILA section 169.<sup>654</sup>

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<sup>653</sup> 46 FR 20848 (Apr. 7, 1981).

<sup>654</sup> 46 FR 20848, 20866 (Apr. 7, 1981).

Existing comment 12(d)(2)-1 is intended to ensure that the security interest is consensual. Specifically, existing comment 12(d)(2)-1 provides that in order to qualify for the exception stated in § 1026.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under § 1026.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in existing § 1026.12(d)(2).

For a security interest to qualify for the exception under existing § 1026.12(d)(2), as discussed in existing comment 12(d)(2)-1.i and ii, the following conditions must be met: (1) the consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account; and (2) the security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by existing § 1026.12(d)(2).

Current comment 12(d)(2)-1.i provides that indicia of the consumer's awareness and intent to provide a security interest include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent): (1) separate signature or initials on the separate agreement indicating that a security interest is being given; (2) placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions; or (3) reference to a specific amount of deposited funds or to a specific deposit account number.

### *The Bureau's Proposal*

The proposal would have retained current guidance in comment 12(d)(2)-1.i requiring that the consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. The proposal would have moved the current guidance in comment 12(d)(2)-1.i discussing indicia of the consumer's awareness and intent to grant a security interest to proposed comment 12(d)(2)-1.ii and would have amended that comment to indicate that guidance only applies to deposit accounts that are not prepaid accounts. The proposal would have added new comment 12(d)(2)-1.iii discussing indicia of the consumer's awareness and intent to grant a security interest with respect to prepaid accounts. The proposal also would have moved guidance in existing comment 12(d)(2)-1.ii to new proposed comment 12(d)(2)-1.iv; no substantive change would have been intended.

With respect to proposed comment 12(d)(2)-1.iii, the Bureau believed that additional protections may be needed to ensure that consumers understand that they are giving a security interest with respect to credit features that are accessed by prepaid cards that are credit cards. To prevent the security interest from becoming the functional equivalent to an offset, the proposal would have set forth in proposed comment 12(d)(2)-1.iii the steps that card issuers must take to demonstrate a consumer's awareness of and intent to grant a security interest in a prepaid account. Specifically, a card issuer would have been required to meet all the following conditions: (1) in addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the prepaid account agreement and the credit card account agreement; (2) the separate document setting forth the security agreement must be signed by the consumer; (3) the separate document

setting forth the security agreement must refer to the prepaid account number and to a specific amount of funds in the prepaid account in which the card issuer is taking a security interest, and these two elements of the document must be separately signed or initialed by the consumer; and (4) the separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest, and each of those conditions must be separately signed or initialed by the consumer.

In addition, as a technical revision, the proposal would have added the title “Rights of the card issuer” to § 1026.12(d)(2); no substantive change was intended.

#### *Comments Received*

The Bureau solicited comment on the approach discussed above. The Bureau also solicited comment on whether these additional protections are sufficient to ensure that security interests do not become the functional equivalent to an offset when a credit card account is directly linked to a prepaid account through an overdraft feature. If these additional protections were not sufficient, the Bureau sought comment on what additional protections would be sufficient to ensure that the security interests taken in prepaid accounts are consensual. Alternatively, the Bureau sought comment on whether it should prohibit a card issuer from obtaining or enforcing any consensual security interest in the funds of a cardholder held in a prepaid account with the card issuer, to ensure that card issuers cannot circumvent the prohibition on offsets by taking routinely a security interest in the prepaid account funds without consumer awareness of the security interest.

The Bureau did not receive specific comments from industry commenters on proposed comment 12(d)(2)-1.iii. One consumer group commenter indicated that the Bureau should ban card issuers from taking a security interest in prepaid accounts or require they be established

only using a separate account. This commenter believed that even with the proposed safeguards, it would be too easy for a card issuer to obtain the consumer's signature on a document. This commenter indicated that at a minimum, the Bureau should require funds from a prepaid card that would be the security interest to be segregated into a different, separate account that is not a transaction account, such as a savings account. In addition, this commenter indicated that the security interest should be limited to the initial deposit.

### *The Final Rule*

The Bureau is adopting comment 12(d)(2)-1 as proposed with technical revisions to clarify the intent of the provision and with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule retains current guidance in 12(d)(2)-1.i requiring that the consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. The final rule also moves the current guidance 1.ii and revises this current guidance to clarify the intent of the provision and to provide that it only applies in relation to credit card accounts other than covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61. As discussed in more detail below, the final rule also adds new comment 12(d)(2)-1.iii discussing indicia of the consumer's awareness and intent to provide a security interest in relation to covered separate credit features accessible by hybrid prepaid in comment 12(d)(2)-1.i discussing indicia of the consumer's awareness and intent to provide a security interest to final comment 12(d)(2)-1.iv; no substantive change is intended. As technical revisions, the final rule adds the title "Rights of the card issuer" to § 1026.12(d)(2) and revises the existing language of § 1026.12(d)(2) to use the phrase "this

paragraph (d)” instead of “this paragraph”; no substantive change is intended.

As discussed above, the Bureau is adopting new comment 12(d)(2)-1.iii as proposed, with technical revisions to clarify the intent of the provision and with revisions to be consistent with new § 1026.61. Specifically, new comment 12(d)(2)-1.iii provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, for a consumer to show awareness and intent to grant a security interest in a deposit account, including a prepaid account, all of the following conditions must be met: (1) in addition to being disclosed in the issuer’s account-opening disclosures under existing § 1026.6, the security agreement must be provided to the consumer in a document separate from the deposit account agreement and the credit card account agreement; (2) the separate document setting forth the security agreement must be signed by the consumer; (3) the separate document setting forth the security agreement must refer to the deposit account number, and to a specific amount of funds in the deposit account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer; and (4) the separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest, and each of those conditions must be separately signed or initialed by the consumer.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that prepaid account issuers may have significant interest in securing credit card debt on a covered separate credit feature accessible by a hybrid prepaid-credit card by means of the prepaid account. These credit features will always be associated with this linked asset account, and the Bureau believes that prepaid card users who use the cards to obtain consumer credit from a covered separate credit feature are likely to have lower credit scores than credit card users overall. Unlike traditional secured credit cards, these prepaid cards likely would not be marketed as secured credit cards and would not require consumers to establish a new separate account or to set aside specific funds. As a result, prepaid consumers are less likely than secured credit card users to understand that they are required to provide a security interest in the prepaid account in order to receive the covered separate credit feature. In addition, these prepaid consumers may have a need to be able to manage their prepaid accounts very carefully to cover both daily expenses and any credit repayments.

With regard to security interests in connection with covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that all of the indicia in new comment 12(d)(2)-2.iii, including delineating a specific dollar amount as being subject to the security interest, will help to ensure that such security interest arrangements do not circumvent the offset provision in TILA section 169 by ensuring that consumers focus careful attention on the consequences of granting security interests so that consumers are better prepared to manage their accounts to both cover daily expenses and repay any credit extensions.

At this time, the Bureau does not believe that it is necessary to ban security interests in prepaid accounts or to provide that a covered separate credit feature accessible by a hybrid prepaid-credit card only can be secured by a separate asset account that is not the prepaid account. The Bureau believes that the protections adopted in the final rule are sufficient to

protect consumers from security interests taken in prepaid account with respect to a covered separate credit feature from becoming functional equivalents of offsets, but the Bureau will continue to monitor how providers in the prepaid market use consensual security interests.

#### *12(d)(3) Periodic Deductions*

Implementing TILA section 169, existing § 1026.12(d)(3) provides that the prohibition on offsets set forth in § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in existing § 1026.13(d)(1)).

#### *The Bureau's Proposal*

Neither TILA section 169 nor existing § 1026.12(d)(3) defines "periodically" for purposes of existing § 1026.12(d)(3). The proposal would have added proposed § 1026.12(d)(3)(ii) to provide that with respect to prepaid cards that are credit cards, for purposes of existing § 1026.12(d)(3), "periodically" means no more frequently than once per calendar month. For example, a deduction could be scheduled for each monthly due date disclosed on the applicable periodic statement in accordance with the requirements of proposed § 1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer. Thus, under proposed § 1026.12(d)(3), with respect to such credit plans accessed by prepaid card that is a credit card, a card issuer would have been permitted to deduct all or a part of the cardholder's credit card debt automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. Proposed comment 12(d)(3)-3 would have provided an example to illustrate when card issuers could

deduct automatically all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under proposed § 1026.12(d)(3) with respect to credit cards that are also prepaid cards. Proposed comment 12(d)(3)-3 would have provided that with respect to those credit cards, a card issuer would not be prohibited under proposed § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of existing § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. The proposed comment would have provided the following example: With respect to credit cards that are also prepaid cards, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25<sup>th</sup> day of each month. In this case, the card issuer would not have been prohibited under proposed § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25<sup>th</sup> of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer if the deductions were pursuant to a plan that was authorized in writing by the cardholder (as discussed in existing comment 12(d)(3)-1) and complied with the limitations in existing § 1026.13(d)(1). Proposed comment 12(d)(3)-3 also would have explained that the card issuer would be prohibited under proposed § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account.

As technical revisions, the proposal also would have: (1) added the title “Periodic deductions” to § 1026.12(d)(3); and (2) moved existing § 1026.12(d)(3) to proposed § 1026.12(d)(3)(i). No substantive changes would have been intended.

#### *Comments Received*

One credit union service organization indicated that the Bureau should not adopt the proposed definition of “periodically.” This commenter indicated that consumers should have the choice to allow for automatic multiple payments within the same month, like consumers have with other financial products such as traditional credit card programs. This commenter indicated that some consumers may prefer to pay smaller amounts more frequently instead of paying a larger amount once a month.

One consumer group commenter indicated that the preauthorized payment plan exception set forth in existing § 1026.12(d)(3) should not apply to credit features accessed by prepaid cards that are credit cards. Thus, card issuers of those credit features should not be permitted to deduct credit card balances on those credit features from prepaid accounts pursuant to existing § 1026.12(d)(3). Another consumer group commenter indicated that with respect to credit features accessed by prepaid cards that are credit cards, a card issuer should be permitted under proposed § 1026.12(d)(3) to deduct no more than 4 percent of the outstanding balance on a monthly basis from the prepaid account pursuant to the preauthorized payment plan.

One consumer group commenter indicated that the Bureau should make clear that consumers have the right to revoke authorization for a payment plan described in proposed § 1026.12(d)(3). This commenter indicated that consumers should be able to exercise the right to revoke authorization under existing § 1026.12(d)(3) easily, such as in writing, electronically or orally. One consumer group commenter indicated that the Bureau should monitor the process

that card issuers use to gain automatic payment authorization to ensure that it is not coercive or misleading so that consumers understand that they have signed up for it.

### *The Final Rule*

As discussed in more detail below, the Bureau is adopting § 1026.12(d)(3) as proposed, with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule moves the current language in existing § 1026.12(d)(3) to new § 1026.12(d)(3)(i). The final rule also adds new § 1026.12(d)(3)(ii) and new comment 12(d)(3)-3 as proposed, with revisions to be consistent with new § 1026.61. New § 1026.12(d)(3)(ii) provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, for purposes of § 1026.12(d)(3), “periodically” means no more frequently than once per calendar month. Thus, under new § 1026.12(d)(3)(ii), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, a card issuer may deduct all or a part of the cardholder’s credit card debt on the covered separate credit feature automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail below, the Bureau also is amending existing comment 12(d)(3)-2 to provide that a card issuer is not prohibited under final § 1026.12(d) from

automatically deducting from the consumer's deposit account any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3).

The Bureau also is making three technical revisions to final § 1026.12(d)(3) and related commentary. First, the final rule adds the title "Periodic deductions" to § 1026.12(d)(3). Second, the final rule revises the language of existing § 1026.12(d)(3) (renumbered as final § 1026.12(d)(3)(i)) to use the phrase "this paragraph (d)" rather than "this paragraph." Third, the final rule revises existing comment 12(d)(3)-1.iii, which references EFTA section 913, to also reference final Regulation E § 1005.10(e), which implements that section of EFTA.

*Definition of "periodically."* New § 1026.12(d)(3)(ii) provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, for purposes of final § 1026.12(d)(3), "periodically" means no more frequently than once per calendar month. For example, a deduction could be scheduled for each monthly due date disclosed on the applicable periodic statement in accordance with the requirements of final § 1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer. Thus, under final § 1026.12(d)(3), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, a card issuer may deduct all or a part of the cardholder's credit card debt on the covered separate credit feature automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so.<sup>655</sup>

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<sup>655</sup> The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. With respect to these account numbers, the proposal would have set forth a new proposed § 1026.12(d)(3)(ii) and comment 12(d)(3)-3 that would have provided that for purposes of the exception for automatic payment plans as discussed in § 1026.12(d)(3), "periodically" would have meant no more frequently than once per calendar month. For the reasons set forth in the section-by-section analysis of

The Bureau also is adopting comment 12(d)(3)-3 as proposed, with revisions to be consistent with new § 1026.61. New comment 12(d)(3)-3 provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, a card issuer would not be prohibited under final § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt on the covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of existing § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account more frequently than once per calendar month pursuant to such a plan.

This comment provides the following example: With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25<sup>th</sup> day of each month. In this case, the card issuer is not prohibited under final § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25<sup>th</sup> of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in final comment 12(d)(3)-1) and comply with the limitations in existing § 1026.13(d)(1). New comment 12(d)(3)-3 also explains that the card issuer is prohibited under final § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt on the covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month,

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§ 1026.2(a)(15)(i)above, the final rule does not adopt the proposed revisions to § 1026.12(d)(3)(ii) and comment 12(d)(3)-3 related to these account numbers.

such as on a daily or weekly basis, or whenever deposits are made or expected to be made to the deposit account.

The Bureau believes that allowing a card issuer to execute a preauthorized transfer once per calendar month to repay all or some of a consumer's credit card balance on a covered separate credit feature accessible by a hybrid prepaid-credit card is appropriate because card issuers of covered separate credit features linked to prepaid accounts generally are restricted from providing periodic statements more frequently than on a monthly basis, and the due date must be the same day of the month for each billing cycle. As discussed in the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above, for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer must adopt reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement, and the due date must be the same day of the month for each billing cycle.

The Bureau is concerned that, with respect to covered separate credit features that are accessible by hybrid prepaid-credit cards, some card issuers may attempt to circumvent the prohibition on offsets by obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt on the covered separate credit feature on a daily or weekly basis from the prepaid account to help ensure that the debt is repaid. If "periodically" is not defined for purposes of final § 1026.12(d)(3), the Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may obtain a consumer's written authorization to daily or weekly debits to the prepaid account to repay the credit card debt on the covered separate credit feature given the overall creditworthiness of prepaid

accountholders who rely on covered separate credit features. In addition, the Bureau believes prepaid consumers may grant the authorization more readily than other credit cardholders because these consumers may believe that providing such authorization is required.

An appropriate interval for “periodic[]” deduction plans may depend on the facts and circumstances of the particular credit feature, but because of the above reasons, the Bureau believes that an appropriate interval for covered separate credit features accessible by hybrid prepaid-credit cards is no more frequently than once per calendar month.

The Bureau believes that the requirement in final § 1026.12(d)(3), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), are necessary to fully effectuate the intent of the provisions and would allow consumers to retain control over the funds in their prepaid accounts even when a covered separate credit feature accessible by a hybrid prepaid-credit card becomes associated with that account, which is consistent with the prohibition on offsets. In particular, with these changes, such card issuers (1) are required to adopt reasonable procedures designed to ensure that periodic statements for covered separate credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement, and the due date disclosed must be the same day of the month for each billing cycle; (2) can move funds automatically from the asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt on covered separate credit features no more frequently than once per month, such as on the payment due date (pursuant to the consumer’s signed, written agreement that the issuer may do so); and (3) are required to offer consumers a means to repay their outstanding credit balances on covered separate credit features other than automatic repayment (such as by means of a transfer of funds from the asset account

to the credit account that the consumer initiates on the prepaid account's online banking website).

As discussed above, one credit union service organization indicated that the Bureau should not adopt the proposed definition of "periodically." This commenter indicated that consumers should have the choice to allow for automatic multiple payments within the same month, like consumers have with other financial products such as traditional credit card programs. This commenter indicated that some consumers may prefer to pay smaller amounts more frequently instead of paying a larger amount once a month. The Bureau notes that under existing comment 12(d)(3)-2.ii, a card issuer is not prohibited under the offset provision in § 1026.12(d)(1) from debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill). Thus, under the final rule, a consumer may still provide specific requests for payment more frequently than once per month as described in existing comment 12(d)(3)-2.ii (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill), so long as those payments are not on an automatic periodic basis more frequently than once per month.

In addition, as discussed above, one consumer group commenter indicated that the preauthorized payment plan exception set forth in existing § 1026.12(d)(3) should not apply to credit features accessed by prepaid cards that are credit cards. Thus, card issuers of those credit features should not be permitted to deduct credit card balances on those credit features from prepaid accounts pursuant to existing § 1026.12(d)(3). Another consumer group commenter indicated that with respect to credit features accessed by prepaid cards that are credit cards, a

card issuer should be permitted under proposed § 1026.12(d)(3) to deduct no more than 4 percent of the outstanding balance on a monthly basis from the prepaid account pursuant to the preauthorized payment plan. The Bureau does not adopt these additional protections suggested by these commenters at this time. The Bureau believes that the requirement in final § 1026.12(d)(3), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), provide sufficient protections to consumers to help ensure that consumers retain control over the funds in their prepaid accounts even when a covered separate credit feature accessible by a hybrid prepaid-credit card becomes associated with that account, which is consistent with the prohibition on offsets. The Bureau will continue to monitor the use of automatic payment plans.

Also, as discussed above, one consumer group commenter indicated that the Bureau should make clear that consumers have the right to revoke authorization for a payment plan, described in proposed § 1026.12(d)(3). This commenter indicated that consumers should be able to exercise the right to revoke authorization under existing § 1026.12(d)(3) easily, such as in writing, electronically or orally. Another consumer group commenter indicated that the Bureau should monitor the process that card issuers use to gain automatic payment authorization to ensure that it is not coercive or misleading so that consumers understand that they have signed up for it.

The final rule does not provide specific guidance on how consumers may revoke the authorization provided pursuant to final § 1026.12(d)(3). The Bureau notes that under final § 1026.12(d)(3), the exception from the offset provision for automatic payments only applies to automatic payment plans that are “authorized” in writing by the cardholder. At this time, the Bureau believes that State or other applicable law, including UDAAP law, should determine

whether an automatic payment plan has been “authorized” and when an authorization has been revoked for purposes of final § 1026.12(d)(3). The Bureau will continue to monitor the processes that card issuers use to gain automatic payment authorization and the processes by which consumers can revoke authorization, to ensure that processes provided by card issuers for obtaining authorization are understandable to consumers and that consumers have reasonable methods available to revoke the authorization.

*Fees or charges imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder’s indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Existing comment 12(d)(1)-3 provides that the offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. Existing comment 12(d)(3)-2 provides that § 1026.12(d)(1) does not prohibit a card issuer from automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

The Bureau did not propose revisions to existing comments 12(d)(1)-3 or 12(d)(3)-2. Nonetheless, as discussed in more detail below, the Bureau is adopting revisions to comment 12(d)(3)-2 to be consistent with new § 1026.61, changes in the final rule to the definition of “finance charge” in final § 1026.4, and the definition of “charges imposed as part of the plan” in final § 1026.6(b)(3). To reflect these changes and to facilitate compliance with § 1026.12(d), the Bureau is adding comment 12(d)(3)-2.iii to provide that the offset prohibition in final § 1026.12(d) does not prohibit a card issuer from automatically deducting any fee or charge

imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3) from a consumer's deposit account, such a prepaid account, held by the card issuer. This clarification applies to both covered separate credit features accessible by a hybrid prepaid-credit card and non-covered separate credit features that are subject to final § 1026.12(d).<sup>656</sup>

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

Nonetheless, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the

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<sup>656</sup> With respect to incidental credit that meets the conditions set forth in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(C) makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not credit-related fees enumerated in new § 1026.61(a)(4)(ii)(B). New comment 61(a)(4)-1.iv.A states that for this type of credit, the prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card.

prepaid account issuer, its affiliate or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.12(d) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account.

As discussed in the section-by-section analysis of § 1026.6(b)(3) above, the Bureau is adding new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1 which provide that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, the term “charges imposed as part of the plan” does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). With respect to a covered separate credit feature, new comment 12(d)(3)-2.iii makes clear that final § 1026.12(d) does not prevent a card issuer from automatically deducting from a consumer’s deposit account, such as a prepaid account, held with the card issuer any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6, the Bureau believes that

fees or charges imposed on the asset feature of a prepaid account that are not finance charges, and thus are not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D), are more appropriately regulated under Regulation E than under Regulation Z with respect to the covered separate credit feature.

The Bureau also is adding new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)-1, which provide that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in § 1026.61, the term “charges imposed as part of the plan” does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 6(b)(3)(iii)(E)-1 also cross-references new comment 4(b)(11)-1.ii.B, which provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature. With respect to a non-covered separate credit feature, new comment 12(d)(3)-2.iii makes clear that final § 1026.12(d) does not prevent a card issuer from automatically deducting from a consumer’s deposit account, such as a prepaid account, held with the card issuer any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Because none of the fees or charges imposed on the asset feature of the prepaid account are charges imposed as part of the plan with respect to a non-covered separate credit feature under new § 1026.6(b)(3)(iii)(E), final § 1026.12(d) does not prevent a card issuer from automatically deducting any of these fees or charges from a consumer’s deposit account, such as a prepaid account, held with the card issuer. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately

regulated under Regulation E rather than Regulation Z with respect to the non-covered separate credit feature.

### *Section 1026.13 Billing Error Resolution*

TILA section 161, as implemented in existing § 1026.13, sets forth error resolution procedures for billing errors that relate to any extension of credit that is made in connection with an open-end account or credit card account. Specifically, it requires a consumer to provide written notice of an error within 60 days after the first periodic statement reflecting the alleged error is sent.<sup>657</sup> The written notice triggers a creditor's duty to investigate the claim within prescribed time limits.

#### *13(a) Definition of Billing Error*

##### *13(a)(3)*

Existing § 1026.13(a) defines a "billing error" for purposes of the error resolution procedures. Under existing § 1026.13(a)(3), the term "billing error" includes disputes about an extension of credit for property or services not accepted by the consumer or not delivered to the consumer as agreed. Existing comment 13(a)(3)-2 explains that, in certain circumstances, a consumer may assert a billing error under existing § 1026.13(a)(3) with respect to property or services obtained through any extension of credit made in connection with a consumer's use of a third-party payment service.

Proposed § 1026.2(a)(15)(vii) would have provided a definition for "account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor." As used in the proposal, this term would have meant an account number that is not a prepaid card that may be used from time to time to access a credit

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<sup>657</sup> 15 U.S.C. 1666; *see also* 15 U.S.C. 1602(g).

plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. Proposed comment 2(a)(15)-2.i.G would have provided that these account numbers were credit cards under the proposal.

Similar to the provision relating to third-party intermediaries, the proposal would have added proposed comment 13(a)(3)-2.ii to address situations where goods or services are purchased using funds deposited into a prepaid account and those funds are credit drawn from a credit plan that is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The proposal would have moved the existing guidance in comment 13(a)(3)-2 to proposed 13(a)(3)-2.i.

The Bureau did not receive specific comments on proposed comment 13(a)(3)-2.ii. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i), the Bureau has not adopted proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)-2.i.G that would have made these account numbers into credit cards under Regulation Z. Thus, Bureau has not adopted proposed comment 13(a)(3)-2.ii related to these account numbers.

#### *13(i) Relation to Electronic Fund Transfer Act and Regulation E*

Existing § 1026.13(i) provides guidance on whether billing error provisions under Regulation E or Regulation Z apply in certain overdraft-related transactions. Specifically, existing § 1026.13(i) provides that if an extension of credit is incident to an EFT and is under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor must comply with the requirements of Regulation E § 1005.11 governing error

resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of existing § 1026.13 (d) and (g) would still apply to the credit portion of these transactions.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, currently under Regulation Z, overdraft credit is subject to Regulation Z only if there is an agreement to extend credit, which is typically described as an overdraft line of credit. In those cases, existing § 1026.13(i) applies when a transaction is partially funded through an EFT from an asset account and partially funded through an overdraft credit line. Such transactions will be subject to both Regulation Z and E. Under existing § 1026.13(i), for those transactions, the creditor must comply with the requirements of Regulation E § 1005.11 governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of existing § 1026.13(d) and (g) would still apply to the credit portion of these transactions.

Currently under Regulation Z, with respect to an asset account with a linked overdraft line of credit: (1) if a transaction only accesses the overdraft line of credit and does not access funds in the asset account, the error resolution provisions in Regulation Z apply, and the error resolution provisions in Regulation E do not apply; and (2) if a transaction only accesses the funds in the asset account and does not access the overdraft line of credit, the error resolution provisions in Regulation E apply, and the error resolution provisions in Regulation Z do not apply. In addition, current Regulation Z does not apply to overdraft credit where there is not an agreement to extend credit. As discussed in existing comment 13(i)-2, overdraft transactions made under those overdraft credit programs are governed solely by the error resolution provisions in Regulation E. Existing comment 13(i)-3 provides an example of the application of existing § 1026.13(i) to transactions where a consumer withdraws money at an ATM machine and activates an overdraft line of credit on the checking account.

As discussed in existing comment 13(i)-1, credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

#### *The Bureau's Proposal*

First, the proposal would have moved the existing language of current § 1026.13(i) to proposed § 1026.13(i)(1) and would have revised that language to specify that this provision would apply to asset accounts that are not prepaid accounts. Second, existing comment 13(i)-2 would have been revised to specify that the comment only apply to asset accounts that are not prepaid accounts. Third, existing comment 13(i)-3 would have been revised to specify that the example set forth in that comment only applies to debit cards. Proposed § 1026.2(a)(15)(iv) would have defined “debit card” to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.” The proposed definition of “debit card” also would have specified that it does not include a prepaid card.

The proposal would have added proposed § 1026.13(i)(2) to provide that with respect to a credit plan in connection with a prepaid account, a creditor must comply with the requirements of existing Regulation E § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the consumer's prepaid account is overdrawn if the credit plan is subject to subpart B of this regulation. The provisions of existing § 1026.13(d) and (g) would still apply to the credit portion of these transactions.

The proposal also would have added proposed comment 13(i)-4 to provide guidance on how proposed § 1026.13(i)(2) would have applied to credit plans in connection with prepaid accounts. Specifically, proposed comment 13(i)-4 would have provided that for a credit

extension involving a credit plan in connection with a prepaid account that is subject to subpart B, when the credit extension is incident to an EFT and occurs when the prepaid account is overdrawn, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit under an overdraft plan and does not include a debit to the prepaid account, the error resolution requirements of Regulation Z would have applied. If the transaction debited a prepaid account only (with no credit extended under the overdraft plan), the provisions of Regulation E would have applied. Nonetheless, under the proposal, if the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B, a creditor would have been required to comply with the requirements of existing Regulation E § 1005.11 and proposed § 1005.18(e) governing error resolution, rather than those of § 1026.13 (a), (b), (c), (e), (f), and (h).

Proposed comment 13(i)-5 would have explained that an overdraft credit plan would not be subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. Under proposed comment 2(a)(15)-2.i.F, a prepaid card would not have been a credit card if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. For these types of credit plans, under the proposal, only the error resolution provisions in Regulation E would have applied.

#### *Comments Received and Final Rule*

The Bureau did not receive comment on this aspect of the proposal. Consistent with the proposal, the Bureau is adopting § 1026.13(i) as proposed, with several technical revisions to

clarify the intent of the provision and to be consistent with new § 1026.61.<sup>658</sup> Consistent with the proposal, the Bureau is moving existing § 1026.13(i) to new § 1026.13(i)(1) and is revising this language to specify that this provision does not apply to transactions involving prepaid accounts as defined in § 1026.61. In addition, the Bureau is revising existing comment 13(i)-2 to make clear that the comment do not apply to transactions involving prepaid accounts defined in § 1026.61. Consistent with the proposal, the final rule also amends final comment 13(i)-3 to make clear that the example set forth in the comment only applies to debit cards. New § 1026.2(a)(5)(iv) defines “debit card” to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.” The definition of “debit card” also specifies that it does not include a prepaid card.

As discussed in more detail below, the Bureau also is adding new § 1026.13(i)(2) to provide guidance on how the error resolution provision in Regulations E and Z apply to transactions with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. As a technical revision, the Bureau also is revising final § 1026.13(i) to reference the error resolution provisions in both final Regulation E §§ 1005.11 and 1005.18(e) as applicable because the Regulation E error resolution rules that apply to prepaid accounts are set forth in both final §§ 1005.11 and 1005.18(e). Specifically, with respect to covered separate credit features, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of existing

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<sup>658</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Existing comment 13(i)-1 would have been revised to explain that with respect to a credit account accessed by such an account number, proposed § 1026.13(i) would not have applied to transfers from that plan to a prepaid account. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed revision to existing comment 13(i)-1 related to these account numbers.

§ 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. The provisions of existing § 1026.13(d) and (g) still apply to the credit portions of these transactions. The final rule also is adopting comment 13(i)-4 as proposed with revisions to be consistent with new § 1026.61. The Bureau has revised the guidance in new comment 13(i)-5 to be consistent with new § 1026.61.

#### *Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards*

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adding new § 1026.13(i)(2) to provide guidance on how the error resolution provisions in Regulations E and Z apply to transactions with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. Specifically, with respect to these credit features, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. The provisions of existing § 1026.13(d) and (g) still apply to the credit portion of these

transactions.

In addition, the Bureau is adopting proposed comment 13(i)-4 with revisions to be consistent with new § 1026.61. New comment 13(i)-4 provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, whether Regulation E or Regulation Z applies depends on the nature of the transaction. If the transaction solely involves an extension of credit under a covered separate credit feature and does not access funds from the asset feature of the prepaid account, the error resolution requirements of Regulation Z apply. New comment 13(i)-4.i provides the following example: Assume that there is \$0 in the asset feature of the prepaid account, and the consumer makes a \$25 transaction with the card. The error resolution requirements of Regulation Z apply to the transaction. New comment 13(i)-4.i provides that this is true regardless of whether the \$25 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether the \$25 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the transaction.

New comment 13(i)-4.ii provides that if the transaction accesses funds from the asset feature of a prepaid account only (with no credit extended under the covered separate credit feature), the provisions of Regulation E apply.

New comment 13(i)-4.iii provides that if the transaction accesses funds from the asset feature of a prepaid account but also involves an extension of credit under the covered separate credit feature, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). New comment 13(i)-4.iii provides the following illustration: Assume that there is \$10 in the

asset feature of the prepaid account, and the consumer makes a \$25 transaction with the card.

The error resolution requirements of Regulations E and Z apply as described above to the transaction. New comment 13(i)-4.iii also provides that this is true regardless of whether \$10 is debited from the asset feature and \$15 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether \$15 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account and a \$25 transaction is debited from the asset feature to cover the amount of the transaction.

Except with respect to prepaid accounts as defined in § 1026.61, new § 1026.13(i)(1) focuses on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, consistent with current § 1026.13(i). On the other hand, for covered separate credit features accessible by a hybrid prepaid-credit card, new § 1026.13(i)(2) applies if credit is extended under a covered separate credit feature that is accessible by hybrid prepaid-credit card and the transaction involves an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature. As described in new comment 61(a)(1)-1, a prepaid card can be a hybrid prepaid-credit card under Regulation Z even if, for example, the person that can extend credit does not agree in writing to extend the credit, the person retains discretion not to extend the credit, or the person does not extend the credit once the consumer has exceeded a certain amount of credit.

The Bureau believes that it is appropriate to apply the error resolution procedures in Regulation E generally to transactions that debit a prepaid account but also draw on a covered

separate credit feature accessible by the hybrid prepaid-credit card. The Bureau believes that this approach is consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized EFT and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn.<sup>659</sup>

An unauthorized EFT on a prepaid account generally would be subject to the limits on liability in existing Regulation E § 1005.6 and final § 1005.18(e); an unauthorized EFT on a prepaid account also is an error for purposes of the error resolution procedures set forth in existing Regulation E § 1005.11(a)(1) and final § 1005.18(e). Although billing errors under existing § 1026.13(a) include a broader category than only unauthorized use, the Bureau believes it is necessary and proper to exercise its adjustment and exception authority under TILA section 105(a) to apply Regulation E's error resolution provisions and limited Regulation Z error resolution provisions to these transactions, to facilitate compliance with EFTA section 908 and TILA section 161 on error resolution. The Bureau is concerned that conflicting provisions could apply to transactions that debit a prepaid account but also draw on a covered separate credit feature accessible by a hybrid prepaid-credit card if Regulation E's provisions applied to limits on liability for unauthorized use, and Regulation Z's provisions generally apply to investigation of billing errors, including transactions involving unauthorized use. To avoid these potential conflicts and to facilitate compliance, new § 1026.13(i)(2) requires a creditor to comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution, rather than those of § 1026.13(a), (b), (c), (e), (f), and (h), if the transaction debits a prepaid account but also draws on a covered separate credit feature accessible by a hybrid prepaid-credit card. This

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<sup>659</sup>15 U.S.C. 1693g(c).

approach is also consistent with the existing provisions in Regulation E § 1005.12(a)(1)(iv) and Regulation Z § 1026.13(i), which apply Regulation E's liability limitation and error resolution procedures to an extension of credit that is incident to an EFT for overdraft lines of credit accessed by debit cards.

*Credit Features That Are Not Accessible by a Hybrid Prepaid-Credit Card*

As discussed above, proposed comment 13(i)-5 would have explained that an overdraft credit plan would not be subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. Under proposed comment 2(a)(15)-2.i.F, a prepaid card would not have been a credit card if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. For these types of credit plans, under the proposal, only the error resolution provisions in Regulation E would have applied.

The Bureau did not receive any specific comment on proposed comment 13(i)-5. The Bureau has revised the guidance in new comment 13(i)-5 to be consistent with new § 1026.61 and with revisions to Regulation E § 1005.12(a).

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to

hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 13(i)-5 explains that Regulation E § 1005.12(a)(1)(iv)(C) and (D), and (2)(iii) provide guidance on whether error resolution procedures in Regulations E or Z apply to transactions involving credit features that are accessed by prepaid cards that are not hybrid prepaid-credit cards as defined in § 1026.61. New Regulation E § 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in § 1026.61(a)(4), these transactions are governed solely by error resolution procedures in Regulation E, and Regulation Z does not apply. New Regulation E § 1005.12(a)(1)(iv)(D) and (2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in § 1026.61, a financial institution must comply with Regulation E's error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

The Bureau notes that overdraft credit features that are exempt under new

§ 1026.61(a)(4) would not be subject to final § 1026.13(i) because these credit features are not accessible by hybrid prepaid-credit cards and are not subject to Regulation Z generally (including § 1026.13).

A non-covered separate credit feature may be subject to the provisions in § 1026.13 generally in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. Nonetheless, even if § 1026.13 generally is applicable to a non-covered separate credit feature, final § 1026.13(i) will not be applicable to the credit feature. Instead, the prepaid account issuer must comply with Regulation E with respect to the transactions on the prepaid account, and the creditor must comply with Regulation Z with respect to the non-covered separate credit feature. The Bureau believes that it is appropriate that a non-related third-party creditor must comply only with Regulation Z error resolution procedures with respect to the non-covered separate credit feature even if the credit feature functions as an overdraft credit feature because this creditor may not know that its credit feature is being used as an overdraft credit feature in relation to the prepaid account.

*Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students*

Except for existing § 1026.60, which concerns certain credit card disclosures, all of the provisions in subpart G implement the Credit CARD Act. The provisions in subpart G that implement the Credit CARD Act generally apply to a “card issuer,” as defined in existing § 1026.2(a)(7), that extends credit under a “credit card account under an open-end (not home-

secured) consumer credit plan,” as defined in existing § 1026.2(a)(15)(ii).<sup>660</sup> Among other things, subpart G contains provisions to implement the Credit CARD Act that:

- Prohibit card issuers from extending credit without assessing the consumer’s ability to pay, with special rules regarding the extension of credit to persons under the age of 21.<sup>661</sup>
- Restrict the amount of required fees that an issuer can charge during the first year after an account is opened.<sup>662</sup>
- Limit the amount card issuers can charge for “back-end” penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit.<sup>663</sup>
- Ban “declined transaction fees” and other penalty fees where there is no cost to the card issuer associated with the violation of the account agreement.<sup>664</sup>
- Restrict the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts and establish procedures for doing so.<sup>665</sup>
- Restrict fees for over-the-limit transactions to one per billing cycle and require that the consumer opt-in to payment of such transactions in order for the fee to be charged.<sup>666</sup>

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<sup>660</sup> Section 1026.57(c) applies to all open-end credit. That section prohibits a card issuer or creditor from offering a tangible item to a college student on or near a college campus or at an event sponsored by the college to induce the student to apply for or open an open-end credit plan.

<sup>661</sup> § 1026.51.

<sup>662</sup> § 1026.52(a)(1).

<sup>663</sup> § 1026.52(b)(1).

<sup>664</sup> § 1026.52(b)(2).

<sup>665</sup> §§ 1026.55 and 1026.59.

<sup>666</sup> § 1026.56.

- Require institutions of higher education to publicly disclose agreements with card issuers and limit the marketing of credit cards on or near college campuses.<sup>667</sup>

In addition, subpart G also contains existing § 1026.60, which sets forth disclosures that card issuers generally must provide on or with a solicitation or an application to open a credit or charge card account.

The Bureau is adding a new § 1026.61 which defines when a prepaid card is a credit card under Regulation Z (using the term “hybrid prepaid-credit card”). As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account,

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<sup>667</sup> § 1026.57.

and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(c) (moved from § 1026.12(h) in the proposal) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under new § 1026.2(a)(15)(i) when it accesses credit from these types of credit features.

For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of “open-end credit” and that credit will not be home-secured. See the section-by-section analysis of the definition of “credit” in final § 1026.2(a)(14), the definition of “open-end-credit” in final § 1026.2(a)(20), and the definition of “finance charge” in final § 1026.4. In addition, as discussed in the section-by-section analyses of § 1026.2(a)(7), (15)(i), and (ii) above, a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) credit plan is a “credit card account under an open-end (not home-secured) consumer credit plan,” and the person issuing the hybrid prepaid-credit card (and its affiliate or business partner if that entity is offering the covered separate credit feature accessible by the hybrid prepaid-credit card) are “card issuers.” As a result, pursuant to the final rule, provisions in subpart G generally will apply to covered separate credit features accessible by hybrid prepaid-credit cards that are open-end (not home-secured) credit plans.<sup>668</sup>

As discussed in more detail below, the Bureau is amending commentary to the following provisions to provide guidance on how certain provisions in subpart G would apply to covered separate credit features accessible by hybrid prepaid-credit cards that are open-end (not home-secured) credit plans:<sup>669</sup>

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<sup>668</sup> A person would not be extending open-end credit where the covered separate credit feature accessed by the hybrid prepaid-credit card does not meet the definition of “open-end credit,” such as when a finance charge is not imposed in connection with the credit feature. See the section-by-section analysis of § 1026.2(a)(20) above.

<sup>669</sup> One commenter asked the Bureau to provide specific guidance in the commentary to § 1026.51 that modeled income may be used with respect to credit card accounts accessed by prepaid cards that are credit cards to meet the requirements set forth in § 1026.51. The Bureau notes that existing comment 51(a)(1)(i)-5.iv provides that for purposes of § 1026.51(a), a card issuer may consider the consumer’s current or reasonably expected income and assets based on information obtained through any empirically derived, demonstrably and statistically sound model

(1) Section 1026.52(a), which restricts required fees charged during the first year the account is opened;

(2) Section 1026.52(b), which restricts the imposition of penalty fees, including the ban on declined transaction fees;

(3) Section 1026.55(a), which restricts the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts; and

(4) Section 1026.57, which limits the marketing of credit cards to college students.<sup>670</sup>

The final rule also provides guidance on how § 1026.60, which requires disclosures to be provided on or with a solicitation or application to open a credit or charge card account, applies to covered separate credit features accessible by hybrid prepaid-credit cards.

The final rule also provides guidance on how provisions in existing § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, apply to non-covered separate credit features that are accessible by prepaid cards as defined by new § 1026.61. A non-covered separate credit feature may be subject to the provisions in § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. The final rule provides that with respect to such non-covered separate credit features, the provisions in existing § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, do not apply to fees or charges imposed on a prepaid account in relation to non-covered separate credit features.

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that reasonably estimates a consumer's income or assets, including any income or assets to which the consumer has a reasonable expectation of access. The Bureau notes that this existing guidance in comment 51(a)(1)(i)-5.iv applies to covered separate credit features accessible by hybrid prepaid-credit cards that are subject to § 1026.51. The Bureau does not believe that additional guidance is needed with respect to these credit features.

<sup>670</sup> The *Overview of the Final Rule's Amendments to Regulation Z* section above describes some of the benefits from these regulations for prepaid account consumers.

## *Section 1026.52 Limitations on Fees*

### *52(a) Limitations During First Year After Account Opening*

#### *52(a)(1) General Rule*

TILA section 127(n)(1) restricts the imposition of certain fees during the first year after opening a credit card account under an open-end consumer credit plan in order to restrict certain “fee harvester” or subprime credit cards that charged a large amount of fees early in the account relationship to the credit line, which significantly reduced the credit available to a consumer during the first year. Specifically, the statute provides that no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account where the account terms would require consumers to pay an aggregate amount of non-exempt fees in excess of 25 percent of the total amount of credit authorized under the account when the account is opened.

This provision is implemented in existing § 1026.52(a). Specifically, existing § 1026.52(a)(1) provides that generally the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. Under existing § 1026.52(a)(2), fees not subject to the 25 percent restriction are late payment fees, over-the-limit fees, returned-payment fees, or fees that the consumer is not required to pay with respect to the account. Existing comment 52(a)(1)-1 provides that the 25 percent limit in existing § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer’s asset account to the card issuer or from another credit account provided by the card issuer).

The proposal would have amended existing comment 52(a)(1)-1 to add a prepaid account as an example of a consumer's asset account. Thus, under the proposal, for a credit card account under an open-end (not home-secured) consumer credit plan that is accessed by a prepaid card that is a credit card, the 25 percent limit in existing § 1026.52(a)(1) would have applied to fees that the card issuer charges to the credit card account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment to the card issuer from the consumer's prepaid account or other asset account or from another credit account provided by the card issuer). Proposed comment 52(a)(1)-1.iii and iv would have added two new examples to existing comment 52(a)(1)-1 to illustrate how the prohibition in existing § 1026.52(a) would have applied to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards.

One industry trade association indicated that the Bureau should not apply the 25 percent cap to fees imposed for overdrafts on prepaid accounts or should include broader exemptions for fees (such as for cash advance fees) that are more appropriately tailored for prepaid account usage. This commenter believed that the 25 percent cap on fees imposed during the first year the credit card account is opened will likely make it cost-prohibitive for issuers to provide overdraft and other credit features.

Several consumer group commenters indicated that the restriction in existing § 1026.52(a) should be expanded to apply beyond the first year after a credit feature accessed by a prepaid card that is a credit card is opened. One of the consumer groups indicated that in the alternative, the rule could state that any increase in the credit limit under a credit feature accessed by a prepaid card that is a credit card constitutes a new credit agreement and results in another

year where fees cannot exceed 25 percent of the credit limit. This commenter indicated that without this safeguard, a card issuer could offer a very small amount of credit free of charge for a year, and then increase the credit limit after the first year while charging any fees it wishes, potentially causing cardholders serious harm.

Several consumer group commenters also indicated that the restriction in existing § 1026.52(a) should apply to fees that are charged by the card issuer for the credit feature prior to the credit feature being opened.

The Bureau sought comment on whether additional amendments to the regulation or commentary would be helpful to effectuate its interpretation of the statute or to facilitate compliance. For example, the Bureau sought comment on whether it would be helpful to mandate the disclosure to consumers of the initial credit line that is made available under the terms of the account, including any linked credit accounts. One consumer group commenter also indicated that with respect to a credit feature accessed by prepaid cards that are credit cards, card issuers should be required to disclose to consumers the credit limit that will apply to the credit feature. This commenter indicated that consumers should not have to guess at their credit limits. This commenter indicated that the restrictions in existing § 1026.52(a) cannot fully protect consumers unless they know what their credit limit is and can check to see if fees exceed 25 percent of that limit.

As discussed below, consistent with the proposal, existing § 1026.52(a) applies to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a “credit card account under an open-end (not home-secured) consumer credit plan,” as that term is defined in final § 1026.2(a)(15)(ii). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit

card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

In addition, the Bureau is adopting revisions to existing comment 52(a)(1)-1 consistent with the proposal with a technical revision to refer to § 1026.61 for the definition of “prepaid account.” Also, the Bureau is adopting the examples in proposed comment 52(a)(1)-1.iii and iv as proposed, with several technical revisions to clarify the intent of the examples and to be consistent with new § 1026.61.

With respect to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau has not expanded the scope of the restriction in existing § 1026.52(a) to apply this restriction beyond the first year the credit feature is opened, or to apply to fees that are charged prior to account opening. In addition, the Bureau has not provided that that any increase in the credit limit under a credit feature accessible by a hybrid prepaid-credit card constitutes a new credit agreement and results in another year where fees cannot exceed 25 percent of the credit limit. Also, the Bureau has not exempted additional credit-related fees (such as for cash advance fees) from the restriction in existing § 1026.52(a), as requested by one industry commenter as discussed above. The Bureau believes that existing § 1026.52(a) should apply to covered separate credit features accessible by hybrid prepaid-credit cards in similar circumstances in which it applies to other credit card accounts that are subject to that restriction.

The Bureau also has not required card issuers to disclose credit limits on covered separate credit features accessible by hybrid prepaid-credit cards. For customer-service reasons and other reasons, credit card issuers typically disclose the credit limits applicable to credit card accounts

to consumers even though that disclosure is not specifically required by TILA and Regulation Z. For similar reasons, the Bureau believes that card issuers that are providing covered separate credit features accessible by hybrid prepaid-credit cards will have an incentive to disclose the credit limits on these credit features as well. For these reasons, the Bureau at this time does not believe that it is necessary under Regulation Z to require that card issuers providing covered separate credit features accessible by hybrid prepaid-credit cards must disclose a credit limit with respect to these credit features.

*52(a)(2) Fees Not Subject to Limitations*

Existing § 1026.52(a)(2) provides that the 25 percent restriction does not apply to late payment fees, over-the-limit fees, returned-payment fees, or fees that the consumer is not required to pay with respect to the account. Existing comment 52(a)(2)-1 provides guidance on the types of fees that are included in the 25 percent threshold. Specifically, existing comment 52(a)(2)-1 provides that except as provided in existing § 1026.52(a)(2), existing § 1026.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening, other than charges attributable to periodic interest rates. The existing comment further clarifies that for example, § 1026.52(a) applies to: (1) fees that the consumer is required to pay for the issuance or availability of credit described in § 1026.60(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit; (2) fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account; (3) fees that the consumer is required to pay in order to engage in transactions using the

account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); (4) fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by existing § 1026.52(a)(2)(i)); (5) fixed finance charges; and (6) minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

### *The Bureau's Proposal*

The proposal would have moved current comments 52(a)(2)-2 and -3 to proposed comments 52(a)(2)-4 and -5, respectively with no intended substantive change. The Bureau proposed to add new comment 52(a)(2)-2 that would have provided additional examples of the types of fees that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards. Specifically, proposed comment 52(a)(2)-2 would have provided that except as provided in existing § 1026.52(a)(2), existing § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by a prepaid card that is a credit card, including fees that are assessed on the prepaid account in connection with credit accessed by the prepaid card. Under proposed comment 52(a)(2)-2, these fees would have included, but would not have been limited to: (1) per transaction fees for “shortages” or “overdrafts;” (2) fees for transferring funds from a credit account to a prepaid account that are both accessed by the prepaid card; (3) a daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a prepaid account is in “overdraft” status, or would be in overdraft status but for funds supplied by a linked line of credit accessed by the prepaid card; or (4) a

daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a line of credit accessed by the prepaid card has an outstanding balance.

The proposal also would have revised the section heading to § 1026.52(a) to delete the reference to limitations prior to account opening to be consistent with the scope of the limitations set forth in § 1026.52(a); no substantive change would have been intended.

#### *Comments Received*

One consumer group commenter indicated that the Bureau should clarify that “load” fees are included for purposes of the 25 percent restriction, even if they are charged to the prepaid account. This commenter indicated that transfer fees and a load fees are essentially the same thing and the card issuer should not be allowed to evade the restriction in existing § 1026.52(a) by charging the fees to the prepaid account.

#### *The Final Rule*

In the final rule, the Bureau is moving existing comments 52(a)(2)-2 and -3 to final comments 52(a)(2)-4 and -5 respectively; no substantive change is intended. In addition, the section heading to § 1026.52(a) is revised to delete the reference to limitations prior to account opening to be consistent with the scope of the limitations set forth in § 1026.52(a); no substantive change is intended. As discussed in more detail below, the Bureau is adding new comments 52(a)(2)-2 and -3 to provide guidance on how § 1026.52(a) applies to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as defined in § 1026.61 that are subject to § 1026.52(a).<sup>671</sup>

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<sup>671</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 52(a)(2)-3 would have provided an additional example of the types of fees that that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by such account numbers. For the reasons set

*Covered separate credit features accessible by hybrid prepaid-credit cards.* The Bureau is revising proposed comment 52(a)(2)-2 from the proposal to be consistent with new § 1026.61. New comment 52(a)(2)-2 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.52(a) applies to the following fees: (1) except as provided in § 1026.52(a)(2), any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature; and (2) except as provided in existing § 1026.52(a)(2), any fee or charge imposed on the asset feature of the prepaid account (other than a charge attributable to a periodic interest rate) during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is a charge imposed as part of the plan under final § 1026.6(b)(3). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analysis of § 1026.6 above, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the

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forth in the section-by-section analysis of § 1026.2(a)(15)(i), the final rule does not adopt proposed comment 52(a)(2)-3 related to these account numbers.

prepaid account is a “charge imposed as part of the plan” under final § 1026.6(b)(3) to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

The Bureau believes that the restriction on fees set forth in TILA section 127(n)(1), as implemented in existing § 1026.52(a), provides important protections for consumers, particularly in the context of covered separate credit features accessible by hybrid prepaid-credit cards. As discussed above, a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(ii) includes an overdraft credit feature offered by prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account. In this case, the covered separate credit feature accessible by a hybrid prepaid-credit card is designed to provide liquidity to the prepaid account. As discussed above, except as provided in existing § 1026.52(a)(2), with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, the restriction in final § 1026.52(a) applies to fees or charges imposed on the covered separate credit feature accessible by a hybrid prepaid-credit card, as well as fees or charges imposed on the asset feature of the prepaid account when those fees are “charges imposed as part of the plan” under final § 1026.6(b)(3).

Although the Bureau believes that issuers will generally assess credit-related fees on the covered separate credit feature, TILA section 127(n)(1) applies to “any fees,” with some exceptions, that the consumer is required to pay under the terms of a credit card account under an open-end consumer credit plan. That term readily encompasses credit-related fees that are

imposed on the asset feature of the prepaid account because it speaks to what the fees relate to, not where they are placed. Even if the term were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit card markets—that interpreting it to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. The Bureau believes that from the consumer’s perspective, there is no practical difference between a fee charged against the covered separate credit feature and a credit-related fee charged to the asset feature of the prepaid account in order to access credit because both functionally reduce the total amount of credit available to the consumer through the covered separate credit feature accessible by the hybrid prepaid-credit card until such fees are paid. If TILA section 127(n)(1) were not interpreted to include credit-related fees charged across any linked accounts, the Bureau is concerned that card issuers could hide non-exempt fees by imposing them on the asset feature of the prepaid account or by creating separate artificially distinct credit accounts and attempting to collect the non-exempt fees from those linked credit accounts.

The Bureau also is adding new comment 52(a)(2)-3 to provide that final § 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. The Bureau notes that under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a “charge imposed as part of the plan” with respect to the covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid

accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii), these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

As discussed above, one consumer group commenter indicated that the Bureau should clarify that “load” fees are included for purposes of the 25 percent restriction, even if they are charged to the prepaid account. As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) above, new comment 4(b)(11)(ii)-1 sets forth the circumstances in which load or transfer fees imposed on the asset feature of the prepaid account are finance charges under new § 1026.4(b)(11)(ii). To the extent that a load fee or transfer fee that is imposed on the asset feature of a prepaid account is a finance charge under new § 1026.4(b)(11)(ii), that load or transfer fee is subject to the 25 percent restriction under § 1026.52(a) because those fees would be “charges imposed as part of the plan” under final § 1026.6(b)(3).

*Non-covered separate credit features.* As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is

not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.52(a) in its own right.

With respect to such non-covered separate credit features that are subject to § 1026.52(a), new comment 52(a)(2)-3 also provides that final § 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)-1, with respect to a non-covered separate credit feature that is accessible by a prepaid card as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are “charges imposed as part of the plan” under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)-1 also cross-references new comment 4(b)(11)-1.ii.B, which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.52(a) does not apply to any fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

### *52(b) Limitations on Penalty Fees*

TILA section 149(a) provides that the amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open-end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.<sup>672</sup> TILA section 149(e) provides that the Bureau, in consultation with certain agencies, may issue rules to provide an amount for any penalty fee or charge described in TILA section 149(a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.<sup>673</sup>

Implementing TILA section 149, existing § 1026.52(b) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee: (1) is consistent with either the cost analysis in existing § 1026.52(b)(1)(i) or the safe harbors in existing § 1026.52(b)(1)(ii); and (2) does not exceed the dollar amount associated with the violation in accordance with existing § 1026.52(b)(2)(i). Under existing § 1026.52(b)(2)(ii), a card issuer also must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction.

As discussed in the section-by-section analysis of § 1026.52(b)(2)(i)(B) below, the Bureau proposed guidance on declined transaction fees in relation to credit card accounts under an open-end (not home-secured) consumer credit plan accessed by prepaid cards that would have

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<sup>672</sup> 15 U.S.C. 1665d(a).

<sup>673</sup> 15 U.S.C. 1665d(e).

been credit cards under the proposal. These declined transaction fees are discussed in more detail in the section-by-section analysis of § 1026.52(b)(2)(i)(B) below.

The Bureau did not propose any other additional guidance in relation to § 1026.52(b) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan accessed by prepaid cards that would have been credit cards under the proposal. Nonetheless, the Bureau believes that additional guidance is needed with respect to the restrictions on penalty fees contained in final § 1026.52(b) given the changes in the final rule to the definition of “finance charge” in final § 1026.4, and the definition of “charges imposed as part of the plan” in final § 1026.6(b)(3), and the addition of new § 1026.61.

As discussed in more detail below, the final rule adds new comment 52(b)-3 to provide guidance on how the restrictions in final § 1026.52(b) generally apply to fees or charges imposed in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. The final rule also adds new comment 52(b)-4 to provide that the restrictions in final § 1026.52(b) do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not “charges imposed as part of the plan” under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. Comment 52(b)-4 also provides that the restrictions in final § 1026.52(b) do not apply to fees or charges imposed on the asset feature of a prepaid account with respect to non-covered separate credit features.

In addition, in the proposal, the Bureau solicited comment on issues related to fees imposed by card issuers when preauthorized payments are returned unpaid. Specifically, the

Bureau solicited comment on situations where at the time a preauthorized payment is set to occur, the prepaid account does not have sufficient funds to cover the amount of the credit card payment. The Bureau solicited comment on: (1) how credit card issuers anticipate handling this situation, including cases where the prepaid account contains funds sufficient to pay some but not all of the credit card payment due; (2) whether issuers anticipate charging a specific fee because the preauthorized payment could not be completed, in addition to any late fee that might be charged if the credit card balance were not paid by the due date; and (3) whether the Bureau should adopt any specific rules to address these issues, and if so, what rules should the Bureau adopt.

The proposal included this request for comment in the discussion of the offset prohibition in proposed § 1026.12(d). With respect to credit card accounts accessed by prepaid cards that would have been credit cards under the proposal, proposed § 1026.12(d)(3) would have allowed an exception for certain preauthorized payment plans to the offset prohibition in proposed § 1026.12(d)(1). In response to this request for comment, several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) related to the circumstances in which card issuers can charge fees when preauthorized payments are returned unpaid and/or related to the amount of the fees. As discussed in more detail below, one consumer group commenter indicated that the Bureau should prohibit these fees under § 1026.52(b). Several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) limiting the circumstances in which these fees can be charged and limiting the amount of the fees.

As discussed in the section-by-section analysis of § 1026.12(d)(3) above, respect to covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new

§ 1026.61, final § 1026.12(d)(3) sets forth an exception for certain preauthorized payment plans with respect to the offset prohibition in final § 1026.12(d). As discussed in more detail below, the restrictions in existing § 1026.52(b) related to returned payment fees apply to fees that are imposed by card issuers when preauthorized payments are returned unpaid. The Bureau does not believe that additional restrictions are needed at this time under final § 1026.52(b) with respect to the circumstances in which these fees can be charged or the amount of the fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.

#### *General Guidance*

*Covered separate credit features accessible by hybrid prepaid-credit cards.* As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. To reflect this change and to ensure compliance with the restrictions in § 1026.52(b), new comment 52(b)-3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature,

regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to final § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the covered separate credit feature.

The Bureau believes that the restriction on penalty fees set forth in TILA section 149(a), and implemented in existing § 1026.52(b), provides important protections for consumers, particularly in the context of covered separate credit features accessible by hybrid prepaid-credit cards. Covered separate credit features accessible by hybrid prepaid-credit cards are designed to provide liquidity to the prepaid account.

As described above, new comment 52(b)-3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. TILA section 149(a) applies to any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open-end consumer credit plan. Those terms readily encompass credit-related fees that are imposed on the asset feature of the prepaid account. Even if the terms were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit markets—that interpreting them to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. From the consumer’s perspective, there is no

practical difference when a penalty fee for a violation of the covered separate credit feature is charged against the covered separate credit feature and when it is charged to the asset feature of the prepaid account. If TILA section 149(a) were not interpreted to include penalty fees for violations of the covered separate credit feature charged to the asset feature, the Bureau is concerned that card issuers could avoid the restrictions set forth in TILA section 149(a) and final § 1026.52(b) with respect to these fees simply by imposing them on the asset feature of the prepaid account.

In addition, to facilitate compliance with final § 1026.52(b), new comment 52(b)-4 provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to a covered separate credit feature. As discussed above, the Bureau believes this additional guidance is needed given the changes in the final rule to the definition of “finance charge” in final § 1026.4, the definition of “charges imposed as part of the plan” in final § 1026.6(b)(3), and the addition of new § 1026.61.

As discussed in more detail in the section-by-section analysis of § 1026.6 above, with respect to a fee or charge imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a “charge imposed as part of the plan” under final § 1026.6(b)(3) to the extent that the amount of the fee or charges exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

Nonetheless, under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both

accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a “charge imposed as part of the plan” with respect to the covered separate credit feature to the extent that the amount of the fee or charges does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii).

As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature. Thus, new comment 52(b)-4 provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature.

*Non-covered separate credit features.* As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new

§ 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.52(b) in its own right.

With respect to non-covered separate credit features that are subject to final § 1026.52(b), new comment 52(b)-4 also provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to a non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)-1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are “charges imposed as part of the plan” under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)-1 also cross-references new comment 4(b)(11)-1.ii.B, which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.52(b) does not apply to fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

#### *Fees for Preauthorized Payments That Are Returned Unpaid*

As discussed above, in the proposal, the Bureau solicited comment on situations where at the time a preauthorized payment is set to occur, the prepaid account does not have sufficient

funds to cover the amount of the credit card payment. The Bureau solicited comment on: (1) how credit card issuers anticipate handling this situation, including cases where the prepaid account contains funds sufficient to pay some, but not all, of the credit card payment due; (2) whether issuers anticipate charging a specific fee because the preauthorized payment could not be completed, in addition to any late fee that might be charged if the credit card balance was not paid by the due date; and (3) whether the Bureau should adopt any specific rules to address these issues, and if so, what rules should the Bureau adopt.

The proposal included this request for comment in the discussion of the offset prohibition in proposed § 1026.12(d). With respect to credit card accounts accessed by prepaid cards that would have been credit cards under the proposal, proposed § 1026.12(d)(3) would have allowed an exception for certain preauthorized payment plans to the offset prohibition in proposed § 1026.12(d)(1). In response to this request for comment, several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) related to the circumstances in which card issuers can charge fees when preauthorized payments are returned unpaid and/or related to the amount of the fees. One consumer group commenter indicated that the Bureau should adopt rules to cover the situation where the consumer authorizes periodic deductions, but there is not enough money to cover a payment when due. In particular, this commenter indicated the Bureau should prohibit fees that are imposed by card issuers when preauthorized payments are returned unpaid under existing § 1026.52(b)(2)(i)(B)(I) as a “declined transaction fee.” Existing § 1026.52(b)(2)(i)(B) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. Existing § 1026.52(b)(2)(i)(B)(I) provides that there is no dollar amount associated

with transactions that the card issuer declines to authorize, and thus fees charged for those declined transactions are prohibited under existing § 1026.52(b)(2)(i)(B).

In the alternative, this commenter indicated that the Bureau should use its authority to establish “additional requirements” to provide for a “right to cure” period for the limited circumstance of prepaid consumers who have authorized automatic deductions to repay credit associated with their prepaid card. This commenter indicated that the Bureau should require the card issuer to provide a limited time period, such as one week, to add funds to the prepaid account before a penalty fee under § 1026.52(b) could be imposed. In that case, any penalty fees would be subject to the limitations of existing § 1026.52(b), namely, that the fee amount (1) must be consistent with either the cost analysis in existing § 1026.52(b)(1)(i) or the safe harbors in existing § 1026.52(b)(1)(ii); and (2) does not exceed the dollar amount associated with the violation under existing § 1026.52(b)(2)(i). In addition, under existing § 1026.52(b)(2)(ii), a card issuer could not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction.

Another consumer group commenter indicated that if the prepaid account does not have enough funds to satisfy a requested transfer or a preauthorized payment, the Bureau should provide some kind of cushion where consumers could avoid a fee if the debt obligation falls below a certain threshold—*i.e.*, less than \$20—and that no fee should be greater than the minimum 4 percent repayment amount and/or the overdraft service charge.

As discussed in the section-by-section analysis of § 1026.12(d)(3) above, with respect to covered separate credit features accessible by hybrid prepaid-credit cards, as defined in § 1026.61, final § 1026.12(d)(3) sets forth an exception for certain preauthorized payment plans

with respect to the offset prohibition in final § 1026.12(d). The Bureau does not believe that fees imposed by card issuers when preauthorized payments are returned unpaid are fees for declined transactions under § 1026.52(b)(2)(i)(B)(I). The Bureau believes that it is clear under existing comment 52(b)-1.i.B that fees imposed by card issuers when preauthorized payments are returned unpaid constitute fees for returned payments and are regulated as returned payment fees under § 1026.52(b)(1), (2)(i)(A), and (2)(ii). Specifically, existing comment 52(b)(1)-i.B provides that the limitations in § 1026.52(b) apply to returned payment fees and any other fees imposed by a card issuer if a payment initiated via check, ACH, or other payment method is returned. Existing commentary to § 1026.52(b)(1), (2)(i)(A), and (2)(ii) provide guidance on how the restrictions in existing § 1026.52(b)(1), (2)(i)(A) and (2)(ii) apply to returned payment fees. *See, e.g.*, comments 52(b)(1)(i)-7, 52(b)(1)(ii)-1.i.B, 52(b)(1)(ii)-1.iii.C, 52(b)(2)(i)-2, and 52(b)(2)(ii)-1.ii, iii and v through vii. For example, § 1026.52(b)(1), and (b)(2)(i)(A) and related commentary restrict the amount of the fee that a card issuer can impose for a returned payment. In addition, if a payment has been returned and is submitted again for payment by the card issuer, comment 52(b)(2)(i)-2 provides that there is no additional dollar amount associated with a subsequent return of that payment and a card issuer is prohibited from imposing an additional returned payment fee. Also, comment 52(b)(2)(ii)-1.ii.A and B provide that a card issuer is prohibited from assessing both a late payment fee and a returned payment fee based on a single event or transaction. The existing restrictions in § 1026.52(b)(1), (2)(i)(A), and (2)(ii), and related commentary regarding returned payment fees apply to fees imposed by card issuers when preauthorized payments are returned unpaid in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in § 1026.61, that are subject to § 1026.52(b).

The Bureau has not established additional requirements beyond those contained in § 1026.52(b)(1), (2)(i)(A), and (2)(ii) and related commentary regarding returned payment fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards, such as a right to cure period for prepaid consumers where preauthorized payments have been returned unpaid. At this time, the Bureau believes that the fee restrictions that apply generally to credit card accounts in existing § 1026.52(b)(1), (2)(i)(A), and (2)(ii) and related commentary with respect to returned payments are sufficient to protect consumers with respect to the circumstances in which card issuer can impose fees for preauthorized payments that are returned unpaid in connection with covered separate credit features accessible by hybrid prepaid-credit cards. The Bureau will continue to monitor whether additional safeguards are needed.

#### *52(b)(2) Prohibited Fees*

##### *52(b)(2)(i) Fees That Exceed Dollar Amount Associated with Violation*

##### *52(b)(2)(i)(B) No Dollar Amount Associated with Violation*

Existing § 1026.52(b)(2)(i)(B) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. Existing § 1026.52(b)(2)(i)(B)(1) through (3), respectively, prohibit the following fees because there is no dollar amount associated with the following violations: (1) transactions that the card issuer declines to authorize; (2) account inactivity; and (3) the closure or termination of an account.

#### *The Bureau's Proposal*

The Bureau proposed to add comment 52(b)(2)(i)-7, which would have provided guidance on when the ban on declined transaction fees in existing § 1026.52(b)(2)(i)(B)(1)

would apply in the context of prepaid accounts. Specifically, this proposed comment would have provided that existing § 1026.52(b)(2)(i)(B)(I) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. Finally, the proposed comment would have provided that fees imposed for declining a transaction that would have only accessed the prepaid account and would not have accessed the consumer's credit card account would not be covered by existing § 1026.52(b)(2)(i)(B)(I).

#### *Comments Received*

The Bureau requested comment on whether once a credit card account has been added to a prepaid card, it should prohibit a card issuer from thereafter assessing a fee for declining to authorize a prepaid card transaction, notwithstanding that a given transaction would not have accessed the credit card account even had it been authorized. Several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction.

Also, as discussed in more detail below, several consumer groups requested that the Bureau adopt additional protections under § 1026.52(b) with respect to credit card accounts that are accessed by prepaid cards that are credit cards. For example, one consumer group commenter indicated that the Bureau should clarify that the following two types of fees are penalty fees prohibited under existing § 1026.52(b)(2)(i)(B) because no dollar amount is associated with the violation: (1) fees for placing a stop payment on preauthorized transfers; and

(2) legal process fees. Another consumer group commenter indicated that any expenditure not associated with a purchase transaction should not be able to trigger an overdraft fee.

### *The Final Rule*

As discussed in more detail below, the final rule adopts new comment 52(b)(2)(i)-7 as proposed with revisions to be consistent with new § 1026.61. New comment 52(b)(2)(i)-7 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, § 1026.52(b)(2)(i)(B)(I) prohibits declined transaction fees from being imposed in connection with the covered separate credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account.

Also, as discussed above and in more detail below, several consumer groups requested that the Bureau adopt additional protections under § 1026.52(b) with respect to credit card accounts that are accessed by prepaid cards that are credit cards. As discussed in more detail below, the Bureau has not adopted such restrictions in final § 1026.52(b) or related commentary in relation to covered separate credit features accessible by hybrid prepaid-credit cards.

*Declined transaction fees.* As discussed above, the Bureau proposed to add comment 52(b)(2)(i)-7, which would have provided guidance on when the ban on declined transaction fees in existing § 1026.52(b)(2)(i)(B)(I) would apply in the context of prepaid accounts. Specifically, this proposed comment would have provided that existing § 1026.52(b)(2)(i)(B)(I) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. Finally, the proposed comment would have provided that fees imposed for declining a transaction that would

have only accessed the prepaid account and would not have accessed the consumer's credit card account would not be covered by existing § 1026.52(b)(2)(i)(B)(I).

The Bureau requested comment on whether, once a credit card account has been added to a prepaid card, the Bureau should prohibit a card issuer from thereafter assessing a fee for declining to authorize a prepaid card transaction, notwithstanding that a given transaction would not have accessed the credit card account even had it been authorized. Several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction.

The Bureau is adopting proposed comment 52(b)(2)(i)-7 with revisions to reflect terminology consistent with new § 1026.61.<sup>674</sup> New comment 52(b)(2)(i)-7 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b)(2)(i)(B)(I) prohibits card issuers from imposing declined transaction fees in connection with the covered separate credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account.

For example, if the hybrid prepaid-credit card attempts to access credit from the covered separate

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<sup>674</sup> The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 52(b)(2)(i)-7 would have provided that the prohibition in § 1026.52(b)(2)(i)(B)(I) applies to declined transaction fees imposed on credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 52(b)(2)(i)-7 related to these account numbers.

credit feature and the transaction is declined, existing § 1026.52(b)(2)(i)(B)(I) prohibits the card issuer from imposing a declined transaction fee, regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account. Fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card are not covered by existing § 1026.52(b)(2)(i)(B)(I).

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that a fee for declining a transaction where the prepaid account issuer attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is declined is no different than a fee for declining a credit card transaction, which is prohibited by current § 1026.52(b)(2)(i)(B)(I). Thus, such a declined transaction fee is prohibited by final § 1026.52(b)(2)(i)(B)(I), regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account.

As discussed above, several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the

prepaid account issuer of the declined transaction. Consistent with the proposal, new comment 52(b)(2)(i)-7 makes clear that fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card are not covered by final § 1026.52(b)(2)(i)(B)(I). The Bureau does not believe that it is appropriate to apply final § 1026.52(b)(2)(i)(B)(I) to fees for declined transactions that would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card because fees for those declined transactions are not directly related to credit.<sup>675</sup>

*Stop payment fees and legal process fees.* As discussed above, one consumer group commenter indicated that the Bureau should clarify that the following two types of fees are penalty fees prohibited under existing § 1026.52(b)(2)(i)(B) because no dollar amount is associated with the violation: (1) fees for placing a stop payment on preauthorized transfers; and (2) legal process fees. The Bureau does not believe it is appropriate at this time to include these clarifications because these requirements are beyond the scope of the proposal, and the Bureau has not collected information about whether there are costs for prepaid account issuers related to the circumstances in which these fees are charged.

*Restriction on overdraft fees.* As indicated above, one consumer group commenter indicated that any expenditure not associated with a purchase transaction should not be able to trigger an overdraft fee. This commenter indicated that a consumer should never be charged an

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<sup>675</sup> As discussed above, certain commenters indicated that declined transaction fees should be prohibited on prepaid accounts generally or should be deemed unfair penalty fees, irrespective of when there is a credit feature in connection with the prepaid account. The Bureau believes such changes are outside the scope of the proposal, and does not make the change at this time. However, the Bureau continues to monitor such fees generally and whether any practices raise concerns. The Bureau further notes, however, that although the Board did not address declined transaction fees in its 2009 rulemaking addressing overdraft services, the Board noted in response to comments received that such fees could raise significant fairness issues under the FTC Act, because the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction. See 74 FR 59033, 59041 (Nov. 17, 2009).

overdraft fee because the consumer incurred another fee that caused the overdraft. The commenter suggested that the general principle should be that prepaid account issuers should never be able to charge an overdraft fee of any kind if the issuer has not extended a payment to a third party.

The Bureau has not adopted a restriction on imposing credit-related fees on a credit extension from a covered separate credit feature unless the credit extension is for a purchase transaction. The requirement is beyond the scope of the proposal. In addition, as discussed above and in the section-by-section analysis of § 1026.52(a), the Bureau notes that the provisions in § 1026.52(a) and (b) apply to credit-related fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as applicable.

*Section 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges*

TILA section 171(a) generally prohibits creditors from increasing any APR, fee, or finance charge applicable to any outstanding balance on a credit card account under an open-end consumer credit plan, with some exceptions.<sup>676</sup> TILA section 172 provides that a creditor generally cannot increase a rate, fee, or finance charge during the first year after account opening and that a promotional rate generally cannot expire earlier than six months.<sup>677</sup>

TILA sections 171 and 172 are implemented in existing § 1026.55. Existing § 1026.55(a) provides that except as provided in existing § 1026.55(b), a card issuer must not increase an APR or a fee or charge required to be disclosed under existing § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

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<sup>676</sup> See 15 U.S.C. 1666i-1.

<sup>677</sup> See 15 U.S.C. 1666i-2.

The Bureau did not propose changes to § 1026.55 or related commentary. Nonetheless, the Bureau believes that additional guidance is needed with respect to the restrictions in final § 1026.55 given the changes in the final rule to the definition of “finance charge” in final § 1026.4, the definition of “charges imposed as part of the plan” in final § 1026.6(b)(3), and the addition of new § 1026.61.

As discussed in more detail below, the final rule adds new comment 55(a)-3 to provide guidance on how the restrictions in final § 1026.55 generally apply to fees or charges imposed in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. The final rule also adds new comment 55(a)-4 to provide that the restrictions in final § 1026.55 do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not “charges imposed as part of the plan” under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. New comment 55(a)-4 also provides that final § 1026.55 does not apply to fees or charges imposed on the asset feature of a prepaid account with respect to a non-covered separate credit feature.

#### *Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards*

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Given this change and to ensure compliance with § 1026.55, the Bureau is adding new comment 55(a)-3 to provide guidance on when fees or charges imposed in connection with covered separate credit features are subject to the restrictions in existing § 1026.55. New comment 55(a)-3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.55(a) prohibits card issuers from increasing an APR or any fee or charge required to be disclosed under existing § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in existing § 1026.55(b). This is true regardless of whether these fees or APRs are imposed on the asset feature of the prepaid account or on the credit feature.

TILA section 171 and 172 apply, respectively, to any APR, fee, or finance charge applicable to any outstanding balance and to any APR, fee, or finance charge on any credit card account under an open-end consumer credit plan. Those terms readily encompass credit-related fees that are imposed on the asset feature of the prepaid account. Even if the terms were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit markets—that interpreting them to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. From the consumer’s perspective, there is no practical difference when an APR or any fee or charge described in existing § 1026.55(a) imposed in connection with a covered separate credit feature is charged against the separate credit feature

and when it is charged to the asset feature of the prepaid account. If TILA sections 171 and 172 were not interpreted to include APRs or fees or charges described in existing § 1026.55(a) in connection to the covered separate credit feature when those fees or charges are imposed on the asset feature, the Bureau is concerned that card issuers could avoid the restrictions set forth in TILA sections 171 and 172 and § 1026.55(a) with respect to these fees or charges simply by imposing them on the asset feature of the prepaid account.

New comment 55(a)-4 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, final § 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.6 above, with respect to a fee or charge imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a “charge imposed as part of the plan” to the extent that the amount of the fee or charges exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

Under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1, a fee or charge imposed on the asset feature of the prepaid account is not a “charge imposed as part of the plan” to the extent that the amount of the fee or charges does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. These fees or charges imposed on the asset

feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii) in relation to the covered separate credit feature. The Bureau believes that this guidance facilitates compliance with final § 1026.55(a) by providing additional clarity to card issuers on how the restrictions in final § 1026.55(a) apply to fees or charges imposed on the asset feature of the prepaid account accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

#### *Non-Covered Separate Credit Features*

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.55 in its own right.

With respect to non-covered separate credit features that are subject to § 1026.55, new comment 55(a)-4 provides that final § 1026.55 does not apply to any fee or charge imposed on

the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E). The Bureau notes that under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)-1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are “charges imposed as part of the plan” under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)-1 also cross-references new comment 4(b)(11)-1.ii.B which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.55 does not apply to any fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

*Section 1026.57 Reporting and Marketing Rules For College Student Open-End Credit*

*57(a) Definitions*

TILA section 127(r) requires creditors to submit an annual report to the Bureau containing the terms and conditions of all business, marketing, promotional agreements, and college affinity card agreements with an institution of higher education, or other related entities, with respect to any college student credit card issued to a college student at such institution.<sup>678</sup>

This TILA section is implemented by existing § 1026.57(d), which requires card issuers that are

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<sup>678</sup> 15 U.S.C. 1637(r).

a party to one or more “college credit card agreements” to submit annual reports to the Bureau regarding those agreements.

Existing § 1026.57(a)(5) defines “college credit card agreement” to mean any business, marketing, or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution. Existing § 1026.57(a)(1) defines “college student credit card” as used in the term “college credit card agreement” to mean a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

#### *The Bureau’s Proposal*

Existing comment 57(a)(1)-1 provides guidance on the definition of “college student credit card” which is used in the definition of “college credit card agreement.” The proposal would have amended this comment to include a prepaid card that is a credit card that is issued to any college student under a credit card account under an open-end (not home-secured) consumer credit plan. Proposed comment 57(a)(1)-1 also would have provided that the definition of college student credit card includes a prepaid account that is issued to any college student where an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account and the credit account may be accessed by a prepaid card that is a credit card.

Existing comment 57(a)(5)-1 provides guidance on the definition of “college credit card agreement.” The proposal would have amended this comment to include guidance on when an agreement related to a prepaid account would be considered a “college credit card agreement.” Proposed comment 57(a)(5)-1 would have provided that the definition of “college credit card agreement” includes a business, marketing, or promotional agreement between a card issuer and

a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement either provides for the addition of open-end (not home-secured) consumer credit plans to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card. Proposed comment 57(a)(5)-1 also would have provided that the definition of “college credit card agreement” includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) an agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card.

#### *Comments Received and the Final Rule*

The Bureau did not receive any comment on this aspect of the proposal. The Bureau is adopting proposed comments 57(a)(1)-1 and 57(a)(5)-1 with technical revisions to clarify the intent of the comments, and to be consistent with new § 1026.61.<sup>679</sup> Final comment 57(a)(1)-1 provides that the definition of “college student credit card” includes a hybrid prepaid-credit card as defined by new § 1026.61 that is issued to any college student where the card accesses a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan. The definition of “college student credit card” also includes a

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<sup>679</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have provided in comments 57(a)(1)-1 and 57(a)(5)-1 guidance on the definitions of “college student credit card” and “college credit card agreement” related to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comments 57(a)(1)-1 and 57(a)(5)-1 related to these account numbers.

prepaid account as defined in § 1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may be added in the future to the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Final comment 57(a)(5)-1 provides that the definition of “college credit card agreement” includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card to prepaid accounts previously issued to full-time or part-time students. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the agreement provides for the issuance of prepaid accounts as defined in § 1026.61 to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may be added in the future to the prepaid account.

Pursuant to the Bureau’s amendments to commentary, final § 1026.57(d) requires a card issuer that is a party to one or more college credit card agreements in connection with covered

separate credit features accessible by hybrid prepaid-credit cards to submit annual reports to the Bureau regarding those agreements. In addition, a card issuer is required to submit agreements that provide for the issuance of prepaid accounts to full-time or part-time students even if a covered separate credit feature is not linked to the prepaid account when the prepaid accounts are issued, so long as such credit features may be added in connection with the prepaid accounts.

As discussed in more detail in the section-by-section analysis of § 1026.61(c) below, new § 1026.61(c) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. Thus, a prepaid card in connection with a prepaid account cannot access a covered separate credit feature at the time the prepaid account is opened. Nonetheless, the Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, have an impact on whether consumers may request that a covered separate credit feature accessible by a hybrid prepaid-credit card be linked to the prepaid account when such covered separate credit features are offered to them. Thus, even though a prepaid account will not have a covered separate credit feature linked to it at the time the prepaid account is opened, if a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be linked to a prepaid account as described above

in the future, the prepaid account at the time of issuance would be a “college student credit card” for purposes of final § 1026.57(a)(1) if the prepaid account is issued to a college student. As a result, under the final rule, a card issuer that is a party to one or more agreements between the card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) must submit annual reports to the Bureau regarding those agreements if: (1) an agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account.

The Bureau believes it is necessary and proper to exercise its adjustment authority under TILA section 105(a), to apply section 127(r)’s requirements for college card agreements to prepaid cards where covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may subsequently be added, to further the purposes of TILA. The provisions in TILA section 127(r) addressing college credit cards reflect Congress’s particular concern with providing special protections for students to ensure that students can make informed credit decisions, and the Bureau believes that including such cards is consistent with such congressional concerns for college students and credit card debt. Further, these concerns might be heightened with respect to prepaid accounts to which covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may be linked because students might be prone to use such prepaid accounts as their primary transaction account.

### *57(b) Public Disclosure of Agreements*

TILA section 140(f)(1) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.<sup>680</sup> This TILA provision is implemented by existing § 1026.57(b), which provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

The Bureau proposed comment 57(b)-3 to explain that existing § 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of open-end (not home-secured) consumer credit accounts to prepaid accounts previously issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card; or (2) prepaid accounts where a credit account may be added in connection with the prepaid account and that credit account may be accessed by a prepaid card that is a credit card. Thus, under proposed § 1026.57(b), an institution of higher education would have been required to publicly disclose such agreements.

One consumer group commenter indicated that it is not enough to require an institution of higher education to offer a disclosure on marketing agreements with card issuers. This commenter believed that the Bureau should specifically require that these disclosures be made available on the institution's website. This commenter believed that these disclosures should be available on the same screen as the application for the card and would disclose the dollar amount received by the institution and any terms associated with those fees. The commenter believed that these terms should be listed in English and Spanish.

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<sup>680</sup> 15 U.S.C. 1650(f)(1).

The Bureau is adopting proposed comment 57(b)-3 as proposed with technical revisions to clarify the intent of the comment and to be consistent with new § 1026.61.<sup>681</sup> Under the final rule, new comment 57(b)-3 provides that existing § 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan to prepaid accounts as defined in § 1026.61 that were previously issued to full-time or part-time students; or (2) new prepaid accounts where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may in the future be added to the prepaid account. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes it is necessary and proper to exercise its adjustment authority under TILA section 105(a) to effectuate the purposes of TILA by applying section 140(f)'s requirements for college card agreements to prepaid cards where covered separate credit features

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<sup>681</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have provided in comment 57(b)-3 that institutions of higher education must disclose marketing agreements related to credit card accounts accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 57(b)-3 related to these account numbers.

that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may subsequently be added. The provisions in TILA section 140(f) addressing college card agreements reflect Congress's particular concern with providing special protections for students to ensure that students can make informed credit decisions, and the Bureau believes that including such cards is consistent with such congressional concerns for college students and credit card debt. The Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, may have an impact on whether consumers may request that a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit card be linked to the prepaid account, as discussed above, when such covered separate credit features are offered to them. Thus, the Bureau believes that the marketing related to a prepaid account where a covered separate credit feature accessible by a hybrid prepaid-credit card may be added would constitute marketing of a credit card. Thus, under the final rule, an institution of higher education must publicly disclose agreements for the marketing of prepaid accounts where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account.

As discussed above, one consumer group commenter indicated that it is not enough to require an institution of higher education to offer a disclosure related to marketing agreements with card issuers. This commenter believed that the Bureau should specifically require that these disclosures be made available on the institution's website. This commenter believed that these disclosures should be available on the same screen as the application for the card and disclose the

dollar amount received by the institution and any terms associated with those fees. The commenter believed that these terms should be listed in English and Spanish.

The final rule does not impose additional requirements on institutions of higher education to disclose marketing agreements. The Bureau believes such changes are outside the scope of the proposal and does not make the change at this time. The Bureau notes that existing comment 1026.57(b)-1 provides that institutions of higher education may comply with the requirement in existing § 1026.57(b) by publishing any relevant credit card agreement on their website or by making such agreements available free of charge upon request using reasonable procedures and in a reasonable timeframe. In addition, the Bureau sent a warning letter in December 2015 to several institutions of higher education because their agreements were not posted on their websites and could not be publicly obtained by the Bureau using reasonable procedures and in a reasonable timeframe.<sup>682</sup> In the letter, the Bureau noted that publishing the agreement on the website is proving to be the least burdensome and most straightforward means of complying with § 1026.57(b), and that any other approach may be less effective and creates compliance risk.

#### *57(c) Prohibited Inducements*

TILA section 140(f)(2) provides that no card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education, as determined by rule of the Bureau; or (3) at an event sponsored

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<sup>682</sup> See Press Release, CFPB, *CFPB Warns Colleges About Secret Campus Credit Card Contracts* (Dec. 16, 2015), available at <http://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-colleges-about-secret-campus-credit-card-contracts/>.

by or related to an institution of higher education.<sup>683</sup> This TILA provision is implemented in existing § 1026.57(c), which provides that no card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

The Bureau proposed to add comment 57(c)-7 to explain that existing § 1026.57(c) applies to (1) the application for or opening of a credit card account that is being added to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card; or (2) the application for or opening of a prepaid account where a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card.

The Bureau did not receive comments on this aspect of the proposal. The Bureau is adopting proposed comment 57(c)-7 with revisions to be consistent with new § 1026.61.<sup>684</sup> New comment 57(c)-7 provides that final § 1026.57(c) applies to (1) the application for or opening of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is being added to a prepaid account as defined as § 1026.61 previously issued to a full-time or part-time student as well as (2) the application for or opening of a prepaid account where a covered

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<sup>683</sup> 15 U.S.C. 1650(f)(2).

<sup>684</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have provided in comment 57(c)-7 guidance on how the prohibition in § 1026.57(c) applies to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 57(c)-7 related to these account numbers.

separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, may have an impact on whether consumers may request that a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card be linked to the prepaid account, as discussed above, when such covered separate credit features are offered to them. Thus, any tangible item given to induce college students to apply for or open a prepaid account where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account would also be interpreted as an inducement to encourage a college student to apply for or open such a covered separate credit feature in connection with the prepaid account. As a result, under final § 1026.57(c), a card issuer or creditor would be prohibited from offering a college student any tangible item to induce the student to apply for or open a prepaid account offered by the card issuer or creditor where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in

connection with the prepaid account, if the offer is made: (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

*Section 1026.58 Internet Posting of Credit Card Agreements*

TILA section 122(d), implemented by existing § 1026.58, generally requires card issuers to post their card agreements on the internet and to provide those agreements to the Bureau. Separately, as part of this final rule, the Bureau is adopting similar provisions for prepaid accounts in final Regulation E § 1005.19. Although the Bureau is not revising § 1026.58, it notes that the requirements of § 1026.58 and those of Regulation E § 1005.19 are distinct and independent of one another. In other words, issuers must comply with both as appropriate. The Bureau notes, however, that it does not believe it is likely that any agreement will constitute both a credit card agreement and a prepaid account agreement and thus be required to be submitted under both § 1026.58 and Regulation E § 1005.19. Given the requirement in new § 1026.61(b) that credit features accessible by hybrid prepaid-credit cards generally must be structured as separate subaccounts or accounts distinct from the prepaid asset account, in conjunction with the account-opening disclosure requirements in existing § 1026.6 and the initial disclosure requirements in existing Regulation E § 1005.7(b) as well as final § 1005.18(f)(1), the Bureau believes it is unlikely that an issuer would use a single agreement to provide all such disclosures for both a prepaid account and for a covered separate credit feature.

The Bureau reminds credit card issuers that while final Regulation E § 1005.19(f) provides a delayed effective date of October 1, 2018 to submit prepaid account agreements to the Bureau, the requirement to submit credit card agreements for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not

home-secured) consumer credit plan becomes effective with the rest of this final rule on October 1, 2017.

*Section 1026.60 Credit and Charge Card Applications and Solicitations*

TILA section 127(c) generally requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.<sup>685</sup> This TILA provision is implemented by § 1026.60.

Existing comment 60-1 provides that § 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. The existing comment also cross-references § 1026.60(a)(5) and (e)(2) for exceptions, § 1026.60(a)(1) and accompanying commentary for the definition of solicitation, and § 1026.2(a)(15) and accompanying commentary for the definition of charge card. The proposal would have amended existing comment 60-1 to cross-reference proposed § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.

The Bureau did not receive any specific comments on the proposed revisions to comment 60-1. Consistent with the proposal, the final rule adopts final comment 60-1 with revisions to be consistent with new § 1026.61. The final rule revises comment 60-1 to provide a cross-reference to new § 1026.61(c) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts. See the section-by-section analysis of § 1026.61(c) below for a discussion of these restrictions.

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<sup>685</sup> 15 U.S.C. 1637(c).

## *60(a) General Rules*

### *60(a)(5) Exceptions*

Existing § 1026.60(a)(5) provides several exceptions to the requirements in existing § 1026.60 to provide cost disclosures on or with credit or charge card applications or solicitations. Specifically, existing § 1026.60(a)(5) provides that existing § 1026.60 does not apply to: (1) home-equity plans accessible by a credit or charge card that are subject to the requirements of existing § 1026.40; (2) overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; (3) lines of credit accessed by check-guarantee cards or by debit cards that can be used only at ATMs; (4) lines of credit accessed solely by account numbers; (5) additions of a credit or charge card to an existing open-end plan; (6) general purpose applications, unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (7) consumer-initiated requests for applications. These exemptions are not specifically listed in TILA section 127(c).

In 1989, to implement the disclosure provisions in TILA section 127(c) as amended by the Fair Credit and Charge Card Disclosure Act of 1988,<sup>686</sup> the Board exempted the following credit card accounts from the disclosure requirements set forth in its § 226.5a (which are contained in the Bureau's existing Regulation Z § 1026.60): (1) home equity plans accessible by a credit or charge card that are subject to the Home Equity Loan Consumer Protection Act of 1988, Public Law 100-709; (2) overdraft lines of credit tied to asset accounts accessed by check guarantee cards or by debit cards; or (3) lines of credit accessed by check guarantee cards or by debit cards that can be used only at ATMs.<sup>687</sup> In the supplemental information to that

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<sup>686</sup> Public Law No. 100-583, 102 Stat. 2960.

<sup>687</sup> 54 FR 13855, 13857 (Apr. 6, 1989).

rulemaking, the Board indicated that a number of commenters raised issues concerning coverage of the proposed rule given the broad definition of the term “credit card” in the regulation.<sup>688</sup>

Among other things, the Board reported that commenters argued that congressional intent was to require disclosures only for “traditional” credit card accounts used primarily to purchase goods and services, and not for other types of accounts that do not fall within such a category or for which the use of a credit or charge card as an access device is merely incidental to the product being offered.<sup>689</sup>

In 1990, the Board added commentary to its Regulation Z § 226.5a (now existing § 1026.60) to provide that the disclosures set forth in its Regulation Z § 226.5a also did not apply to: (1) lines of credit accessed solely by account numbers; (2) the addition of a credit or charge card to an existing open-end plan; (3) general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (4) consumer-initiated requests for applications.<sup>690</sup> In the supplemental information to the 1990 rulemaking, the Board did not explain why it was including these exemptions.

As discussed above, existing § 1026.60(a)(5)(iv) currently provides that the disclosure requirements in existing § 1026.60 do not apply to lines of credit accessed solely by account numbers. The proposal would have amended existing § 1026.60(a)(5)(iv) to provide that this exception does not apply where the account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Under the proposal, these account numbers would have been credit cards. Thus, under the proposal, a card issuer would have been required to provide the disclosures required by

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<sup>688</sup> *Id.*

<sup>689</sup> *Id.*

<sup>690</sup> *See* 55 FR 13103, 13107 (Apr. 9, 1990).

existing § 1026.60 on or with a solicitation or application to open a credit or charge card account that would have been accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau did not receive any comments on proposed § 1026.60(a)(5)(iv). As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, the Bureau is not adopting proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)-2.i.G, which would have made these account numbers into credit cards under Regulation Z.

Nonetheless, the Bureau is revising the proposed changes to § 1026.60(a)(5)(iv) to refer to an account number that is a hybrid prepaid-credit card, rather than an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the Bureau is revising the exemption in existing § 1026.60(a)(5)(iv) that relates to lines of credit accessed solely by account numbers so that this exception would not apply to a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card, as defined in new § 1026.61.

The Bureau noted in the proposal that a card issuer generally would be required to provide the cost disclosures in existing § 1026.60 on or with solicitations or applications to open a credit or charge card account that is accessed by a prepaid card that is a credit card. Consistent with the intent of the proposal, the Bureau is revising the exemption in existing § 1026.60(a)(5)(iv) to make clear that the cost disclosures in existing § 1026.60 must be provided on or with solicitations or applications to open a covered separate credit feature accessible by a hybrid prepaid-credit card even when that hybrid prepaid-credit card is solely an account number.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau does not believe that it is appropriate to except a covered separate credit feature accessible by a hybrid prepaid-credit card that is solely an account number from the disclosure requirements set forth in TILA section 127(c). The Bureau believes that the cost disclosures in final § 1026.60 would be helpful to consumers in deciding whether to open such a covered separate credit feature accessible by a hybrid prepaid-credit card.

#### *60(b) Required Disclosures*

TILA section 127(c), implemented by existing § 1026.60, generally requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.<sup>691</sup> Under existing § 1026.60, card issuers generally are required to provide the following disclosures, among other cost disclosures, on or with the applications or solicitations for credit cards: (1) the APRs applicable to the account for purchases, cash advances, and balance transfers; (2) any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit card, including any fee based on account activity or inactivity; (3) any non-periodic fees related to opening the account, such as one-time membership or participation fees; (4) any minimum or fixed finance charge that could be imposed during a billing cycle; (5) any transaction charge imposed on purchases, cash

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<sup>691</sup> 15 U.S.C. 1637(c).

advances, or balance transfers; (6) any late payment fees, over the limit fees, or returned payment fees; (7) whether a grace period on purchases applies; (8) the name of the balance computation method used to determine the balance for purchases; (9) any fees for required insurance, debt cancellation, or debt suspension coverage; (10) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed; and (11) a reference to the Bureau's website where consumers may obtain information about shopping for and using credit cards.

Under existing § 1026.60(b), charge card issuers generally are required to provide the above disclosure on or with the applications or solicitations for charge cards, except that a charge card issuer is not required to disclose: (1) the APRs applicable to the account for purchases, cash advances, and balance transfers; (2) any minimum or fixed finance charge that could be imposed during a billing cycle; (3) whether a grace period on purchases applies; (4) the name of the balance computation method used to determine the balance for purchases; (5) any fees for required insurance, debt cancellation, or debt suspension coverage; and (6) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed.

The Bureau did not propose any changes to existing § 1026.60(b) or its related commentary. One consumer group commenter indicated that with respect to credit card accounts that will be accessed by a prepaid card that is a charge card, the Bureau should require disclosure of the following items in the table required to be provided on or with applications or solicitations: (1) any minimum or fixed finance charge that could be imposed during a billing cycle; (2) any fees for required insurance, debt cancellation, or debt suspension coverage; and (3) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the

card, disclosures about the available credit that will remain after those fees are imposed. This commenter believed that unlike traditional charge cards, prepaid cards that are charge cards have a significant possibility of imposing fixed finance charges; offering credit insurance, debt cancellation, or debt suspension; or having fees in excess of the 15 percent threshold for the credit availability disclosure.

As discussed in more detail below, the Bureau is revising existing § 1026.60(b) to provide that with respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a charge card issuer must provide the above three disclosures.

In addition, as discussed in more detail below, new comment 60(b)-3 provides guidance on the application of the disclosure requirements in existing § 1026.60(b) to fees or charges imposed on a covered separate credit feature or an asset feature that are both accessible by a hybrid prepaid-credit card. The final rule also adds new comment 60(b)-4 to provide that the disclosures in final § 1026.60(b) do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not “charges imposed as part of the plan” under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. New comment 60(b)-4 also provides that the disclosures in final § 1026.60(b) do not apply to fees or charges imposed on the asset feature of a prepaid account with respect to a non-covered separate credit feature. The Bureau believes this additional guidance in new comments 60(b)-3 and -4 is needed given the changes in the final rule to the definition of “finance charge” in final § 1026.4, the definition of “charges imposed as part of the plan” in final § 1026.6(b)(3), and the addition of new § 1026.61.

*Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards That Are Charge Cards*

As discussed above, one consumer group commenter indicated that with respect to a credit card account that will be accessed by a prepaid card that is a charge card, the Bureau should require disclosure of the following items in the table required to be provided on or with applications or solicitations: (1) any minimum or fixed finance charge that could be imposed during a billing cycle; (2) any fees for required insurance, debt cancellation, or debt suspension coverage; and (3) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed. This commenter believed that unlike traditional charge cards, prepaid cards that are charge cards have a significant possibility of imposing fixed finance charges; offering credit insurance, debt cancellation, or debt suspension; or having fees in excess of the 15 percent threshold for the credit availability disclosure.

In response to the comment, the Bureau is revising existing § 1026.60(b) to provide that with respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a charge card issuer also must provide the above three disclosures. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under § 1026.61 and a credit card under § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

TILA section 127(c)(5) states that the Bureau may, by regulation, require the disclosure of information in addition to that otherwise required by 127(c), and modify any disclosure of information required by 127(c), in any application or solicitation to open a charge card account for any person, if the Bureau determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection. The Bureau believes that use of its authority under TILA section 105(a) and 127(c)(5) to amend § 1026.60(b) to require such charge card issuers to provide these three disclosures is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards. Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.<sup>692</sup> In addition, the Bureau believes that requiring these three disclosures for covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards will, consistent with Dodd-Frank Act section 1032(a), ensure that the terms of these charge card accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the charge card account.

The Bureau believes that these disclosures may be more helpful for covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards than they would be for traditional charge card accounts. Traditional charge card accounts typically require charge cardholders to repay the charge card balance in full each month. Thus, the required credit insurance, debt cancellation, or debt suspension disclosures typically would not apply to these

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<sup>692</sup> 15 U.S.C. 1601.

accounts because the cardholders are not allowed to revolve charge card balances. In addition, traditional charge card accounts are generally targeted to more creditworthy individuals. Thus, these charge cards typically have a higher credit limit and typically do not charge fees for credit availability that exceed 15 percent of the initial credit line. Traditional charge card issuers also typically do not impose fixed finance charges.

Nonetheless, the Bureau believes that covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards may more likely be targeted to consumers with lower credit scores than credit card users overall and the card issuer may not require that charge card balances be repaid in full each month. Thus, in these cases, charge card issuers may be more likely to charge fixed finance charges; require credit insurance, debt cancellation, or debt suspension products; or charge fees for credit availability that might exceed the 15 percent threshold. Thus, the Bureau believes that it is appropriate to apply these disclosures when a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card is opened.

#### *Fee Imposed on the Asset Feature of the Prepaid Account*

*Covered separate credit features accessible by hybrid prepaid-credit cards.* As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Nonetheless, the final rule characterizes certain fees or charges that are imposed on the asset feature of the prepaid account as finance charges in connection with a covered separate credit feature where both the asset feature and the credit feature are accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.4(b)(11)(ii) above, new § 1026.4(b)(11)(ii) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, fees or charges imposed on the asset feature of the prepaid account generally are finance charges only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.6 above, the final rule also clarifies that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, fees or charges imposed on the asset feature that are not finance charges also are not “charges imposed as part of the plan” with respect to the covered separate credit feature.

Given this guidance in the final rule related to fees or charges imposed on the asset feature of the prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card, new comment 60(b)-3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a card issuer is required to disclose under

final § 1026.60(b) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under final § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under final § 1026.60(b). For example, assume that a card issuer imposes a \$1.25 per transaction fee on the asset feature of a prepaid account for purchases when a hybrid prepaid-credit card accesses a separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and the card issuer charges \$0.50 per transaction for purchases to access funds in prepaid accounts in the same program without such a credit feature. In this case, the \$0.75 excess is a charge imposed as part of the plan under final § 1026.6(b)(3) and must be disclosed under final § 1026.60(b)(4).

To facilitate compliance with the disclosure requirements in § 1026.60, new comment 60(b)-4 provides that a card issuer is not required under final § 1026.60(b) to disclose any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.6 above, under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)-1, a fee or charge imposed on the asset feature of the prepaid account is not a “charge imposed as part of the plan” to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). The Bureau believes that the guidance in new comment 60(b)-3 aids compliance with final § 1026.60 by providing additional clarity to card issuers on

how the disclosure requirements in final § 1026.60(b) apply to fees or charges imposed on the asset feature of the prepaid account accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

*Non-covered separate credit features.* As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the disclosure requirements in § 1026.60 in its own right.

With respect to non-covered separate credit features that are subject to § 1026.60, new comment 60(b)-4 provides that the disclosure requirements in final § 1026.60 do not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit

feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 60(b)(3)(iii)(E)-1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are “charges imposed as part of the plan” under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 60(b)(3)(iii)(E)-1 also cross-references comment 4(b)(11)-1.ii.B which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, a card issuer of a non-covered separate credit feature would not be required to disclose any fees or charges imposed on the asset feature of the prepaid account under final § 1026.60(b) with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

#### *60(b)(4) Transaction Charges*

Existing § 1026.60(b)(4), which implements TILA section 127(c)(1)(A)(ii)(III), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any transaction charge imposed on purchases.<sup>693</sup> The proposal would have added proposed comment 60(b)(4)-3 to provide guidance on when fees would be considered transaction fees for purchases under existing § 1026.60(b)(4) for prepaid cards that are credit cards. Specifically, proposed comment 60(b)(4)-3 would have provided that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for credit accessed by a credit card that is a prepaid card to make a purchase, that fee is

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<sup>693</sup> 15 U.S.C. 1637(c)(1)(A)(ii)(III).

a transaction charge as described in existing § 1026.60(b)(4). Proposed comment 60(b)(4)-3 also would have provided that such fees must be disclosed as transaction charges under existing § 1026.6(b)(4) whether the fee is a flat per transaction fee to make a purchase, a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions, or a one-time fee for transferring funds from the consumer's credit account to the consumer's prepaid account to cover the shortfall in the prepaid account as a result of a purchase with the prepaid card.

The Bureau did not receive specific comments on this aspect of the proposal. The Bureau is adopting proposed comment 60(b)(4)-3 with revisions to be consistent with §§ 1026.8 and 1026.61. New comment 60(b)(4)-3.i provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) to make a purchase where this fee is imposed as part of the plan as described in final § 1026.6(b)(3), that fee is a transaction charge described in final § 1026.60(b)(4). This is true whether the fee is a per transaction fee to make a purchase or a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, new comment 60(b)(4)-3.ii provides guidance on whether a fee must be disclosed as a fee for a purchase transaction under final § 1026.60(b)(4) or a cash advance transaction under final § 1026.60(b)(8). New comment 60(b)(4)-3.ii provides that a fee for a transaction will be treated as a fee to make a purchase under final § 1026.60(b)(4) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature and \$15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. A per transaction fee imposed for the \$15 credit transaction must be disclosed under final § 1026.60(b)(4).

As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(4)-3.ii is consistent with guidance for disclosing those credit transactions as “sale credit” on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(a) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

In contrast, new comment 60(b)(4)-3.iii provides that a fee for a transaction will be treated as a cash advance fee under final § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature

accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the \$15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of \$25 is debited from the asset feature of the prepaid account. In this case, a per transaction fee for the \$15 credit transaction must be disclosed under final § 1026.60(b)(8).

As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(4)-3.iii is consistent with guidance for disclosing those credit transactions as “nonsale credit” on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

#### *60(b)(8) Cash Advance Fee*

Existing § 1026.60(b)(8), which implements TILA section 127(c)(1)(B)(i), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any fee imposed for an extension of credit in the form of cash or its equivalent.<sup>694</sup>

The proposal would have added proposed comment 60(b)(8)-4 to provide guidance on when fees would be considered cash advance fees that must be disclosed under existing § 1026.60(b)(8) for credit card accounts that are accessed by prepaid cards. In addition, proposed comment 60(b)(8)-4 would provide guidance on how cash advance fees must be disclosed. Specifically, proposed comment 60(b)(8)-4 would have provided that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance accessed by a credit card that is a prepaid card, such as a cash withdrawal at an ATM, that fee is a cash advance fee. Under proposed comment 60(b)(8)-4, if the cash advance fee is the same dollar amount as the transaction charge for purchases

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<sup>694</sup> 15 U.S.C. 1637(c)(1)(B)(i).

described in existing § 1026.60(b)(4), the card issuer could have disclosed the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances.

Proposed comment 60(b)(8)-4 would have provided the following three examples of how cash advance fees must be disclosed.

Under proposed comment 60(b)(8)-4.i, the first example would have provided that a card issuer assesses a \$15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer assesses a \$25 fee for credit accessed by a prepaid card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer could have disclosed separately a purchase transaction charge of \$15 and a cash advance fee of \$25.

Under proposed comment 60(b)(8)-4.ii, the second example would have provided that a card issuer assesses a \$15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer also assesses a \$15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer could have disclosed the \$15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, under the proposal, the card issuer could have disclosed the \$15 fee on two separate rows, with one row indicating that a \$15 fee applies to purchase transactions, and a second row indicating that a \$15 fee applies to ATM cash advances.

Under proposed comment 60(b)(8)-4.iii, the third example would have provided that a card issuer assesses a \$15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of \$1.50 for out-of-network ATM cash withdrawals and \$1.00 fee for in-network ATM cash withdrawals. The card issuer must disclose the cash advance fee as \$16.50 for out-of-network ATM cash withdrawals, indicating that \$1.50 is for the out-of-network ATM withdrawal fee, such as “\$16.50 (including a \$1.50 out-of-network ATM withdrawal fee).” The card issuer also could have disclosed the cash advance fee as \$16.00 for in-network ATM cash withdrawals, indicating that \$1.00 is for the in-network ATM withdrawal fee, such as “\$16 (including a \$1.00 in-network ATM cash withdrawal fee).”

The Bureau did not receive specific comments on this aspect of the proposal. The Bureau is adopting proposed comment 60(b)(8)-4 as proposed with technical revisions to clarify the intent of the comment and to be consistent with final § 1026.8 and new § 1026.61.<sup>695</sup> New comment 60(b)(8)-4.i provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance, such as a cash withdrawal at an ATM, where this fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a cash advance fee. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by

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<sup>695</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 60(b)(8)-5 would have provided guidance on when fees will be considered cash advance fees under § 1026.60(b)(8) with respect to credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt proposed comment 60(b)(8)-5 related to these account numbers.

a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

For the reasons discussed in the section-by-section analyses of §§ 1026.8 and 1026.60(a)(4), new comment 60(b)(8)-4.i also provides that a fee for a transaction will be treated as a cash advance fee under final § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. *See also* new comment 60(b)(4)-3.iii. As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(8)-4.i is consistent with guidance for disclosing those credit transactions as “nonsale credit” on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

New comment 60(b)(8)-4.ii also provides that if the cash advance fee is the same dollar amount as the transaction charge for purchases described in final § 1026.60(b)(4), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Consistent with proposed comment 60(a)(8)-4, new comment 60(a)(8)-4.ii provides examples of how fees for purchase transactions described in final § 1026.60(b)(4) and fees for cash advances described in final § 1026.60(b)(8) that are charged on the covered separate credit feature must be disclosed.

### *Section 1026.61 Hybrid Prepaid-Credit Cards*

The Bureau is adding new § 1026.61 which defines when a prepaid card is a credit card under Regulation Z (using the term “hybrid prepaid-credit card”). As discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section above and in more detail below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. Section 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(c) (moved from § 1026.12(h) in the proposal) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature accessible by the hybrid prepaid-

credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as “non-covered separate credit features,” as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 61(a)-1 explains that in addition to the rules set forth in new § 1026.61, hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards are also subject to other rules in Regulation Z, and some of those rules and related commentary contain specific guidance related to hybrid prepaid-credit cards and covered

separate credit features accessible by hybrid prepaid-credit cards. For example, as discussed in the section-by-section analyses of §§ 1026.2(a)(15)(i) and 1026.61(a), a hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to a covered separate credit feature. A covered separate credit feature accessible by a hybrid prepaid-credit card also will be a credit card account under an open-end (not home-secured) consumer credit plan, as defined in final § 1026.2(a)(15)(ii), if the covered separate credit feature is an open-end (not home-secured) credit plan. Thus, the provisions of Regulation Z that apply to credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan generally will apply to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards as applicable (*see generally* subparts B and G). Some of those rules and related commentary contain specific guidance with respect to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. *See* the section-by-section analyses of subparts A, B and G in this final rule.

#### *61(a) Hybrid Prepaid-Credit Card*

TILA section 103(*l*) defines the term “credit card” to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.<sup>696</sup> Under Regulation Z, the term “credit card” is defined in existing § 1026.2(a)(15)(i) to mean “any card, plate, or other single credit device that may be used from time to time to obtain credit.”

#### *The Bureau’s Proposal*

The proposal would have provided guidance on when the following devices related to prepaid accounts are “credit cards”: (1) prepaid cards, as defined in proposed § 1026.2(a)(15)(v)

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<sup>696</sup> 15 U.S.C. 1602(*l*).

to mean any card, code, or other device that can be used to access a “prepaid account” as defined in proposed § 1026.2(a)(15)(vi) consistent with proposed Regulation E; and (2) account numbers that are not prepaid cards that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor but does not allow consumers to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor, as defined in proposed § 1026.2(a)(15)(vii).

*Prepaid cards.* The proposal would have covered a broad range of credit plans as credit card accounts under Regulation Z when they were accessed by a prepaid card. First, under the proposal, credit plans, including overdraft services and overdraft lines of credit, directly accessed by prepaid cards generally would have been credit card accounts under Regulation Z. Under the proposal, this would have applied where credit is “pulled” by a prepaid card, such as when the consumer uses the prepaid card at point of sale to access an overdraft plan to fund a purchase. In particular, proposed comment 2(a)(15)-2.i.F would have provided that the term “credit card” generally includes a prepaid card that is a single device that may be used from time to time to access a credit plan.

The proposal intended broadly to capture a prepaid card as a credit card when it directly accessed a credit plan, regardless of whether that credit plan was structured as a separate credit plan or as negative balance to the prepaid account. The Bureau recognized that under the proposal, credit would have included: (1) transactions that are authorized where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization; and (2) transactions on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Such transactions would have been credit

accessed by a prepaid card that is a credit card under the proposal regardless of whether the person established a separate credit account to extend the credit or whether the credit was simply reflected as a negative balance on the prepaid account.

The proposal would not have applied the credit card rules in situations in which a prepaid card only assessed credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and was not payable by written agreement in more than four installments. Specifically, the proposal provided that the prepaid card in such situations would not have been a credit card. As discussed in the section-by-section analysis of § 1026.4 above, the proposal also included revisions to the definition of “finance charge” in § 1026.4(a) and (b)(2) and their related commentary to delineate when a fee imposed in relation to credit accessed by a prepaid card that is a credit card would have been a finance charge under § 1026.4. In general, the proposal would have treated any transaction charges imposed on a cardholder by a card issuer on a prepaid account in connection with credit accessed by a prepaid card as a finance charge, regardless of how the amount of the fees compared to fees the issuer charged on non-credit transactions or accounts that did not involve credit access. The Bureau recognized that, under the proposal, if a prepaid account issuer would have imposed a per transaction fee on a prepaid account for any transactions authorized or settled on the prepaid account, the prepaid account issuer would have needed to waive that per transaction fee imposed on the prepaid account when the transaction accessed credit in order to take advantage of the proposed exception for when a prepaid card would not be a credit card under the proposal.

*Account numbers that are not prepaid cards.* As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, proposed § 1026.2(a)(15)(vii) would have included within the definition of credit card “an account number where extensions of credit are

permitted to be deposited directly only into particular prepaid accounts specified by the creditor.” As used in the proposal, this term would have meant an account number that was not a prepaid card that may be used from time to time to access a credit plan that allowed deposits directly into particular prepaid accounts specified by the creditor but did not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. Proposed comment 2(a)(15)-2.i.G would have provided that these account numbers were credit cards under the proposal.

This proposal language would have covered credit plans that are not accessed directly by prepaid cards but instead are structured as “push” accounts. Under such a credit plan, a person would provide credit accessed by an account number where such extensions of credit may only be deposited directly into particular prepaid accounts specified by the person and cannot be deposited directly into another asset account, such as a deposit account. For example, such a credit plan may allow a consumer to use an account number to request that an extension of credit be deposited directly into a particular prepaid account specified by the creditor when the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card. In the proposal, the Bureau expressed concern that these types of credit plans could act as substitutes for credit plans directly accessed by a prepaid card. The Bureau did not, however, propose to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

#### *Comments Received on Prepaid Cards Accessing Credit from Separate Credit Features*

In response to the proposal, several commenters expressed concern about the way the proposal would have applied the credit card rules to credit products that were structured as standalone plans or products, rather than as negative balances on the prepaid account. An

issuing credit union requested clarification that the proposal would have applied the credit card rules to situations in which a prepaid card could be used to initiate the load or transfer of credit to a prepaid account, but this load or transfer could not occur in course of processing transactions conducted with the card when there were insufficient funds in the prepaid account to cover the amount of the transaction. This commenter noted that consumers can consciously load value to their prepaid account using their debit card or credit card, where this load is not occurring as part of an overdraft feature in connection with the prepaid account. When using the debit card, the consumer may consciously load funds from an overdraft or line of credit product that is linked to a traditional checking account. When using a credit card, the consumer is loading credit from an available credit card balance to fund the prepaid account. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

On the other hand, as discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These commenters urged the Bureau to apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter suggested that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or

consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

Two industry trade associations said the Bureau should not consider a prepaid card to be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third party rather than the prepaid account issuer or an associated company. These commenters indicated that such unrelated third-party creditors are not in a position to know that they have additional obligations under Regulation Z at the point in time that a prepaid account issuer or a consumer chooses to use a credit feature offered by the unrelated third-party creditor as a form of overdraft credit feature in relation to a prepaid account. Several other commenters, including an industry trade association, a program manager, and several issuing banks, requested clarification that a prepaid card would not be a credit card under the proposal where it accesses credit deposited into the prepaid account from a separate credit feature offered by an unrelated third-party creditor. These commenters argued that prepaid account issuer may not know that the deposited funds are credit.

On the other hand, several consumer groups supported the proposed rule's approach in considering a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z. They believed the proposed rule would deter evasion by third-party creditors that allow their credit features to be used as an overdraft credit feature accessed by prepaid cards.

*Comments Received on Prepaid Cards Accessing Credit Through a Negative Balance on the Asset Feature of a Prepaid Account*

The Bureau also received comments on the proposal regarding when a prepaid card is a credit card when it accesses credit extended through a negative balance on the asset feature of the

prepaid account. As discussed above, the proposal would have provided that a prepaid card would not have been a credit card under existing § 1026.2(a)(15)(i) if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments.

Many industry commenters argued that the Bureau should not regulate overdraft credit features in connection with prepaid accounts under Regulation Z except where there is an agreement to extend credit, consistent with how overdraft credit is treated currently with respect to checking accounts. These commenters said that the Bureau should instead subject overdraft credit programs where there is not an agreement to the opt-in regime in Regulation E § 1005.17, which currently applies to overdraft services provided for ATM and one-time debit card transactions. Several commenters, including industry trade associations, a credit union service organization, a credit reporting agency, and a program manager, also asserted that overdraft credit does not meet the definition of “credit” under TILA because with respect to overdraft credit, there is no right to defer payment and/or no right to incur debt. These comments are discussed in more detail in the *Overview of the Final Rule’s Amendments to Regulation Z* section and in the section-by-section analysis of § 1026.2(a)(14) above.

In commenting on the specifics of the Regulation Z proposal, many industry commenters were concerned that because of the breadth of the fees that would be considered finance charges under the proposal, a prepaid account issuer either could not charge general transactional fees on the prepaid account or would have to waive certain fees on any transaction that happened to have involved credit, as defined under the proposal, in order to avoid triggering the credit card rules.

For example, one payment network indicated that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the

prepaid account if the *only* fees charged on the prepaid account in connection with the extension of credit are the *very same* fees that would apply to the same transaction on the prepaid card without an extension of credit. Similarly, two industry trade associations urged that a prepaid card should be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account only if the prepaid account issuer charges fees directly correlated with the overdraft in question. These commenters argued that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the prepaid account issuer only imposes on the prepaid account fees or charges that are wholly unrelated to an overdraft, such as a fee to make a balance inquiry at an ATM. These commenters also indicated that a prepaid card should not be a credit card when the prepaid account issuer only imposes unrelated fees or charges on the prepaid account, even when these unrelated fees or charges are imposed when the prepaid account balance is negative.

Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a “finance charge” simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

A program manager indicated that the Bureau should clarify that a prepaid card is not a credit card simply because the prepaid account issuer charges reasonable debt collection costs (including attorney’s fees) related to collecting the overdraft credit from a consumer.

Many industry commenters were particularly concerned that under the proposal, a prepaid account issuer would need to waive per transaction fees in certain circumstances to avoid triggering the credit card rules. The circumstances raised by industry commenters centered on: (1) force pay transactions; (2) payment cushions; and (3) transactions that take the account

negative when a load of funds from an asset account is pending. These comments are discussed below and in further detail in the section-by-section analysis of § 1026.61(a)(4).

*Force pay transactions.* “Force pay” transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, where a transaction is either not authorized in advance, or where there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid. Because the proposal’s definition of finance charge was broad, a force pay transaction would have triggered application of the credit card rules unless the prepaid account issuer would have waived transaction fees. Industry commenters were nearly universally concerned about this outcome, arguing that the credit card rules should not apply so long as the same fee amount applies regardless of whether the transaction is paid entirely from funds in the prepaid account or is paid in whole or in part by credit. Industry commenters said requiring prepaid account issuers to waive per transaction fees to avoid triggering the credit card rules on all force pay transactions would be complicated and thus would impose substantial compliance costs. These commenters indicated that similar issues also may arise with other per transaction fees, such as currency conversion fees when assessed on force pay transactions.

One payment network predicted that if the proposal were finalized, rather than create complex waiver rules, a prepaid account issuer might instead impose much stricter authorization rules in order to prevent inadvertent overdrafts. This commenter indicated that this could make it

more difficult for prepaid cardholders to use their cards at gas pumps, restaurants, hotels, or other locations where these overdrafts from force pay transactions are most likely to occur.

One program manager also indicated that while issuers of other prepaid products could possibly avoid being subject to the credit rules by changing their fee structure (*e.g.*, charging a monthly fee to hold the prepaid account instead of charging a per transaction fee), such an option is not available in the payroll card context because State wage and hour laws prohibit periodic fees on payroll card accounts.

With respect to force pay transactions, one consumer group commenter supported requiring a prepaid account issuer to waive the per transaction fee imposed on a credit transaction where credit is extended through a negative balance on the asset feature of the prepaid account in order to avoid triggering the credit card rules under the proposal.

Nonetheless, this commenter indicated that if the Bureau decides to make any exceptions with respect to force pay transactions, these exceptions should be limited to prepaid account issuers who do everything possible to prevent overdrafts, have overdrafts in only very rare and unpreventable situations, and do not charge penalty fees related to declined transactions, overdrafts, or negative balances.

Another consumer group commenter similarly urged that if the Bureau decides to provide an exception for force pay transactions, the exception should only be allowed if the prepaid account issuer does not charge a fee to account holders who have a negative balance, and the exception should only be provided to those prepaid account issuers that take reasonable steps to minimize unpreventable overdrafts. In this case, the commenter said that the Bureau also should allow prepaid account issuers to recoup no more than 5 percent of funds deposited each month until all debts caused by unpreventable overdrafts are paid.

*Payment cushions.* One program manager also raised a concern about its de minimis purchase cushion, whereby it will authorize transactions for some consumers that result in a negative account balance so long as the shortfall is less than \$10. For prepaid accounts where a per transaction fee is imposed on the prepaid account on all transactions regardless of whether the transaction is paid entirely with funds from the prepaid account or is paid with credit, a prepaid card would have been a credit card under the proposal unless the prepaid account issuer waived its per transaction fees on transactions that trigger the purchase cushion. This commenter said that it may not continue to offer its de minimis purchase cushion if it were required to waive these per transaction fees.

One consumer group commenter supported not triggering the credit card rules where a prepaid card can only access a de minimis amount of credit, using \$10 as a safe harbor, if such credit is not promoted or disclosed.

*Transactions that take the account negative when a load of funds from an asset account is pending.* One digital wallet provider raised concerns that a prepaid card could be subjected to the credit card rules under the proposal where credit could be extended through a negative balance on the asset feature of the prepaid account for transactions that occur after a consumer has requested a load transaction from another asset account to pay for the transaction but the load transaction has not yet settled. In this case, transactions on the prepaid account may take the account balance negative until the load transaction from the asset account has settled. This can occur, for example, when a consumer authorizes a remittance through a mobile wallet which is linked to a checking account, the consumer requests that funds be taken from the consumer's checking account to pay for the remittance, and the remittance is sent before the incoming transfer of funds from the checking account is complete. In this case, the prepaid account issuer

is extending credit through a negative balance on the asset feature of the prepaid account until the incoming transfer of funds from the checking account is complete.

The commenter indicated that in all its multi-currency transactions, it charges a currency conversion fee for the transaction, including on transactions where credit is extended as described above. Nonetheless, this currency conversion fee for a credit transaction as described above is the same amount as the fee charged for transactions that are paid entirely with funds from the prepaid account. This commenter indicated that under the proposal, it would need to waive this currency conversion fee for transactions where credit is extended to prevent the prepaid card from becoming a credit card under the proposal, even though the currency conversion fee it charges for these transactions is the same amount as the current conversion fee it charges for transactions entirely paid from funds from the prepaid account. This commenter said that if a prepaid card would be a credit card in this scenario and it was required to waive these fees in order to avoid triggering the credit card rules, it would likely stop processing transactions that take the prepaid account negative (such as remittances discussed above) before the incoming transfer of funds from the checking account is complete.

*Comments Received on Prepaid Cards that Access Credit When No Fees for Credit Are Imposed*

One consumer group commenter expressed concern that the proposal to exclude prepaid cards from the definition of credit card if the prepaid card only accesses credit that is not subject to a finance charge, as defined in § 1026.4, or a fee described § 1026.4(c) would lead to evasions. For example, this commenter was concerned that a prepaid issuer could offer a “deluxe” prepaid card that comes with \$100 in “free” overdraft protection, but the prepaid account issuer recovers the costs for the credit through other fees charged on the credit account that are not finance charges or fees described in § 1026.4(c), such as higher fees for “voluntary”

credit insurance that is not a finance charge or fee described in § 1026.4(c). This commenter urged the Bureau to cover all prepaid cards as credit cards when the prepaid card accesses credit, regardless of whether a finance charge or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions as discussed above may be necessary.

*Comments Received on Account Numbers That Are Not Prepaid Cards*

As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, consumer group commenters indicated that the proposal with respect to push accounts was too limited. Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

One issuing bank and one law firm writing on behalf of a coalition of prepaid issuers did not support subjecting push accounts to credit card rules. One of these industry commenters indicated that attempting to cover push accounts as credit card accounts under the proposal created an overly complex regulatory regime to address the perceived risk of circumvention or evasion of the rules for overdraft plans set forth in the proposal.

One industry trade association commenter indicated that for arrangements where the consumer has the choice of whether to use the line of credit to cover specified overdrafts or to use the line of credit funds for other purposes, this commenter believes it would be inappropriate to treat the line of credit (or its associated account number) as a credit card. This commenter believed that consumer choice makes it clear that the line of credit is a general use line of credit and not a substitute for an overdraft line of credit.

#### *The Final Rule*

Based on the comments received as discussed above, the Bureau is making substantial changes from the proposal to narrow the circumstances in which a prepaid card is a credit card (*i.e.*, hybrid prepaid-credit card) under Regulation Z. A summary of these changes are discussed below. A more detailed description of the changes in the final rule based on the above comments is contained in the section-by-section analyses of § 1026.61(a)(1), (2) and (4).

Under the final rule, new § 1026.61(a) sets forth when a prepaid card is a credit card under the regulation. New § 1026.61(a)(1)(i) provides that credit offered in connection with a prepaid account is subject to new § 1026.61 and the regulation as specified in that section. New § 1026.61(a)(1)(ii) provides generally that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature, as described in new § 1026.61(a)(2)(i), or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as

described in new § 1026.61(a)(3). New § 1026.61(a)(1)(ii) also provides that a hybrid prepaid-credit card is a credit card for purposes of Regulation Z with respect to those respective credit features. New § 1026.61(a)(1)(iii) specifies that a prepaid card is not a hybrid prepaid-credit card—and thus not a credit card for purposes of Regulation Z—if the only credit offered in connection with the prepaid account is incidental credit meeting the conditions set forth in new § 1026.61(a)(4).

*Separate credit features.* As discussed in more detail below in the section-by-section analysis of § 1026.61(a)(2), under new § 1026.61(a)(2)(i), the term “covered separate credit feature” means a separate credit feature that is accessible by a hybrid prepaid-credit card. Under new § 1026.61(a)(2)(i), a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature (and thus the separate credit feature is a covered separate credit feature) if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. The hybrid prepaid-credit card can access both the covered credit feature and the asset feature of the prepaid account, and is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(a)(2)(i) also provides that a separate credit feature that meets the two conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New § 1026.61(a)(2)(i) would capture overdraft credit features that are separate credit features offered by prepaid account issuers, their affiliates, or their business partners in connection with a prepaid account. For example, a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in cases where transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature in the prepaid account at the time the transaction is initiated, and credit can be drawn, transferred, or authorized to be drawn or transferred, from the credit feature at the time the transaction is authorized to complete the transaction. In addition, a prepaid card is a “hybrid prepaid-credit card” with respect to such a credit feature in cases related to settlement of transactions where credit can be automatically drawn, transferred, or authorized to be drawn or transferred, from the credit feature to settle transactions made with the card where there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled.

New § 1026.61(a)(2)(i) also captures situations where transactions can be initiated using a prepaid card where the card is a traditional “dual purpose” card. In this case, the card can be used both to access the asset feature of a prepaid account and to draw on the covered separate credit feature independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has \$50 in available funds in her prepaid account. The consumer initiates a \$25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the asset feature of the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the covered separate credit feature, the card will draw on

credit from the covered separate credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds in the prepaid account to complete the transaction.

As discussed in more detail below in the section-by-section analysis of § 1026.61(a)(2), new § 1026.61(a)(2)(ii) defines the term “non-covered separate credit feature” to mean a separate credit feature that does not meet the two conditions set forth in new § 1026.61(a)(2)(i). A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in new § 1026.61(a)(2)(i). A non-covered separate credit feature is not subject to the rules in Regulation Z applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

First, a separate credit feature is a “non-covered separate credit feature” when the separate credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. This is true even if the separate credit feature functions as an overdraft credit feature with respect to the prepaid account. For example, if a consumer links her prepaid account to a credit card issued by a card issuer, where the card issuer is not the prepaid account issuer, its affiliate, or its business partner, and credit is drawn automatically into the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the prepaid account, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third party.

Second, a separate credit feature is a “non-covered separate credit feature” if a prepaid card cannot access the separate credit feature during the course of authorizing, settling, or

otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. This is true even if the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's website, and these draws, transfers, or authorizations cannot occur in the course of authorizing, settling, or otherwise completing a transaction at the website to obtain goods or services, obtain cash, or conduct P2P transfers.

For this type of "non-covered separate credit feature," the credit feature would not be functioning as an overdraft credit feature with respect to the prepaid account. In addition, the prepaid card also is not functioning as a traditional "dual purpose" card where the card can be used both to access the asset feature of a prepaid account and to draw on a credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers independent of whether there are sufficient or available funds in the asset feature to complete the transaction. Instead, the prepaid card can only be used to draw or transfer credit from a separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

As described above, under new § 1026.61(a)(1)(i) and final § 1026.2(a)(15)(i), a prepaid card is a credit card (*i.e.*, a hybrid prepaid-credit card) for purposes of this regulation with respect to a covered separate credit feature. The Bureau is using its interpretive authority under TILA section 105(a) to define such prepaid cards as credit cards under TILA section 103(l). The Bureau believes that defining such prepaid cards as credit cards under § 1026.2(a)(15)(i) is consistent with the definition of "credit card" in TILA section 103(l). TILA section 103(l)

defines the term “credit card” to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.<sup>697</sup> The Bureau believes that such a prepaid card meets this TILA definition of “credit card” because it can be used from time to time to obtain credit from the separate credit feature in the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

For the reasons set forth in the *Overview of the Final Rule’s Amendments to Regulation Z* section, the Bureau believes that most overdraft credit features offered in connection with prepaid accounts should be treated as credit card accounts under Regulation Z, except in limited circumstances as discussed below and in the section-by-section analysis of § 1026.61(a)(4). As discussed further below, however, the Bureau is concerned about covering prepaid cards as credit cards when the cards can access separate credit features offered by unrelated third parties that have no affiliation or business arrangement with the prepaid account issuer, even if the separate credit feature functions as an overdraft credit feature in relation to the prepaid account. In this case, the unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties were subject to the provisions applicable to hybrid prepaid-credit cards, these third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. The Bureau is concerned that such third parties might take steps to try to mitigate these kinds of risks, which would make prepaid accounts less widely usable by consumers. Thus, as discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the final rule does not cover a prepaid card as a credit card under

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<sup>697</sup> 15 U.S.C. 1602(l).

Regulation Z when it accesses separate credit features offered by these unrelated third parties. In order to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a) to exclude such prepaid cards from the definition of “credit card” under TILA section 103(l) and final Regulation Z § 1026.2(a)(15)(i). The exception would facilitate compliance by allowing an unrelated third party to comply with the rules in Regulation Z that already apply to the separate credit feature without having to comply with additional Regulation Z provisions that would apply if the prepaid card were covered as a credit card with respect to the credit feature. Under this exception, third parties would not face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account, where the prepaid card may be linked to the separate credit feature without the knowledge of the unrelated third party.

As discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the Bureau also is clarifying that a prepaid card is not a credit card when the prepaid card accesses a separate credit feature that is not functioning as an overdraft credit feature, and the card is not a traditional “dual purpose” card as discussed above. In this case, the prepaid card only can access the separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Pursuant to its interpretive authority under TILA section 105(a), the Bureau is defining “credit card” in current TILA section 103(l) and final § 1026.2(a)(15)(i) to exclude a prepaid card from being covered as a credit card with respect to a separate credit feature when it only can access credit from the separate credit feature outside the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau does not interpret TILA section 103(l) to encompass

an account number for a prepaid account to be a “credit card” under TILA section 103(I) when the prepaid account number can only be used as a destination for the transfer of money from a separate credit account, and cannot be used to obtain credit within the course of a transaction to obtain goods or service, obtain cash, or conduct P2P transfers. The Bureau believes that when credit is accessed outside of the course of a transaction on a prepaid account, it is somewhat less risky for consumers because consumers would be required to make a deliberate decision to access the credit outside the course of a transaction, and thus can separately evaluate the tradeoffs involved. In addition, as discussed further below, this approach is consistent with regard to how lines of credit that can be accessed by debit cards are treated under the credit card rules in Regulation Z. Thus, consistent with this current definition of “credit card,” the Bureau is clarifying that a prepaid card is not a credit card with respect to a separate credit feature when it can only access the separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau also believes that this clarification is consistent with the proposal’s general focus on covering overdraft credit features offered in connection with prepaid accounts as credit card accounts under Regulation Z.

*Credit extended through a negative balance on the asset feature of the prepaid account.*

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(3) below, under new § 1026.61(a)(3), a prepaid card that can access credit extended through a negative balance on the asset balance of the prepaid card is a hybrid prepaid-credit card unless the card can only access incidental credit as described in new § 1026.61(a)(4). This provision is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. Thus,

for purposes of coverage, a person offering such an overdraft credit feature is a “card issuer” under final § 1026.2(a)(7) that is subject to Regulation Z, including § 1026.61(b).

In terms of triggering coverage under Regulation Z, under new § 1026.61(a)(1)(i) and (3)(i) and final § 1026.2(a)(15)(i), a prepaid card is a credit card (*i.e.*, hybrid prepaid-credit card) for purposes of this regulation when it is a single device that can be used from time to time to access credit extended through a negative balance on the asset feature of the prepaid account, unless the card can only access incidental credit as described in new § 1026.61(a)(4). The Bureau is using its interpretive authority under TILA section 105(a) to define such prepaid cards as credit cards under TILA section 103(*l*). The Bureau believes that classifying such prepaid cards as credit cards under § 1026.2(a)(15)(i) is consistent with the definition of “credit card” in TILA section 103(*l*). TILA section 103(*l*) defines the term “credit card” to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.<sup>698</sup> The Bureau believes that such a prepaid card meets this TILA definition of “credit card” because it can be used from time to time to access credit that is extended as a negative balance on the prepaid account in the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

However, as discussed further below, new § 1026.61(b) prohibits a card issuer from structuring an overdraft credit feature as a negative balance on the asset feature of the prepaid account, unless the program is structured to involve only incidental credit as provided in new § 1026.61(a)(4). The Bureau believes that this rule is necessary to promote transparency and compliance with the credit card requirements. Thus, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit

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<sup>698</sup> 15 U.S.C. 1602(*l*).

feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a “covered separate credit feature” under new § 1026.61(a)(2)(i).

As described in the section-by-section analysis of § 1026.61(a)(4) below, new § 1026.61(a)(4) provides that an overdraft credit feature structured as a negative balance on the asset feature of a prepaid account is not accessible by a hybrid prepaid-credit card where: (1) the prepaid card cannot access a covered separate credit feature as defined in new § 1026.61(a)(2)(i); (2) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer generally has a policy and practice of declining to authorize transactions made with the card when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the amount of the transactions, or the prepaid account issuer only authorizes those transactions in circumstances related to certain payment cushions and delayed load cushions; and (3) with respect to the prepaid account that is accessible by the prepaid card, the prepaid account issuer does not charge credit-related fees for any credit extended on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

Under this exception, a prepaid account issuer may extend credit through a negative balance on the asset feature of the prepaid account in certain situations, such as force pay transactions, without having to waive general transaction fees, as would have been required under the proposal to avoid triggering the credit card rules. As discussed above, force pay transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the

prepaid account to cover the transaction at settlement. This can occur, for example, where a transaction is either not authorized in advance, or where there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid.

The exception in new § 1026.61(a)(4) also would allow a prepaid account issuer to adopt a payment cushion where the issuer could authorize transactions that would take the account balance negative by no more than \$10 at the time the transaction is authorized. In addition, the exception would allow a prepaid account issuer to adopt a delayed load cushion. Specifically, in cases where the prepaid account issuer has received an instruction or confirmation for an incoming EFT originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the final rule allows a prepaid account issuer to authorize transactions that take the prepaid account negative, so long as the transactions will not cause the account balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

Thus, the Bureau is intending to exempt overdraft credit features that are structured as a negative balance on the asset feature of the prepaid account under Regulation Z where the prepaid account issuer generally is not authorizing transactions that will take the asset feature of the prepaid account negative and the prepaid account issuer generally does not charge credit-related fees on credit extended on the asset feature of the prepaid account. As discussed in more detail below, the Bureau believes that this exception will address a substantial number of the

concerns expressed by industry commenters about situations in which the proposal would have required them to waive general transaction fees on incidental credit to avoid triggering the credit card rules. In light of the very limited nature of the incidental credit at issue, the Bureau believes that it is appropriate to exclude this incidental credit from coverage under Regulation Z. Thus, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a), to exclude such prepaid cards that qualify for the exception under new § 1026.61(a)(4) from the definition of “credit card” under TILA section 103(l) and final Regulation Z § 1026.2(a)(15)(i).<sup>699</sup> The exception in new § 1026.61(a)(4) would facilitate compliance by allowing a prepaid account issuer to comply only with Regulation E with respect to the prepaid account and this incidental credit, instead of also complying with Regulation Z with respect to the incidental credit.

Given that a prepaid account issuer can only extend credit through a negative balance on the asset feature of the prepaid account in limited circumstances under the exception in new § 1026.61(a)(4), and credit-related fees generally may not be imposed for the credit extended, the Bureau anticipates that the credit extended through a negative balance on the asset feature of a prepaid account that qualifies for the exception would be limited. The Bureau believes that certain harms to consumers, such as becoming overextended in using this credit, would be limited. Thus, to facilitate compliance, the Bureau believes that this type of credit is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. For example, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.12(a) above, Regulation E’s provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. In addition, such credit extensions

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<sup>699</sup> 15 U.S.C. 1602(l).

would be disclosed on Regulation E periodic statements under existing § 1005.9(b) or, if the financial institution follows the periodic statement alternative in final § 1005.18(c)(1), on the electronic and written histories of the consumer's prepaid account transactions.

Also, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, although this incidental credit generally is governed by Regulation E, the Bureau is exempting this incidental credit from the opt-in rule in final § 1005.17. Existing § 1005.17 sets forth requirements that financial institutions must follow in order to provide “overdraft services” to consumers related to consumers’ accounts. Under existing § 1005.17, financial institutions must provide consumers with notice of their right to opt-in, or affirmatively consent, to the institution’s overdraft service for ATM and one-time debit card transactions, and obtain the consumer’s affirmative consent before fees or charges may be assessed on the consumer’s account for paying such overdrafts. For the reasons discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, the Bureau is adding new § 1005.17(a)(4) to provide that credit accessed from an overdraft credit feature that is exempt from Regulation Z under § 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17. This is true even though the prepaid account issuer may be charging per transaction fees that are permitted under new § 1026.61(a)(4)(ii)(B) with respect to credit accessed from the overdraft credit feature. The Bureau does not believe that the opt-in requirements in final § 1005.17 are appropriate for these types of overdraft credit features given that these overdraft credit features may not charge higher per transaction fees for credit extended through a negative balance on the asset feature of the prepaid account than the per transaction fees charged when the transaction only accesses funds in the asset feature of the prepaid account.

*Account numbers that are not prepaid cards.* As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, upon review of the comments and its own analysis, the Bureau has decided not to adopt the proposal to provide that an account number for a credit account would be a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In proposing these provisions, the Bureau was concerned that a prepaid account issuer and a creditor could design arrangements to circumvent the proposed rules in Regulation Z applicable to prepaid cards that are credit cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to account numbers of the credit account were designed to prevent this type of evasion of the rules applicable to prepaid cards that are credit cards.

The Bureau is addressing this type of evasion by generally covering a prepaid card as a credit card (*i.e.*, “hybrid prepaid-credit card”) when the card can access a separate credit feature that is functioning as an overdraft credit feature and is offered by a prepaid account issuer, its affiliate, or its business partner.<sup>700</sup> Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from

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<sup>700</sup> One consumer group commenter urged the Bureau to include an anti-evasion provision in the final rule. This commenter believed that the Bureau should be able to rely on an anti-evasion rule to prohibit conduct that clearly is against the spirit of the rules, even if the final rule does not specifically prohibit that activity. The Bureau is not adopting such an anti-evasion rule at this time. The Bureau in various ways has crafted the final rule to address potential areas of evasion that could arise with respect to the application of the rules in Regulation Z to overdraft credit features offered by prepaid account issuers, their affiliates, or their business partners in connection with prepaid accounts. *See, e.g.*, the section-by-section analyses of §§ 1026.2(a)(7) and (a)(15)(i) and 1026.4(b)(11)(ii) above, and 1026.61(a)(4) and (a)(5)(iii) below.

the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a “covered separate credit feature.” Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature. In this case, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the final rule provides that a prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

In addition, the final rule also provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways than through the hybrid prepaid-credit card. For the reasons set forth in the *Overview of the Final Rule’s Amendments to Regulation Z* section, the Bureau believes that consumers will benefit from the application of the credit card rules generally to a credit account that functions as an overdraft

credit feature in connection with a prepaid account when that overdraft feature is offered by a prepaid account issuer, its affiliate, or its business partner, regardless of whether the credit account can only be used as an overdraft credit feature. In addition, the Bureau is concerned about potential evasion if the provisions set forth in the final rule applicable to overdraft credit features described above could be avoided simply by providing other uses for the credit account.

The Bureau believes that the provisions in the final rule described above with respect to a covered separate credit feature adequately capture situations where a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner functions as an overdraft credit feature in relation to a prepaid account. Thus, the Bureau believes that it is no longer necessary to treat an account number of the credit account as a credit card to capture situations when the credit account may function as an overdraft credit feature in relation to the prepaid account.

As discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. As discussed above and in more detail in the section-by-section analyses of § 1026.61(a)(2) and (4) below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a “non-covered separate credit feature,” which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner.

Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

#### *61(a)(1) In General*

New § 1026.61(a)(1)(i) provides that credit offered in connection with a prepaid account is subject to new § 1026.61, as specified in that section. New § 1026.61(a)(1)(ii) provides generally that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in new § 1026.61(a)(2)(i), or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account, as described in new § 1026.61(a)(3). New § 1026.61(a)(1)(ii) also provides that a hybrid prepaid-credit card is a credit card for purposes of Regulation Z with respect to those respective credit features. New § 1026.61(a)(1)(iii) specifies that a prepaid card is not a hybrid prepaid-credit card—and thus not a credit card for purposes of Regulation Z—if the only credit offered in connection with the prepaid account is incidental credit meeting the conditions set forth in new § 1026.61(a)(4).

As described below, the commentary to new § 1026.61(a)(1) contains general guidance on the circumstances in which a prepaid card is a hybrid prepaid-credit card under § 1026.61(a).

#### *Credit Accessible by a Hybrid Prepaid-Credit Card*

New comment 61(a)(1)-1 makes clear that a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature described in new

§ 1026.61(a)(2)(i), or if the prepaid card can access credit through a negative balance on the asset feature of a prepaid account described in new § 1026.61(a)(3) (except as provided in new § 1026.61(a)(4)), even if, for example: (1) the person that can extend the credit does not agree in writing to extend the credit; (2) the person retains discretion not to extend the credit; or (3) the person does not extend the credit once the consumer has exceeded a certain amount of credit. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau does not believe that whether a prepaid card is a credit card under Regulation Z should turn on whether the person has agreed in writing to extend the credit or retains the discretion not to extend credit in certain circumstances.

*Prepaid Card That Is Solely an Account Number*

Proposed comment 2(a)(15)-2.i.F would have provided that the term “credit card” includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Thus, under the proposal, a prepaid card that is solely an account number would have been a credit card under § 1026.2(a)(15)(i) if it met this standard.

For reasons discussed in more detail in the section-by-section analyses of § 1026.61(a)(2) and (4) below, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card (*i.e.*, hybrid prepaid-credit card). Nonetheless, consistent with the proposal, new comment 61(a)(1)-2 provides that a prepaid card that is solely an account number is a hybrid prepaid-credit card (and thus is a credit card under Regulation Z) if it meets the conditions for being a hybrid prepaid-credit card set forth in new § 1026.61(a).

*Usable From Time to Time*

Current comment 2(a)(15)-1 provides that a credit card under Regulation Z must be usable from time to time. Because this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards. The proposal would have revised this comment to provide that with respect to a preauthorized check that is issued on a prepaid account for which the funds are withdrawn at the time of preauthorization using the prepaid account number, the credit is obtained using the prepaid account number and not the check. The proposal also would have revised this comment to cross-reference proposed comment 2(a)(15)-2.i.F for a discussion of when a prepaid account number is a credit card.

The Bureau did not receive specific comment on this aspect of the proposal. The final rule moves the proposed guidance in proposed comment 2(a)(15)-1 related to prepaid accounts to new comment 61(a)(1)-3 and revises it to be consistent with new § 1026.61. Consistent with current comment 2(a)(15)-1, new comment 61(a)(1)-3 provides that in order for a prepaid card to be a hybrid prepaid-credit card under new § 1026.61(a), the prepaid card must be capable of being used from time to time to access credit as described in new § 1026.61(a). Because this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not hybrid prepaid-credit cards. Consistent with the proposal, new comment 61(a)(1)-3 also provides that with respect to a preauthorized check that is issued on a prepaid account for which credit is extended through a negative balance on the asset feature of the prepaid account, or credit is drawn, transferred or authorized to be drawn or transferred from a separate credit feature, the credit is obtained using the prepaid account number and not the check at the time of preauthorization using the prepaid

account number. The comment states that a prepaid account number is a hybrid prepaid-credit card if the account number meets the conditions set forth in new § 1026.61(a), as discussed above.

#### *Prepaid Account That Is a Digital Wallet*

One digital wallet provider indicated that the Bureau should clarify that the proposal's restrictions do not apply to a digital wallet's stored payment credentials. This commenter indicated that stored credentials do not present the same risks of consumer harm as overdraft protection for prepaid cards. New comment 61(a)(1)-4 provides guidance on the circumstances in which prepaid account number for a digital wallet that is a prepaid account is a hybrid prepaid-credit card under new § 1026.61(a).

Specifically, new comment 61(a)(1)-4 states that a digital wallet that is capable of being loaded with funds is a prepaid account under final Regulation E § 1005.2(b)(3). *See* final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)-6. The comment explains that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card if it meets the conditions set forth in new § 1026.61(a).

New comments 61(a)(1)-4.i.A and B provide illustrations of this rule. First, the comments explain that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card under new § 1026.61(a)(2)(i) where it can be used from time to time to: (1) access a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers as described in new § 1026.61(a)(2)(i); or (2) access the stored credentials for a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business

partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers as described in new § 1026.61(a)(2)(i).

Second, new comments 61(a)(1)-4.i.C and D state that a prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to: (1) credentials stored in the prepaid account that access a non-covered separate credit feature as described in new § 1026.61(a)(2)(ii) that is not offered by the prepaid account issuer, its affiliate, or its business partner, even if the prepaid account number can access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) credentials stored in the prepaid account that access a non-covered separate credit feature as described in new § 1026.61(a)(2)(ii), where the prepaid account number cannot access those credential in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers, even if such credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

Third, comment 61(a)(1)-4.ii states that a digital wallet is not a prepaid account under final Regulation E § 1005.2(b)(3) if the digital wallet can never be loaded with funds, such as a digital wallet that only stores payment credentials for other accounts. See final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)-6. The comment explains that an account number that can access such a digital wallet would not be a hybrid prepaid-credit card under new § 1026.61(a), even if the wallet stores a credential for a separate credit feature that is offered by the digital wallet provider, its affiliate, or its business partner and can be used in the course of a transaction involving the digital wallet.

### *Prepaid Account That Can Be Used For Bill Payment Services*

To help ensure compliance with the final rule, the Bureau also is including guidance in the final rule on when a prepaid card that can be used for an online bill payment service offered by the prepaid account issuer is a hybrid prepaid-credit card under § 1026.61(a). New comment 61(a)(1)-5 provides that where a prepaid account can be used for online bill payment services offered by the prepaid account issuer, the prepaid card (including a prepaid account number) that can access that prepaid account is a hybrid prepaid-credit card if it meets the requirements set forth in § 1026.61(a). For example, if a prepaid account number can be used from time to time to initiate a transaction using the online bill payment service offered by the prepaid account issuer to pay a bill, and credit can be drawn, transferred, or authorized to be drawn or transferred to the prepaid account from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing that transaction as described in § 1026.61(a)(2)(i), the prepaid account number would be a hybrid prepaid-credit card under § 1026.61(a). In this case, the prepaid account number can be used to draw or transfer credit, or authorize the draw or transfer of credit, from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of completing a transaction to pay for goods or services through the online bill payment service.

### *Real-Time Notification or Opt-in For Overdrafts*

In the proposal, the Bureau discussed the possibility of requiring additional real-time notifications of transactions triggering an overdraft or requiring real-time opt-in by consumers to approve each overdraft in addition to applying the credit card rules in Regulation Z to overdraft credit features in connection with prepaid accounts. The Bureau understood that there may be

technological, operational, and procedural challenges to the timing and delivery of such a notice or compliance with such an opt-in requirement, particularly in the point of sale retail environment. The Bureau was unsure at the time whether such a procedure could be implemented given that notifications and/or opt-in might require multiple communications among financial institutions, card networks, and merchants. Accordingly, the Bureau did not propose any requirements related to real-time notification or opt-in, but it solicited comment on possible options and suggestions for what it might require in this regard for prepaid accounts.

Several commenters, including industry trade associations and an issuing bank, indicated that real-time notification and opt-in is not feasible with current technology. Two of these commenters were concerned that such notices are not feasible given existing technology and that such notices could thus never be reliable and therefore would be more likely to lead to consumer confusion. These commenters stated that current processing systems will not necessarily have real-time balances and cannot be depended upon for providing real-time notices with any reliability. Further, these commenters stated that current terminals are not capable of displaying the required messaging. Thus, these commenters stated that it is not clear that the requisite technology is in place to comply with the potential notification and opt-in requirements discussed above, and thus there is a likelihood that such a requirement could lead to consumer confusion. Moreover, even if the card issuer clearly discloses that real-time notifications will not always be provided, the fact that they could be provided for the majority of transactions will lead consumers over time to believe that the notices are more reliable than in fact they are.

One program manager that offers an overdraft feature in connection with some of its prepaid accounts indicated that consumers who use the overdraft feature consent to receive notifications electronically, and the program manager sends electronic messages notifying

consumers when they have overdrafted. The program manager indicated that most of these consumers with the overdraft feature also choose to receive alert messages that provide balance information periodically and after every transaction. This program manager indicated that a point-of-sale opt-in may present challenges, but it may be feasible to create a program where the overdraft feature could be turned on for a time-period during which the consumer intends to use the feature.

One consumer group said that the Bureau should mandate clear and deliberate opt-in processes so the consumer knows exactly the moment when they can begin incurring overdraft charges. Another consumer group commenter stated that current technology exists that can notify a person that the account has insufficient funds, via text or email. After receiving this notification, consumers could transfer funds if they wish to avoid credit. This commenter noted that its research has found that many people overdraft without knowing it and most would prefer to have transactions declined rather than paying a fee for overdrawing their accounts.

Based on these comments, the Bureau is not adopting real-time notification and opt-in requirements at this time. The Bureau will continue to monitor developments with respect to real-time notification and opt-in.

#### *61(a)(2) Prepaid Card Can Access Credit From a Covered Separate Credit Feature*

##### *In General*

As discussed above, the Bureau received industry comments stating that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third party. On the other hand, as discussed above, several consumer groups supported the proposed rule to consider a third party that offers an open-end credit feature

accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

In addition, the Bureau received an industry comment that the Bureau should clarify that a prepaid card should not be a credit card when the prepaid card could be used to initiate the load or transfer of credit to the prepaid account, but this load or transfer could not occur in order to process transactions conducted with the card when there were insufficient funds in the prepaid account to cover the amount of the transaction. On the other hand, as discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

As discussed in more detail below, under the final rule, new § 1026.61(a)(2)(i)(A) defines a separate credit feature accessible by a hybrid prepaid-credit card as described in new § 1026.61(a)(2)(i) as a covered separate credit feature. Under new § 1026.61(a)(2)(i)(A), a

prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature (and the separate credit feature is a covered separate credit feature) when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied: (1) the card can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. As discussed in more detail below, new § 1026.61(a)(2)(i)(B) provides that a separate credit feature that meets the two conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

As discussed in more detail below, consistent with the proposal, under new § 1026.61(a)(2)(i), a prepaid card is a credit card under Regulation Z (*i.e.*, hybrid prepaid-credit card) with respect to a separate credit feature when the credit feature functions as an overdraft credit feature with respect to the prepaid account, and the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. Consistent with the proposal, new § 1026.61(a)(2)(i) also captures situations where transactions can be initiated using a prepaid card where the card is a traditional “dual purpose” card. In this case, the card can be used both to access the asset feature of a prepaid account and to draw on the covered separate credit feature independent of whether there are sufficient or available funds in the asset feature to complete the transaction.

Under the final rule, a prepaid card is a hybrid prepaid-credit card when it can access credit from a covered separate credit feature as described in new § 1026.61(a)(2)(i), even if finance charges are not charged in relation to this credit. As discussed above, under the proposal, a prepaid card would not have been a credit card under § 1026.2(a)(15)(i) if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. One consumer group commenter expressed concern that the exclusion of prepaid cards from the definition of credit card if the prepaid card only accesses credit that is not subject to a finance charge, as defined in § 1026.4, or a fee described § 1026.4(c) would lead to evasions. For example, this commenter was concerned that a prepaid issuer could offer a “deluxe” prepaid card that comes with \$100 in “free” overdraft protection but recover the costs for the credit through other fees charged on the credit account that are not finance charges or fees described in § 1026.4(c), such as higher fees for purportedly “voluntary” credit insurance that is not a finance charge or fee described in § 1026.4(c). This commenter urged the Bureau to cover all prepaid cards as a credit card when the prepaid card accesses credit, regardless of whether a finance charge or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions may be necessary.

To address these concerns, the Bureau provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature when it meets the two conditions set forth in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed in connection with the credit from the covered separate credit feature. The Bureau believes that the final rule is consistent with the intent of the proposal and the definition of “credit card” under Regulation Z,

which applies to “charge cards” and other credit products meeting the regulatory definitions even if they do not involve finance charges.<sup>701</sup> In proposing not to apply the credit card rules in situations in which a prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments, the Bureau intended to provide this exception only with respect to credit extended through a negative balance on the asset feature of the prepaid account. In the proposal, the Bureau stated its belief that this type of credit, where no credit-related fees are imposed, is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. See the section-by-section analysis of § 1026.61(a)(4) below for a description of the exception that is contained in the final rule.

With regard to covered separate credit features, however, the same logic does not apply. Not all credit extensions accessing separate credit features via a prepaid card would be subject to Regulation E protections if Regulation Z did not apply. Rather, Regulation E would apply to credit extensions that are deposited in a prepaid account by use of an EFT, but it would not apply to extensions of credit where the transaction does not involve an EFT to or from the prepaid account. The final rule also is consistent with the definition of “credit card” under Regulation Z, which does not require that finance charges be charged for the credit in order for a device to meet the definition of “credit card.”

The Bureau also believes that considering a prepaid card to be a hybrid prepaid-credit card with respect to a covered separate credit feature when it meets the two conditions set forth in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed in connection with the

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<sup>701</sup> Specifically, Regulation Z defines the term “credit card” to mean “any card, plate, or other single credit device that may be used from time to time to obtain credit.” See § 1026.2(a)(15)(i). In addition, under Regulation Z, a card issuer (or its agent) offering credit is a “creditor” under § 1026.2(a)(17)(iii) for purposes of the provisions in subpart B of the regulation, regardless of whether a finance charge is imposed for the credit.

credit from the covered separate credit feature, also would help prevent card issuers from structuring their fees to recover the cost of credit through fees that are not finance charges to avoid triggering the credit card rules. The Bureau believes that this will help promote transparency and consumers understanding of the costs of credit.

Thus, the final rule provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, as defined in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed for the credit from the covered separate credit feature.

#### *Covered Separate Credit Features*

New § 1026.61(a)(2)(i)(A) provides that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature and the following two conditions are both satisfied: (1) the card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. Under new § 1026.61(a)(2)(i)(A), a separate credit feature that is accessible by a hybrid prepaid-credit card is a covered separate credit feature.

New § 1026.61(a)(2)(i)(B) provides that a separate credit feature that meets the conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In developing these rules, the Bureau was conscious that there were two distinct types of credit extensions that could occur

with respect to a covered separate credit feature. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's website to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau believes that if the prepaid card is capable of accessing the separate credit feature in the two conditions set forth in § 1026.61(a)(2)(i), the covered separate credit feature is a credit card account under Regulation Z, even with respect to draws or transfers of credit from the covered separate credit feature that occur outside the course of any transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. This is consistent with other provisions in Regulation Z that apply the credit card rules to the credit card account generally, even with respect to transactions that are not conducted with the credit card, such as convenience check transactions. *See, e.g.*, §§ 1026.52(a) and (b) and 1026.55 and related commentary, and § 1026.12(d)(1) and comment 12(d)(1)-3.

Under new § 1026.61(a)(2)(i), a hybrid prepaid-credit card that can access a covered separate credit feature, as defined in new § 1026.61(a)(2)(i), is a credit card under Regulation Z with respect to that covered separate credit feature. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. New comment 61(a)(2)-1.i provides that for a prepaid card to be a hybrid prepaid-credit card

under new § 1026.61(a)(2)(i) with respect to a separate credit feature, the prepaid account must be structured such that the draw or transfer of credit, or authorizations of either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner is capable of occurring in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a P2P transfer. In this case, the separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

New comment 61(a)(2)-1.ii makes clear a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. This provision prevents a prepaid account issuer from evading the credit card provisions of Regulation Z by structuring the transactions as a push of credit funds to the prepaid account (as opposed to a pull of credit funds from the separate credit feature) during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative.

New comment 61(a)(2)-1.iii makes clear that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways.

New comment 61(a)(2)-2 provides guidance on when a draw, transfer, or authorization of a draw or transfer occurs within the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, as described in new § 1026.61(a)(2)(i). Specifically, new comment 61(a)(2)-2.i provides that a draw, transfer, or authorization from a separate credit feature is deemed to be in the “course of authorizing, settling, or otherwise completing” a transaction if it occurs during the authorization phase of the transaction or in later periods up to the settlement of the transaction. This comment makes clear that a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account.

New comment 61(a)(2)-2.ii focuses on situations in which the credit is drawn, transferred, or authorized to be drawn or transferred in the course of authorizing a transaction. New comment 61(a)(2)-2.ii makes clear that under new § 1026.61(a)(2)(i), a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in cases, for example, where (1) transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated, and credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction; and (2) transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account.

New comment 61(a)(2)-2.iii provides illustrations of transactions in which credit is drawn, transferred, or authorized to be drawn or transferred in the course of settling a transaction. For example, under new § 1026.61(a)(2)(i), a prepaid card is a “hybrid prepaid-credit card” with respect to such a separate credit feature in cases where credit can be automatically drawn, transferred, or authorized to be drawn or transferred from the separate credit feature at the time of settlement where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the original transaction with the card.

New comment 61(a)(2)-3 clarifies that in addition to overdraft credit features, new § 1026.61(a)(2)(i) also covers a prepaid card as a hybrid prepaid-credit card (and thus a credit card under Regulation Z) where the card is a traditional “dual purpose” card. In this case, a prepaid card can be used from time to time both to access the asset feature of a prepaid account and to draw on the covered separate credit feature in the course of a transaction independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has \$50 in funds in her prepaid account. The consumer initiates a \$25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the covered separate credit feature, the card will draw on credit from the credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds the prepaid account to complete the transaction.

New comment 61(a)(2)-4.i clarifies that new § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards use the terms “covered separate credit

feature” or “covered separate credit feature accessible by a hybrid prepaid-credit card” to refer to a separate credit feature that meets the conditions of new § 1026.61(a)(2)(i). *See, e.g.*, final §§ 1026.4(c)(4), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), 1026.60(a)(5)(iv), and 1026.60(b). In addition, new comment 61(a)(2)-4.i also states that several provisions in Regulation Z also describe this arrangement as one where a covered separate credit feature and an asset feature on a prepaid account are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61. *See, e.g.*, final §§ 1026.4(b)(11), 1026.6(b)(3)(iii)(D), and 1026.13(i)(2).

New comment 61(a)(2)-4.ii provides guidance on new § 1026.61(a)(2)(i)(B), which provides that a separate credit feature that meets the two conditions set forth in new § 1026.61(a)(2)(i)(A) is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. New comment 61(a)(2)-4.ii clarifies that if a prepaid card is capable of drawing or transferring credit, or authorizing either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a P2P transfer, the credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card, even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, with respect to a covered separate credit feature, a consumer may use the prepaid card at the prepaid account issuer’s website to load funds from the covered separate credit feature outside the course of a transaction conducted

with the card to obtain goods or services, obtain cash, or conduct P2P transfers. This credit transaction is considered a credit transaction on a covered separate credit feature accessible by a hybrid prepaid-credit card, even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. As discussed above, the Bureau believes that if the prepaid card is capable of accessing the separate credit feature in the two conditions set forth in § 1026.61(a)(2)(i), the covered separate credit feature is a credit card account under Regulation Z, even with respect to draws or transfers of credit from the covered separate credit feature that occur outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

#### *Non-Covered Separate Credit Features*

As discussed above, in order for a separate credit feature to be a “covered separate credit feature” accessible by a hybrid prepaid-credit card, the separate credit feature must meet the following two conditions set forth in new § 1026.61(a)(2)(i): (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

New § 1026.61(a)(2)(ii) defines the term “non-covered separate credit feature” to mean a separate credit feature that does not meet these two conditions. Under § 1026.61(a)(2)(ii), a prepaid card that accesses credit from a non-covered separate credit feature is not a hybrid prepaid-credit card with respect to this non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described

above. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

New comment 61(a)(2)-5.i clarifies that a separate credit feature is a “non-covered separate credit feature” when the separate credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. This is true even if the separate credit feature functions as an overdraft credit feature with respect to the prepaid account. For example, assume a consumer links her prepaid account to a credit card issued by a card issuer that is not the prepaid account issuer, its affiliate, or its business partner so that credit is drawn automatically into the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the asset feature. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third-party card issuer.

New comment 61(a)(2)-5.ii clarifies that a separate credit feature is a “non-covered separate credit feature” if a prepaid card cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. This is true even if the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer’s website, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or

otherwise completing transactions at the website to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2) with respect to this non-covered separate credit feature.

New comment 61(a)(2)-5.iii explains that a person offering a non-covered separate credit feature does not become a card issuer under final § 1026.2(a)(7), and thus does not become a creditor under final § 1026.2(a)(17)(iii) or (iv), because the prepaid card can be used to access credit from the non-covered separate credit feature. The person offering the non-covered separate credit feature, however, may already have obligations under Regulation Z with respect to that separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer under final § 1026.2(a)(7) and thus a creditor under final § 1026.2(a)(17)(iii). Nonetheless, in that case, the person does not need to comply with the provisions in Regulation Z applicable to hybrid prepaid-credit cards even though the prepaid card can access credit from the non-covered separate credit feature. The obligations under Regulation Z that apply to a non-covered separate credit feature are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature.

Each of the two types of non-covered separate credit features is discussed in more detail below.

*Non-covered separate credit feature where a prepaid card can access a separate credit feature that is not offered by the prepaid account issuer, its affiliate, or its business partner.* As discussed above, the Bureau received comments from industry stating that a prepaid card should

not be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third-party. These commenters were concerned that an unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties that offer separate credit features were subject to the provisions applicable to hybrid prepaid-credit cards, these third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This would have been true even if the third parties were already subject to the credit card rules in their own right because the proposal contained a number of provisions that would have applied only to prepaid cards that are credit cards and would not have applied to credit card accounts generally.

In contrast, several consumer groups supported the proposed rule to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

Based on the comments, the Bureau believes it is appropriate not to trigger status as a hybrid prepaid-credit card where a credit feature is not offered by the prepaid account issuer, its affiliate, or its business partner, even if an individual consumer decides to link the two accounts such that a draw or transfer of credit, or authorization of either, occurs during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers.

With respect to a third party offering a separate credit feature that is neither an affiliate nor a business partner of the prepaid account issuer, the Bureau recognizes that this unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties were subject to the provisions applicable

to hybrid prepaid-credit cards, such third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This can occur when the prepaid account issuer uses the ACH network to execute an authorization from a consumer to pull credit for a consumer from a separate credit account offered by an unrelated third party. Financial institutions participating in the ACH network may have difficulty specifically identifying and blocking pulls of credit by a prepaid account (and, unlike with credit/debit cards, the prepaid account issuer likely would have no way of knowing if the account and routing number a consumer provides for ACH purposes accesses a deposit account or a credit account). Moreover, because an ACH debit pull may be used to access credit from accounts that are not subject to the current credit card rules in their own right, the Bureau is concerned that unrelated third parties offering separate credit features would face even more challenges if the pull (or the ability to initiate pulls) triggered credit card compliance obligations.

The Bureau also is concerned that unrelated third parties that are already subject to the credit card rules in their own right also may be unwilling to assume that compliance risk due to the prepaid account issuer's actions in linking a separate credit feature offered by an unrelated third party to a prepaid account to be used as an overdraft credit feature. As a result, the Bureau is concerned that credit card networks could prevent prepaid account issuers from being merchants in the network for all purposes because credit card issuers would not want to be subject to the enhanced obligations in Regulation Z that would apply if a prepaid card were deemed to be a credit card with respect to a credit card account offered by an unrelated third party. The Bureau believes that this rule will reduce the risk that unrelated third parties offering separate credit features would take the steps described above, which could harm consumers by making prepaid accounts less widely usable by consumers.

Thus, the final rule does not consider a prepaid card to be a credit card under the regulation in relation to a separate credit feature where an unrelated third party that is not an affiliate or business partner of the prepaid account issuer offers the credit feature.

In contrast, the Bureau does believe that it is appropriate to consider a prepaid card to be a credit card when it can access an overdraft credit feature that is offered by a third party where the third party is the prepaid account issuer's affiliate or its business partner. As discussed further below in the section-by-section analysis of § 1026.61(a)(5), new § 1026.61(a)(5)(i) defines the term "affiliate" for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards to mean any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

As discussed further below in the section-by-section analysis of § 1026.61(a)(5), new § 1026.61(a)(5)(iii) defines the term "business partner" for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards generally to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where either (1) the person that can extend credit or its affiliate has an agreement with the prepaid account issuer or its affiliate that the prepaid card can access the separate credit feature in the course of a transaction; or (2) the person that can extend credit or its affiliate has a cross-marketing agreement or other similar arrangement with the prepaid account issuer or its affiliate and where, whether or not by agreement, the prepaid card can access the separate credit feature in the course of a transaction.

The Bureau believes that it is appropriate to consider such an unaffiliated third party that can extend credit to be the prepaid account issuer's business partner in the above circumstances

because in those cases, there is a sufficient connection between the parties such that the unaffiliated third party should know that its credit feature is accessible by a prepaid card as a credit feature for the prepaid account. Also, the Bureau believes that these types of links between the prepaid account issuer and the unaffiliated third party are likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related. Thus, the Bureau believes that it is appropriate to consider these entities to be business partners in this context.

The Bureau believes that the approach described above of not covering a prepaid card as a credit card with respect to a separate credit feature when it is offered by a third party that is not an affiliate or business partner of the prepaid account issuer addresses the concerns discussed above about unintended consequences for consumers and third parties alike, while appropriately guarding against the risk that third parties offering separate credit features or their affiliates would cooperate with prepaid account issuers or their affiliates to attempt to evade the intended scope of the rules regarding overdraft credit features.

*Non-covered separate credit feature where prepaid card can access separate credit feature only outside the course of a transaction.* One issuing credit union expressed concern that the proposal would have triggered the credit card rules in situations in which a prepaid card could be used only to complete standalone loads or transfers of credit from a separate credit feature to the prepaid account, but not to access credit in the course of a transaction conducted with the prepaid card. This commenter noted that consumers can consciously load value to their prepaid account using their debit card or credit card, where the load is not part of an overdraft feature offered in connection with the prepaid account. When using the debit card, the consumer may consciously load funds from an overdraft or line of credit product that is linked to a

traditional checking account. When using a credit card, the consumer is loading from an available credit card balance to fund the prepaid account. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

In the final rule, the Bureau is clarifying the circumstances in which a prepaid card is a credit card from the proposal to address circumstances in which credit can only be loaded or transferred from a separate credit feature to the prepaid account outside the course of completing a transaction conducted with the prepaid card. Under new § 1026.61(a)(2)(ii), even if a separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, a prepaid card is not a hybrid prepaid-credit card under new § 1026.61(a)(2) with respect to that

separate credit feature if the feature cannot be accessed within the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's website, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the website to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, the separate credit feature is a non-covered separate credit feature under new § 1026.61(a)(2)(ii), and the prepaid card is not a hybrid prepaid-credit card under new § 1026.61(a)(2) with respect to this non-covered separate credit feature.

With respect to this type of non-covered separate credit feature, the separate credit feature cannot function as an overdraft credit feature with respect to the prepaid account. In addition, the prepaid card also cannot function as a traditional "dual purpose" card where the card can be used both to access the asset feature of a prepaid account and to draw on the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers independent of whether there are sufficient or available funds in the asset feature to complete the transaction. Instead, the prepaid card can only be used to draw or transfer credit from the separate credit feature on an occasional and intentional basis, outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau believes that this situation is somewhat less risky for consumers because consumers would be required to make a deliberate decision to access the credit outside the course of a transaction, and thus can separately evaluate the tradeoffs involved.

The Bureau also believes that this clarification is consistent with the proposal's general focus on covering overdraft credit features offered in connection with prepaid accounts as credit card accounts under Regulation Z.

In addition, in adopting this approach, the Bureau is drawing on the same logic and maintaining consistency with the existing credit card rules' treatment of overdraft lines of credit that can be accessed by debit cards. Under the existing rules as set forth in existing comments 2(a)(15)-2.i.B and 2(a)(15)-2.ii.A., debit cards are generally treated as credit cards under existing § 1026.2(a)(15)(i) when they access overdraft lines of credit (where there is an agreement to extend credit). In addition, the term "credit card" also includes a deposit account number even when there is no physical debit card device when the account number can be used to access an open-end line of credit to purchase goods or services. Nonetheless, under the current definition of credit card as set forth in existing comment 2(a)(15)(i)-2.ii.C, a deposit account number is not a credit card if the account number can only be used as a destination for the transfer of money from a separate credit account.

#### *Prepaid Card Can Access Multiple Separate Credit Features*

The Bureau recognizes that a prepaid card may access multiple separate credit features in a variety of circumstances. New § 1026.61(a)(2)(ii) and new comment 61(a)(2)-6 clarify coverage under new § 1026.61(a)(2) when a prepaid card can access multiple separate credit features. New § 1026.61(a)(2)(ii) and new comment 61(a)(2)-6 provide that even if a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, it is not a hybrid prepaid-credit card with respect to any non-covered separate credit features. New comment 61(a)(2)-6 provides the following example to illustrate: Assume that a prepaid card can access "Separate Credit Feature A" where the card can be used from time to time to access

credit from a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In addition, assume that the prepaid card also can access “Separate Credit Feature B,” but that credit feature is offered by an unrelated third-party creditor that is not the prepaid account issuer, its affiliate, or its business partner. The prepaid card is a hybrid prepaid-credit card with respect to “Separate Credit Feature A” because it is a covered separate credit feature under new § 1026.61(a)(2)(i). The prepaid card, however, is not a hybrid prepaid-credit card with respect to “Separate Credit Feature B” because it is a non-covered separate credit feature under new § 1026.61(a)(2)(ii).

*61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance On the Asset Feature of the Prepaid Account*

Many industry commenters argued that the Bureau should not regulate overdraft credit features under Regulation Z except where there is an agreement to extend credit, consistent with how overdraft credit is treated with respect to checking accounts. These commenters said that the Bureau should instead subject overdraft credit programs where there is not an agreement to the opt-in regime in Regulation E § 1005.17, which currently applies to overdraft services provided for ATM and one-time debit card transactions. For the reasons discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section, the Bureau continues to believe that it is appropriate generally to cover overdraft credit features offered by prepaid account issuers that are structured as a negative balance on the prepaid account as credit card accounts under Regulation Z, except as provided in new § 1026.61(a)(4).

Accordingly, new § 1026.61(a)(3)(i) provides that a prepaid card that can access credit extended through a negative balance on the asset balance of the prepaid card is a hybrid prepaid-credit card unless the card can only access incidental credit as described in new § 1026.61(a)(4). Nonetheless, as discussed in more detail below, new § 1026.61(a)(3) is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. For purposes of coverage, a person offering such an overdraft credit feature is a “card issuer” under final § 1026.2(a)(7) that is subject to Regulation Z, including new § 1026.61(b). However, as discussed in more detail in the section-by-section analysis of § 1026.61(b) below, new § 1026.61(b) prohibits card issuers from structuring an overdraft credit feature as a negative balance on the asset feature of the prepaid account, unless the program is structured to involve only incidental credit as provided in new § 1026.61(a)(4). The Bureau believes that this rule is necessary to promote transparency and compliance with the credit card requirements. Thus, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a “covered separate credit feature” under new § 1026.61(a)(2)(i). Thus, new § 1026.61(a)(3)(ii) provides that notwithstanding that § 1026.61(c)(3)(i) triggers coverage under Regulation Z, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates new § 1026.61(b). A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card as described in new § 1026.61(a)(4).

In terms of providing guidance on the situations that trigger coverage under § 1026.61(a)(3)(i), new comment 61(a)(3)(i)-1.i provides a cross-reference to new comment 2(a)(14)-3 for examples of when transactions authorized or paid on the asset feature of a prepaid account meet the definition of credit under final § 1026.2(a)(14). New comment 61(a)(3)(i)-1.ii provides that except as provided in § 1026.61(a)(4), a prepaid card would trigger coverage as a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit that can be extended through a negative balance on the asset feature of the prepaid account. This comment clarifies, however, that unless the only credit offered meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b).

New comment 61(a)(3)(i)-1.ii also explains that a credit extension through a negative balance on the asset feature of a prepaid account can occur during the authorization phase of the transaction or in later periods up to the settlement of the transaction. New comment 61(a)(3)(i)-1.iii provides that, for example, credit is extended through a negative balance on the asset feature of a prepaid account where a transaction is initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated, and credit is extended on the asset feature of the prepaid account when the transaction is authorized. New comment 61(a)(3)(i)-1.iv also provides, for example, that credit is extended through a negative balance on the asset feature of a prepaid account where a transaction occurs when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. In this case, credit is extended on the asset feature at settlement to pay

those transactions. Also, credit is extended through a negative balance on the asset feature of a prepaid account where a transaction settles even though it was not authorized in advance, and credit is extended through a negative balance on the asset feature at settlement to pay that transaction.

As discussed above, new § 1026.61(a)(3) is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. New comment 61(a)(3)(ii)-1 explains that new § 1026.61(a)(3)(i) determines whether a prepaid card triggers coverage as a hybrid prepaid-credit card under new § 1026.61(a), and thus, whether a prepaid account issuer is a card issuer under final § 1026.2(a)(7) subject to this regulation, including new § 1026.61(b). However, new § 1026.61(b) requires that any credit feature accessible by a hybrid prepaid-credit card must be structured as a separate credit feature using either a credit subaccount of the prepaid account or a separate credit account. In that case, a card issuer would violate new § 1026.61(b) if it structures the credit feature as a negative balance on the asset feature of the prepaid account, unless the only credit offered in connection with the prepaid account satisfies new § 1026.61(a)(4). A prepaid account issuer can use a negative asset balance structure to extend credit on a prepaid account if the prepaid card is not a hybrid prepaid-credit card as described in new § 1026.61(a)(4).

#### *61(a)(4) Exception*

As discussed above, many industry commenters raised concerns regarding the breadth of fees that would be considered finance charges under the proposal. Many industry commenters were concerned that even though they were not intending to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as forced pay-transactions as discussed in the section-by-section analysis of § 1026.61(a) above. Because this credit could be

extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. These commenters were concerned that they could not charge certain fees on the prepaid account, or would have to waive certain fees, for the prepaid card not to be a credit card under the proposal.

For example, one payment network indicated that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the *only* fees charged on the prepaid account in connection with the extension of credit are the *very same* fees that would apply to the same transaction on the prepaid card without an extension of credit. Similarly, two industry trade associations urged that a prepaid card should be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account only if the prepaid account issuer charges fees directly correlated with the overdraft in question. These commenters argued that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the prepaid account issuer only imposes on the prepaid account fees or charges that are wholly unrelated to an overdraft, such as a fee to make a balance inquiry at an ATM. These commenters also indicated that a prepaid card should not be a credit card when the prepaid account issuer only imposes unrelated fees or charges on the prepaid account, even when these unrelated fees or charges are imposed when the prepaid account balance is negative.

Another industry trade association indicated that a monthly fee to hold the prepaid account should not cause a prepaid card to be a credit card simply because the fee may be

imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

A program manager indicated that the Bureau should clarify that a prepaid card is not a credit card simply because the prepaid account issuer charges reasonable debt collection costs (including attorney's fees) related to collecting the overdraft credit from a consumer.

As discussed above, many industry commenters were particularly concerned that under the proposal, a prepaid account issuer would need to waive per transaction fees in certain circumstances to avoid triggering the credit card rules. The circumstances raised by industry commenters centered on (1) force pay transactions; (2) payment cushions; and (3) transactions that take the account negative when a load of funds from an asset account is pending, as discussed in more detail below and in the section-by-section analysis of § 1026.61(a).

One consumer group commenter urged the Bureau to cover all prepaid cards as credit cards when the prepaid card accesses credit, regardless of whether a finance charge, as defined in § 1026.4, or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions may be necessary. With respect to payment cushions, this commenter supported not triggering the credit card rules where a prepaid card can only access a de minimis amount of credit, using \$10 as a safe harbor, if such credit is not promoted or disclosed. With respect to force pay transactions, this commenter supported requiring a prepaid account issuer to waive the per transaction fee that is imposed on a credit transaction where credit is extended through a negative balance on the asset feature of the prepaid account in order to avoid triggering the credit card rules under the proposal. Nonetheless, this commenter indicated that if the Bureau decides to make any exceptions with respect to force pay transactions, these exceptions should be limited to prepaid

account issuers who do everything possible to prevent overdrafts, have overdrafts in only very rare and unpreventable situations, and do not charge penalty fees related to declined transactions, overdrafts, or negative balances.

As discussed above, new § 1026.61(a)(4) creates an exception to the general rule that credit structured as a negative balance feature on an prepaid asset account is subject to the credit card rules, in order to provide flexibility for the kinds of incidental credit that commenters raised concerns about. Specifically as described in new § 1026.61(a)(4), an overdraft credit feature where credit is extended through a negative balance on the asset feature of the prepaid account is not accessible by a hybrid prepaid-credit card where: (1) the prepaid card cannot access a covered separate credit feature as defined in new § 1026.61(a)(2)(i); (2) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer generally has a policy and practice of declining to authorize transactions made with the card when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the amount of the transactions, or the prepaid account issuer only authorizes those transactions in circumstances related to payment cushions and delayed load cushions discussed below; and (3) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer does not charge credit-related fees for any credit extended on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.<sup>702</sup> Each of the three prongs of the limited exception is discussed in more detail below.

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<sup>702</sup> An industry trade association and an issuing bank were concerned that all prepaid cards (and associated account numbers) could be credit cards or otherwise subject to Regulation Z solely due to the fact that the cardholder can incur an overdraft that he or she is contractually obligated to repay. These commenters asked the Bureau to clarify that “credit” under Regulation Z would not include the amount of an overdraft if the consumer is not contractually obligated to reimburse the card issuer for that overdraft (*i.e.*, the consumer would not be incurring debt or deferring the payment of debt) and to clarify disclosure obligations if the consumer is not contractually obligated to repay the overdraft credit. The Bureau believes that it has addressed these concerns by providing the exception in § 1026.61(a)(4) for how prepaid account issuers may provide incidental credit as a negative balance on the prepaid

The Bureau believes that the exception in new § 1026.61(a)(4) addresses many of the concerns raised by industry commenters and consumer group commenters. To address evasion risks and other concerns raised by consumer group commenters discussed above, the Bureau has carefully calibrated new § 1026.61(a)(4). Specifically, under the final rule, a prepaid card is not a credit card under the regulation when it accesses credit through a negative balance on the asset feature of the prepaid account only in circumstances where, with respect to a prepaid account accessible by the prepaid card: (1) the prepaid account issuer generally declines to authorize transactions on the prepaid account that will create negative balances on the asset feature of the prepaid account (or allows those authorizations in limited circumstances related to payment cushions and delayed load cushions); and (2) the prepaid account issuer generally does not charge credit-related fees for the credit extended on the asset feature of the prepaid account. Thus, for example, a prepaid card is a credit card under Regulation Z (*i.e.*, a hybrid prepaid-credit card) when credit is extended through a negative balance on the asset feature of a prepaid account where, with respect to the prepaid account accessible by the prepaid card: (1) the prepaid account issuer has a policy and practice of authorizing transactions (outside of the payment cushion and delayed load circumstances described above) where there are insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at authorization; or (2) a prepaid account issuer charges credit-related fees for credit extended through a negative balance on the asset feature of the prepaid account beyond fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

Thus, where new § 1026.61(a)(4) has not been satisfied, the final rule prohibits a prepaid account issuer from offering an overdraft credit feature as a negative balance to the asset feature

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account without being subject to Regulation Z, even if the consumer is contractually obligated to pay these overdrafts.

of the prepaid account and requires the prepaid account issuer to offer the overdraft credit feature as a “covered separate credit feature” under new § 1026.61(a)(2)(i). Specifically, under new § 1026.61(a)(3), a prepaid card that can access credit extended through a negative balance on the asset feature of the prepaid card is a hybrid prepaid-credit card for purposes of coverage under the credit card rules unless the card can only access credit described in new § 1026.61(a)(4). A person offering such an overdraft credit feature is a “card issuer” under final § 1026.2(a)(7) and is subject to Regulation Z, including new § 1026.61(b). However, to facilitate transparency and compliance with Regulation Z, the Bureau is prohibiting card issuers under new § 1026.61(b) from structuring an overdraft credit feature as a negative balance on the asset feature of the prepaid account, except as provided in new § 1026.61(a)(4). Instead, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a “covered separate credit feature” under new § 1026.61(a)(2)(i).

The Bureau believes that new § 1026.61(a)(4) will allow prepaid account issuers who do not intend to offer substantive credit programs to provide incidental credit in circumstances that will benefit consumers, without opening the door to widespread evasion of the rule. First, with respect to force pay transactions, payment cushions, and delayed load cushions, under this exception, the final rule provides that credit card rules will not be triggered so long as the prepaid account issuer generally does not charge credit-related fees for the credit extended and has met the other requirements. Second, the final rule provides that a prepaid account issuer is not required under this exception to waive per transaction fees imposed on the asset feature of the

prepaid account if the amount of the per transaction fee imposed for transactions involving credit is not higher than the amount of the fee that is imposed for transactions that only access funds in the asset feature of the prepaid account. Rather, the final rule provides that under this exception, if a fee is not a credit-related fee as enumerated in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may still debit these fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed. Third, the final rule provides that under this exception, a prepaid account issuer may charge a fee to hold the prepaid account, so long as the amount of the fee or charge to hold the prepaid account imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available. Fourth, the final rule provides that a prepaid account issuer may still qualify for the exception in new § 1026.61(a)(4) even if it charges fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law, so long as the other conditions of the exception have been met.

To the extent that a prepaid account issuer meets the conditions as described in new § 1026.61(a)(4) with respect to a prepaid card, the prepaid card is not a hybrid prepaid-credit card and thus is not a credit card under the regulation. As discussed in more detail below, the final rule provides that in the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in new § 1026.61(a)(4), the prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing

fees on the prepaid account because those fees are not finance charges as described in new comment 4(b)(11)-1.iii. As discussed in the section-by-section analysis of § 1026.61(a), in light of the very limited nature of the incidental credit, the Bureau believes that it is appropriate to exclude this incidental credit from coverage under Regulation Z.

*Prepaid card cannot access a covered separate credit feature under § 1026.61(a)(2)(i).*

To qualify for the exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(i) provides that the prepaid card cannot access credit from a covered separate credit feature, as defined in new § 1026.61(a)(2)(i). The Bureau believes that allowing a prepaid account issuer to take advantage of the exception in new § 1026.61(a)(4) even though the card can access a covered separate credit feature, described in new § 1026.61(a)(2)(i), would allow the prepaid account issuer to circumvent the rules in new § 1026.61(a)(2)(i).

New comment 61(a)(4)-1.i and ii explain that § 1026.61(a)(4)(i) is designed to limit the exception for when a prepaid card is not a credit card to circumstances in which (1) the card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in new § 1026.61(a)(4)(ii)(A) and (B); and (2) the card can access credit from a non-covered separate credit feature, as defined in new § 1026.62(a)(2)(ii), but cannot access credit for a covered separate credit feature, as defined in new § 1026.62(a)(2)(i).

New comment 61(a)(4)-1.iii makes clear that a prepaid account issuer does not qualify for the exception in new § 1026.61(a)(4) if the prepaid account issuer structures the arrangement such that when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time a transaction is initiated, the card can draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by the prepaid account issuer, its

affiliate, or its business partner during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account.

New comment 61(a)(4)-1.iv provides guidance on how the regulation applies in cases where the prepaid card is not a hybrid prepaid-credit card. Specifically, new comment 61(a)(4)-1.iv provides that in the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in new § 1026.61(a)(4), the prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges, as described in new comment 4(b)(11)-1.iii.

*General policy and practice of declining transactions that will create a negative balance.*

To qualify for the exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(A) provides that with respect to any prepaid account that is accessible by the prepaid card, a prepaid account issuer also must have established a policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized, or declining to authorize any such transactions except in two circumstances related to payment cushions and delayed load cushions as discussed below.

This prong is designed to limit the exception under new § 1026.61(a)(4) to situations where the prepaid account issuer generally is not authorizing transactions that will take the asset feature of the prepaid account negative. The Bureau believes that this prong will help ensure that

consumers do not develop a substantial negative balance on their prepaid asset accounts that most do not intend to use as a credit account, which could pose risks to consumers by compromising their ability to manage and control their finances. This prong is intended to address concerns raised by industry commenters that the proposed circumstances in which a prepaid card would be a credit card captured (1) “force pay” transactions, (2) payment cushions; and (3) delayed load cushions, while also balancing consumer group concerns that any such limited exceptions be cabined in a way that does not undermine the broader rule. Thus, the final rule does not cover overdraft credit features under Regulation Z where these three types of credit are extended through a negative balance on the asset feature of the prepaid account, so long as the prepaid account issuer generally does not charge credit-related fees for the credit.

As discussed above, “force pay” transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, when a transaction is either not authorized in advance, or there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid.

New comment 61(a)(4)(ii)(A)-1 makes clear that a prepaid account issuer is not required to receive an authorization request for each transaction to comply with this requirement. Nonetheless, the prepaid account issuer generally must establish an authorization policy as described above and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. In that case, a prepaid account issuer is deemed

to satisfy the requirement set forth in new § 1026.61(a)(4)(ii)(A) even if a negative balance results on the prepaid account when a transaction is settled.

New comment 61(a)(4)(ii)(A)-2 also makes clear that a prepaid account issuer may still satisfy the requirements set forth in § 1026.61(a)(4)(ii)(A) even if a negative balance results on the asset feature of the prepaid account because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account, as specified in final Regulation E § 1005.11, so long as the prepaid account issuer otherwise complies with the conditions set forth in new § 1026.61(a)(4). For example, under new § 1026.61(a)(4), a prepaid account issuer may not impose a fee or charge enumerated under new § 1026.61(a)(4)(ii)(B) with respect to such a negative balance.

This exception also allows a prepaid account issuer to adopt a payment cushion where the issuer would authorize transactions that would take the account balance negative by no more than \$10 at the time the transaction is authorized. The Bureau believes that this \$10 payment cushion will benefit consumers without allowing consumers to develop a substantial negative balance on their prepaid asset accounts, which could pose risks for consumers.

As discussed above, one consumer group commenter suggested that prepaid account issuer should be prevented from advertising or disclosing this payment cushion in order to take advantage of any exception of this credit from coverage under Regulation Z. The final rule does not prevent a prepaid account issuer from advertising or disclosing this payment cushion to consumers in order to take advantage of the exception in new § 1026.61(a)(4). The Bureau does not believe that it is necessary to restrict prepaid account issuers from advertising or disclosing this payment cushion to consumers, given the de minimis amount of credit (\$10) that they may

offer through the payment cushion. The Bureau believes that such a restriction may discourage prepaid account issuers from offering such a payment cushion, which could harm consumers.

In addition, the exception allows a prepaid account issuer to adopt a delayed load cushion. Specifically, in cases where the prepaid account issuer has received an instruction or confirmation for an incoming EFT originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, a prepaid account issuer may still qualify for the exception in new § 1026.61(a)(4) if the prepaid account authorizes transactions that take the prepaid account negative, so long as the transactions will not cause the account balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

The Bureau recognizes that, in some cases, a prepaid account issuer may receive instructions or confirmation with respect to incoming EFTs from a separate asset account to load funds to the prepaid account, such as in cases involving direct deposits of salaries or government benefits. In such cases, prepaid account issuers may provide access to these funds to prepaid cardholders based on the instructions or confirmations even though the prepaid account issuer's transfer of funds has not yet settled, and therefore the prepaid account issuer does not have the funds.

In addition, the Bureau also recognizes that, in some cases, prepaid account issuers may receive a request from the consumer to load funds to the prepaid account from a separate asset account, including where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction. This can occur, for

example, when a consumer authorizes a remittance through a mobile wallet which is linked to a checking account, the consumer requests that funds be taken from the consumer's checking account to pay for the remittance, and the remittance is sent before the incoming transfer of funds from the checking account is complete. In this case, the prepaid account issuer is extending credit through a negative balance on the asset feature of the prepaid account until the incoming transfer of funds from the checking account is complete.

In these two situations, the Bureau believes that it would benefit consumers to receive access to the funds prior to settlement, so long as the consumer generally is not charged credit-related fees. The Bureau does not believe these situations raise the same concerns as overdraft credit features offered by prepaid account issuers in connection with prepaid accounts.

To facilitate compliance, new comment 61(a)(4)(ii)(A)-3.i provides examples of cases where the prepaid account issuer may receive an instruction or confirmation for an incoming EFT originating from a separate asset account to load funds to the prepaid account. This comment describes that such instructions or confirmations may occur in relation to a direct deposit of salary from an employer and a direct deposit of government benefits. New comment 61(a)(4)(ii)(A)-3.ii also provides an example of a case where the prepaid account issuer may receive a request from the consumer to load funds to the prepaid account from a separate asset account. This comment describes an example where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the asset feature of the prepaid account to pay for the transaction.

New comment 61(a)(4)(ii)(A)-4 also makes clear that the two circumstances described above in which a prepaid account issuer can authorize transactions that create a negative balance on the asset feature of the prepaid account, namely payment cushions and delayed load cushions,

are not mutually exclusive. For example, assume a prepaid account issuer has adopted the \$10 payment cushion and the delayed load cushion. Also, assume the prepaid account issuer has received an instruction or confirmation for an incoming EFT originating from a separate asset account to load funds to the prepaid account, but the prepaid account issuer has not received the funds from the separate asset account. In this case, a prepaid account issuer satisfies this requirement if the amount of a transaction at authorization will not cause the prepaid account balance to become negative at the time of the authorization by more than the requested load amount plus the \$10 payment cushion.

*No credit-related fees except for fees or charges for the actual costs of the collecting the credit if otherwise permitted by law.* To qualify for the exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(B) provides that with respect to prepaid accounts that are accessible by the prepaid card, the prepaid account issuer may generally not charge credit-related fees on the asset feature of the prepaid account. Specifically, the exception would only apply where the prepaid account issuer does not charge the following fees: (1) any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. These fees do not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available; (2) any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or (3)

any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

Thus, this prong prevents a prepaid account issuer from charging credit-related fees for the credit extended through a negative balance on the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. Because the credit extended through the exception in new § 1026.61(a)(4) is intended to be limited to inadvertent or de minimis credit, the Bureau believes that it is appropriate to limit the exception to instances in which the prepaid account issuer does not charge credit-related fees for the credit, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. In addition, the Bureau believes that preventing prepaid account issuers from generally charging credit-related fees to take advantage of this exception will provide greater incentive to prepaid account issuers to limit the circumstances resulting in “forced pay” transactions extended through this exception. For the reasons discussed in the *Overview of the Final Rule’s Amendments to Regulation Z* section, the Bureau believes that it is appropriate to generally cover overdraft credit features offered by prepaid account issuers where, with respect to the prepaid account accessible by the prepaid card: (1) the prepaid account issuer has a policy and practice of authorizing transactions (outside of the payment cushion and delayed load circumstances described above) where there are insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at authorization; or (2) a prepaid account issuer charges credit-related fees for credit extended through a negative balance on the asset feature of the prepaid account beyond fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

To facilitate compliance, new comment 61(a)(4)(ii)(B)-1 clarifies that new

§ 1026.61(a)(4)(ii)(B) does not prohibit a prepaid account issuer from charging different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts. The Bureau recognizes that prepaid account issuer may offer prepaid programs for different purposes and offer different services on those prepaid account programs. Those service differences may impact the pricing on the prepaid programs. The Bureau believes that requiring prepaid account issuers to charge the same fees on all of its prepaid account programs to take advantage of this exception would make the exception generally unavailable for most prepaid account issuers.

New § 1026.61(a)(4)(ii)(B)(*I*) provides that to qualify for the exception in new § 1026.61(a)(4), a prepaid account issuer may not charge on the prepaid account any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. These fees do not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available. New comment 61(a)(4)(ii)(B)(*I*)-1 clarifies the types of fees or charges that are included and not included under new § 1026.61(a)(4)(ii)(B)(*I*). New comment 61(a)(4)(ii)(B)(*I*)-1.i.A clarifies that the types of fees or charges described in new

§ 1026.61(a)(4)(ii)(B)(I) include daily, weekly, monthly, or other periodic fees assessed each period that a prepaid account has a negative balance or is in “overdraft” status.

New comment 61(a)(4)(ii)(B)(I)-1.i.B also clarifies that the types of fees or charges described in new § 1026.61(a)(4)(ii)(B)(I) include daily, weekly, monthly, or other periodic fees where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion as described in new § 1026.61(a)(4)(ii)(A)(I) or a delayed load cushion as described in new § 1026.61(a)(4)(ii)(A)(2) during that period. For example, assume that a consumer will pay a fee of \$10 to hold the prepaid account if the consumer is not enrolled in a purchase cushion or a delayed load cushion during that month, or alternatively, the consumer will pay a fee of \$15 to hold the prepaid account if the consumer is enrolled in a purchase cushion or delayed load cushion during that period. The \$15 charge is a charge described in new § 1026.61(a)(4)(ii)(B)(I) because the amount of the fee to hold the prepaid account is higher based on whether the consumer is participating in the payment cushion or delayed load cushion during that period.

New comment 61(a)(4)(ii)(B)(I)-1.ii clarifies that new § 1026.61(a)(4)(ii)(B)(I) does not prohibit a daily, weekly, monthly, or other periodic fee to hold the prepaid account so long as the amount of the fee is not higher based on whether the consumer is enrolled in a purchase cushion or a delayed load cushion during that period, whether or how much credit has been extended during that period, or the amount of credit that is available during that period.

New § 1026.61(a)(4)(ii)(B)(2) provides that to qualify for the exception in new § 1026.61(a)(4), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment

61(a)(4)(ii)(B)(2)-1 provides examples of fees that are and are not fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(2)-1.i provides that fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature include: (1) a fee imposed because the balance on the prepaid account becomes negative; (2) interest charges attributable to a periodic rate that applies to the negative balance; (3) any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in “overdraft” status, except that the actual costs to collect the credit may be imposed if otherwise permitted by law; and (4) late payment fees.

Consistent with the proposal, a prepaid card is a credit card under the final rule if the prepaid account issuer charges a late fee with respect to the credit.<sup>703</sup> With regard to late payment fees in particular, the Bureau is concerned that such fees could be structured to take the place of a per transaction fee for a credit extension on the prepaid account. For example, if a late fee were not included as a enumerated fee under new § 1026.61(a)(4)(ii)(B), a prepaid account issuer could provide that payment of the overdraft is due immediately and charge a late fee each day that the overdraft balance remains outstanding. The Bureau believes such a late fee would function as a fee for a negative balance that is not permitted to be imposed on the prepaid account if the prepaid account issuer intends to qualify for the exception in new § 1026.61(a)(4). Thus, the final rule provides that a late fee may not be imposed on the asset feature of a prepaid account if the prepaid account issuer intends to qualify for the exception in new § 1026.61(a)(4).

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<sup>703</sup> Under the proposal, a prepaid card would have been a credit card if it is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. A late fee is a fee described in § 1026.4(c)(2) and thus under the proposal, a prepaid card would have been a credit card if a late fee was charged for the credit.

Nonetheless, new § 1026.61(a)(4)(ii)(B)(2) and new comment 61(a)(4)(ii)(B)(2)-1.ii.A provide that a prepaid account issuer may impose fees on the asset feature of the prepaid account for actual collection costs, including attorney's fees, and still qualify for the exception in new § 1026.61(a)(4) if those fees are otherwise permitted by law. The Bureau does not believe that allowing a prepaid account issuer to qualify for the exception in new § 1026.61(a)(4), even if the prepaid account issuer imposes actual collection costs to collect the credit, poses the same evasion risks discussed above in regard to late fees because these costs must be the actual costs incurred by the prepaid account issuer to collect the credit, and those fees must be otherwise permitted by law.

New § 1026.61(a)(4)(ii)(B)(3) provides that to qualify for the exception in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(3)-1 provides examples of fees that are and are not fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

New comment 61(a)(4)(ii)(B)(3)-1.i.A provides that new § 1026.61(a)(4)(ii)(B)(3) includes transaction fees where the amount of the fee is higher based on whether the transaction accesses only asset funds in the asset feature or accesses credit. For example, a \$15 transaction charge is imposed on the asset feature each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset feature at the time of the authorization or settlement. A \$1.50 fee is imposed each time a transaction is paid entirely from funds in the asset feature. The \$15 charge is a charge where the amount of the fee or charge is higher when

credit is extended on the asset feature or when there is a negative balance on the asset feature because the transaction fee is higher when the transaction accesses credit than when the transaction accesses only asset funds in the asset feature.

New comment 61(a)(4)(ii)(B)(3)-1.i.B provides that new § 1026.61(a)(4)(ii)(B)(3) includes a fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges a higher fee for an ATM balance inquiry requested on the prepaid account if the balance inquiry is requested when there is a negative balance on the asset feature than the amount of fee imposed when there is a positive balance on the asset feature, the balance inquiry fee is a fee described in new § 1026.61(a)(4)(ii)(B)(3) because the amount of the fee is higher based on whether it is imposed when there is a negative balance on the asset feature.

Nonetheless, new comment 61(a)(4)(ii)(B)(3)-1.ii.A provides that new § 1026.61(a)(4)(ii)(B)(3) does not include transaction fees on the prepaid account where the amount of the fee imposed when the transaction accesses credit does not exceed the amount of the fee imposed when the transaction only accesses asset funds in the prepaid account. For example, assume a \$1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. The \$1.50 transaction charge imposed on the prepaid account is not prohibited under new § 1026.61(a)(4)(ii)(B) because the fee or charge is not higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. Thus, under the final rule, a prepaid account issuer would not need to waive per transaction fees for

credit extensions where the per transaction fee is not higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

New comment 61(a)(4)(ii)(B)(3)-1.ii.B provides that new § 1026.61(a)(4)(ii)(B)(3) does not include a fee for a service on the prepaid account where the amount of the fee is not higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges the same amount of fee for an ATM balance inquiry regardless of whether there is a positive or negative balance on the asset feature, the balance inquiry fee is not a fee described in new § 1026.61(a)(4)(ii)(B).

New § 1026.61(a)(4)(ii)(C) also makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in new § 1026.61(a)(4)(ii)(B), as discussed above. New comment 61(a)(4)(ii)(C)-1 explains that a fee or charge not otherwise covered by new § 1026.61(a)(4)(ii)(B) does not become covered by that provision simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. For example, assume that a prepaid account issuer imposes a fee for an ATM balance inquiry and the amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. Also assume that when the fee is imposed, there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee does not become a fee covered by new § 1026.61(a)(4)(ii)(B) because the fee is debited from the prepaid account balance when there

are insufficient or unavailable funds in the asset feature of the prepaid account to cover the fee at the time it is imposed.

#### *61(a)(5) Definitions*

New § 1026.61(a)(5) sets forth definitions of the following terms that are used in new § 1026.61 and throughout the regulation in relation to hybrid prepaid-credit cards: (1) prepaid account; (2) prepaid card; (3) prepaid account issuer; (4) affiliate; (5) business partner; (6) asset feature; (7) credit feature; and (8) separate credit feature. Each of these definitions is discussed in more detail below.

#### *Prepaid Account and Prepaid Card*

Although Regulation Z and its commentary use the term “debit card,” that term is not defined. Generally, under the existing regulation, this term refers to a card that accesses an asset account. Specifically, existing comment 2(a)(15)-2.i.B provides as an example of a credit card: “A card that accesses both a credit and an asset account (that is, a debit-credit card).” In addition, existing comment 2(a)(15)-2.ii.A provides that the term credit card does not include a debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

Under the proposal, different rules generally would have applied in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account or a card or device that accesses another type of asset account. To assist compliance with the regulation, the proposal would have defined “debit card” for purposes of Regulation Z in proposed § 1026.2(a)(15)(iv) to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.” The proposed definition of “debit card” would have specified that it does not include a prepaid card. Proposed

§ 1026.2(a)(15)(v) would have defined “prepaid card” to mean “any card, code, or other device that can be used to access a prepaid account.” The proposal would have defined “prepaid account” in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in proposed Regulation E § 1005.2(b)(3). Proposed comment 2(a)(15)-6 would have provided that the term “prepaid card” in proposed § 1026.2(a)(15)(v) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code. That proposed comment also would have provided that the phrase “credit accessed by a prepaid card” means any credit that is accessed by any card, code, or other device that also can be used to access a prepaid account.

The term “prepaid account” as defined in proposed Regulation E § 1005.2(b)(3) would not have included gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards. Under current Regulation Z and the proposal, these cards would not been credit cards unless they were subject to an agreement to extend credit.

Nonetheless, the Bureau solicited comment on whether gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards should be included within the definition of “prepaid accounts” for purposes of Regulation Z, even if those accounts would not been considered prepaid accounts for purposes of error resolution, disclosure, and other purposes under Regulation E. The Bureau solicited comment on current and potential credit features that may be offered on these types of cards, the nature of potential risks to consumers if credit features were offered on these types of cards, and incentives for the industry to offer credit features on these types of cards. The Bureau

also solicited comment on any implications of treating these products as prepaid accounts under Regulation Z but not Regulation E.

Several industry commenters, including programs managers and a payment network, indicated that these products should not be covered by Regulation Z if they are not prepaid accounts under Regulation E. One consumer group commenter indicated that these accounts should be covered by Regulation Z if they offer overdraft credit even if they are not prepaid accounts under Regulation E. This commenter indicated that while those types of accounts would rarely, if ever, have a credit or overdraft feature, the Bureau should to include prepaid cards in the Regulation Z definition of credit card if they access credit or overdraft features in connection with such accounts.

One program manager also indicated that the Bureau should exempt student cards and payroll cards from the overdraft provisions in the proposal under Regulation Z even if these cards access prepaid accounts as defined in Regulation E.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, consistent with the proposal, the final rule generally applies different rules in Regulation Z depending on whether credit is accessible by a hybrid prepaid-credit card that can access both a covered separate credit feature and the asset feature of a prepaid account as defined in new § 1026.61(a), or credit is accessed by a card or device that accesses another type of asset account.

Consistent with the proposal, as discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(iv) above, the term “debit card” is defined in new § 1026.2(a)(15)(iv) to mean any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account, as defined in new § 1026.61. Under the final rule, the term “debit card” does not include a prepaid card, as defined in § 1026.61.

The final rule moves the definition of “prepaid card” from proposed § 1026.2(a)(15)(v) to new § 1026.61(a)(5)(vii) and adopts this definition as proposed. New § 1026.61(a)(5)(vii) defines “prepaid card” to mean any card, code, or other device that can be used to access a prepaid account. The final rule moves proposed comment 2(a)(15)-6 to new comment 61(a)(5)(vii)-1 and revises it. Consistent with proposed comment 2(a)(15)-6, new comment 61(a)(5)(vii)-1 clarifies that the term “prepaid card” in new § 1026.61(a)(5)(vii) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code. Proposed comment 2(a)(15)-6 also would have provided that the phrase “credit accessed by a prepaid card” means any credit that is accessed by any card, code, or other device that also can be used to access a prepaid account. The Bureau has not adopted this part of proposed comment 2(a)(15)-6 because the final rule does not use the term “credit accessed by a prepaid card.” Instead, the final rule uses the term “hybrid prepaid-credit card” as defined in § 1026.61(a).

The Bureau is not exempting categorically student cards and payroll cards from the provisions in the final rule under Regulation Z even if these cards access prepaid accounts as defined in Regulation E and meet the definition of “hybrid prepaid-credit card” under new § 1026.61(a). These cards would be “prepaid cards” under new § 1026.61(a)(15)(vii) to the extent that they are cards, codes, or other devices that can be used to access a prepaid account, including a prepaid account number or other code. In addition, these cards would be hybrid prepaid-credit cards to the extent they meet the definition in new § 1026.61(a). The Bureau does not believe that it is appropriate to categorically exclude these cards from the provisions in the final rule under Regulation Z to the extent these cards are “hybrid prepaid-credit cards” as defined in new § 1026.61(a). The Bureau believes that consumers holding student prepaid cards

and payroll cards would benefit from the protections provided by Regulation Z if those prepaid cards meet the definition of “hybrid prepaid-credit cards” under new § 1026.61(a). In addition, the Bureau believes that it is appropriate to maintain consistency between the definitions of “prepaid account” in Regulation E § 1005.2(b)(3) and Regulation Z § 1026.61(a)(5)(v).

The final rule moves the definition of “prepaid account” from proposed § 1026.2(a)(15)(vi) to new § 1026.61(a)(5)(v) and adopts this definition as proposed. As discussed in the section-by-section analysis of Regulation E § 1005.2(b)(3)(ii) above, the term “prepaid account,” as defined in final Regulation E § 1005.2(b)(3)(ii), does not include, among other things, products such as gift cards, accounts established for distributing certain needs-tested government benefits that are excluded under Regulation E § 1005.15(a)(2), and certain types of health care and employee benefit accounts. The provisions in the final rule that apply to covered separate credit features accessible by hybrid prepaid-credit cards do not apply to cards or access devices that access these types of accounts because they are not “prepaid accounts” under final Regulation E § 1005.2(b)(3) or new Regulation Z § 1026.61(a)(5)(v). At this time, the Bureau does not believe that it is appropriate to include these accounts in the definition of “prepaid account” for purposes of new § 1026.61(a)(5)(v), when these accounts are not “prepaid accounts” for purposes of final § 1005.2(b)(3). The Bureau is unaware of any credit features currently associated with cards that access these types of accounts. At this time, the Bureau believes that it is appropriate to maintain consistency between the definitions of “prepaid account” in Regulation E § 1005.2(b)(3) and Regulation Z § 1026.61(a)(5)(v).

*Prepaid Account Issuer, Affiliate, and Business Partner*

The proposal did not define the terms “prepaid account issuer,” “affiliate,” or “business partner.” For the reasons discussed in the section-by-section analysis of § 1026.61, the Bureau is

revising the circumstances from the proposal for when a prepaid card is a credit card (*i.e.*, hybrid prepaid-credit card) under Regulation Z. Under the final rule, new § 1026.62(a)(2)(i) provides that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are satisfied: (1) the card can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

*Definition of “prepaid account issuer.”* New § 1026.61(a)(5)(vi) defines “prepaid account issuer” to mean a financial institution as defined in Regulation E § 1005.2(i) with respect to a prepaid account.

*Definition of “affiliate.”* New § 1026.61(a)(5)(i) defines “affiliate” to mean any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956.<sup>704</sup> This definition is consistent with how affiliate is used in other provisions in Regulation Z.<sup>705</sup>

*Definition of “business partner.”* New § 1026.61(a)(5)(iii) defines the term “business partner” for purposes of new § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has “an arrangement” with a prepaid account issuer or its affiliate. As explained in new comment

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<sup>704</sup> 12 U.S.C. 1841 *et seq.*

<sup>705</sup> *See, e.g.*, existing § 1026.32(b)(5).

61(a)(5)(iii)-1, a person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of new § 1026.61(a)(5)(iii) if the circumstances in either comment 61(a)(5)(iii)-1.i or comment 61(a)(5)(iii)-1.ii are met. First, new comment 61(a)(5)(iii)-1.i provides that an unaffiliated person that can extend credit is a business partner of the prepaid account issuer if the person that can extend credit or its affiliate has an agreement with the prepaid account issuer or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 61(a)(5)(iii)-1.i provides, however, that the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network together.

Second, new comment 61(a)(5)(iii)-1.ii provides that an unaffiliated person that can extend credit is a business partner of the prepaid account issuer if the person or its affiliate has a business, marketing, promotional agreement, or other arrangement with the prepaid account issuer or its affiliate where the agreement or arrangement provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or the credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and (2) at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, this requirement is satisfied even if there is no specific

agreement between the parties that the card can access the separate credit feature, as described above under new comment 61(a)(5)(iii)-1.i. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer, from the separate credit feature is effectuated through a card network or payment network.

New comment 61(a)(5)(iii)-2 provides that a person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider such as a program manager, or the issuer's affiliates. In that case, the person that can extend credit will be a business partner of the prepaid account issuer. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the business partner of the prepaid account issuer.

To prevent evasion of the protections provided in the final rule related to hybrid prepaid-credit cards, the Bureau believes that it is important to include an unaffiliated third party that can extend credit through a separate credit feature as a "business partner" of the prepaid account issuer where the person that can extend credit, or its affiliate, has a marketing agreement or arrangement with the prepaid account issuer, or its affiliate, and where, whether or not by agreement, the prepaid card can access the separate credit feature in the course of a transaction. Otherwise, the Bureau is concerned that without including such arrangements, prepaid account issuers or their affiliates could structure an arrangement with an unaffiliated third party that can extend credit, or its affiliate, to avoid forming an "agreement," as discussed in new comment 61(a)(5)(iii)-1.i, that the card may be used to access the third party's credit feature as an

overdraft credit feature when all the parties understand that this type of connection is occurring. Such a result could frustrate the operation of certain consumer protections provided in the final rule. The Bureau believes that when there is a marketing agreement or arrangement between the parties as described in new comment 61(a)(5)(iii)-1.ii.A, the parties have a sufficient connection such that the unaffiliated third party that can extend credit should understand when its credit feature is used as an overdraft credit feature with respect to a prepaid account, even if there is no specific agreement between the parties to that effect under new comment 61(a)(5)(iii)-1.i. Also, the Bureau believes that these types of links between the prepaid account issuer and the unaffiliated third party that can extend credit are likely to involve revenue sharing or payments between the two companies, and the pricing structure of the two accounts may be tied together. Thus, the Bureau believes that it is appropriate to consider these entities to be business partners in this context.

*Asset Feature, Credit Feature, and Separate Credit Feature*

As discussed in more detail in the section-by-section analysis of § 1026.61(b) below, the final rule requires that credit features that are accessible by a hybrid prepaid-credit card be structured as a separate credit feature—either a separate sub-account or account—rather than as a negative balance on the asset feature of a prepaid account. While a negative balance structure would be permissible where an issuer only offers incidental credit pursuant to new § 1026.61(a)(4),<sup>706</sup> an issuer that offers more extensive credit or charges credit-related fees using a negative balance structure would be subject to the credit card rules pursuant to new § 1026.61(a)(3), and would be in violation of the rule on account structure specified in new

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<sup>706</sup> If a prepaid account issuer complies with the exception in § 1026.61(a)(4) with respect to a prepaid account that is accessed by a prepaid card, the prepaid card is not a hybrid prepaid-credit card under Regulation Z, and thus is not a credit card under Regulation Z. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) and thus § 1026.61(b) does not apply to the overdraft credit feature accessed by the prepaid card.

§ 1026.61(b). Instead, under the final rule, a card issuer must structure the credit feature as a separate credit feature, either as a separate credit account or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

The Bureau defines the terms “asset feature,” “credit feature,” and “separate credit feature” to effectuate the provisions set forth in new § 1026.61(b), as well as other provisions set forth in new § 1026.61 and in Regulation Z generally that relate to hybrid prepaid-credit cards. These defined terms are discussed in more detail below.

*Definition of “asset feature.”* Under the final rule, the term “asset feature” in new § 1026.61(a)(5)(vii) is defined to mean an asset account that is a prepaid account, or an asset subaccount of a prepaid account. As described above and in more detail below in the section-by-section analysis of § 1026.61(b), a card issuer cannot structure a credit feature as a negative balance on the asset feature of a prepaid account, unless the conditions in new § 1026.61(a)(4) are met.

*Definition of “credit feature.”* The term “credit feature” is defined in new § 1026.61(a)(5)(iv) to mean either: (1) a separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or (2) a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card. As discussed above, under new § 1026.61(b), a card issuer may not structure a credit feature as a negative balance on the asset feature of the prepaid account, except as permitted under new § 1026.61(a)(4).

New comment 61(a)(5)(iv)-1 provides that the definition of “credit feature” set forth in new § 1026.61(a)(5)(iv) only defines that term for purposes of Regulation Z in relation to credit offered in connection with a prepaid account or prepaid card. This comment explains that this definition does not impact when an account, subaccount or negative balance is a credit feature under Regulation Z with respect to credit in relation to a checking account or other transaction account that is not a prepaid account, or a debit card. *See, e.g.*, existing comment 2(a)(15)-2.ii.A and existing comment 4(b)(2)-1 where the term credit feature is used in relation to a debit card or asset account other than a prepaid account.

One issuing credit union indicated that the Bureau should clarify that where a prepaid account is loaded with funds using a deposit account where an overdraft protection program or overdraft line of credit is activated, the prepaid card does not become a credit card under the proposal because the overdraft protection program or overdraft line of credit was activated. New comment 61(a)(5)(iv)-2 provides that a “credit feature” for purposes of § 1026.61(a)(5)(iv) does not include an asset account other than a prepaid account that has an attached overdraft feature. For example, assume that funds are loaded or transferred to a prepaid account from an asset account (other than a prepaid account) on which an overdraft feature is attached. The asset account is not a credit feature under new § 1026.61(a)(5)(iv) even if the load or transfer of funds to the prepaid account triggers the overdraft feature that is attached to the asset account.

*Definition of “separate credit feature.”* New § 1026.61(a)(5)(viii) defines “separate credit feature” to mean a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account. As discussed above, under new § 1026.61(b), a card issuer must structure

an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a “covered separate credit feature” under new § 1026.61(a)(2)(i).

*61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards*

*The Bureau’s Proposal*

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by certain prepaid cards would have been subject to the rules for credit cards under Regulation Z. In particular, proposed comment 2(a)(15)-2.i.F would have provided that the term “credit card” includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments.

The proposal made clear that the Bureau intended that the credit card rules apply broadly to a range of product structures. In the proposal, for instance, the Bureau specifically stated that the proposal was intended to cover: (1) transactions that are authorized where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization; and (2) transactions on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Such transactions would have been credit accessed by a prepaid card that is a credit card under the proposal, regardless of whether the

person established a separate credit account to extend the credit or whether the credit was simply reflected as a negative balance on the prepaid account.

In addition to proposing a broad scope of coverage, the Bureau sought to explore practical considerations regarding product structure and operations for credit that would be subject to the credit card rules. Specifically, in the proposal, the Bureau stated its belief that creditors would tend to establish separate credit accounts to extend credit accessed by the prepaid card that is a credit card, instead of having the credit balance be reflected as a negative balance on the prepaid account, because creditors generally would find that separate credit accounts aid compliance with the periodic statement requirements in proposed §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) and the offset provisions in proposed § 1026.12(d)(3) that would apply to credit card accounts accessed by prepaid cards. The Bureau solicited comment on whether creditors would likely establish separate credit accounts, instead of reflecting the credit balance as a negative balance on the prepaid account. The Bureau also solicited comment on any implications for compliance depending on how the account is structured (*i.e.*, whether a separate credit account is created or whether the credit balance is reflected as a negative balance on the prepaid account) and whether any differentiation in regulation or guidance would be useful.

#### *Comments Received*

The commenters that responded to the Bureau's questions on this issue universally supported separate account structures. Specifically, one industry trade association stated that it believed a credit feature that is accessed by a prepaid card that is a credit card under the proposal should not be structured as a negative prepaid account balance. This commenter pointed out that, if an account is a "dual" account, the overdraft line of credit would only be accessed if a transaction amount were more than the amount in the prepaid account, and such a transaction

would create two distinct balances. Similarly, one consumer group commenter stated with respect to credit accessed by a prepaid card that is a credit card, the Bureau should require the credit feature to be structured as a separate account, rather than reflected as a negative balance on the prepaid account. This commenter indicated that allowing credit to be reflected solely as a negative balance on the prepaid account would be confusing to consumers and would undercut the message that the consumer is being given credit, and being charged for credit.

### *The Final Rule*

After consideration of these comments and additional internal analysis regarding transparency and compliance concerns, in the final rule, the Bureau requires that credit features that are accessible by a hybrid prepaid-credit card be structured as a separate credit feature—either a separate sub-account or account—rather than as a negative balance on the asset feature of a prepaid account. While a negative balance structure would be permissible where an issuer only offers incidental credit pursuant to new § 1026.61(a)(4),<sup>707</sup> an issuer that offers more extensive credit or charges credit-related fees using a negative balance structure would be subject to the credit card rules, pursuant to new § 1026.61(a)(3), and would be in violation of the rule on account structure specified in new § 1026.61(b). Instead, under the final rule, a card issuer must structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

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<sup>707</sup> If a prepaid account issuer complies with the exception in § 1026.61(a)(4) with respect to a prepaid account that is accessed by a prepaid card, the prepaid card is not a hybrid prepaid-credit card under Regulation Z, and thus is not a credit card under Regulation Z. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) and thus, § 1026.61(b) does not apply to the overdraft credit feature accessed by the prepaid card.

The Bureau believes that this structural requirement will make it substantially easier for creditors and consumers alike to implement and understand credit accessible via a hybrid prepaid-credit card under a credit card regime. Regulation Z's open-end rules are generally drafted with the assumption that the product in question is a pure credit product, without substantial positive funds. For example, existing § 1026.11(a) generally provides that creditors must refund any positive balances on the credit account to the consumer within six months. And, as discussed in more detail in the section-by-section analysis of § 1026.4(a) above, the rules for defining finance charges in the credit card context generally treat all transaction charges as finance charges, which makes sense when all transactions are generally assumed to involve use of credit.

But because hybrid prepaid-credit cards by their nature involve consumer assets as well as use of credit, bifurcating the asset feature from the credit feature makes application of the credit card rules more intuitive in a number of respects. For example, as discussed in more detail in the section-by-section analysis of § 1026.4(b)(11)(ii) above, it provides a structure by which general transaction fees that are imposed in the same amount for any transaction conducted on the prepaid account—regardless of whether there are sufficient positive funds in the account—to be excluded from the finance charge. This both makes the program easier for the prepaid account issuer to operate and easier for the consumer to understand, so that the finance charge reflects the costs associated with the use of credit. As discussed above, this implementation is also more generally consistent with comments received in response to the proposed rule that urged the Bureau to include only differentiated and unique fees imposed when credit is extended in the definition of finance charge, rather than also including fees that are the same for purely positive balance transactions.

Bifurcating the two features also will make it easier to apply standard credit card requirements, such as periodic statements requirements and no-offset rules in the prepaid context. Specifically, the periodic statement requirements in § 1026.7(b)(1) and (10) (which implement TILA section 127(b)(1) and (8) respectively) require card issuers to disclose for each billing cycle both the outstanding balance in the account at the beginning of statement period and the outstanding balance in the account at the end of the period.<sup>708</sup> In addition, because of the offset restrictions in final § 1026.12(d) (which implements TILA section 169)<sup>709</sup> and the due date and 21-day timing requirements for periodic statements in final § 1026.7(b)(11) and in final § 1026.5(b)(2)(ii)(A) (which implement TILA sections 127(b)(12) and (o) and TILA section 163 respectively)<sup>710</sup>, incoming deposits to the asset feature of the prepaid account could not be applied automatically to repay the negative balance on the asset balance of the prepaid account when those incoming deposits are received. Instead, with respect to a covered separate credit feature accessible by hybrid prepaid-credit card, a card issuer (1) is required to adopt reasonable procedures designed to ensure that periodic statements for the covered separate credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement, and the due date disclosed must be the same day of the month for each billing cycle; and (2) can move funds automatically from the asset account held by the card issuer to the covered separate credit feature held by the card issuer to pay some or all of the credit card debt on the covered separate credit feature no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so). Even if card issuers were able to identify methods of satisfying those requirements that were

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<sup>708</sup> 15 U.S.C. § 1637(b)(1) and (8).

<sup>709</sup> 15 U.S.C. 1666h(a).

<sup>710</sup> 15 U.S.C. 1637(b)(12), and (o) and 1666b.

technically compliant with the credit card rules using a negative balance account structure, the Bureau believes that consumers would have a harder time understanding the operation of their accounts and their rights under such a system.

Accordingly, the Bureau believes that use of its authority under TILA section 105(a) to add the provisions in new § 1026.61(b) is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of the credit or charge card account. Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.<sup>711</sup> The Bureau believes that requiring credit features accessible by hybrid prepaid-credit cards to be structured as separate credit features will promote the purposes of TILA by ensuring that Regulation Z's periodic statement disclosures are clear to consumers and that card issuers are complying with the offset restrictions and due date requirements in TILA in a manner that is transparent to consumers.

The Bureau recognizes under this requirement, card issuers will be required after the final rule becomes effective to structure any overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner as a separate credit feature, except to the extent that overdraft credit feature meets the conditions set forth in new § 1026.61(a)(4). To the extent a prepaid account issuer has been offering overdraft credit as a negative balance on prepaid accounts prior to these rules becoming effective, the prepaid account issuer will need to restructure its overdraft credit feature as a separate credit feature if the overdraft credit feature does not meet the conditions set forth in new § 1026.61(a)(4). Nonetheless, as discussed above,

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<sup>711</sup> 15 U.S.C. 1601.

the Bureau believes that bifurcating the two accounts is likely to make it easier for card issuers to comply with the Regulation Z requirements, such as the periodic statement and offset provisions discussed above, that will apply to the overdraft credit feature once the final rule becomes effective and facilitate consumers' understanding of the operation of their accounts and their rights with respect to each account.

To provide additional clarity on the provisions in new § 1026.61(b), new comment 61(b)-1 provides that if a credit feature that is accessible by a hybrid prepaid-credit card is structured as a subaccount of the prepaid account, the credit feature must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance.

New comment 61(b)-2 provides guidance on how a card issuer may comply with the requirement in new § 1026.61(b). New comment 61(b)-2.i provides that if at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred, or authorized to be drawn or transferred from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply with the applicable provisions of this regulation with respect to the credit extension from the time the prepaid card transaction is authorized. Because of the offset prohibition set forth in final § 1026.12(d) and the due date and 21-day timing requirements for periodic statements in final § 1026.7(b)(11) and in final § 1026.5(b)(2)(ii)(A) respectively, incoming deposits to the asset feature of the prepaid account could not be applied automatically to repay the negative balance on the asset balance of the

prepaid account when those incoming deposits are received. Thus, new comment 61(b)-2.i makes clear that a card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day, to ensure that the card issuer is complying with these Regulation Z provisions in a manner that is clear to consumers.

New comment 61(b)-2.ii provides that for transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at the time it settles, and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of this regulation from the time the transaction is settled.

New comment 61(b)-2.iii provides that if a negative balance would result on the asset feature in circumstances other than those described in new comment 61(b)-2.i and ii, credit must be drawn from the covered separate credit feature to avoid the negative balance. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions in this regulation from the time credit is drawn from the covered separate credit feature. For example, assume that a fee for an ATM balance inquiry is imposed on the prepaid account when there are insufficient or unavailable funds to cover the amount of the fee when it is imposed. Credit must be drawn from the covered separate credit feature to avoid a negative balance. The Bureau expects that the card issuer will make it clear to consumers in the credit arrangement that credit will be drawn from the covered separate credit

feature to avoid a negative balance on the asset feature of the prepaid account, including if applicable for fees imposed on the prepaid account where there are insufficient or unavailable funds to cover the amount of the fee when it is imposed.

*61(c) Timing Requirement for Credit Card Solicitation or Application with Respect to Hybrid Prepaid-Credit Cards*

As discussed in more detail in the section-by-section analysis of § 1026.12(a) above, credit cards generally may not be issued on an unsolicited basis. Thus, TILA section 132 and existing § 1026.12(a) prevent a card issuer from issuing on an unsolicited basis a prepaid card that also is a credit card at the time of issuance. For example, prepaid cards that are sold in retail locations could not access automatically an overdraft credit feature that would make the prepaid card into a credit card at the time the prepaid card is sold. Under TILA section 132 and existing § 1026.12(a), a card issuer could add a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

*The Bureau's Proposal*

The Bureau proposed to use its authority in TILA section 105(a) and Dodd-Frank Act section 1032(a) to add new proposed § 1026.12(h)(1) that would have required card issuers to wait at least 30 days after a prepaid account is registered before the card issuer may make a solicitation or provide an application to the holder of the prepaid account to open a credit or charge card account that would be accessed by a prepaid card. In addition, card issuers would have been required to wait until at least 30 days after registration to open a credit card account for the holder of a prepaid account that would be accessed by the prepaid card. Moreover, if a card issuer has established an existing credit or charge card account with a holder of a prepaid account that is accessed by a prepaid, the card issuer would have been prevented from allowing

an additional prepaid card obtained by the consumer from the card issuer to access the credit or charge card account, until at least 30 days after the consumer has registered the additional prepaid account.

Proposed § 1026.12(h)(2) would have defined “solicitation” for purposes of § 1026.12(h)(1) to mean an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. This proposed definition of “solicitation” would have been the same as one used with respect to credit card disclosures set forth in existing § 1026.60(a)(1) that must be provided on or with credit card applications and solicitations. See the section-by-section analysis of § 1026.60 above. Consistent with existing § 1026.60, proposed § 1026.12(h)(2) also would have specified that a “firm offer of credit,” as defined in section 603(l) of the Fair Credit Reporting Act<sup>712</sup> for a credit or charge card, would be a solicitation for purposes of proposed § 1026.12(h).

Proposed comment 12(h)-1 would have explained that a prepaid card or prepaid account is registered, such that the 30-day timing requirement required by proposed § 1026.12(h) begins, when the issuer of the prepaid card or prepaid account successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and State law. The beginning of the required 30-day timing requirement would have been triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer’s mere purchase or obtaining of the card.

Proposed comment 12(h)-2 would have provided a cross-reference to existing § 1026.12(a)(1) and proposed comment 12(a)(1)-7 for additional rules that would apply to the

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<sup>712</sup> 15 U.S.C. 1681a(l).

addition of a credit or charge card account to a previously-issued prepaid account. As discussed in the section-by-section analysis of § 1026.12(a)(1) above, proposed comment 12(a)(1)-7 would have provided that a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h). Proposed comment 12(h)-2 also would have cross-referenced § 1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

#### *Comments Received*

Several consumer group commenters urged the Bureau to extend the 30-day waiting period to 90 days. They noted that in 30 days, the consumer will only have completed one monthly cycle and will not have time to explore all the card's features. They believed that more time would help the consumer see whether she can manage her finances without resorting to credit at the end of the month. They also believed that a 90 day waiting period would help creditors to determine whether the consumer has the ability to repay credit.

Several commenters, including industry trade associations, an issuing bank, and a payment network, indicated that the Bureau should not adopt a waiting period. For example, one payment network said that this approach may create burdens and frustration for consumers who are explicitly seeking a prepaid account that has credit features. This commenter believed that the risks identified by the Bureau are more appropriately mitigated by requiring an affirmative consumer opt-in for any prepaid card to be linked with a credit feature, and that this opt-in can be given only after disclosures about the credit have been provided.

One digital wallet provider suggested that the Bureau clarify that this restriction does not apply to a digital wallet's funding sources. This commenter was concerned that applying the 30-

day waiting period to digital wallets would effectively ban new consumers from linking a credit card as a funding source for their digital wallet.

### *The Final Rule*

After consideration of the comments, the Bureau is adopting the 30-day waiting period largely as proposed. Specifically, the Bureau is moving proposed § 1026.12(h) to new § 1026.61(c) and is revising it to clarify the intent of the provision and to be consistent with new § 1026.61(a).<sup>713</sup> Specifically, new § 1026.61(c)(1) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

New § 1026.61(c)(2) provides that for purposes of new § 1026.61(c), the term “solicitation” has the same meaning set forth in § 1026.60(a)(1). The term “solicitation” in existing § 1026.60(a)(1) means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. In addition, existing § 1026.60(a)(1) provides that a “firm offer of credit” as defined in section 603(l) of the Fair

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<sup>713</sup> The proposal would have provided that the term “credit card” includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal also would have applied the provisions in proposed § 1026.12(h) to credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the provisions in proposed § 1026.12(h) (renumbered as new § 1026.61(c)) related to these account numbers.

Credit Reporting Act<sup>714</sup> for a credit or charge card is a solicitation for purposes of existing § 1026.60(a)(1). The definition of “solicitation” in new § 1026.61(c)(2) is the same as the proposed definition of “solicitation” in proposed § 1026.12(h). The final rule cross-references the definition of “solicitation” in existing § 1026.60(a)(1) rather than repeating the same definition in new § 1026.61(c).

The Bureau is moving proposed comment 12(h)-1 to comment 61(c)-1 and is revising it to provide additional clarification. Consistent with the proposal, new comment 61(c)-1 provides that a prepaid card or prepaid account is registered, such that the 30-day timing requirement required by new § 1026.61(c) begins, when the issuer of the prepaid card or prepaid account successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and State law. The beginning of the required 30-day timing requirement is triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer’s mere purchase or obtaining of the card. New comment 61(c)-1 is revised from the proposal to provide guidance on situations where customer identification and verification are completed on a prepaid account before the account is opened. In that case, new comment 61(c)(1)-1 provides that the 30-day timing requirement begins on the day the prepaid account is opened.

The Bureau is moving proposed comment 12(h)-2 to new comment 61(c)-2 and is adopting it as proposed. The Bureau also is adding new comment 61(c)-3 to address situations where a hybrid prepaid-credit card is replaced or substituted for another hybrid prepaid-credit card. Specifically, new comment 61(c)-3 provides that a card issuer is not required to comply with new § 1026.61(c) when a hybrid prepaid-credit card is permitted to be replaced, or

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<sup>714</sup> 15 U.S.C. 1681a(l).

substituted, for another hybrid prepaid-credit card without a request or application under final § 1026.12(a)(2) and related commentary. For example, new § 1026.61(c) does not apply to situations where a prepaid account or credit feature that is accessible by a hybrid prepaid-credit card is replaced because of security concerns, and a new hybrid prepaid-credit card is issued to access the new prepaid account or credit feature without a request or application under final § 1026.12(a)(2).

With regard to comments urging the Bureau to clarify that the 30-day restriction does not apply to a digital wallet's funding sources, the Bureau is adding new comment 61(a)(1)-4 to provide guidance on the circumstances in which a prepaid account number for a digital wallet that is a prepaid account is a hybrid prepaid-credit card under new § 1026.61(a).

Specifically, new comment 61(a)(1)-4.i states that a digital wallet that is capable of being loaded with funds is a prepaid account under final Regulation E § 1005.2(b)(3). *See* final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)-6. The comment explains that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card if it meets the conditions set forth in new § 1026.61(a). *See* new comment 61(a)(1)-4 for illustrations of this rule.

Thus, new § 1026.61(c) applies to a digital wallet that is capable of being loaded with funds (and thus is a prepaid account under final Regulation E § 1005.2(b)(3)), where the prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card as defined in new § 1026.61(a). The Bureau believes that this additional guidance will help relieve any concerns that the 30-day period would effectively ban new consumers from linking a credit card as a funding source for their digital wallet, except where the linked credit feature is a covered separate credit feature as defined in new § 1026.61(a)(2)(i).

With regard to the two conflicting sets of comments urging the Bureau to drop the 30-day waiting period entirely and conversely to expand it to 90 days, the Bureau has concluded based on additional consideration to adopt the 30-day waiting period as proposed. The Bureau continues to believe the 30-day waiting period would benefit consumers by separating the decisions to obtain and register the prepaid account from the decision to obtain a covered separate credit feature accessible by the hybrid prepaid-credit card. Nonetheless, the Bureau believes that extending the waiting period to 90 days seems unnecessary to ensure that a consumer can make an informed decision regarding whether to link the account to a covered separate credit feature. The Bureau believes that a longer waiting period may restrict consumers who are seeking prepaid accounts with covered separate credit features accessible by hybrid prepaid-credit cards.

The Bureau notes that if the prepaid account issuer offers the covered separate credit feature accessible by the hybrid prepaid-credit card, the prepaid account issuer is the “card issuer” for purposes of Regulation Z, including new § 1026.61(c). This is because the hybrid prepaid-credit card accessing the covered separate credit feature is a credit card, and existing § 1026.2(a)(7) defines “card issuer” as a person that issues a credit card or that person’s agent with respect to the card. If the prepaid account issuer’s affiliate or business partner offers the covered separate credit feature accessible by a hybrid prepaid-credit card, both the person offering the covered separate credit feature and the prepaid account issuer are card issuers for purposes of new § 1026.61(c). In this case, under new comment 2(a)(7)-1.ii, the person offering the covered separate credit feature would be an agent of the prepaid account issuer.

The Bureau believes that use of its authority under TILA section 105(a) to add the provisions in new § 1026.61(c) is necessary and proper to effectuate the purposes of TILA to

help ensure the informed use of the credit or charge card account when it is opened.

Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.<sup>715</sup> Furthermore, TILA section 132 requires that no credit card shall be issued except in response to a request or application therefor.<sup>716</sup> In addition, the Bureau believes that the waiting period will, consistent with Dodd-Frank Act section 1032(a), ensure that the features of the covered separate credit feature offered in connection with the prepaid account are fully, accurately, and effectively disclosed to consumers in a manner that permits the consumers to understand the costs, benefits, and risks associated with the credit feature.

The Bureau believes that the requirement in new § 1026.61(c) of a 30-day waiting period for a prepaid card to access a covered separate credit feature will promote the informed and voluntary use of credit. Under new § 1026.12(c)(1), a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. The Bureau believes that it would promote the informed use of the credit to separate the decision to purchase and register a prepaid account from the decision to accept an offer to add a covered separate credit feature accessible by a

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<sup>715</sup> 15 U.S.C. 1601.

<sup>716</sup> 15 U.S.C. 1642.

hybrid prepaid-credit card. The Bureau believes that consumers may be able to focus more effectively on the credit terms of the covered separate credit feature, and make a more informed decision whether to request such a credit feature, if the decision to accept the credit feature occurs apart from the process to register the card. Without these protections, card issuers may attempt to market the covered separate credit feature to prepaid cardholders at the time they purchase the prepaid card or at registration. The Bureau believes that without this provision, prepaid account issuers would be likely to provide solicitations or applications to the prepaid cardholder to open a covered separate credit feature accessible by a hybrid prepaid-credit card, or suggest that the prepaid cardholder allow an existing credit feature held by the prepaid cardholder to become a covered separate credit feature accessible by a hybrid prepaid-credit card, at the time the prepaid accounts are registered because prepaid account issuers will already be collecting information from the cardholders in order to register the prepaid accounts.

Without the waiting period, consumers may feel pressured to decide whether to add the covered separate credit feature without having the opportunity to fully consider the terms of the credit feature and the consequences of obtaining the credit feature. Therefore, the Bureau believes that a consumer's decision to add a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account should be distinct from the decision to obtain or register the prepaid card.

In addition, the Bureau believes that separating these decisions would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration, which may enable the consumer to better understand those terms and conditions. This is consistent with EFTA section 905(a), which requires financial institutions to disclose the terms and conditions of EFTs involving a consumer's account. The Bureau also

believes that requiring at least 30 days to elapse between the registration of a prepaid account and any offer of a covered separate credit feature accessible by a hybrid prepaid-credit card would enhance consumer understanding of the terms of the prepaid account and would help consumers to make more informed decisions regarding linking a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account.

As discussed in the section-by-section analysis of Regulation E § 1005.18(e)(3) above, existing customer identification requirements limit the functionality of most prepaid accounts prior to registration. In addition, the registration process is critical for application of full Regulation E protections under this final rule. For example, Regulation E § 1005.18(e)(3) provides that for all prepaid accounts, other than payroll card accounts and government benefit accounts, with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no process), the financial institution is not required to provisionally credit the consumer's account in the event the financial institution takes longer than 10 or 20 business days, as applicable, to investigate and determine whether an error occurred.<sup>717</sup> If a card issuer were allowed to market covered separate credit features to consumers at the time of prepaid account registration, the Bureau is concerned that consumers could believe that they are required to request that the covered separate credit feature accessible by a hybrid prepaid-credit card be linked to the prepaid account in order to register or access the prepaid account. This could cause some consumers to not register their prepaid accounts and lose important protections under Regulation E.

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<sup>717</sup> See also new Regulation E § 1005.18(c)(2), which provides a modified version of the periodic statement alternative for prepaid accounts that cannot be or have not been verified by the financial institution.

## **VI. Effective Date**

The Bureau is generally establishing that this rule take effect on October 1, 2017, which is approximately 12 months from the issuance of this final rule. However, the Bureau is adopting several specific accommodations related to the effective date as set forth in § 1005.18(h), and a delayed effective date for the requirement to submit prepaid account agreements to the Bureau as described in § 1005.19(f).

As discussed in the section-by-section analysis of § 1005.18(h) above, the 12-month implementation period is a change from the proposal, which would have required that the rule generally take effect nine months following the publication of the rule in the *Federal Register*, with three months' additional leeway for certain disclosure-related requirements. The Bureau received many comments from industry, including trade associations, issuing banks, credit unions, program managers, payment networks, a payment processor, and a law firm writing on behalf of a coalition of prepaid issuers, arguing that the proposed nine- and 12-month compliance periods would be insufficient to implement the changes that would be required under the proposal. Upon consideration of the comments received, the Bureau believes that it is appropriate to provide a longer implementation period and to make a number of modifications and accommodations in the final rule to address particular concerns raised by commenters.

For instance, final § 1005.18(h)(2)(i) sets forth an exception to the October 1, 2017 effective date that states that the disclosure requirements of Regulation E subpart A as modified by final § 1005.18 shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account access devices and packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. Accordingly, unlike the proposed

rule, the final rule does not require that financial institutions pull and replace existing access devices and packaging material after the rule takes effect. In return, final § 1005.18(h)(2)(ii) requires that financial institutions provide notices of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via non-compliant packaging materials printed prior to the effective date. Final § 1005.18(h)(2)(iii) clarifies the requirements for providing notice of changes to consumers who acquired prepaid accounts before October 1, 2017. Final § 1005.18(h)(2)(iv) facilitates the delivery of notices of certain changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Final § 1005.18(h)(3) provides an accommodation to financial institutions that do not have sufficient data in a readily accessible form in order to comply fully with the requirements for providing electronic and written account transaction history pursuant to final § 1005.18(c)(1)(ii) and (iii), respectively, and the summary totals of fees pursuant to final § 1005.18(c)(5) by October 1, 2017.

As discussed in the section-by-section analysis of § 1005.19(f) above, final § 1005.19(f)(2) sets forth a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b). The Bureau believes that the effective dates discussed herein strike the appropriate balance between providing consumers with necessary protections while giving financial institutions adequate time to comply with all aspects of this final rule.

## **VII. Section 1022(b)(2)(A) of the Dodd-Frank Act**

### *A. Overview*

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2)

calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons (which in this case would be the providers subject to the proposed rule), including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The Bureau has consulted, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

As discussed above, the final rule amends both Regulation E, which implements EFTA, and Regulation Z, which implements TILA, as well as the official interpretation to those regulations. The final rule creates comprehensive consumer protections for prepaid financial products. It expressly brings such products within the ambit of Regulation E as prepaid accounts and creates new provisions specific to such accounts. It also modifies certain Regulation E provisions as they apply to prepaid accounts, including provisions that currently apply to government benefit accounts and payroll card accounts.<sup>718</sup> Additionally, the final rule contains amendments to Regulations E and Z to regulate covered separate credit features accessible by a hybrid prepaid-credit card.

In applying the consumer protections in Regulation E to a broader set of consumer accounts, the Bureau furthers the statutory purposes of EFTA, which include providing a basic

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<sup>718</sup> The definition of prepaid account in § 1005.2(b)(3) includes government benefit accounts and payroll card accounts.

framework establishing the rights, liabilities, and responsibilities of participants in EFT systems and providing individual consumer rights. In addition, the Bureau believes that applying the consumer protections articulated in Regulation Z to covered separate credit features accessible by a hybrid prepaid-credit card conforms to TILA's statutory purposes, which include assuring a meaningful disclosure of credit terms, avoiding the uninformed use of credit, and protecting consumers against inaccurate and unfair billing and credit card practices.

*B. Major Provisions Discussed*

Below, the Bureau considers the benefits, costs, and impacts of the following major provisions of the final rule:

1. The establishment of certain disclosures that financial institutions are required to provide to consumers (or, in certain circumstances, provide consumers access to) prior to the acquisition of a prepaid account and modifications of initial disclosures that are provided at account acquisition;

2. The application of Regulation E's periodic statement requirement to prepaid accounts and the establishment of an alternative that requires financial institutions to provide consumers access to certain types of account information;

3. The extension of Regulation E's limited liability and error resolution regime to all prepaid accounts, including provisional credit requirements in most circumstances;

4. The requirement that all issuers of prepaid accounts submit their prepaid account agreements to the Bureau on an ongoing basis, post publicly available prepaid account agreements on their own websites, and in limited circumstances, respond to consumers' requests for written copies of their account agreements; and

5. The modification and application of particular Regulation E and Regulation Z provisions to covered separate credit features accessible by a hybrid prepaid-credit card.

With respect to each major provision of the final rule, the Bureau considers the benefits, costs, and impacts to consumers and covered persons. In addition, the Bureau discusses certain alternative provisions that it considered, in addition to the major provisions ultimately adopted, and addresses comments received in response to the proposed rule's section 1022(b)(2)(A) treatment of these topics. Where comments discuss the benefits or costs of a provision of the proposed rule in the context of commenting on the merits of that provision, the Bureau has addressed those comments above in the relevant section-by-section analysis. In this respect, the Bureau's section 1022(b)(2)(A) discussion is not limited to the discussion in this part of the final rule.

In considering the relevant potential benefits, costs, and impacts, the Bureau has consulted the available data discussed in this preamble and has applied its knowledge and expertise concerning consumer financial markets. Where available, the Bureau has used the economic analyses that it regards as most reliable and helpful to consider the relevant potential benefits, costs, and impacts of the final rule. However, the Bureau notes that, in some instances, there are limited data available to inform the quantification of the potential benefits, costs, and impacts. For example, financial institutions that currently apply Regulation E's limited liability and error resolution provisions, including provisional credit, do not generally publicize information regarding the incremental costs associated with these activities. Moreover, some potential benefits are difficult to quantify.

General economic principles, coupled with available quantitative information, provide insight into the potential benefits, costs, and impacts arising from the final rule. Where possible,

the Bureau makes quantitative estimates based on these principles as well as available data. However, where data are limited, the Bureau generally provides a qualitative discussion of the final rule's benefits, costs, and impacts.

### *C. Baseline for Consideration of Benefits and Costs*

The baseline for this discussion is the current market for prepaid accounts.<sup>719</sup> This baseline considers both the existing regulatory structure as well as the economic attributes of the relevant market.<sup>720</sup> Although the Bureau describes the current market in detail above, this section also describes certain features of the current market where particularly relevant. When informative, the Bureau also evaluates potential future impacts relative to how the market might have evolved absent the final rule. To ascertain the current state of the market, the Bureau performed industry outreach and conducted its Study of Prepaid Account Agreements in connection with the proposed rule. The Bureau also performed consumer testing to inform the proposed rule and conducted additional consumer testing in connection with the final rule.

The final rule both extends Regulation E to cover additional accounts and amends Regulation E to include new provisions for those accounts, such as the final rule's requirements relating to pre-acquisition disclosures. With respect to the provisions addressing consumer access to account information, limited liability, and error resolution protections, the Bureau generally extends existing provisions of Regulation E, as they apply to payroll card accounts, to

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<sup>719</sup> The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and the most appropriate baseline for that particular rulemaking.

<sup>720</sup> As discussed above, several Federal regulatory regimes apply to some or all types of prepaid accounts or to transactions involving these accounts, including: requirements set forth in current Regulation E; requirements regarding receipt of Federal payments onto prepaid cards and interchange fees; and requirements to prevent financial crimes such as money laundering and terrorist financing. Prudential regulators also have issued guidance pertaining to the application of their rules to prepaid cards, program managers, and issuing financial institutions. The benefits, costs, and impacts that arise from the final rule are attenuated if certain provisions are already required under State law.

all prepaid accounts. For some prepaid accounts, such as GPR cards that do not receive Federal payments, these protections are newly required. However, certain other prepaid accounts, such as payroll card accounts and GPR cards that receive Federal payments, are currently subject to Regulation E's requirements (as they apply to payroll card accounts) directly or indirectly.<sup>721</sup> Regulation E also contains provisions that currently apply to government benefit accounts, which the final rule amends to conform more closely to requirements for other types of prepaid accounts.<sup>722</sup>

Current industry practice is consistent with the final rule's requirements in some cases. In such cases, the benefits, costs, and impacts of the final rule on both financial institutions and consumers are more modest than those that would result if industry practice deviated from the final rule's requirements. As discussed above, the Bureau's Study of Prepaid Account Agreements, performed in connection with the proposed rule, suggested that many financial institutions subject to the final rule already implement many of the final rule's requirements pertaining to consumer access to account information, limited liability, and error resolution. In addition to existing Federal regulatory requirements, the need for issuing financial institutions to comply with payment card associations' network rules may explain why some financial institutions currently fully or partially implement the final rule's requirements with respect to limited liability and error resolution.<sup>723</sup>

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<sup>721</sup> As discussed above, the FMS Rule extends Regulation E's payroll card account protections to prepaid accounts that receive Federal payments.

<sup>722</sup> Current provisions governing consumer access to government benefit account information differ somewhat from those applicable to payroll card accounts. Specifically, the alternative to the periodic statement requirement, described in existing § 1005.15(c), does not require that a financial institution make available an electronic history of account transactions to the consumer.

<sup>723</sup> In certain circumstances, payment card associations' network rules provide some form of zero liability protections for prepaid cardholders. *See, e.g., Visa Inc., Zero Liability, available at <https://www.visa.com/chip/>*

The final rule also includes protections for consumers using prepaid cards to access covered separate credit features offered by prepaid account issuers, their affiliates, or their business partners (except as provided in new § 1026.61(a)(4)). The Bureau understands that few providers currently offer prepaid accounts with overdraft services.<sup>724</sup> However, one of the largest prepaid account program managers offers an overdraft service in connection with some of its prepaid account products (which include both GPR cards and payroll card accounts), so the number of prepaid accounts eligible for overdraft services is not negligible.<sup>725</sup>

The Bureau believes that those few prepaid account providers offering overdraft services do not presently comply with requirements set forth in the final rule's credit provisions. The Bureau understands that those prepaid account providers offering overdraft services condition consumer eligibility on receipt of a regularly occurring direct deposit and require consumers to opt-in to the service.<sup>726</sup> When funds are deposited into an overdraft-enabled prepaid account, the Bureau understands that these funds generally are applied automatically to any outstanding negative balance before the consumer may access them.<sup>727</sup> The Bureau understands that

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personal/security/zero-liability.jsp (last visited Oct. 1, 2016); MasterCard Inc., *Zero Liability Protection*, available at <http://www.mastercard.us/zero-liability.html> (last visited Oct. 1, 2016).

<sup>724</sup> As discussed in more detail below, the Bureau sometimes uses the generic term “provider” in this discussion to describe covered entities responsible for compliance with the final rule’s provisions.

<sup>725</sup> NetSpend is a significant provider of prepaid accounts. See Total Sys. Serv., Inc., Annual Report (Form 10-K), at 2, available at <http://www.sec.gov/Archives/edgar/data/721683/000119312516476239/d240097d10k.htm> (for the year ended Dec. 31, 2015) (“Through our NetSpend business, we believe that we are the largest prepaid program manager in the United States based on gross dollar volume.”). A news article reported that 6 percent of NetSpend’s customers regularly use overdraft services. Suzanne Kapner, *Prepaid Plastic is Creeping into Credit*, Wall St. J. (Sept. 5, 2012), available at <http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602> (2012 NetSpend WSJ Article). In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A recent financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015, and 49 percent of those active cards had direct deposit. Total Sys. Serv., Inc., Quarterly Report (Form 10-Q), at 27, available at <https://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d97203d10q.htm> (for the quarterly period ended Sept. 30, 2015).

<sup>726</sup> See, e.g., 2012 FRB Kansas City Study at 9.

<sup>727</sup> The Treasury FMS rule, described above, prohibits prepaid cards from having an attached line of credit if the credit agreement allows for the automatic repayment of the loan from a card account triggered by the delivery of the

providers currently offering such services have adopted program rules designed to aid the population using these features, such as discouraging persistent use of the overdraft service by capping the number of fees that a consumer may incur in a specified period.<sup>728</sup> However, there is currently no Federal regulatory requirement that providers offer such protections for all prepaid account products.

The Bureau believes that additional prepaid account providers may be considering offering products that would be covered separate credit features accessible by a hybrid prepaid-credit card, suggesting the potential for increased consumer access to these products in the future.<sup>729</sup> The final rule provides clarity regarding the terms on which a prepaid account issuer, its affiliate, or its business partner may offer covered separate credit features accessible by a hybrid prepaid-credit card to consumers. The final rule's credit provisions help ensure that prepaid account issuers, their affiliates, and their business partners offer covered separate credit features accessible by a hybrid prepaid-credit card to prepaid account consumers in a transparent manner and that consumers using these features receive certain important protections.

#### *D. Coverage of the Final Rule*

The final rule applies to any prepaid product that meets the definition of prepaid account set forth in § 1005.2(b)(3). With respect to the Regulation E provisions, covered persons include financial institutions that issue prepaid accounts. Financial institutions may work with program managers or other industry participants in marketing, establishing, or maintaining prepaid

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Federal payment into the account. 31 CFR 210(b)(5)(i)(C). Certain State laws subject some government benefit accounts to similar provisions. *See, e.g.*, CA AB 1280; CA AB 2252.

<sup>728</sup> *See, e.g.*, 2012 NetSpend WSJ Article; *see also* NetSpend Corp., *Amended Terms for Your Cardholder Agreement*, available at <http://www.netspend.com/account/overdraftTerms.m> (last visited Oct. 1, 2016) (overdraft terms and conditions).

<sup>729</sup> The Bureau understands from industry comments regarding the proposed rule that other financial institutions offering prepaid accounts would consider offering overdraft services in connection with their prepaid account products if the Bureau were to adopt a Regulation E opt-in regime, described in greater detail above.

accounts.<sup>730</sup> Given the variety of organizational forms used to offer prepaid programs, the Bureau does not allocate burdens among issuers, program managers, and other participants in this discussion of the benefits, costs, and impacts arising from the final rule. In addition to financial institutions, card issuers and creditors offering covered separate credit features accessible by a hybrid prepaid-credit card are also subject to the final rule's credit provisions. Depending on the facts and circumstances, these persons may or may not be the prepaid account issuer or program manager. For clarity, the Bureau sometimes uses the generic term "provider" in this discussion to describe covered entities responsible for compliance with the final rule's provisions and does not allocate burdens arising from these provisions among market participants.

#### *E. Potential Benefits and Costs to Consumers and Covered Persons*

In applying the consumer protections in Regulations E and Z to a broader class of accounts, the Bureau intends to reduce consumer and industry uncertainty regarding responsibilities and liabilities among market participants. With the possible exception of the final rule's credit provisions, which apply to covered separate credit features accessible by a hybrid prepaid-credit card, the Bureau does not believe that the final rule will meaningfully reduce consumer access to consumer financial products and services. This is because, with the exception of the credit provisions, most financial institutions are already partially complying with many of the final rule's requirements (due to preexisting regulatory requirements or

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<sup>730</sup> Some financial institutions acting as prepaid account issuers choose to perform all of the functions required to manage a prepaid program, including marketing prepaid accounts directly to consumers. More commonly, however, prepaid account issuers leave program management to others. The scope of such roles may vary. However, the issuer typically enters into a contract with the program manager to provide the association bank identification number for the program and to monitor regulatory compliance in exchange for fee income and indemnification from risk. 2012 FRB Philadelphia Study at 10.

payment card association network rules), and the additional requirements of the final rule will result in relatively modest ongoing burden for these institutions.

By adopting the final rule, the Bureau aims to lessen consumer risk associated with using those prepaid account products that currently do not offer the protections required by the final rule. In addition, the final rule lessens the potential risk incurred by consumers who would use prepaid account products in the future that, absent the final rule's requirements, would lack these protections. In particular, the Bureau is concerned that some prepaid account consumers may be unaware that certain prepaid account products currently on the market offer fewer protections than comparable products currently subject to Regulation E, and consumers may be unaware of the diversity of protections currently offered in connection with prepaid account products. In addition, because both prepaid cards and debit cards linked to checking accounts enable consumers to access their own funds and have similar functionalities and appearances, prepaid accountholders may believe that the accounts associated with these cards offer similar consumer protections. By bringing prepaid accounts within the ambit of Regulation E, the final rule ensures that prepaid accountholders receive consistent protections, regardless of the prepaid account held, and have the opportunity to enjoy the protections afforded to consumers of similar products.

The final rule's disclosure requirements ensure that consumers generally have access to comparable, transparent, key, and comprehensive information prior to acquiring a prepaid account. Motivated by private incentives, financial institutions may choose to disclose a socially suboptimal amount of information to consumers.<sup>731</sup> For example, firms may engage in strategies

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<sup>731</sup> The socially optimal amount of information about a prepaid account depends on the cost to financial institutions (or third parties) of acquiring and providing product information and the benefit to consumers from improved understanding and choice. In general, at the social optimum, the benefit to consumers from additional or more

to frustrate consumer efforts to compare products.<sup>732</sup> Consumers generally incur costs, in terms of time, money, or both, to determine the price and quality of a particular product before purchasing it. Consumers searching for a prepaid account have less incentive to compare various products when performing these comparisons is costly. When consumers are unwilling to incur these search costs, financial institutions may exercise market power. As a result, a sufficiently inexpensive reduction in these costs can benefit consumers and enhance efficiency.<sup>733</sup> By standardizing the information that consumers receive, the final rule's short form disclosure requirements reduce the search costs associated with finding, understanding, and comparing critical information. Further, because all consumers of the product potentially benefit when prices decrease due to search by some consumers, the benefits of lower search costs extend beyond those consumers who actually engage in comparison shopping before making a purchasing decision.

In addition to reducing search costs by making information more comparable and transparent, the final rule's disclosure requirements ensure that consumers have access to comprehensive information regarding prepaid accounts. Financial institutions have strong

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transparent information would exactly equal the additional cost to financial institutions (or third parties) of providing that information.

<sup>732</sup> See, e.g., Glenn Ellison & Sara Fisher Ellison, *Search, Obfuscation, and Price Elasticities on the Internet*, 77 *Econometrica*, 427 (2009).

<sup>733</sup> See, e.g., Dale O. Stahl II, *Oligopolistic Pricing with Sequential Consumer Search*, 79 *Am. Econ. Rev.* 700 (1989). A commenter from a university regulatory studies center stated that this paper provides a poor model of the market for prepaid accounts because it assumes that consumers search for the best price for a homogeneous good while prepaid products vary in terms of both price and product features. The commenter recommended instead a paper by Bakos that similarly concludes that "reducing the cost of price and product information typically will improve market efficiency but will reduce seller profits." J. Yannis Bakos, *Reducing Buyer Search Costs: Implications for Electronic Marketplaces*, 43 *Mgmt. Sci.* 1676, 1677 (1997). See also Simon P. Anderson & Regis Renault, *Pricing, Product Diversity, and Search Costs: A Bertrand-Chamberlin-Diamond Model*, 30 *Rand J. Econ.* 719 (1999) (showing that product diversity does not change the conclusion in Stahl that lower search costs lead to lower equilibrium prices). These authors note that some (but not all) features of the market for credit cards can be explained by their framework. *Id.* at 731. This commenter also stated that the Bureau should consider ways to protect consumers who do not search. The Bureau notes that the final rule's general requirements with respect to limited liability and error resolution protect consumers regardless of whether they search.

incentives to make consumers aware of generally attractive product features, such as functionality offered without an additional fee. However, financial institutions have less incentive to identify and make transparent unattractive product features, such as high fees that may be associated with certain types of activities. In some cases, prepaid accountholders may utilize high-cost features frequently, and these consumers may have selected a different product were the fee information transparent when they acquired the account.<sup>734</sup>

One commenter suggested that the Bureau analyze more recent data describing prepaid card consumer spending and behavior but did not point to particular spending or behavior studies that it deemed more informative than those discussed in the proposal. Commenters noted that various third-party sources aggregate information regarding prepaid cards and offer consumers evaluations of prepaid card fees and terms, including tailored recommendations in some cases. However, not all consumers rely on these evaluations in their search. Consumers may not access these evaluations due to lack of awareness, difficulty in accessing the evaluations, or skepticism regarding their objectivity. The Bureau believes that the final rule's content and formatting requirements increase transparency by ensuring that financial institutions disclose certain terms to consumers before they acquire prepaid accounts.

In addition to depending on financial institutions to disclose information about account features to aid purchasing decisions, consumers rely on financial institutions to provide information regarding their account status, as well as other services such as error resolution, on an ongoing basis. Although the account terms and conditions may articulate the financial institution's commitments with respect to these features, many consumers may not review these

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<sup>734</sup> Research covering prepaid programs that represented approximately 90 percent of the GPR card market (in terms of number of cards) shows that the majority of the market sampled (70 percent) provides explicit tips regarding how to avoid fees and minimize the costs associated with using the card. However, the authors identify marketing and communication to promote positive consumer use as an area for improvement. 2014 CFSI Scorecard at 11.

documents or be able to anticipate their needs accurately before acquiring an account. Moreover, a financial institution's strength in performing these functions may be difficult to ascertain or impossible to observe in advance. While a financial institution's reputation would suffer if it consistently provided poor service, such long-term consequences may not protect all consumers sufficiently from the financial institution's incentives for short-term gain.<sup>735</sup> The switching costs incurred by a consumer in changing prepaid accounts may serve as an additional friction that decreases a financial institution's incentive to provide high quality services on an ongoing basis.

Although most prepaid account programs reviewed in the Bureau's Study of Prepaid Account Agreements offered many of the limited liability and error resolution protections set forth in the final rule, the Bureau is concerned that the total number of consumers at risk of an unexpected loss could increase in the future as more consumers adopt and use prepaid accounts. Prepaid accounts, which leverage the same large payment network rails as credit cards, are widely accepted by merchants and increasingly used by consumers. A survey conducted by the Board in 2013 (and published in 2014) found that 15 percent of respondents reported using a general purpose prepaid card in the past 12 months.<sup>736</sup> Among respondents to that survey who reported having a general purpose prepaid card or a payroll card, 38 percent reported that it was reloadable, and about half of those respondents who reported that they had a GPR or payroll card

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<sup>735</sup> The relationship between reputation and quality is highly complex, even under competition. See, e.g., Rachel Kranton, *Competition and the Incentive to Produce High Quality*, 70 *Economica* 385 (2003). For a general survey of reputation and quality, see Heski Bar-Isaac & Steve Tadelis, *Seller Reputation*, 4 *Foundations and Trends Microeconomics* 273 (2008).

<sup>736</sup> Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014*, at 8 (Mar. 2014), available at <http://www.federalreserve.gov/econresdata/mobile-devices/files/consumers-and-mobile-financial-services-report-201403.pdf> (2014 FRB Consumers and Mobile Financial Services Survey). General purpose prepaid cards are one type of product subsumed within the final rule's definition of prepaid account. As described above, payroll card accounts are already required to comply with Regulation E's limited liability and error resolution requirements. The subsequent wave of the survey found that 19.8 percent of respondents reported using a prepaid debit card in the past 12 months, suggesting that product use is proliferating. 2015 FRB Consumers and Mobile Financial Services Survey at 53 tbl.C.3.

reported that they or someone else added money to their card in the past month.<sup>737</sup> Another survey conducted in May 2014 found that 16 percent of respondents had used a “prepaid card” that was not a gift card in the last 12 months.<sup>738</sup> The 2013 FDIC Survey found that 12 percent of households had ever used prepaid cards, 7.9 percent had used prepaid cards in the last 12 months, and 3.9 percent had used prepaid cards in the last 30 days; moreover, this survey found that prepaid card use was more common among households that were unbanked or underbanked.<sup>739</sup> Another survey found that 5 percent of adults had used prepaid cards at least once a month.<sup>740</sup>

Although consumers have different motivations for acquiring prepaid accounts, some financial institutions design and market these accounts to consumers as an alternative to traditional checking accounts. According to one survey, of the 5 percent of adults who reported using a prepaid card at least once a month, 41 percent did not simultaneously maintain a checking account.<sup>741</sup> This implies that roughly 2 percent of the adult population uses a prepaid card monthly and does not have a checking account.<sup>742</sup> According to a survey conducted by the Board in 2012 (and published in 2013), 1.6 percent of respondents reported that either they or

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<sup>737</sup> 2014 FRB Consumers and Mobile Financial Services Survey at 48 tbls.C.9 & C.10. This implies that roughly 3 percent of respondents had a general purpose prepaid card or payroll card that they or someone else had (re)loaded in the past month. The subsequent survey wave did not include these questions. 2015 FRB Consumers and Mobile Financial Services Survey. The most recent wave of the survey found that 16.2 percent of respondents used a GPR card in the past 12 months, but the survey did not inquire regarding how frequently respondents reloaded the cards. 2016 FRB Consumers and Mobile Financial Services Survey at 61 tbl.C.3.

<sup>738</sup> GfK, *GfK Prepaid Omnibus Research Findings*, at 6 (2014), available at <http://www.nbpca.org/~media/2519B8BADB1B4388BA5F11C511B3ACAE.ashx>. The definition of prepaid card in this survey appears to have included products that are not included in the final rule’s definition of prepaid account. *Id.* at 7.

<sup>739</sup> 2013 FDIC Survey at 29-30.

<sup>740</sup> 2014 Pew Survey at 1. Survey respondents were told not to include gift cards, rebate cards, credit cards, or phone cards. *Id.* at 24.

<sup>741</sup> 2014 Pew Survey at 1, 7.

<sup>742</sup> *See id.*

their partner had a reloadable prepaid card and did not have a checking, savings, or money market account.<sup>743</sup> Prepaid accounts offer individuals who do not have access to traditional debit or credit card accounts a means to perform EFTs. These accounts also enable consumers, who may not otherwise have access to another electronic payment method, to make purchases from online merchants and others who do not accept cash. Additionally, prepaid accounts provide individuals lacking access to traditional checking accounts a means of storing funds that can be more secure than holding cash. Prepaid accounts also offer consumers the ability to accept payments of wages and benefits via direct deposit. For unbanked consumers, loading funds into a prepaid account may serve as an alternative to relying on a check-cashing provider.

Although consumers may hold funds in certain types of prepaid accounts that are currently subject to Regulation E, some consumers regularly deposit funds into prepaid accounts that are not currently subject to Regulation E's requirements.<sup>744</sup> Consumers may hold their prepaid accounts for extended periods and load significant portions of their available funds into such accounts. Consumers who store funds in prepaid accounts without liability limitations and error resolution protections (including provisional credit) may be at risk of an unexpected loss of or a delay in access to funds in the event of an error or unauthorized transfer. The final rule reduces the risk borne by these consumers by requiring that financial institutions limit liability

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<sup>743</sup> Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2013*, at 5 (Mar. 2013), available at <http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201303.pdf>. The following information was used to derive this statistic: "In 2012, the share of unbanked consumers [meaning those who reported that neither they nor their spouse or partner had a checking, savings, or money market account] declined to 9.5 percent of the adult population. Adopting a more expansive definition of being banked that includes use of a reloadable prepaid card, the share of consumers who are unbanked declined . . . to 7.9 percent in 2012." The 2014 FRB Consumers and Mobile Financial Services Survey, which reported findings from a survey conducted in 2013, did not include information that enabled the Bureau to calculate a revised statistic.

<sup>744</sup> As discussed above, payroll card accounts and government benefit accounts are currently subject to Regulation E. The FMS Rule ensures that the protections that apply to payroll card accounts under Regulation E also apply to prepaid cards that receive Federal payments. Consistent with the Bureau's findings in its Study of Prepaid Account Agreements, one industry commenter stated that the FMS Rule has essentially forced any product accepting ACH credits to implement the protections that apply to payroll card accounts under Regulation E.

for unauthorized transfers and offer error resolution protections for all prepaid accounts, including provisional credit on accounts that have completed the customer identification and verification processes.

In addition, the final rule helps consumers assess the risks and costs associated with using prepaid accounts by requiring more comprehensive disclosure of account transaction history than currently required. These new requirements may help consumers to understand the financial costs associated with using prepaid accounts, to recognize errors, and to exercise error resolution rights. As discussed below, many financial institutions currently implement several of the final rule's provisions relating to communication of account information to accountholders, including providing consumers with electronic access to their transaction history.

The final rule also modifies Regulations E and Z to impose new requirements in relation to covered separate credit features accessible by a hybrid prepaid-credit card. As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliate, or its business partner (except as described in new § 1026.61(a)(4)). New § 1026.61(b) generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61 refers to these overdraft credit features as "covered separate credit features." In addition, under the final rule, a prepaid card that can access a covered separate credit feature is a "credit card" under Regulation Z with respect to that credit feature. The final rule defines such a prepaid card that is a credit card as a "hybrid prepaid-credit card" in new § 1026.61.

The Bureau anticipates that most covered separate credit features will meet the definition of “open-end credit.” Persons offering covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) credit generally are required to comply with the disclosure provisions and credit card provisions in subparts B and G of Regulation Z, including certain fee and payment restrictions. Additionally, the final rule provides that card issuers must adhere to timing requirements regarding solicitation and application that generally prevent card issuers from doing any of the following within 30 days of prepaid account registration: (1) opening a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) making a solicitation or providing an application for such a feature; or (3) allowing an existing credit feature to become such a covered separate credit feature accessible by a hybrid prepaid-credit card. Moreover, for those prepaid account programs where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card, the final rule requires that a financial institution generally provide to any prepaid account without an associated covered separate credit feature accessible by a hybrid prepaid-credit card the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature.<sup>745</sup>

Although few providers currently offer overdraft services in connection with prepaid accounts, the Bureau believes that such offerings could become more prevalent in the future. Therefore, the Bureau believes that it is important to ensure that consumers using prepaid cards that access covered separate credit features receive appropriate protections. By adopting the

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<sup>745</sup> The final rule permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. However, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature.

requirements at this time, the Bureau hopes to mitigate harm to consumers arising from the absence of these protections and to lessen disruption that industry could experience if regulatory uncertainty were resolved after such products had become widespread.

To assess the potential impacts of the final rule on consumers and covered persons, the Bureau separately discusses the benefits and costs associated with each major provision. For clarity, costs arising from compliance burdens that are imposed on financial institutions, card issuers, and creditors are discussed under the subheading “Benefits and Costs to Covered Persons” for each major provision. The final rule’s provisions may impose one-time implementation costs and may affect ongoing operational costs, both of which may be fixed or variable.<sup>746</sup> Economic theory predicts that providers will absorb fixed cost increases. However, such increases may restrict consumer choice if they cause current providers to exit the market or deter potential providers from entering the market. In some situations, a decrease in the number of market participants could facilitate the exercise of market power by remaining providers. This could result in higher prices for consumers, decreased product quality, or some combination thereof.

Providers’ ability to recoup variable cost increases by raising prices depends on both the relative elasticities of supply and demand for the product and the extent of market competition.<sup>747</sup> Both providers and consumers ultimately will bear these burdens, and the party that is less responsive to a price change will bear a larger share.

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<sup>746</sup> Fixed costs are those costs that do not depend on the number of prepaid accounts supplied by the financial institution or the number of credit card accounts supplied by the card issuer or creditor.

<sup>747</sup> The relative elasticities of supply and demand for a product measure how responsive the quantity supplied by providers is to a price change relative to how responsive the quantity demanded by consumers is to a price change. The relative elasticities of supply and demand can vary across covered products. The availability of information, which affects the perceived availability of substitute products, as well as the presence of substitute products may influence these relative elasticities.

### *1. Pre-Acquisition Disclosures and Initial Disclosures*

The final rule requires new pre-acquisition disclosures for prepaid accounts, extends existing Regulation E disclosure requirements to prepaid accounts, and requires new disclosures to be made on prepaid account access devices. Under the final rule, newly printed disclosures will need to be compliant beginning October 1, 2017. The final rule also modifies the initial disclosures of fees required by Regulation E. The final rule extends § 1005.7 to prepaid accounts; and, in § 1005.18(f)(1), adds the requirement that the financial institution must disclose all fees imposed by the financial institution in connection with a prepaid account, not just fees related to EFTs. In addition, section § 1005.18(f)(3) requires that financial institutions disclose on prepaid account access devices the financial institution's name, and both the URL of a website and a telephone number that a consumer can use to contact the financial institution about the prepaid account.

Section 1005.18(b)(1) generally requires that a financial institution provide a short form disclosure and a long form disclosure before a consumer acquires a prepaid account.<sup>748</sup> Sections 1005.18(b)(2) through (5) establish the content of these disclosures. The long form disclosure includes all of the information required to be disclosed on the short form, with the exception of information related to fees or the availability of the long form. In addition, among other information, the long form sets forth *all* fees imposed in connection with a prepaid account and their qualifying conditions; contact information of the Consumer Financial Protection Bureau; and contact information for the financial institution.

The short form disclosure includes a “static” portion, an “additional fee types” portion, and a portion for additional information. The static portion includes the seven fees or fee types

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<sup>748</sup> For concision, in this section, the disclosure requirements of § 1005.18(b)(5) are considered as part of the short form disclosure requirements.

that the Bureau believes to be the most important to consumers when shopping for a prepaid account. The “additional fee types” portion states the total number of fees that the prepaid account charges (not including finance charges, purchase price, or activation fees)<sup>749</sup> but which are not disclosed in the static portion of the form, followed by a second statement explaining that what follows are examples of some of those additional fee types, followed by the two of these fee types that generated the most revenue for the prepaid product during the prior 24-month period. The final rule also introduces a 5 percent de minimis revenue threshold, whereby if a fee type resulted in less than 5 percent of total fee revenue from consumers for that 24-month period then that fee type would not be required to be disclosed. The short form includes additional disclosures regarding FDIC deposit or NCUA share insurance and other account protections; the website of the Consumer Financial Protection Bureau; a statement directing the consumer to the location of the long form disclosure; and a statement regarding whether the product offers overdraft credit features. In addition to the information required on the short form disclosure, financial institutions must disclose outside of, but in close proximity to, the short form disclosure, the name of the financial institution; the name of the prepaid program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any.

The final rule restricts the information that may be disclosed on, or with, the short form and long form disclosures. Section 1005.18(b)(7) requires that when a short form or long form disclosure is presented in writing or electronically, it must be segregated from other information and contain only the information required or permitted by the final rule. Section 1005.18(b)(3) requires that if the amount of a fee associated with a fee type listed in the short form disclosure could vary, a financial institution must disclose the highest fee associated with the fee type,

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<sup>749</sup> For concision, in this section, the number of additional fee types disclosure is considered without further discussion of the fact that finance charges, purchase price, and activation fees are excluded from its determination.

along with a symbol, such as an asterisk, linked to a statement that explains the fee could be lower depending on how and where the prepaid account is used. With the exception of a periodic fee, a financial institution must use the same symbol and explanatory statement for all fees that could be lower. In addition, § 1005.18(b)(3) establishes, with the exception of cash reload fees, that short form disclosures must not include any third-party fees; and it allows financial institutions to disclose any of the two-tiered disclosures required under § 1005.18(b)(2) as a single fee disclosure, if the amount is the same for both fees.

The final rule establishes certain aspects of the timing, form, and formatting of the short form and long form disclosures. Section 1005.18(b)(6) requires financial institutions provide certain portions of these disclosures in a tabular format, excepting disclosures that are provided orally. In addition, § 1005.18(b)(7) provides specific formatting requirements on grouping, prominence, and size. It requires that all information must be presented in a single, easy-to-read typeface, in a single color against a contrasting background; specifies which information must be emphasized with bold typeface; and specifies minimum and relative type sizes. It establishes how fees and other information on the short form should be grouped, including a “top-line” component which presents the first four fee types at the top of the form in a relatively large, bold font. On the long form disclosure, it requires that fee information must generally be grouped together by the categories of function.

The final rule also sets forth requirements for how and when the short form and long form disclosures must be provided to consumers. Section 1005.18(b)(1) requires financial institutions to provide consumers with the short form disclosure prior to acquisition of the prepaid account. It similarly requires that the long form disclosure be provided prior to acquisition of a prepaid account; however, it also provides exceptions if the account is acquired

in a retail location or orally by telephone, as discussed below. Section 1005.18(b)(6) requires that the disclosures must be in writing, sets forth special rules that apply if they are provided in electronic form or orally, and provides that these disclosures must be in a retainable form (excepting disclosures that are provided orally).

The final rule creates exceptions to the pre-acquisition disclosure regime if the prepaid account is acquired in a retail location or orally by telephone. In a retail location, financial institutions may provide the long form disclosure after the consumer acquires a prepaid account as long as the prepaid account access device is contained inside the product's packaging material, the short form disclosure is visible to consumers, and the short form includes information about how to access the long form disclosure by telephone and via a website, among other requirements.

Before a consumer acquires a prepaid account orally by telephone, a financial institution must orally disclose the information required in the short form disclosure. However, the final rule allows a financial institution to provide the long form disclosure after the consumer acquires the prepaid account, provided that certain conditions are met before the consumer acquires the prepaid account, including that the financial institution informs the consumer orally that the information required to be disclosed on the long form disclosure is available both by telephone and on a website.

Pursuant to § 1005.18(b)(9), financial institutions must provide the short form and long form disclosures in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) the financial institution principally uses a foreign language on prepaid account packaging material; (2) the financial institution principally uses a foreign language to advertise, solicit, or

market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or (3) the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. The financial institution must also provide the long form disclosure in English upon the consumer's request and on its website wherever it provides the long form disclosure in a foreign language.

A short form disclosure for a payroll card account or government benefit account must also contain a statement that consumers do not have to accept such an account and which directs the consumer to ask about other ways to receive wages, salary, or benefits; or a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and which directs the consumer to choose one.

The final rule sets forth disclosure requirements when a financial institution offers multiple service plans within a particular prepaid account program. The financial institution may provide the standard short form disclosure (as described above) for the service plan in which the consumer is enrolled by default upon acquisition. Alternatively, the financial institution may simultaneously disclose the required information for all of its service plans in a short form substantially similar to Model Form A-10(e). The long form disclosure for a prepaid account program with multiple service plans must present the required information for all service plans in the form of a table.

Finally, § 1005.18(h)(1) provides that, except in certain circumstances, the requirements of subpart A of Regulation E, as modified by final § 1005.18, apply to prepaid accounts, including government benefit accounts subject to § 1005.15, beginning October 1, 2017. If a financial institution has changed a prepaid account's terms and conditions as a result of

§ 1005.18(h)(1) taking effect 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 provide certain disclosures to the consumer. Section 1005.18(h)(2)(iii) requires that financial institutions notify consumers with accounts acquired before the effective date of any change to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, at least 21 days in advance of the change becoming effective.<sup>750</sup> If a consumer acquires a prepaid account on or after the effective date, § 1005.18(h)(2)(ii)(A) requires that financial institutions notify that consumer of any change to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, within 30 days of acquiring the consumer's contact information. In addition, for accounts acquired after the effective date, § 1005.18(h)(2)(ii)(B) requires that financial institutions mail or deliver to the consumer initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) that have been updated as a result of § 1005.18(h)(1) taking effect, within 30 days of obtaining the consumer's contact information. Section 1005.18(h)(2)(iv) specifies the methods financial institutions may use to notify consumers of these changes and send updated initial disclosures.

*a. Benefits and Costs to Consumers*

The benefits and costs to consumers arising from the disclosure requirements for prepaid accounts are addressed in four parts: (i) a general discussion of the benefits to consumers of information; (ii) a discussion of the anticipated benefits of the disclosure requirements; (iii) a

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<sup>750</sup> If a financial institution obtains a consumer's contact information fewer than 30 days in advance of that change becoming effective or after it has become effective, the financial institution is permitted to provide notice of the change in accordance with the timing requirements set forth in § 1005.18(h)(2)(ii)(A).

discussion of consumer engagement with disclosure; and (iv) a discussion of potential costs to consumers of the disclosure requirements.

*i. Benefits of Information in General*

According to standard models of consumer choice, when consumers face a choice among products in a given market, they consider the options available to them as well as the information they have about each of those options. In order for a consumer to make the best choice for her situation, her information must be accurate and descriptive of all available options.<sup>751</sup> In reality, however, consumers may not be perfectly informed. As discussed above, among other reasons, this could transpire because firms perceive an advantage to withholding information, or because consumers perceive gathering information as overly burdensome.

Information provision (*e.g.*, mandated disclosure) can therefore facilitate consumer decision-making in at least three ways. First, information provision can inform consumers about the choices that are available to them. This provides a direct benefit of improving the likelihood that consumers find products that fit their preferences.<sup>752</sup> In addition, as discussed above, informing consumers about their choices (or facilitating information gathering by consumers) may increase competition in the product market, which in turn could cause firms to offer consumers better terms. Second, information provision can inform consumers about the attributes of the products that are available to them. This provides the direct benefit of enabling consumers to consider the relative merits of each product and to select the best product from among their choices. In addition, revealing or highlighting certain attributes of a product type

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<sup>751</sup> Here, “make the best choice” is intended to be descriptive of the consumer’s process of choice; to consciously optimize over her choice set and, through that process, select the best option. This is distinct from the possible interpretation of obtaining the best outcome, which could be achieved without optimizing; through random selection among known options, for example.

<sup>752</sup> Increasing knowledge of the consumer’s choice set may be particularly beneficial when products within a market are highly differentiated or in which consumers within a market have diverse tastes.

could induce firms to compete on those attributes, raising benefits to consumers or lowering costs. Third, information provision can inform consumers about the attributes of the products they have already chosen. This can both increase the benefits a consumer receives from a chosen product and reduce the costs associated with its use.

*ii. Benefits*

The Bureau believes that disclosures required by the final rule provide consumers with the additional information necessary to make informed choices regarding the prepaid account products available to them. The short form discloses key fees, key fee types, and other important information. So that the fees may be quickly located and compared, the fees and fee types that the Bureau believes are most important to consumers in shopping for prepaid accounts are listed at the top of the short form disclosure.<sup>753</sup> Consumers seeking information not found on the short form disclosure can use the long form disclosure, which also is required to be made available to consumers before consumers acquire a prepaid account.<sup>754</sup> As discussed in detail above, the long form disclosure lists all fees for a particular prepaid account program and the conditions, if any, under which they may be imposed, waived, or reduced. These disclosures will help consumers become more informed about the details of each prepaid account and could therefore improve consumer choice among available products.

The Bureau designed the short form disclosure in part to help consumers who are shopping for prepaid accounts to find the most important information. The Bureau limited the information that is displayed in order to make the information that is presented more salient and

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<sup>753</sup> The Bureau's beliefs about the fees most important to consumers were based on the results of consumer testing. See ICF Report II. In addition, examining payroll account usage data, Wilshusen et al. find that these same fees also constitute a large majority of the fees charged to consumers, both by incidence and total value. 2012 FRB Philadelphia Study at 59.

<sup>754</sup> In addition, § 1005.18(f)(1) requires that a prepaid account's account agreement include all of the information required to be provided in the long form disclosure.

easier to locate.<sup>755</sup> As noted above, the fees that participants in the Bureau's testing identified as being most important to them are listed at the top of the short form disclosure, which the Bureau believes is a likely point for consumers' first engagement.<sup>756</sup> This effect is reinforced by the display of top-line information, which is presented in a relatively large, bold font printed on a background that provides clear contrast. Other disclosed fees and additional information are presented in clear, concise language and printed on a background that provides clear contrast for ease of reading.

One potential outcome of the Bureau's emphasis on a limited amount of information on the short form disclosure is that consumers could begin to rely on this information to guide their purchase decisions more heavily than they do currently. If so, then financial institutions may in turn increase their competitive efforts on disclosed fees and information, which could result in a benefit for consumers, for example, in the form of a reduction in disclosed fees. The requirement that financial institutions disclose only the highest possible fee for each required fee disclosure on the short form could encourage financial institutions with varying fees to simplify their fee structure. Such a reduction in complexity could improve consumers' comprehension of the products they are considering prior to acquisition.

Another benefit of the final rule will be to standardize prepaid account product disclosures. Currently, while providers generally disclose certain fees and information to consumers pre-acquisition, there is significant variation in the content and formatting of the

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<sup>755</sup> Reducing the size of the choice set for choices made under time pressure has been shown to increase both the percentage of the remaining items seen as well as the time of fixation on those items. See Elena Reutskaja et al., *Search Dynamics in Consumer Choice under Time Pressure: An Eye-Tracking Study*, 101 Am. Econ. Rev. 900 (2011).

<sup>756</sup> Andrew Caplin et al., *Search and Satisficing*, 101 Am. Econ. Rev. 2899 (2011).

disclosures offered to consumers before they acquire a prepaid account.<sup>757</sup> The form of these disclosures varies significantly across products, variously utilizing bulleted lists, tables, plain text, and combinations of these methods. In some cases, fee inclusion, fee descriptions, and fee prominence are seemingly selected to highlight the relative strengths or to diminish the relative weaknesses of the particular product. As described above, the Bureau believes that standardization will reduce the cost to consumers associated with finding and understanding critical information about prepaid accounts and therefore increase consumers' knowledge of their available choices and facilitate comparison shopping among prepaid account products. The short form disclosure will standardize the summary disclosure of key fees and other important information. Similarly, the long form disclosure will standardize the grouping of fees and make standard the disclosure of fees' qualifying conditions, making fees easier for consumers to locate and compare across products.

Consumers will also benefit from disclosed fees, terms, and conditions that are accurate pre-acquisition. Under the final rule, prepaid accounts are being brought within the ambit of Regulation E, which, among other things, requires that financial institutions provide consumers with written notice at least 21 days before implementing, generally, a change that would result in increased fees or liability for the consumer, or fewer types of EFTs or stricter limitations on EFTs. Therefore consumers can have confidence that the fees and features of the products that

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<sup>757</sup> This variation is pronounced in both retail and non-retail channels. For example, Pew documented wide disparity in disclosures available on prepaid card websites. See The Pew Charitable Trusts, *Loaded with Uncertainty: Are Prepaid Cards a Smart Alternative to Checking Accounts?* (Sept. 2012), available at <http://www.pewtrusts.org/en/research-and-analysis/reports/2012/09/06/loaded-with-uncertainty>; see also 2014 Pew Study. Relatedly, CFSI and Pew cited the lack of current standards, among other things, as motivation for developing their own model forms. See Ctr. for Fin. Serv. Innovation, *Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards* (Mar. 2012), available at [http://policylinkcontent.s3.amazonaws.com/ThinkingInsideTheBox\\_CFSI\\_0.pdf](http://policylinkcontent.s3.amazonaws.com/ThinkingInsideTheBox_CFSI_0.pdf); see also The Pew Charitable Trusts, *The Need for Improved Disclosures for General Purpose Reloadable Prepaid Cards* (Feb. 2014), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/02/26/the-need-for-improved-disclosures-for-general-purpose-reloadable-prepaid-cards>.

they purchase are accurately disclosed, and that certain changes to those products are properly disclosed to the consumer with advance notice.

As discussed in detail above, under the final rule, financial institutions may offer consumers multiple service plans within a single prepaid account program. This provides consumers with the benefit of additional options from which to choose, which may therefore improve the quality of consumers' purchasing decisions or product use. However, multiple service plans may also present challenges to consumers. In particular, because financial institutions that disclose multiple plans on the short form will utilize a unique disclosure format, these disclosures may be relatively difficult to compare to other prepaid products. This could decrease the overall quality of consumers' purchasing decision. In addition, the multiple service plan option will result in a larger amount of information for consumers to process, somewhat lessening the above-discussed benefits of limited information on the short form disclosure.

Also as discussed above, in certain situations, if a financial institution principally uses a foreign language on retail packaging, to market a prepaid account, or to communicate with a consumer during account acquisition, then the short form and long form must be provided in that same foreign language. A financial institution must also provide the long form disclosure in English upon a consumer's request and on any part of the website where it provides the long form disclosure in a foreign language. The Bureau believes that if a consumer relies on a foreign language in the acquisition of a prepaid account, then it is likely that that foreign language is the consumer's language of greatest proficiency. Furthermore, the Bureau believes that the ability to obtain the long form disclosure information in English will be beneficial to consumers in various situations, such as when a family member who only reads English is assisting a non-English speaking consumer to manage his prepaid account.

The proposed rule would have required that if a financial institution primarily used a foreign language in-person with a consumer who was acquiring a prepaid account, then the financial institution would have to provide pre-acquisition disclosures in that foreign language. Two trade associations and one law firm commenting on behalf of a coalition of credit unions commented that the requirement that financial institutions provide disclosures in the foreign language that they use to converse to consumers in-person, as specified in the proposed rule, would be overly burdensome, create a potential compliance trap, and could result in a reduction in access to foreign language speakers. In response to these comments, the Bureau has removed this requirement for in-person interactions in this final rule. The Bureau has maintained the requirement that financial institutions provide disclosures in the foreign language if a financial institution principally uses a foreign language to market a prepaid account and provides a means there for a consumer to acquire the account by telephone or through a website; or provides a means for a consumer to acquire a prepaid account by telephone or through a website principally in a foreign language; or primarily uses a foreign language on packaging material. The Bureau believes that this approach ensures that the majority of consumers who acquire a prepaid account using a foreign language have the ability to receive disclosures in that language while not limiting the ability of financial institutions to interact with their customers in the language that the customer is most comfortable.

The final rule also requires disclosure on the short form of whether the prepaid account might offer the consumer an overdraft credit feature at some time in the future.<sup>758</sup> If an overdraft credit feature might be offered, then the financial institution must also disclose the time period after which it might be offered and that fees would apply. Because both the existence of, and the

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<sup>758</sup> See § 1005.18(b)(2)(x).

absence of, possible overdraft credit features are required to be similarly disclosed, consumers will be able to easily compare prepaid account products along this dimension. The Bureau's pre-proposal consumer testing, in addition to external studies,<sup>759</sup> suggests that many consumers choose prepaid products specifically to avoid overdraft services. Requiring financial institutions to disclose when a prepaid account program does or does not offer overdraft credit features will therefore help those consumers make informed purchasing decisions if they want to avoid such features. Conversely, consumers who are seeking a prepaid account with the possibility of accessing an overdraft credit feature will be able to more easily identify products that offer such a feature.

Additionally, as discussed above, the final rule requires the short form disclosure for payroll card accounts and government benefit accounts to contain either a statement that the consumer does not have to accept the account and which directs the consumer to ask about other ways to receive wages, salary, or benefits; or a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and which directs the consumer to choose one of the available options. The Bureau believes that these disclosures may prompt consumers to ask questions about alternative ways of receiving their wages or benefits and thereby facilitate consumer choice.

Section 1005.18(b)(2)(viii) requires disclosure of the total number of fee types charged by the financial institution other than those disclosed on the short form disclosure. In the Bureau's consumer testing, this number became a focal point for participants. If this number becomes a focal point for consumers, then financial institutions may choose to compete on this metric, which could potentially reduce the number of fee types imposed in connection with

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<sup>759</sup> See, e.g., 2014 Pew Survey at 13.

prepaid accounts. As a result, consumers may benefit from fewer fees and simpler products, generally.

Section 1005.18(b)(2)(ix) requires disclosure of up to two fee types, other than those disclosed on the static portion of the short form disclosure, that generated the highest total revenue from consumers of the prepaid account program over the prior 24-month period.<sup>760</sup> The disclosure of these fees will serve at least two purposes. First, it will help to alert consumers to account features for which they may end up incurring a significant cost. Second, it will help ensure that the disclosure regime set forth in the final rule adapts to new and varied products as services that each firm offers or introduces that generate sufficient revenue will appear in the additional fee types portion of the disclosure.

As discussed in greater detail in the section-by-section analyses of § 1005.18(b)(2) and (b)(2)(ix) above, the Bureau proposed to require financial institutions to disclose up to three incidence-based fees on the short form. Incidence-based fees would have been fees that were incurred most frequently in the prior 12-month period by consumers of a particular prepaid account product. A number of industry commenters, including trade associations, issuing banks, program managers, payment network providers, and a law firm commenting on behalf of a coalition of prepaid issuers, suggested that the incidence-based fee disclosures should be eliminated because they would confuse consumers and restrict the ability of consumers to comparison shop.<sup>761</sup>

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<sup>760</sup> If a fee type resulted in less than 5 percent of total revenue from consumers for that 24-month period, then that fee type would not be required to be disclosed.

<sup>761</sup> Due in part to public comments to the proposed rule, the Bureau shifted from additional fee types based on fee incidence in the proposed rule to additional fee types based on fee revenue in the final rule. As a result, there is an inconsistency between the public comments, which address fee incidence, and the disclosure requirements of the final rule, which address fee revenue. Nonetheless, the two approaches are similar, and therefore, unless stated otherwise, the Bureau addresses comments related to incidence-based fees as if those comments were about the final rule's revenue-based fees.

While the Bureau’s pre-proposal and post-proposal consumer testing indicates that many individuals will understand the additional fee types portion of the short form disclosure, it is possible that some consumers will incorrectly interpret it. In Bureau’s pre-proposal and post-proposal consumer testing, participants did not comprehend statements that were intended to explain what are now additional fee types in the final rule.<sup>762</sup> In addition, some participants incorrectly concluded that the absence of a fee type implied the absence of the service related to that fee type. In order make the connection for consumers that the additional fee types disclosed pursuant to final § 1005.18(b)(2)(ix) are a subset of the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii)(A), and that absence of any feature on the short form does not necessarily mean the prepaid account program does not offer that feature, the Bureau has added a new explanatory statement to precede the additional fee types that introduces the concept of additional fee types in a simple, succinct manner.

### *iii. Consumer Engagement with Disclosure*

According to the standard social science models of consumer decision-making presented above, consumers must have relevant and accurate information in order to make good choices. However, recent research in social science, law, and design suggests that even if consumers were

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<sup>762</sup> Pre-proposal testing of a statement intended to inform consumers that the fees listed were those that generated significant revenue for the financial institution resulted in minimal participant comprehension or notice. *See* ICF Report I at 35. (Certain prototype short form disclosures tested included the statement: “The fees below generate significant revenue for this company.”). Post-proposal testing of a similar disclosure that, in addition to including an explanation of the criteria for disclosing such fees (*i.e.*, that the two fees listed were the most commonly charged), also directed consumers where to find detail about all fees, similarly did not increase participant comprehension. *See* ICF Report II at 22-23. (Certain prototype short form disclosures tested included the statement: “We charge [x] additional fees. Details on fees inside the package, at 800-234-5678 or at bit.ly/XYZprepays. These are our most common.”.)

provided an unlimited amount of information, many consumers would not comprehend or utilize all of that information.<sup>763</sup> This result highlights the importance of an initial step: “engagement,”<sup>764</sup> the immediate analysis of any new information encountered by a consumer in which the consumer assesses the costs and benefits of consumption of that information.<sup>765</sup> If this calculation yields a high enough net expected benefit, then the consumer engages, and begins to further consume the information. This calculation incorporates the consumer’s automatic emotional response to the design as well as the consumer’s expected reward from engagement. Without an affirmative decision at this first step, neither utilization nor comprehension can occur.<sup>766</sup>

The Bureau designed the model short form disclosure not only to provide relevant information to consumers, but also to increase consumer engagement. To appeal to consumers’ emotional response, the Bureau designed the short form disclosure to be visually appealing. In addition, to reduce the perceived difficulty of learning about a prepaid product, the short form disclosure assigns terms a clear hierarchy through positioning, type-size, contrasting background, and bold-faced type; includes concise descriptions of fees and conditions; and limits the use of symbols and fine-print. Finally, as the perceived cost to a consumer of using a disclosure

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<sup>763</sup> James Lacko & Janis Pappalardo, *The Failure and Promise of Mandated Consumer Mortgage Disclosures: Evidence from Qualitative Interviews and a Controlled Experiment with Mortgage Borrowers*, 100 Am. Econ. Rev. 516 (2010); see also Kleimann Commc’n Group, *Know Before You Owe: Evolution of the Integrated TILA RESPA Disclosures* (July 2012), available at [http://files.consumerfinance.gov/f/201207\\_cfpb\\_report\\_tila-respa-testing.pdf](http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf); Eric Johnson et al., *Can Consumers Make Affordable Care Affordable? The Value of Choice Architecture*, PLOS One (Dec. 2013), at 1, 2.

<sup>764</sup> *Id.* Throughout, this treatment describes the *first moment* of information consumption as “engaging” with the information provision. “Engaging,” as it is used here, is therefore distinct from “reading” or “comprehending,” both of which could imply sustained information consumption.

<sup>765</sup> A related decision-making framework is developed with accompanying case studies by Stephen Wendel. See Stephen Wendel, *Designing for Behavior Change: Applying Psychology and Behavioral Economics* (Mary Treseler ed., 2013).

<sup>766</sup> See, e.g., Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 Stan. L. Rev. 545 (2014).

increases with the amount of information provided, the short form disclosure presents consumers with a reduced, manageable set of information about the product.<sup>767</sup>

A number of industry commenters, including a trade association and an issuing credit union, stated that consumers generally do not read disclosures or comparison shop. One issuing credit union asserted that only one in 30,000 consumers actually read the provided disclosures. The Bureau disagrees with the claim that a minute number of consumers read disclosures for prepaid products. A recent survey of prepaid consumers reported that approximately one in three prepaid consumers comparison shopped before purchase, and, of those that did not, nearly one third stated that they would be more likely to comparison shop if disclosures were standardized across prepaid products.<sup>768</sup> The disclosure regime designed by the Bureau is intended, in part, to engage consumers who may not otherwise read a disclosure of fees or comparison shop. Therefore the segment of consumers who are not currently reading prepaid disclosures is an opportunity for the Bureau to improve consumer engagement and promote a more active, competitive market in general. Further, if comparison shoppers drive the market towards products with consumer-friendly features and costs, non-shoppers could benefit from a better selection of available products as well.

One academic institution questioned whether consumers would be able to make use of the disclosures because financial literacy is low in general and particularly low for the consumers whom the Bureau is attempting to assist. However, the fact that the majority of consumers who

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<sup>767</sup> The idea that consumers may decrease their engagement with information when more information is provided is somewhat supported by research on “choice overload.” This work demonstrates that when choice sets are large, some people opt to make no choice at all. See, e.g., Sheena Iyengar et al., *How Much Choice is Too Much? Contributions to 401(k) Retirement Plans*, in *Pension Design and Structure: New Lessons from Behavioral Finance* 83 (Oxford: Oxford University Press 2004).

<sup>768</sup> 2015 Pew Survey at 8.

use prepaid products do so to avoid fees such as overdraft and check-cashing fees<sup>769</sup> suggests that many prepaid consumers have a strong understanding of the potential benefits of prepaid accounts and the features that are important to them. Even if it were true that prepaid users have low financial literacy on average the Bureau does not believe that this would rationalize abandoning standardized disclosures. For the reasons stated above, the Bureau believes it is to consumers' benefit that they be informed about the products they purchase. A well-designed disclosure regime can engage consumers, help to educate consumers, and simplify the process of product comparison. Therefore the Bureau believes that the short form and long form disclosures will act as a corrective to confusion caused by a lack of financial literacy, if it exists.

*iv. Costs to Consumers*

The Bureau's effort to simplify pre-acquisition disclosures may generate costs as well as benefits for consumers. As discussed above, the Bureau's emphasis of a limited number of fees in the short form disclosure could result in a reduction in the amounts of those particular fees through competitive pressure. However, to the extent they exist, fees that would be relatively *de-emphasized* by the short form disclosure could, as a result, experience an easing of competitive pressure and thereby increases in the amounts charged. Such costs should be mitigated to some extent by the additional fee types portion of the short form disclosure. Likewise, the number of fees that could be added to a product due to a lack of emphasis by the disclosure regime should be mitigated to some extent by the requirement for financial institutions to disclose the number of additional fees not disclosed explicitly on the short form disclosure.

Section 1005.18(b)(3)(i), which generally requires a financial institution to disclose the highest amount for any fee or fee type listed on the short form disclosure, may also generate

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<sup>769</sup> See 2014 Pew Survey at 13.

costs for consumers. As discussed above, the Bureau believes that there is a clear benefit to consumers of providing a simple and concise short form disclosure, and the Bureau believes that this is achieved, in part, by limiting footnotes and fine print. However, in acquisition channels in which the short form disclosure is not necessarily provided with the long form disclosure, this provision could result in a consumer having less information about a particular prepaid product than they would have had in the current marketplace. In such circumstances, although the long form disclosure must always be made available (*e.g.*, through a telephone number or a website), some consumers may consider the search cost too high to justify seeking out the long form. Therefore, § 1005.18(b)(3)(i) may create a distinct new cost to consumers if it results in them not having all the information they want or need to make their purchasing decision.

One consumer advocacy group and a number of industry commenters, including trade associations, prepaid program managers, issuing banks, a law firm commenting on behalf of a coalition of prepaid issuers, and a payment network provider cautioned that requiring the disclosure of the highest potential fee could be misleading. One consumer advocacy group and a number of trade associations further cautioned that the disclosure of the highest potential fee could result in the elimination of useful fee waivers, such as a program that allows a number of free customer service calls per month before a fee is charged. Several industry commenters, including an issuing bank and a trade association specifically recommended permitting inclusion in the short form disclosure of the conditions under which the monthly fee could be waived, citing the importance of this fee and the prevalence of discounts and waivers applicable to this fee as crucial to consumer decisions in choosing a prepaid card. A consumer group said its research showed that 14 of 66 prepaid cards disclose that the monthly fee can be waived entirely if the consumer takes certain actions.

The Bureau is requiring disclosure of the highest possible fee both because doing so significantly reduces the complexity of the short form disclosure, and because doing so significantly reduces the chances that a consumer will be caught off guard by an unexpected fee or an unexpectedly large fee. Financial institutions can bring the existence of potentially lower fees to consumers' attention through the use of an asterisk, and these beneficial fee waivers can be marketed to consumers elsewhere on the retail packaging, the firm's website, or over the phone. In addition, based on the prevalence of monthly fee waivers and recommendations from both industry and consumer group comments, the Bureau has included in the final rule a provision enabling financial institutions to disclose details regarding waivers to the periodic fee using a second symbol, such as a dagger. The final rule also permits inclusion in the short form disclosure for payroll card accounts and government benefits accounts of a statement directing the consumers to a location outside the short form for information on ways to access funds and balance information for free or for a reduced fee.

One State government agency, and a number of industry commenters, including trade associations, prepaid program managers, issuing banks, a law firm commenting on behalf of a coalition of prepaid issuers, and a credit union service organization, questioned the benefit of requiring both short form and long form disclosures. These commenters essentially suggested that the Bureau is requiring redundant information and placing unnecessary burden on industry participants. Commenters further argued that multiple disclosures will add to consumer confusion. The Bureau used results from its consumer testing to design a tiered disclosure regime in order to provide consumers with a manageable amount of information when first engaging with a product, while not limiting consumers' ability to obtain additional information if they choose to do so. The information provided on the short form disclosure aligns with what

the Bureau believes consumers value most in their shopping and decision-making processes. The long form disclosure guarantees that any consumer who wishes to search for additional fee information can do so easily. The combination of the short form and long form disclosures allows for an accurate depiction of a prepaid account's fee structure, enabling consumers to quickly comparison shop on key fees and terms, while ensuring that comprehensive information is available to them should they decide to use it.

A trade association and several industry commenters, including prepaid program managers and an issuing bank, noted that in order to compete on the number of additional fee types metric, financial institutions may reduce the number of optional features that are beneficial to consumers but which carry a fee, such as the option to purchase cashier's checks. The Bureau agrees that financial institutions will have to weigh the benefits of providing fee-based services with the potential costs of disclosing the existence of additional fees on the short form disclosure. However, the Bureau anticipates that the services that consumers care most about will remain marketable and therefore financially viable; and these services are therefore likely to remain available to consumers.

This final rule also differs from the proposed rule in that it requires that the number of fee types is disclosed as opposed to the number of individual fees. This change allows for fee variation within fee types, such that different fees for a similar service, such as standard and expedited delivery of a replacement card, are considered a single fee type. This enables financial institutions to maintain the flexibility to offer useful services to consumers without it reflecting negatively on their products.

*b. Benefits and Costs to Covered Persons*

This section primarily considers the benefits and costs to a covered person from developing, maintaining, and delivering the new pre-acquisition disclosures. Some of the content and the method of delivery (*e.g.*, web, phone, or retail) depend on how the consumer acquires the prepaid account, and some of the disclosures are also generally available outside of account acquisition (*e.g.*, on the web or by phone). To fully consider the costs of these disclosures, we address the costs that arise in four cases: (i) the development and maintenance of pre-acquisition disclosures, (ii) delivery of pre-acquisition disclosures outside of account acquisition; (iii) delivery of pre-acquisition disclosures for accounts acquired outside the retail channel<sup>770</sup>; and (iv) delivery of pre-acquisition disclosures for accounts acquired within the retail channel. We also consider (v) the benefits of these disclosures.

Regarding the modified initial disclosure requirements, § 1005.7(b) currently requires financial institutions to provide certain initial disclosures for accounts subject to Regulation E, and this final rule extends this provision to prepaid accounts. Generally, the Bureau believes that financial institutions already disclose full terms and conditions for prepaid accounts in their account agreements, which include most or all of what is required by § 1005.7(b). The disclosure requirements of § 1005.7(b) (not considering the modifications in § 1005.18(f)(1), which are considered below) will therefore entail very small cost to covered persons.

The Bureau also recognizes that certain financial benefits to consumers from the disclosures may have an associated financial cost to covered persons. Covered persons generate revenue through consumers' use of their products. Therefore, when a consumer experiences a

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<sup>770</sup> This treatment considers five significant acquisition channels for prepaid accounts: the retail channel (*i.e.*, in-person, in a retail location); in-person, in a non-retail location, such as a bank or place of employment; orally, over the telephone; electronically, via a website or mobile application; and via direct mail.

financial benefit, a financial institution may experience a financial cost of the same magnitude. Such costs could stem from each of the primary consumer benefit channels identified above: bolstered consumer knowledge of alternative products; improved acquisition choices from among available products; lower-cost, higher-benefit usage of acquired products; and increased competitive pressures.

*i. The Development and Maintenance of Pre-Acquisition Disclosures*

Sections 1005.18(b)(2) through (9) set forth the content and form requirements for the short form and long form disclosures. To satisfy these requirements, financial institutions will incur one-time costs of designing compliant disclosures. Based on pre-proposal industry outreach, the Bureau understands that the design process will require as many as 100 labor hours per prepaid account program, including time for design work and legal and financial institution review. However, the design costs should be offset somewhat by the Bureau's provision of model forms for the short form disclosure and a sample form for the long form disclosure.<sup>771</sup> The Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample disclosures forms included in the final rule to aid in their development.<sup>772</sup>

Financial institutions will incur ongoing costs of maintaining the short form and long form disclosures pursuant to § 1005.18(b)(2) through (7). The magnitude of these costs will vary by financial institution and will depend on current practices and the acquisition channels used to sell prepaid accounts. Under the final rule, the long form and the static portion of the short form disclosure will require updating at most as often as a prepaid product's account agreement is

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<sup>771</sup> One trade association representing credit unions commented that the design costs would be \$300 per form.

<sup>772</sup> These files are available at [www.consumerfinance.gov/prepaid-disclosure-files](http://www.consumerfinance.gov/prepaid-disclosure-files).

updated; and based on industry outreach, the Bureau believes that financial institutions rarely change the prepaid account agreements of their prepaid products in a way that would require changes to the pre-acquisition disclosures. When a change to the disclosures is required, financial institutions that sell prepaid accounts online and over the phone will incur small costs to update their websites and interactive voice response (IVR) systems. Financial institutions that sell prepaid accounts in a branch setting will incur small costs to update and print new disclosures.<sup>773</sup> Financial institutions that sell prepaid accounts in retail stores may incur costs to update packaging. These acquisition channel-specific costs are discussed in detail in the sections below.

Financial institutions will incur one-time and ongoing costs to comply with the short form disclosure's required statement regarding the number of additional fee types charged pursuant to § 1005.18(b)(2)(viii)(A) and disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix). As discussed in greater detail above, the additional fee types portion of the short form requires disclosure of the two fee types that generated the most revenue from consumers over the prior 24-month period for that particular prepaid account program that are (1) not already disclosed in the static portion of the short form disclosure and (2) not less than 5 percent of total revenue from consumers for that 24-month period. These fee types could vary over time for a given account program due to changes in how consumers use the card or due to changes in the program itself. In either case, financial institutions are responsible for updating the disclosure of additional fee types portion of their short form disclosures. The reassessment must occur at a minimum frequency of every 24 months and financial institutions will have 90

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<sup>773</sup> Financial institutions that sell another financial institution's prepaid accounts in pre-printed packages are covered under the retail location exception and will incur costs similar to that of a typical retail store.

days from the end of the 24 month period to reassess and update the disclosure of additional fee types on their short form.

Financial institutions are also required to reassess the statement regarding the number of additional fee types disclosure and the disclosure of additional fee types whenever a program's fee schedule is revised. In situations where a financial institution does not have data to calculate fee revenue, such as the addition of a new fee or at the start of a new prepaid program, the financial institution must reasonably anticipate the fees that generate the most revenue over the next 24 months and determine if any fees must be disclosed in the additional fee types portion of the short form. Newly printed card stock must be accurate at the time the fee schedule change goes into effect.<sup>774</sup>

Regarding one-time costs, financial institutions may need to update their accounting systems or practices to evaluate fee revenue from all sources on a 24-month basis. Based on comments received from industry participants, and for reasons explained in the Alternatives section below, the Bureau believes that most financial institutions are already capable of tabulating fees in this manner, and thus it expects this cost to be small.

Regarding ongoing costs, for a given prepaid account program, the burden of updating short form disclosures due to changes in the additional fee types portion will depend on the frequency with which the top two additional fee types change for that product and the channel through which that product is distributed. Similarly, if a financial institution changed its product, then it will be required to populate the additional fee types portion with a reasonable estimate of the fees that would match the additional fee types portion's criteria. The Bureau believes the

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<sup>774</sup> In rare cases where a fee schedule change is necessary to maintain or restore the security of an account or an EFT system as described in § 1005.8(a)(2), the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the fee schedule change permanent.

costs of updating the additional fee types portion are very small for acquisition channels where disclosures are not printed on packaging material. As explained above, financial institutions would have 90 days to reassess and update the additional fee types portion on their short form disclosures.

A number of industry commenters, including trade associations, an issuing bank, an issuing credit union, program managers, and payment network providers, suggested that the ongoing cost of updating the proposed incidence-based portion of the short form disclosure would have been overly burdensome. Some commenters, including a trade association, a law firm commenting behalf of a coalition of prepaid issuers, and a payment network provider, suggested that the annual reassessment would have resulted in changes from year to year of the most commonly-charged fees and therefore create costs to update disclosures, despite the fact that the prepaid product itself had not changed. However, the Bureau learned in comments from industry participants that the fee types that generate the highest *revenue* from consumers, which replaces the proposal's requirement of disclosing fees with the highest incidence, do not change regularly on an annual basis. In addition, the final rule created a 5 percent de minimis revenue threshold, below which an additional fee types would not need to be disclosed.<sup>775</sup> This threshold eliminates the need to disclose low-revenue fee types and therefore may reduce the frequency with which short form disclosures will need to be updated.<sup>776</sup> In addition, final

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<sup>775</sup> If a financial institution is required to disclose fewer than two additional fee types, it may still choose to disclose up to two fees in the space reserved for additional fee types. A financial institution could use this option to disclose fees that it believes may be required as additional fee types in future years due to fluctuations in consumers' use patterns. This would further reduce expected costs incurred due to updating the additional fee types portion of the short form disclosure.

<sup>776</sup> Some commenters claimed that while fees may not vary much in an absolute sense, very low incidence fees may be volatile relative to each other, and that the ranking of fees might therefore change relatively often. This provision ensures that low revenue fees are not considered for the additional fee types portion of the short form, and therefore, that this type of volatility will not create additional costs for financial institutions.

§ 1005.18(b)(2)(ix)(A) allows financial institution to consolidate the calculation of additional fee types across all prepaid account programs that share the same fee schedule, potentially limiting burden for issuers with many programs. The final rule also increases the amount of time between reassessments from 12 months to 24 months, which should lessen the probability of disclosed additional fee types differing from period to period while also lessening the amount of time that must be spent on reassessment. The Bureau believes that while there may be costs to financial institutions to update systems in order to track revenue and how different fee types contribute to revenue, once those systems are updated the burden on financial institutions due to the reassessment of fee types that generate the highest revenue from consumers will be small.

*ii. Delivery of Disclosures Outside of Account Acquisition*

A number of the provisions detailed above require financial institutions to provide or make available pre-acquisition disclosures orally via a telephone. The Bureau expects that compliance with these provisions may require implementation costs of updating an IVR system, training live customer service agents, or both. To the extent that the provisions increase usage of financial institutions' telephone systems, financial institutions may incur additional ongoing costs of utilizing or operating these systems. Financial institutions will also bear small ongoing costs of monitoring and updating their telephone systems to ensure that they provide accurate information.

The Bureau learned in its pre-proposal industry outreach that utilizing an IVR system costs up to \$0.12 per minute, while live agent customer service costs up to \$0.90 per minute. The total burden of these costs for any single financial institution will depend on the financial institution's potential customers' demand for obtaining disclosures orally over the telephone, and may depend on the financial institution's negotiated rates for IVR, live agent customer service,

or both. Based on a review of current prepaid account fee schedules and the long form disclosure requirements, the Bureau estimates that a long form disclosure could be provided orally, on average, in approximately 4.5 minutes. Therefore, if a consumer calls for more information and listens to the entire long form disclosure, via an IVR system, then this would cost the financial institution approximately \$0.54 per call.<sup>777</sup> This estimate could increase if financial institutions offer consumers the option to speak to a live agent before or after the long form is disclosed by an IVR system. Based on pre-proposal outreach, the Bureau estimates that approximately 4.2 percent of callers to an IVR system with a live agent option get forwarded to a live agent, and the average service time for a live agent is approximately 5.1 minutes. Therefore, if all financial institutions offer a live agent option, then the cost to the industry would increase, on average, by \$0.19 per call to approximately \$0.73 per call.<sup>778</sup> However, financial institutions have an incentive to get consumers the information they value most in the shortest amount of time to minimize costs. Financial institutions also have the flexibility to order the information in the long form disclosure while maintaining the grouping of fees by categories of function. This will allow financial institutions to order the information presented orally in the long form disclosure by relative importance to consumers. Those consumers who call searching for a single piece, or small set, of information could shorten the length of time that they spend on the phone because they will acquire the information they need to make their decision before the

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<sup>777</sup> The Bureau believes that financial institutions will use IVR systems to respond to customers who call for information that is on the long form. This belief is based on the cost of live agents relative to IVR systems and the repetition involved in disclosing the long form to customers.

<sup>778</sup> Here,  $\$0.19 = 4.2\% * 5.1 \text{ minutes} * \$0.90/\text{minute}$ ; and  $\$0.73 = \$0.54 + \$0.19$ .

entire long form is disclosed. Therefore the average call length of consumers in retail settings will likely be less than the Bureau's 4.5 minute estimate.<sup>779</sup>

A number of the provisions detailed above require financial institutions to provide, or may result in financial institutions providing, pre-acquisition disclosures electronically via a website. The Bureau believes that all current prepaid account providers already maintain a website, and therefore that implementation costs of complying with these provisions would not include the costs of obtaining and initializing a website. To the extent that the provisions increase usage of financial institutions' websites, financial institutions may bear additional ongoing costs of bandwidth usage. In addition, financial institutions will be required to design an electronic version of the relevant disclosures, and therefore will bear a one-time web-design cost. The Bureau believes this cost will be relatively small and also mitigated by the Bureau's provision of model forms, sample forms, and native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule. The total burden of these costs for any single financial institution will depend on the financial institution's customers' demand for obtaining disclosures electronically, via a website, and may depend on the financial institution's negotiated web-hosting rates. Finally, financial institutions will bear small ongoing costs of monitoring and updating their websites to ensure that they provide accurate information.

In addition to providing pre-acquisition disclosures to consumers on an ongoing basis, financial institutions are required to provide notices of changes to consumers when certain changes are made to their accounts. Specifically, § 1005.18(f)(2) provides that the change-in-

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<sup>779</sup> If, for example, the average call length were instead half of the 4.5 minute estimate, then each call would cost, on average, approximately \$0.27. If a financial institution includes the option to speak to a live agent, then each call would cost, on average, approximately \$0.46.

terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or § 1005.18(f)(1). The Bureau does not believe that these requirements introduce a significant cost. Based on pre-proposal industry outreach, the Bureau believes that financial institutions rarely alter their fee structures, and when such a change does occur, financial institutions are generally already providing these notices to consumers due to the FMS Rule, State laws, or as a best practice.

If a financial institution changes a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, a financial institution must notify consumers with accounts acquired before October 1, 2017 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.

For prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii), if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the E-Sign Act, or will not be mailing or delivering written account-related communications to the consumer within the time periods specified in § 1005.18(h)(2)(ii) or (iii), then the financial institution will be able to provide to the consumer a notice of a change in terms and conditions or required or voluntary updated initial disclosures as a result of this final rule taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Financial institutions with prepaid accounts that offer overdraft credit features are likely to trigger this requirement. For any consumer who has not consented to electronic communications and who will be receiving other physical mailings from the financial institution in the specified time period, that financial institution will incur a cost of printing the notice, which can be included in the envelope or package which was already scheduled to be delivered. It is unlikely that the financial institution will incur additional mailing costs to send these notices. The remaining notices of change may be sent to consumers electronically. Therefore, the Bureau believes that the cost associated with providing these notices is minimal.

*iii. Delivery of Pre-Acquisition Disclosures for Accounts Acquired Outside the Retail Channel*

In-person (non-retail locations) and direct mail acquisitions will require the short form and long form disclosures to be provided on paper. The long form disclosure must be provided pre-acquisition, and all the fees and information required on the long form must also be included as part of the prepaid account agreement. For each prepaid account sold, this will entail additional costs of materials (*e.g.*, printing, paper) and personnel training (*e.g.*, training personnel to provide both forms in these settings).

Acquisitions that do not occur in person, such as those that occur over the telephone, via direct mail, or electronically, may result in financial institutions sending consumers an account access device via the mail. Section 1005.18(f)(1) requires financial institutions to include all of the information required to be disclosed in the long form as part of the initial disclosures given pursuant to § 1005.7. Accordingly, financial institutions that offer these methods of account acquisition may incur new ongoing costs in the form of increased shipping costs and increased materials costs. However, financial institutions typically include the prepaid account agreement

with the access device they send to consumers. Therefore, the cost to include the long form disclosure in the mail will be minimal, likely at a cost of printing an additional sheet of paper.

As discussed above, § 1005.18(b)(1)(iii) requires a financial institution to orally disclose the short form disclosure before a consumer acquires a prepaid account orally by telephone. Financial institutions will be able to choose between disclosing the information required by the long form disclosure orally prior to acquisition, and communicating prior to acquisition that the information required by the long form is available both orally by telephone and electronically via a website. Both the costs of providing disclosures orally over the telephone and the costs of providing disclosures electronically via a website were considered in generality above. Because the labor and capital necessary to conduct business over the telephone may also be used to disclose the fees and other information required in the short form and long form disclosures, the Bureau believes that the costs of providing disclosures orally over the telephone will be substantially mitigated for financial institutions that already transact over the telephone. The Bureau estimates that the short form disclosure can be disclosed orally, on average, in approximately one minute. This requirement will add a cost of approximately \$0.12 per call if the financial institution uses an automated system to disclose the short form disclosure, plus an additional \$0.54 if the consumer asks to hear the long form disclosure. If the disclosure regime prompts the consumer to ask questions, the financial institution would also incur costs for additional live agent time. The Bureau estimates that the cost to the prepaid industry to disclose the required information during sales calls is approximately \$324,300 to \$346,300 per year.<sup>780</sup>

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<sup>780</sup> See the discussion in the previous section for per call cost estimates. The Bureau estimates, using load amount and issuance forecasts from Mercator Advisory Group reports, that approximately 102 million prepaid cards will be acquired in 2016. Mercator Advisory Group, *Tenth Annual U.S. Prepaid Cards Market Forecasts, 2013-2016*, at 16-17 (Oct. 2013), and Mercator 12th Annual Market Forecasts. The Bureau estimates, using a share of 1 percent (2014 Pew Survey at 5) that approximately 1 million of the 102 million prepaid cards will be acquired by telephone. If approximately 1 to 5 percent of consumers ask to hear the long form disclosure when acquiring an account via

Pursuant to § 1005.18(b)(6), prepaid account acquisitions conducted electronically (for example, via a website or a mobile application) will necessitate electronic disclosure of both the short form and long form disclosure prior to acquisition. Financial institutions may choose the manner of electronic disclosure. However, electronic disclosures must be provided in a manner which is reasonably expected to be accessible to the consumer given how the consumer is acquiring the prepaid account. The cost of this provision will depend on the manner in which the financial institution complies; however, given that the financial institution can generally provide disclosures in the same format in which the acquisition occurs, the Bureau expects that this provision will result in very little additional cost. For example, the costs of providing disclosures electronically, via a website, were considered above; however, because financial institutions that transact via a website must successfully operate a website, they also already bear most costs associated with disclosing information via a website, such as the cost of updating and maintaining a website. Similarly, because financial institutions that transact via a mobile application must successfully operate a mobile application, they also already bear most costs associated with disclosing information via a mobile application. Moreover, the Bureau believes that such financial institutions generally already disclose fees and account agreements electronically, further reducing the marginal burden of this provision.

One industry commenter asserted that requiring the short form and long form disclosures during electronic acquisition will confuse consumers and increase the number of potential customers who abandon the sign-up process. The Bureau conducted multiple rounds of consumer testing to ensure that the disclosures that it designed were straightforward and provided consumers with useful information for their purchasing decisions. While the Bureau

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telephone, then the cost to the prepaid industry to disclose the required information during sales calls is approximately \$324,300 to \$346,300 per year.

did not specifically test the disclosure regime in an electronic setting, the Bureau believes that a consumer who is shopping for a prepaid card online or through an app is likely familiar with electronic disclosures. Further, information and formatting requirements that the final rule imposes for disclosures provided electronically will ensure that those disclosures are comparable to the disclosures provided in the retail setting. Therefore, the Bureau disagrees with the assertion that electronic disclosure of the short form and long form will confuse consumers. If, instead, a consumer chooses not to purchase a prepaid product electronically because the disclosures make the consumer more informed, then there will be a cost to the financial institution but also a benefit to the consumer.

Financial institutions that offer payroll card accounts or government benefit accounts could potentially incur additional costs to disclose in the short form the statement required by § 1005.18(b)(2)(xiv)(A) or § 1005.15(c)(2)(i), as applicable, regarding alternate forms of accepting wages, salary, and benefits. Additional costs could accrue, for example, if the additional disclosure caused the short form disclosure to exceed the space constraints of current payroll card account packaging materials or government benefit account packaging materials. However, the Bureau believes that in these contexts, prepaid accounts are not usually distributed within space-constrained packaging, and that the short form disclosure requirements could be easily met if, for example, the financial institution provides the short form disclosure on an 8½ inch by 11 inch sheet of paper.<sup>781</sup> If it is the case that the statements regarding a consumer's payment options both informs consumers and motivates them to consider other payment options, then the costs to some financial institutions could increase. In particular, a financial institution

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<sup>781</sup> The Bureau's industry outreach revealed that in some cases payroll card accounts and government benefit accounts are distributed in envelopes that also contain fee disclosures, the account agreement, and marketing materials. The model short form that includes this payroll card account notice easily fits within these constraints. *See* Model Form A-10(b).

could experience a cost if consumers decline to acquire its prepaid account as a result of this disclosure. However, EFTA and current Regulation E already prohibit financial institutions and other persons, including employers, from requiring a consumer to establish an account with a particular institution as a condition of employment or receipt of a government benefit,<sup>782</sup> and therefore it is possible that the cost of these provisions will be mitigated since some consumers may have already been informed that they had other options.

One member of Congress, several State government agencies, one county government agency, and a number of industry commenters, including trade associations, program managers, issuing banks, payment network providers, and employers, stated that the proposed notice regarding payment options would be seen as a warning and would dissuade consumers from accepting a payroll card account or government benefit account. The member of Congress and State government agencies further suggested that the proposed statement would impel consumers to ask to receive their government benefits through paper checks, which are more costly to government agencies than prepaid accounts. The member of Congress requested that the Bureau quantify the impact on taxpayers of requiring government agencies disclose the statement of payment options.

As discussed in greater detail above in the section-by-section analysis of § 1005.18(b)(2)(xiv)(A), the Bureau made changes to the statement of payment options in the final rule in response to comments that the proposed language would drive consumers away from prepaid accounts. Most participants in the Bureau's post-proposal consumer testing expressed essentially neutral feelings about both versions of the statement and appeared to be drawing on past experiences, rather than the language in the statement, to decide whether or not they would

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<sup>782</sup> § 1005.10(e)(2).

want to use the payroll card account or the government benefit account.<sup>783</sup> Under the final rule, financial institutions have the option to display a generic statement that consumers have options available to them to receive their payments, or to list the specific options that are available to the consumer. As discussed above, the Bureau believes that the required disclosure will impose a small impact on financial institutions that might experience a cost if a consumer declines to acquire a prepaid account. Further, for reasons discussed in the paragraphs that follow, the Bureau believes that the disclosure will impose a small impact on government agencies that might experience a cost if a consumer instead chooses to accept paper checks.

In the Board's annual report to Congress on government-administered prepaid cards, it reported that of the \$148 billion in government benefits disbursed through prepaid cards in 2015, five program types accounted for 97 percent of disbursed funds.<sup>784</sup> The remaining program types each account for less than 1 percent of total funds disbursed. Two of the top five program types, SNAP and cash assistance programs, are needs-tested, State-administered programs and will therefore not be impacted by the final rule because they are excluded from coverage under EFTA and Regulation E. The remaining three program types, Social Security benefits, unemployment insurance payments, and child support payments, are subject to the disclosure requirements of the final rule and account for approximately 44 percent of all benefits disbursed through prepaid cards.

In 2010 the Treasury finalized a rule that requires that all recipients of Federal nontax benefits receive payment by EFT by May 1, 2013.<sup>785</sup> Only those born prior to May 1, 1921 who are already receiving paper checks may continue to receive paper checks without a waiver.

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<sup>783</sup> ICF Report II at 16-17 and 27.

<sup>784</sup> 2015 FRB Government Prepaid Cards Report at 1 and 6.

<sup>785</sup> 75 FR 80315 (Dec. 22, 2010).

Waivers can be issued for consumers for whom the EFT requirement creates a hardship due to a mental impairment, or due to a recipient living in a remote area without sufficient banking infrastructure. Social security payments are Federal nontax benefits and are therefore subject to this Treasury rule. The vast majority of Social Security recipients are therefore required to receive EFT payments and will not be given the option to receive paper checks. Therefore, this final rule will have virtually no impact on the cost to the Federal government of disbursing benefits.

The remaining two large government disbursement programs, unemployment insurance payments and child support payments, are State-administered. State laws determine the methods by which benefits recipients can receive payments.<sup>786</sup> If every benefits recipient under these two programs who is currently receiving payments to a prepaid card were instead to receive payments by paper check, the cost to States would be considerable. The Bureau estimates that each benefits recipient that chooses to receive paper checks instead of payments into a prepaid account or other electronic payment option would result in a cost to States of \$11.10 to \$24.05 per year.<sup>787</sup> However, a number of State agencies no longer offer recipients the option to receive paper checks,<sup>788</sup> and therefore, the number of consumers who would have the option to receive paper checks in lieu of payments to a prepaid card is a fraction of the total number of government benefit account recipients.

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<sup>786</sup> State laws must not be inconsistent with Federal Regulation E requirements, including the requirement that consumers are given a choice among electronic methods of delivery.

<sup>787</sup> The increased cost for payments via paper check is determined by the difference in cost to the Treasury of a payment by paper check (\$1.03) and an electronic payment (\$0.105), for a cost increase of \$0.925 per payment. Per payment cost increase is then multiplied by the expected number of payments per year based on the benefits program (assumed monthly for child support payments and biweekly for unemployment payments). See the Bureau of the Fiscal Service website, *available at* [https://www.fiscal.treasury.gov/fsservices/gov/pmt/eft/eft\\_home.htm](https://www.fiscal.treasury.gov/fsservices/gov/pmt/eft/eft_home.htm).

<sup>788</sup> Paper checks do not appear as an option for consumers to receive unemployment insurance on the websites of the five most populous States. This is also the case for child support recipient payments in in two of the five most populous States.

The Bureau believes that this final rule will not impose a significant cost on States that disburse benefits to prepaid accounts. The rule will have virtually no impact in States that restrict payment methods to EFT because consumers will not have the option to receive paper checks. In addition, the Bureau believes, based on the neutral reaction of consumers to the statement of payment options during the Bureau's post-proposal consumer testing, that it is unlikely that a large proportion of consumers will not opt to receive benefits to a prepaid account due to a negative reaction to the statement of payment options, and therefore, any impact in States that still allow for paper checks will be small. Moreover, the statement of payment options is provided to consumers pre-acquisition. Therefore, current government benefits recipients that hold prepaid accounts should be unaffected, and any change to the number of payments made using prepaid accounts will only come due to the choices of new recipients. Accordingly, any impact the disclosures do have will take place gradually. If, for example, the disclosure requirements prompt consumers to ask about their options and 1 percent of consumers who would have accepted a prepaid account now ask for paper checks, then the rule will result in costs to the States of approximately \$555,000 annually.<sup>789</sup>

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<sup>789</sup> The Bureau estimates that the cost of all prepaid benefits recipients switching to paper checks would total approximately \$60 million per year. Therefore a 1 percent change from EFT options to paper checks would result in a cost of \$555,000 nationwide. This estimate is based on the total number of parents receiving child support in 2013 (5,697,000), assumed to be paid monthly, and the total number of weeks of unemployment compensated in 2015 (100,692,869), assumed to be paid biweekly, resulting in 68,364,000 total child support payments and 50,346,435 total unemployment payments. The total number of payments to prepaid cards is determined by the percent of disbursements to prepaid accounts as a percentage of total disbursements for child support in 2013 (39.2 percent) and unemployment in 2014 (66 percent). The cost of switching to paper checks is determined by multiplying the total number of payments to prepaid cards by the cost increase of \$0.925 per payment (*see* footnote 787).

*See* U.S. Census Bureau, *Custodial Mothers and Fathers and Their Child Support: 2013*, at 2 tbl.1 (April 2014), available at <http://www.census.gov/people/childsupport/data/files/chlds13.pdf>, for parents due child support; U.S. Dept. of Labor, *Unemployment Insurance Data Summary*, available at <http://www.workforsecsecurity.doleta.gov/unemploy/content/data.asp>, 2015 Quarterly Reports Summary Benefits Data, for weeks of unemployment compensated; Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government-Administered General-Use Prepaid Cards*, at 6 (July 2014), available at <http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201407.pdf>, for child support prepaid disbursement share; and the 2015 FRB Government Prepaid Cards Report for unemployment prepaid disbursement share.

Under § 1005.18(b)(9), a financial institution must provide the short form and long form disclosures in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) it principally uses a foreign language on prepaid account packaging material, (2) it principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically, or (3) it provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. In addition, the financial institution is also required to provide the information required to be disclosed on the long form in English upon a consumer's request and on any part of the website where it discloses this information in a foreign language. If a financial institution does not already maintain the practice of disclosing its fee schedules in both languages, then this requirement may entail a small fixed cost to have its disclosures translated, as well as additional ongoing translation costs whenever the financial institution introduces a new fee or changes the wording of any part of its prepaid account agreement. Because, in such cases, the long form disclosure will be required to be provided in two languages, this requirement could also result in additional ongoing material costs and increased shipping costs. The total burden of costs related to this requirement will depend on the amount that these requirements diverge from current practices and the number of languages that financial institutions use to market prepaid accounts. Based on industry outreach, the Bureau believes that most financial institutions that transact in foreign languages also provide disclosures in those foreign languages, and therefore this requirement is unlikely to generate significant additional costs.

Final § 1005.18(b)(2)(x) requires disclosure on the short form of whether the prepaid account might offer the consumer an overdraft credit feature at some time in the future. If an overdraft credit feature might be offered, then the financial institution must also disclose the time period after which it might be offered and that fees would apply. If consumers choose prepaid products in order to avoid overdraft credit features (see discussion in the *Benefits and Costs to Consumers* section above), then this requirement will generate direct costs for financial institutions that offer such features. However, based on its Study of Prepaid Account Agreements of existing prepaid account products, the Bureau believes that very few financial institutions currently offer such features.

*iv. Delivery of Pre-Acquisition Disclosures for Accounts Acquired Within the Retail Channel*

Through industry outreach, the Bureau understands that the final rule could generate many costs unique to the retail acquisition channel. For this reason, the retail acquisition channel is considered separately here. Nonetheless, costs borne by financial institutions transacting in the retail acquisition channel are largely the same as those borne by the financial institutions described above. This treatment therefore takes the above treatment as a starting point and describes costs to covered persons only as they deviate from that treatment.

In a retail location, the final rule requires a financial institution to provide the short form disclosure before a consumer acquires a prepaid account. Through pre-proposal discussions with industry participants, the Bureau learned that some financial institutions would not have been able to accommodate the short form disclosure on the exterior of their current packaging materials without making significant changes, such as redesigning of packages. As discussed above, the one-time costs associated with a package redesign are relatively small. However, some financial institutions currently use the exterior of their prepaid account packaging materials

to facilitate retail transactions or to incorporate fraud prevention mechanisms (*i.e.*, by providing bar codes or other information). In these cases, the Bureau has learned from pre-proposal discussions with industry participants that complying with the short form disclosure requirements in § 1005.18(b) as proposed, while maintaining their programs' previous levels of functionality and fraud prevention, could as much as double the per unit cost of printing packaging materials.<sup>790</sup>

As discussed in greater detail above, in a retail location, the financial institution is able to choose between two methods of providing the long form disclosure. As it is required to do in other acquisition channels, the financial institution could provide the long form disclosure before a consumer acquires a prepaid account. Alternatively, the financial institution could provide the long form disclosure after the consumer acquires a prepaid account, provided that, among other things, the short form disclosure includes both a telephone number and a URL of a website that the consumer could use to directly access the long form disclosure. Financial institutions that provide the long form disclosure prior to acquisition could potentially bear additional costs to train personnel to provide it in retail locations, as well as shipping and materials costs to provide physical copies of the long form to consumers. Financial institutions choosing to provide the long form after the consumer acquires a prepaid account may bear additional costs of shipping and materials. However, because the long form disclosure may be included with the product's terms and conditions in the prepaid account agreement, which is generally included in the prepaid account packaging, the Bureau believes these costs will be very small. These financial institutions will also bear the costs of making the long form available electronically via a website and orally over the telephone. These costs were considered in generality above. The Bureau

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<sup>790</sup> In pre-proposal discussions, the Bureau learned from industry participants that the per-package printing cost, including the card access device and the packaging materials, ranges from \$0.75 to \$2.00.

estimates that if 1 percent to 5 percent of retail consumers call to access the long form then the cost to the prepaid industry of disclosing the long form disclosure orally by telephone would be approximately \$148,600 to \$1,532,700 per year.<sup>791</sup>

Financial institutions are tasked with maintaining accurate disclosures and account agreements. If a financial institution makes changes to a prepaid account's fees or other terms, then that financial institution will make changes to the account agreements and disclosures, as appropriate, for newly printed cards and packaging. However, the financial institution may continue to sell stock that has already been printed as long as the financial institution honors the disclosed fees and terms, or, in some circumstances, follows Regulation E's system for notifying consumers of changes in terms to existing accounts, set forth in § 1005.8(a).

It is the current practice of some financial institutions, when changing the terms or conditions of a prepaid account agreement, to sell old card stock at retail and inform consumers who purchase old stock that the terms of their account have changed when they register their prepaid account. This final rule subjects prepaid accounts to the protections of Regulation E, which, among other things, requires that a financial institution provide written notice to the consumer, at least 21 days before the effective date, of any change in term or condition that would result in increased fees for the consumer, increased liability for the consumer, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of transfers.

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<sup>791</sup> The cost per call was considered above. The Bureau estimates that approximately 55 million to 66 million prepaid accounts will be acquired in retail locations in 2016. This estimate was derived by applying retail market shares of 54 percent (2014 Pew Survey at 5) and 65 percent (2013 Aite Group Report) to the estimate of total prepaid card acquisitions in 2016 (*see* footnote 780). The lower bound estimate is obtained by assuming the lower bound of retail acquisitions (55 million), the lower bound of consumers calling for additional information (1 percent), and the lower bound of the average cost per call (\$0.27). The upper bound estimate is obtained by assuming the upper bound of retail acquisitions (66 million), the upper bound of consumers calling for additional information (5 percent), and the upper bound of the average cost per call (\$0.46).

For 2013 Aite Group report, *see* Aite Group LLC, *Prepaid Debit Card Realities: Cardholder Demographics and Revenue Models*, at 22 (Nov. 2013).

Moreover, as discussed in detail above, the final rule also requires pre-acquisition disclosures. Together, these two provisions implicitly prohibit the practice of making any change to disclosed terms, including changes made at the time of account registration, that would require prior notice to the consumer under § 1005.8(a) or § 1005.18(f)(2), without giving at least 21 days prior notice of the change.

The Bureau understands financial institutions do not change the fee schedules for most prepaid accounts often, especially for prepaid products distributed in person, such as GPR cards and similar products sold at retail. When financial institutions do decide to make changes to their accounts sold at retail,<sup>792</sup> they will generally have two options available to them: remove old card stock from retail shelves and replace it with new card stock with accurate disclosures (commonly referred to as a “pull and replace”); or honor the original terms for at least 21 days after providing written notice to consumers of the change in terms, as required under Regulation E, as amended. The Bureau believes that sending change-in-terms notices to consumers after they register their cards is generally more cost effective than conducting a pull and replace.<sup>793</sup> However, financial institutions must also consider compliance with legal requirements under operative State consumer protection and contract laws, difficulties that may arise in attempting to provide notice of changed terms to consumers, as well as financial institutions’ concerns about being accused of deceptive advertising practices by selling products with inaccurate disclosures. Therefore, the method which financial institutions choose to maintain accurate pre-acquisition

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<sup>792</sup> This discussion refers, specifically, to changes in terms or conditions that are required to be disclosed under §§ 1005.7 or 1005.18(f)(1).

<sup>793</sup> The Bureau estimates that pulling and replacing card stock will result in costs of \$0.65 to \$2.35 per card in retail. The Bureau estimates that sending change-in-terms notices will result in minimal costs for cardholders who can be contacted electronically and up to \$0.50 per cardholder who cannot be contacted electronically and must receive a physical change-in-terms notice in the mail, plus the loss of any revenue which is lost while the financial institution must honor the original terms, and plus the cost of any system updates which must take place in order to track individual accounts in order to honor the original terms.

disclosures and the associated costs will vary greatly by program size, system capabilities, proportion of cards sold at retail, the frequency and type of changes to terms and conditions, and how financial institutions judge the risks associated with each option.<sup>794</sup>

Section 1005.18(h)(2)(ii) requires that financial institutions notify any consumer, who acquires a prepaid account on or after the effective date via packaging materials that were manufactured, printed, or otherwise produced prior to the effective date, of any changes to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers within 30 days of obtaining the customer's contact information. In addition, financial institutions must also 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 to notify consumers and provide 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 with another scheduled mailing within the 30 day time period. Financial institutions will incur small costs to print these notices and disclosures, but it is unlikely that financial institutions will incur additional mailing costs. 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.

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<sup>794</sup> If a financial institution chooses to remove a service from its accounts then it is possible that pulling and replacing product will be the only feasible way to comply with the disclosure requirements of the final rule. The Bureau believes that financial institutions removing services from accounts outside of the immediate situation described in existing § 1005.8(a)(2) occurs rarely, if ever. If this were to occur, financial institutions would incur costs to send change-in-terms notices to existing customers, print new card stock, and reset stock on store shelves.

The Bureau believes that the cost of monitoring and updating the additional fee types portion of the short form disclosure in the retail channel will be almost fully mitigated by two factors: first, because financial institutions will be able to phase out and replace old stock at the pace that it is sold (a strategy commonly referred to as “sell-through”) there should be no costs of product destruction or resetting; and second, because financial institutions could choose their reassessment dates to coincide with their natural product refresh cycle, there will be few additional costs to printing or shipping new prepaid cards.<sup>795</sup>

Industry commenters, including one trade association and one issuing credit union, asserted that the potential adjustments to the proposed incidence-based portion of the short form disclosure would prevent financial institutions from purchasing card stock in bulk, which helps to keep the per unit cost low. However, in the final rule, the Bureau is only requiring that updates to the disclosure of additional fee types portion of the packaging material be made when new stock is printed. Moreover, as discussed above, financial institutions can sell stock printed prior to the reassessment date indefinitely. Accordingly, if smaller institutions purchase in bulk to minimize costs, those institutions would still be able to sell that stock until it is gone. Therefore, complying with the disclosure of additional fee types will not force institutions to alter their ongoing purchasing practices.

Lastly, the final rule requires that prepaid account packaging printed on or after the effective date of October 1, 2017 must be accurate. However, it will allow financial institutions

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<sup>795</sup> One prepaid issuer noted that the lead time required before a new production run can range between two and four months (not including the time taken by the production firm itself), and that the lead time grows as deviations from the previous production run increase (changing the packaging dimensions was given as an example of a change that might result in a longer lead time). The Bureau anticipates that changes in retail packaging due to changes in an account’s additional fee types alone will constitute minor changes in the account’s packaging, and therefore result in lead times at the lower end of this estimate. Given that financial institutions will experience short lead times and flexibility in the timing of additional fee types reassessment, it is likely that reassessments and updates can be scheduled to coincide with natural printing cycles.

to sell-through prepaid account packaging or other preprinted materials that are prepared in the ordinary course of business prior to the effective date but which do not comply with the final rule's disclosure requirements. This approach to stock manufactured before the effective date in the ordinary course of business will minimize the costs to financial institutions that sell products in the retail setting, and is discussed further in the Alternatives section below.

*v. Benefits*

Finally, the Bureau recognizes that when a consumer chooses one prepaid product over another, one covered person incurs a cost but another receives a benefit. Because consumers use prepaid products in a variety of ways, it is currently unclear if the final rule will yield more such benefits for some financial institutions than for others. However, in line with the discussion of benefit to consumers above, the Bureau believes that the final rule may benefit financial institutions that offer products with low fees generally, low top-line fees (and other fees in the static portion of the short form disclosure) specifically, and fewer types of fees overall, the most.

*c. Alternatives Considered*

The Bureau considered a number of alternatives to key provisions in the development of the final rule. Industry outreach, consumer testing, and public comments from industry, consumer groups, and others, influenced the evolution of the rule from its proposed form to its current, final form. Modifications to the disclosure requirements for the final rule from those that were included in the proposed rule are discussed in this section as alternatives.

One such alternative would have been the exclusion of third-party fees from the short form, including the requirement to disclose the cash reload fee. This alternative would have required that financial institutions disclose the highest potential cash reload fee that a consumer could incur but without including any fee charged by a third party, such as by the retail location

where funds are added. However, through industry comments, the Bureau learned that there is considerable variety in how financial institutions impose cash reload fees. Some firms charge cash reload fees to consumers directly, others do not charge consumers but allow third parties to charge consumers, and others implement some combination of the two methods. Therefore, this alternative could have resulted in poorer purchasing decisions by consumers because it would not have ensured that the cash reload fee disclosure is comparable across products. Moreover, if this alternative were adopted, consumers who purchase products that charge third-party fees might not fully understand that there is considerable variety in how financial institutions impose cash reload fees at the time of acquisition and thereby could have incurred unexpected, additional costs of use. Therefore, this alternative would have undermined the Bureau's stated goal of creating a disclosure regime that provides consumers with complete information so that they can make informed decisions.

The final rule requires that the short form and long form disclosures include a statement regarding account registration and FDIC deposit insurance or NCUA share insurance, as applicable, regardless of whether or not such insurance coverage is available for a prepaid account. An alternative, as would have been required under the proposed rule, is to only require a statement when FDIC deposit insurance or NCUA share insurance is *not* available. This proposed statement was meant to inform consumers, who may assume otherwise, that their prepaid account is not insured. However, the Bureau found through its post-proposal consumer testing that, while consumers understood there was insurance coverage when the disclosure included a statement to that effect, consumers were unsure about whether the prepaid account offered FDIC deposit insurance or NCUA share insurance when presented with disclosures

where no statement was included.<sup>796</sup> The final rule requires a statement regarding eligibility for FDIC deposit insurance and NCUA share insurance as well as instructions to register the prepaid account for other protections in programs where registration takes place after the account is opened. This has the benefit of informing consumers about what protections they may have in all circumstances. Since this requires only a concise statement added to the short form and long form disclosures, the burden on financial institutions is negligible. In cases where FDIC deposit insurance or NCUA share insurance is available, the statement could potentially benefit financial institutions by signaling to consumers that their product is safer than non-insured alternatives.

The proposed rule would have required that any prepaid account program which could offer an overdraft credit feature accessed by a prepaid card that would have been a credit card under the proposal must include in its long form disclosure certain fees related to the credit account. One issuing bank recommended that credit features and fees not be included on the long form disclosure because of the proposed 30-day waiting period that prevents financial institutions from offering credit features at or soon after acquisition. The commenter stated that certain charges, such as APR, could vary depending on the creditor or could otherwise change in the 30 day waiting period, and could therefore be inaccurate by the time a consumer consults them. The Bureau has modified the long form disclosure's content requirement regarding the disclosure of credit or other overdraft features in the final rule. Financial institutions will not be required to include all fees applicable to a covered separate credit feature accessible by a hybrid prepaid-credit card on the long form disclosure. This information must still be disclosed to the consumer when credit is offered after the 30-day waiting period (further discussion of the final rule's Regulation Z requirements that are extended to prepaid accounts can be found in the

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<sup>796</sup> ICF Report II at 15.

*Requirements Applicable to Covered Separate Credit Features* section below). Instead, financial institution's contact information must be provided so that a consumer that is interested in overdraft credit features has the ability to search for more information. Only credit-related fees that may be assessed against the prepaid account itself must be disclosed. This modification will allow consumers to acquire more information about credit products tied to their prepaid card without requiring that financial institutions disclose information related to credit products before they are ever offered, lessening the burden on covered entities who might offer overdraft credit features. This will create added search costs for consumers who would have otherwise had access to potential credit-related fees and features in the long form disclosure. However, given that the information needed to assess a credit product could vary by consumer or change between the time of acquisition and the time that credit is offered, requiring that financial institutions provide all applicable information to consumers only when an offer of credit is made results in a more accurate disclosure regime overall.

As discussed above, the final rule provides a retail location exception to the requirement to provide the long form disclosure pre-acquisition. The proposed commentary would have stated that a retail store that offers one financial institution's prepaid account products exclusively would have been considered an agent of the financial institution and would therefore have been required to provide both the short form and long form disclosures pre-acquisition. In other words, such a retail store would not have been able to rely on the retail location exception. Several industry commenters, including trade associations, program managers, and an issuing bank, suggested that the proposed definition of agent would have made it difficult for retailers with limited retail space, such as gas stations, to sell prepaid products, because they may only have space for a single product or line of products, and would therefore not be covered under the

long form retail exception. This would have unnecessarily burdened small retailers that may be selling a single product due to space constraints and not due to an arrangement with a financial institution. Accordingly, in the commentary to the final rule, the Bureau has expanded the range of entities that would be considered retail locations, including retailers that sell one financial institution's prepaid account products exclusively.

The proposed rule would have required that financial institutions disclose on the short form disclosures, the three fees, not including those already disclosed in the static portion of the short form disclosures, that are incurred most often. As discussed above, the final rule replaces these incidence-based fee disclosures with the requirement that financial institutions disclose the two additional fee types that generate the highest revenue from consumers. The Bureau received comments from a number of industry participants, including trade associations, financial institutions, and program managers that cautioned that financial institutions would incur significant costs to update systems to calculate fee incidence. Industry commenters, including trade associations, an issuing bank, an issuing credit union, and a program manager stated that the data needed to calculate fee incidence is often housed with a third-party data processor, and therefore any calculation would require a transfer of data from the third party to the financial institution. Alternatively, the data processor could create a report for the financial institution (or its program manager, if any), but since the financial institution is ultimately responsible for the accuracy of its disclosures, any report or data provided would still need to be reviewed by the financial institution for accuracy. The commenters warned that these changes would increase costs for data processors and financial institutions, which would ultimately increase the cost of prepaid accounts for consumers.

The Bureau also received comments from consumer groups that suggested that basing additional fee disclosures on revenue was superior to basing additional disclosures on how frequently fees are incurred because a fee's revenue is a direct measure of the impact of that fee on consumers. Incidence-based fee disclosures would have guaranteed that the most commonly charged fees are disclosed, but could result in high impact fees being left off of the short form disclosure if their costs are high but the frequency with which they are incurred is low. Further, a disclosure based on incidence could incent financial institutions to alter their fee structure such that the disclosed incidence-based fees are purposefully low while the undisclosed fees are exceedingly high.

The Bureau believes that while many financial institutions would have incurred costs to calculate fee incidence, most financial institutions already maintain the ability to calculate fee revenue. The Bureau recognizes that some financial institutions will incur a one-time cost to update their agreements with program managers or with third-party data processors in order to obtain the information necessary to tabulate fee revenue by fee type. However, analytics and reporting tools are features that financial institutions value and on which data processors compete;<sup>797</sup> data processors are therefore likely to develop tools to fill this need and then compete to offer the best value to financial institutions, their customers. Moreover, since the requirement to calculate fee revenue is imposed industry-wide, costs passed through from data processors will be spread among all financial institutions, diminishing the cost of this requirement per financial institution. Therefore, while the Bureau recognizes that this requirement may generate new costs, the Bureau does not anticipate that the costs will be

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<sup>797</sup> Javelin Strategy & Research, *Choosing a Prepaid Processor in an Evolving Market: A Study on Issuer and Program Manager Needs*, at 12 (Nov. 2008), available at <https://visadps.com/download/Visa-DPS-prepaid-processing.pdf>.

significantly burdensome over the long run, and the costs will be less burdensome than the costs would have been under the proposed rule's incidence-based disclosure requirement.

Lastly, the proposed rule would have required that all disclosures of prepaid accounts sold in retail locations comply with the rule's pre-acquisition disclosure requirements within 12 months of the rule's effective date. If a financial institution had not sold all of its prepaid account products in packaging printed prior to the end of the 12-month period, the proposed rule may have resulted in financial institutions destroying and replacing such stock (commonly referred to as a "pull and replace"). The costs associated with a pull and replace includes the costs of creating new stock, removing and destroying old stock, confirming that no old stock remains in retailers' possession and/or is offered for sale, and replenishing retail inventory. Through pre-proposal industry outreach, post-proposal industry outreach during and after the comment period, and reviewing comments submitted by industry commenters, the Bureau has learned that the cost to a financial institution of conducting a pull and replace is high. In addition, coordinating with retailers adds a layer of complexity due to issues of timing with retailer product reset schedules, requirements of some retailers to source merchandising to third-party vendors, and general negotiations that must take place. Further, the cost of a pull and replace may have disproportionately affected small entities that might purchase card stock in bulk to keep the per-unit cost of printing low. As discussed in the proposal, based on pre-proposal industry outreach, the Bureau estimates that after 12 months, 40 percent of total prepaid account stock will remain in distribution. Thus, the cost to the prepaid industry to conduct a large-scale pull and replace might have been significant.

As discussed above, the final rule requires that newly printed retail prepaid account packaging materials must be accurate if printed on or after October 1, 2017, but allows financial

institutions to sell through prepaid account packaging or other preprinted materials prepared in the ordinary course of business prior to October 1, 2017 that do not comply with the final rule's disclosure requirements. This will enable financial institutions to phase out and replace old stock at the pace that it is sold. A sell-through strategy should prove to be significantly less expensive than a pull and replace for many financial institutions. This modification will come at a cost to consumers who may not fully realize the benefits of the prepaid disclosure regime immediately at retail locations because old packaging remains in commerce. For example, a consumer who is contemplating the purchase of a prepaid account in the retail setting may be provided with old disclosures that do not incorporate important fee information required by the final rule during a transition period. For this limited period of time, a consumer may have difficulty comparing multiple products with older disclosures, and to compare multiple products with a mix of older disclosures and updated disclosures. Over time, however, the eventual replacement of old stock will result in consumers having the full benefits of a thoughtfully designed and tested disclosure regime.

## *2. Applying Regulation E's Periodic Statement Requirement with Modification and Providing an Alternative Means of Compliance with the Requirement*

While expressly defining prepaid accounts as accounts subject to Regulation E, the final rule also provides an alternative means of compliance with Regulation E's periodic statement requirement. The alternative means of compliance is a modified version of the alternative means of compliance offered to payroll card account providers under current § 1005.18(b)(1). Section 1005.15(d) of the final rule also modifies the alternative means of compliance with Regulation E's periodic statement requirement for government benefit accounts so that it is consistent with the alternative means of compliance for prepaid accounts.

Under current § 1005.18(b), a financial institution offering payroll card accounts need not furnish periodic statements if the financial institution makes available to the consumer his or her account balance through a readily available telephone line, an electronic history of the consumer's account transactions that covers at least 60 days preceding the date that the consumer electronically accesses the account, and, upon oral or written request, a written transaction history that covers at least 60 days. Similarly, under current § 1005.15(c), government agencies offering government benefit accounts need not comply with the periodic statement requirement if they make available to the consumer the account balance, through a readily available telephone line and at a terminal, and promptly provide at least 60 days of written history of the consumer's account transactions in response to an oral or written request.

The final rule requires that financial institutions wishing to avail themselves of this alternative means of complying with the Regulation E periodic statement requirement make available to the consumer at no charge his or her account balance through a readily available telephone line, provide the consumer with access to at least 12 months of transaction history electronically, and, if requested by the consumer, provide at least 24 months of transaction history in writing. For those payroll card account providers and providers of prepaid accounts that receive Federal payments that are currently required to comply with the Regulation E periodic statement requirement and are meeting their compliance obligations by relying on the alternative means of compliance, this provision extends the present requirement to provide 60 days of transaction history to 12 months when provided electronically and 24 months when provided in writing. For government agencies that are currently required to comply with the Regulation E periodic statement requirement, this provision additionally requires electronic

access to government benefit account history information as part of the alternative means of compliance, which current Regulation E does not require.

Regardless of how a financial institution chooses to comply, the final rule also requires that the financial institution disclose to the consumer 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.<sup>798</sup> Finally, for financial institutions following the alternative means of complying with the periodic statement requirement, the final rule extends to prepaid accounts modified requirements for initial disclosures regarding access to account information and error resolution, as well as annual error resolution notices.<sup>799</sup>

*a. Benefits and Costs to Consumers*

Extending Regulation E's periodic statement requirement to all prepaid accounts will help to ensure that consumers receive the benefits associated with increased information regarding their prepaid accounts. These benefits include having the ability to monitor account transactions for both budgeting and the identification of errors.

The final rule requires that financial institutions disclose to the consumer summary totals of the amount of all fees assessed against the consumer's prepaid account on any periodic statement, any written history of account transactions, and any electronic history of account

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<sup>798</sup> For periodic statements, the monthly summary may be for the statement period or for the prior calendar month; for other transaction histories, it must be for the prior calendar month.

<sup>799</sup> Current § 1005.18(c)(1) and (2) for payroll card accounts, § 1005.18(d) for prepaid accounts, and current § 1005.15(d)(1) and (2) for government benefit accounts, revised as § 1005.15(d)(1) and (2).

transactions.<sup>800</sup> This disclosure will make the cumulative costs associated with the use of the prepaid account accessible and transparent to consumers.

The final rule also requires that those financial institutions relying on the alternative means of complying with the periodic statement requirement make accessible at least 12 months of transaction history electronically and, if requested, at least 24 months of transaction history in writing. Consumers, especially those who rely on a prepaid account as their primary transaction account, may need to consult more extensive account history in connection with, for example, housing and employment applications or tax filings; in these situations, they may benefit from having up to 24 months of account history available. Additionally, transaction histories may help consumers to discover unauthorized transfers or other errors. For instance, in certain circumstances, consumers have up to 120 days from the date of the unauthorized transfer to assert an error. In order to fully exercise these protections, consumers must be able to access at least 120 days of transaction history.

The final rule requires that at least 12 months of transaction history provided as part of the alternative means of compliance with the periodic statement requirement be provided electronically. As discussed further below, the Bureau's understanding is that, while prepaid accounts generally are not subject to this requirement at present, most financial institutions offer electronic access to prepaid accounts' transaction histories and a substantial number of them maintain 12 months of transaction data in some electronic format.

In developing the proposed rule, the Bureau considered how consumers prefer to obtain information about their transaction history. In focus group research, the Bureau generally found

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<sup>800</sup> § 1005.18(c)(5). With respect to government benefit accounts, § 1005.15(d)(2) provides that for government benefit accounts, a government agency must comply with the account information requirements applicable to prepaid accounts as set forth in § 1005.18(c)(3) through (5).

that consumers were satisfied with the amount of information they receive regarding their transaction history (either online, through text message, or over the telephone) under existing industry practice, and they generally did not express a desire to receive a paper statement.<sup>801</sup> Several industry participants the Bureau spoke with during its pre-proposal outreach, as well as several participants in the Bureau's consumer testing, noted that the time lag between receipt of a paper statement and the transactions covered by the statement decreased its utility for tracking account balance information relative to other means, such as real-time text message alerts, which provide consumers with more timely access. According to one program manager, when it provided electronic periodic statements to all of its customers, its customers only infrequently accessed those statements.<sup>802</sup>

Many consumers participating in the Bureau's focus groups also stated that they monitor their account balance using the internet and mobile devices.<sup>803</sup> This is consistent with the findings of various industry surveys, which suggest that many consumers currently have multiple methods through which they can access information regarding their prepaid accounts. One survey of consumers with prepaid accounts asked consumers how they check their balances, and found that more than half sometimes use a phone call, more than half sometimes check online, and text message alerts, email alerts, and smartphone apps were each used by more than a third of respondents.<sup>804</sup> According to one survey of 66 GPR card programs, almost three-quarters

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<sup>801</sup> ICF Report I at 10.

<sup>802</sup> The program manager reported that consumers viewed the statements for just over 1 percent of active accounts, and consumers downloaded the statements for slightly less than 1 percent of active accounts.

<sup>803</sup> According to a survey conducted by the Board, roughly 87 percent of respondents owned or had regular access to a mobile phone, and roughly 77 percent of those with a mobile phone had a smartphone as of November 2015. Additionally, 89 percent had regular access to the internet, either at home or outside of the home. 2016 FRB Consumers and Mobile Financial Services Survey at 8, 64 tbls.C.21 & C.22. A survey of prepaid card users found that 88 percent use the internet. 2014 Pew Survey at 5 ex.2.

<sup>804</sup> 2015 Pew Survey at 13.

offer text alerts and more than half offer email alerts regarding account balances and transactions.<sup>805</sup> Another organization reviewed the terms and conditions associated with 18 GPR card programs that they estimated collectively represented 90 percent of the total GPR card marketplace (based on number of active cards in circulation). It found that all of the reviewed cards allowed cardholders to check balances online, via text message, by calling customer service, or on a mobile app or a mobile-enabled website.<sup>806</sup>

Although consumers generally have access to written transaction history information at present, many financial institutions currently charge fees for written account information, and in these cases the final rule will lower the cost to consumers of accessing account information in this way. Of the 66 GPR card programs reviewed by one organization, 68 percent disclosed a fee for paper account statements ranging from 99 cents to \$10 (median \$2.95).<sup>807</sup> As discussed below, the Bureau's discussions with industry participants suggest that few consumers currently request paper transaction histories or statements. It is worth noting, however, that if financial institutions are unwilling to comply with the new rule by providing paper transaction histories or statements to consumers for free, they may decide to require all consumers to provide E-Sign consent in order to have access to the product so that they could provide statements electronically. This could mean that consumers who cannot or choose not to provide E-Sign consent will have access to a more limited range of prepaid accounts.

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<sup>805</sup> 2014 Pew Study at 17.

<sup>806</sup> Additionally, it found that all of the cards reviewed provided consumers with accessible customer service assistance and IVR systems. 2014 CFSI Scorecard at 12 (Mar. 2014).

<sup>807</sup> Of the GPR card programs reviewed by that organization, 21 percent of programs did not disclose a paper statement fee, and 11 percent disclosed that paper statements are free. The study did not distinguish between periodic statements and other forms of written account history. 2014 Pew Study at 19.

*b. Benefits and Costs to Covered Persons*

The benefits and costs to covered persons arising from the application of Regulation E's periodic statement requirement to all prepaid accounts will depend on the financial institution's current business practices and whether the financial institution chooses to avail itself of the alternative means of complying with the periodic statement requirement. Specifically, financial institutions may comply with the requirement by providing periodic statements, either in paper form or in electronic form having obtained E-Sign consent from the consumer, or they may choose to implement the alternative means of complying with the periodic statement requirement.

As discussed above, financial institutions are already required to comply with the Regulation E periodic statement requirement, or the specified alternative, for payroll card accounts and for accounts that receive Federal payments (pursuant to the FMS Rule). Government agencies that offer government benefit accounts are similarly required to comply with this requirement (without the requirement to provide electronic access to account history under the periodic statement alternative). Based on pre-proposal outreach to industry participants, the Study of Prepaid Account Agreements, and review of various industry studies, the Bureau understands that financial institutions generally provide consumers with electronic access to transaction histories or electronic periodic statements and generally provide telephone access to account information similar to what is required by the final rule.<sup>808</sup> In many instances,

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<sup>808</sup> One review of 66 GPR card programs found that almost every card provided free online access to account information. It also found that most card programs offered email and text alerts free of charge and that most programs provided the customer with at least a limited number of free interactive voice-recognition customer service calls through which consumers could access account information. 2014 Pew Study at 36. Another review of 18 GPR card programs, comprising an estimated 90 percent of active GPR cards in circulation, found that all of the cards reviewed allowed cardholders "to check their balance online, via text message, by calling customer service, or on a mobile app or a mobile-enabled website." 2014 CFSI Report at 12.

electronic transaction histories currently provided extend well beyond the 60 days currently required for certain prepaid accounts.<sup>809</sup> The Bureau’s understanding based on outreach to industry is that few, if any, financial institutions provide paper periodic statements or paper transaction histories to consumers with prepaid accounts other than on an ad hoc basis.

The Bureau expects that most financial institutions will continue to offer account history information to consumers electronically (except for those cases where a written transaction history is required in response to an ad hoc consumer request) and will continue to use an automated telephone line to provide 24-hour access to account balance information. Therefore, the Bureau believes that the majority of costs to covered persons of the final rule will arise from two sources.

First, periodic statements or transaction histories must display a summary total of the amount of all fees assessed against the consumer’s prepaid account for the prior month and for the calendar year to date. Financial institutions will need to modify existing statements or electronic transaction histories to include these totals. Second, those financial institutions that do not currently make at least 12 months of transaction history available to consumers electronically or do not maintain access to at least 24 months of transaction history would potentially incur additional data storage costs and may need to implement system changes if they choose to avail themselves of the alternative means of complying with Regulation E’s periodic statement requirement.<sup>810</sup>

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<sup>809</sup> One survey found that “[e]ven of the fifteen cards for which information is available . . . allow cardholders to access at least two years of transactional data online, which can be important for tax-filing and budgeting purposes. Three of the four cards that offer less than two years of transactional data provide one year of data, while one card offers six months of data.” 2014 CFSI Report at 12.

<sup>810</sup> As a result of the final rule, financial institutions that do not provide consumers with 24 months of transaction history may incur additional costs in the future when migrating information across information technology platforms since additional data must be retained.

The structure of the costs associated with these changes depends on whether the financial institution relies on vendors to format or host online periodic statements or transaction histories or whether it performs these functions in-house. Those financial institutions that format their own periodic statements or transaction histories will incur a one-time implementation cost to capture and summarize fee information and modify their disclosures to display this information.<sup>811</sup> Those financial institutions that currently do not make available 12 months of account history will incur costs associated with obtaining additional electronic storage media to expand existing capacity.

The proposal would have required financial institutions to make available 18 months of account history, and according to discussions with industry participants prior to issuing the proposed rule, the costs associated with such an expansion would have been minimal. In response to the proposal, however, several industry commenters said that they do not currently make available 18 months of account history and that the cost of doing so would be significant. Of these, several commenters noted that they currently provide 12 months of electronic transaction history or that their systems maintain at least 12 months of transaction history in readily accessible electronic format. Industry commenters also noted that older account history information is typically archived and is less readily accessible, but can be retrieved in response to specific requests. One commenter that currently archives account information after six months estimated that it would cost an additional \$1.00 per account to keep account information in active, rather than archived, status for 18 months. Because the final rule requires 12 rather than

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<sup>811</sup> In response to the Bureau's pre-proposal outreach, one program manager estimated that it would cost approximately \$15,000 to modify its website to provide the summary total of fees as well as a summary of the total amount of deposits to the account and the total amount of all debits made to the prepaid account. This should be an upper bound on the estimated cost to this program manager of modifying its website to display only the required summary total of fees.

18 months of transaction history to be made electronically available, and because it permits financial institutions that, as of the effective date, do not have readily accessible the data necessary to provide at least 12 months of electronic account history to gradually increase the number of months of account data that they provide until they have enough account information to fully comply with the requirement, the Bureau believes that the requirement to provide electronic account history information will have a minimal burden for most financial institutions.

Many providers of prepaid accounts rely on processors to provide online portals that give consumers access to account history information. Based on pre-proposal discussions with industry participants, the Bureau understands that program managers typically pay processors a flat fee per account that may be a function of both the extent of the account history provided and the number of accounts that are being serviced.<sup>812</sup> The Bureau expects that these covered entities will generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary totals. However, one program manager predicted that if such a fee disclosure were a regulatory requirement, the processor would offer it as part of a standard package of services at no additional cost.<sup>813</sup>

In formulating its proposal, the Bureau conducted outreach to prepaid issuers and program managers regarding the utilization of paper account statements by consumers and the cost to financial institutions of providing such statements. Based on these discussions and

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<sup>812</sup> One program manager that relies on a processor for this function told the Bureau that fees for data storage are charged on a per account basis one time at activation. According to the program manager, costs were generally increasing from \$0.08 per account for three months of transaction history to \$0.19 per account for one year of transaction history. This program manager also suggested that processor prices decrease with scale, and that because it was operating at low scale it was consequently paying among the highest prices.

<sup>813</sup> One program manager stated that its processor quoted a one-time cost of \$65,000 for providing this functionality on its processor-hosted website (in response to an ad-hoc request). This potentially represents an upper bound for the true development cost since this number likely includes a mark-up over the true cost of providing the service. Actual development costs will be borne jointly by the processor and the financial institutions relying on the processor for hosting services.

information provided by commenters, the Bureau's understanding is that consumer requests for written account histories for GPR cards are infrequent, generally well under 1 percent of active cardholder-months, regardless of whether the consumer is charged a fee for the statement. One commenter stated that it serves over 2 million cardholders and that it receives 750 requests per month for written transaction histories, equivalent to approximately 0.04 percent of all cardholder accounts.<sup>814</sup> The Bureau notes that some financial institutions currently charge consumers fees if they wish to receive paper statements or transaction histories, and in some cases, financial institutions may charge consumers fees that exceed the cost to provide these statements.<sup>815</sup> However, given the infrequent nature of such requests (regardless of whether a fee is charged for the statement), the Bureau believes that the revenue impact of the final rule's requirement to provide paper statements or account histories free of charge is likely de minimis. Since a financial institution may require that consumers provide E-Sign consent in order to receive a prepaid account, and thus provide statements or account histories electronically instead of following the periodic statement alternative, any revenue impact could be further mitigated.

Some commenters said that the requirement in the proposal to mail 18 months of transaction history upon request would impose a substantial burden on financial institutions. The commenter, mentioned above, which stated that it receives 750 requests per month for written transaction histories noted that the increase from 60 days to 18 months of transaction history is a 900 percent increase in the volume of history that would have to be provided. Another

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<sup>814</sup> In pre-proposal outreach, one program manager told the Bureau that when it eliminated a \$2.50 fee for receiving a paper statement, there was no change in the frequency with which statements were requested.

<sup>815</sup> Estimates quoted to the Bureau by financial institutions varied somewhat but generally were approximately \$1 per statement to respond to ad hoc requests once the costs associated with fielding the incoming call, postage, and producing the statement were considered. Financial institutions generally noted that postage is a large driver of this cost. One financial institution noted that, given the sensitivity associated with the information, such statements need to be sent via first class mail. Another financial institution that relied on its processor to provide ad hoc paper statements to consumers pays its processor \$2 for each paper statement delivered.

commenter estimated that extending the timeline to 18 months would increase the cost of mailing statements by three to four times. Additionally, some commenters explained that transaction data is generally moved to archived status after 12 months, and that once the data is archived, a financial institution may incur costs for retrieving information on a one-off basis in order to respond to consumers' requests for written histories.

The Bureau acknowledges that it may cost substantially more to provide a 24 month written transaction history than to provide a 60 day written transaction history. The Bureau notes, however, that the final rule further clarifies that a financial institution may send less than 24 months of written transaction history if the consumer requests a shorter timeframe. The Bureau anticipates that many consumers requesting written transaction histories will not need access to a full 24 months of transaction history and that therefore in many cases financial institutions will be able to send a significantly shorter transaction history. The Bureau also notes that, given the small fraction of consumers that request written transaction histories, the overall burden of the requirement to send written transaction histories is small, even if the cost of each mailing is substantially higher than it would be if sending a 60-day history.

If the final rule expands consumer access to account information, financial institutions could benefit from receiving more timely notice of unauthorized transfers by consumers and potentially fewer inquiries by telephone or email. For example, in the event that a consumer identifies an unauthorized transfer, the financial institution may be able to place the appropriate holds on the account to prevent further unauthorized use. Timely notification could also decrease the costs associated with investigations of alleged errors. In addition, if timely notification by some consumers were to provide an early warning of a widespread or systemic set of unauthorized transfer attempts, the financial institution could benefit from cutting off the

avenue for the unauthorized transfers before the issue becomes more widespread. However, to the extent that consumers are able to identify unauthorized transfers and other errors that they would not have identified in the absence of these disclosures, financial institutions may incur additional costs.

### *3. Applying Regulation E's Limited Liability and Error Resolution Regime*

The final rule extends Regulation E's limited liability and error resolution regime to all prepaid accounts; provisional credit is also required for all prepaid accounts that have successfully completed the financial institution's customer identification and verification processes.<sup>816</sup> For prepaid accounts that have not been through the financial institution's customer identification and verification process, have not completed the process, have failed the process, or for which the financial institution has no such process for that particular prepaid program, the financial institution must comply with Regulation E's limited liability and error resolution regimes, but not with the provisional credit requirements. Under § 1005.6(a), a consumer may be held liable for an unauthorized EFT resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. In addition, § 1005.6(b) limits the amount of liability a consumer may assume.

For accounts subject to the Regulation E error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was, in fact, authorized.<sup>817</sup> More specifically, after receiving notice that a consumer believes that an

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<sup>816</sup> Payroll card accounts and government benefit accounts are required to follow Regulation E's limited liability and error resolution regime regardless of whether the account had been through the customer identification and verification process. As described above, the FMS Rule requires that a prepaid card that receives a Federal payment comply with these provisions.

<sup>817</sup> See EFTA section 909(b).

EFT was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. Although the investigation must generally be completed within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account), the financial institution may take up to 45 days to complete the investigation if it provisionally credits the consumer's account for the amount of the alleged error within 10 business days of receiving the error notice.<sup>818</sup> Upon completion of the investigation, § 1005.11(c)(1) requires the financial institution to report the investigation's results to the consumer within three business days and correct an error within one business day after determining that an error occurred. In cases where the financial institution ultimately can establish that no error (or a different error) occurred, § 1005.11(d)(2) permits the financial institution to reverse the provisional credit. If the financial institution cannot establish that the transfer in question was authorized, the financial institution must credit the consumer's account (or finalize the provisional credit).

Prepaid accounts that are payroll card accounts, government benefit accounts, and those that receive Federal payments are currently required to provide Regulation E's limited liability and error resolution protections. Other types of prepaid accounts, such as GPR cards that do not receive Federal payments, currently are not required to provide these protections, although some do so by contract. One study reviewed 18 GPR card programs, estimated to represent 90 percent of the number of active GPR cards in circulation, and found that all of the programs reviewed had adopted the consumer liability protections outlined by Regulation E as it applies to payroll

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<sup>818</sup> § 1005.11(c)(2). The financial institution has 90 days (instead of 45) if the claimed unauthorized EFT was not initiated in a State, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. § 1005.11(c)(3). Provisional credit is not required if the financial institution requires, but does not receive, written confirmation within 10 business days of an oral notice by the consumer. § 1005.11(c)(2)(i)(A).

cards.<sup>819</sup> The Bureau’s Study of Prepaid Account Agreements found that roughly 89 percent of all programs, and all of the largest GPR card programs, offered limited liability protections to consumers. The Bureau’s Study of Prepaid Account Agreements also found that over two-thirds of prepaid programs (excluding government benefit accounts and payroll card accounts) appeared to follow Regulation E’s error resolution regime, including provisional credit requirements, with roughly 80 percent of the largest GPR card programs offering such protections.

To the extent that financial institutions already follow policies consistent with Regulation E’s limited liability and error resolution regime, the potential impacts on most consumers and covered persons arising from these provisions are limited. Additionally, prepaid accounts are typically subject to payment card association network rules that provide zero-liability protection and chargeback rights in some circumstances that, unless changed by the networks, apply regardless of what Regulation E requires.<sup>820</sup> In certain cases, business practices may differ from those guaranteed by the terms and conditions associated with the prepaid account, and consumers may, in practice, have additional protections beyond those articulated in the account agreement.

*a. Benefits and Costs to Consumers*

In general, the potential benefits to consumers arising from the final rule’s requirements include reduced risk (relative to a baseline where some programs do not offer the protections of the final rule) and reduced uncertainty regarding responsibilities and liabilities among market

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<sup>819</sup> 2014 CFSI Report at 12. Another study asserts that only two-fifths of 66 GPR card programs reviewed included all of the protections, but most of this appears to be the lack of disclosure of mandatory extensions of time frames to submit claims for good cause. Regulation E, as applied to payroll card programs, does not require the disclosure of this information, so it is unclear whether it can be inferred that lack of disclosure of this information in the terms and conditions implies lack of protection for consumers. 2014 Pew Study at 20.

<sup>820</sup> See, e.g., Network Branded Prepaid Card Ass’n, *Cardholder Protections—NBPCA Position*, available at <http://www.nbpc.org/en/Government-Affairs/Policy-Positions/Cardholder-Protections.aspx> (last visited Oct. 1, 2016).

participants. With respect to consumer uncertainty, the Bureau does not have information that would permit it to quantify the extent to which some consumers may overestimate the risks associated with using prepaid accounts (and so may underutilize them) or the extent to which other consumers may underestimate the risks (and therefore may fail to take certain precautions if they use them). Both groups will benefit from the reduced uncertainty regarding limited liability and error resolution protections that will result from the final rule.

Consumers using prepaid accounts will further benefit from any reduction in expected financial losses incurred due to unauthorized EFTs or other errors that will result from the final rule. Although financial institutions typically offer limited liability and error resolution protections in connection with prepaid accounts, the final rule will reduce consumer losses from unauthorized transfers in cases where such protections were not offered as well as ensure that errors are investigated expeditiously and that consumers regain access to funds more quickly. This potential benefit to consumers will depend on the following: (a) the number of consumers with prepaid accounts that do not currently follow the limited liability and error resolution regime, including access to provisional credit, that is described in the final rule; (b) the average magnitude of the financial losses consumers would experience from unauthorized transfers or other errors absent the final rule; and (c) the probability that these unauthorized transfers or other errors would occur absent the final rule. The Bureau notes that these benefits could be concentrated among certain segments of the population.<sup>821</sup>

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<sup>821</sup> The Final Rule may also provide additional benefits to consumers. First, the requirements may reduce the frequency with which unauthorized transfers or other errors occur by creating an additional incentive for financial institutions to prevent these adverse events in the first place. This change could benefit consumers in non-monetary ways if adverse events nevertheless impose meaningful costs (including inconvenience). Second, even if no unauthorized transfer or other error has occurred, the requirement to offer provisional credit provides consumers with a zero-interest loan and a timely investigation. Third, as discussed further below, consumers with prepaid accounts from financial institutions that currently voluntarily offer the Final Rule's protections receive some benefit

In order to quantify the potential benefits to consumers from the final rule's requirements, the Bureau would need the quantities in (a), (b), and (c) or a database of representative market information that can be used to estimate these quantities. To the Bureau's knowledge, neither these quantities nor such a database currently exists. However, industry studies provide some insight into the magnitude and distribution of these determinants of the potential benefits from these provisions.

The Bureau first considers the number of consumers with prepaid accounts that currently do not offer the limited liability and error resolution protections, including access to provisional credit, which the final rule requires for prepaid accounts that have completed a financial institution's customer identification and verification process (and continues to require for all payroll card accounts and government benefit accounts). As described above, surveys suggest that between 8 and 16 percent of consumers have used a general purpose prepaid card in the past 12 months.<sup>822</sup> At present, Federal law does not require providers of these products to offer any of the limited liability and error resolution protections required by the final rule to consumers, except for those consumers with prepaid accounts that receive Federal payments (and therefore

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from the Final Rule's requirements since, absent the Final Rule, financial institutions currently offering these protections could change their terms and conditions and stop providing these protections in the future.

<sup>822</sup> 2014 FRB Consumers and Mobile Financial Services Survey at 48 tbl.C.8a. *See also* 2014 Pew Survey at 1. For the purpose of this survey, respondents were explicitly told not to include gift cards, rebate cards, credit cards, or phone cards. Five percent of adults reported using a prepaid card at least once a month. *See also* 2013 FDIC Survey at 29-30 (which reports that 12 percent of households surveyed had ever used prepaid cards, 7.9 percent have used a prepaid card in the last 12 months, and 3.9 percent have used a prepaid card in the last 30 days). *See also* Mercator Advisory Group, *Prepaid 2013: U.S. Consumers Buying More Cards For Own Use*, at 9 (Oct. 2013) (which reports that 7 percent of households surveyed in 2013 currently use a GPR card). *See also id.* at 11 (which reports that 14 percent of households surveyed in 2013 purchased a GPR card in the last year). *See also* GfK, *GfK Prepaid Omnibus Research Findings*, at 6 (2014), available at <http://www.nbpca.org/~media/2519B8BADB1B4388BA5F11C511B3ACAE.ashx>. The definition of prepaid card in this survey appears to have included some products that would not be covered by the final rule's definition of prepaid account. This survey found that 16 percent of respondents had used a "prepaid card" that was not a gift card in the last 12 months.

are covered by the FMS Rule), or are payroll cards or non-needs tested government benefit cards.

However, financial institutions offering prepaid accounts may (and often do) voluntarily offer these protections, in many cases because similar protections are required by payment card association network rules. As discussed above, the Bureau's Study of Prepaid Account Agreements found that the vast majority of programs reviewed followed Regulation E's limited liability protections. In addition, most prepaid programs appeared to follow Regulation E's error resolution regime, including provisional credit requirements. Excluding payroll card account programs and government benefit account programs (which are currently required to comply), over two-thirds of included programs provided error resolution protections, with provisional credit, consistent with Regulation E. The majority of the remainder offered some form of error resolution, albeit with limitations on the conditions under which provisional credit is offered. Among the programs reviewed that were offered by the largest GPR providers, the Study of Prepaid Account Agreements found that roughly 80 percent offered error resolution with provisional credit and all offered limited liability protections. Most remaining programs offered full error resolution with provisional credit in limited circumstances.

For the foregoing reasons, the Bureau believes that the number of consumers with prepaid accounts that do not currently offer the limited liability and error resolution protections (including provisional credit) that are required by the final rule is small.<sup>823</sup> However, the final rule will provide consumers whose prepaid accounts lack these protections with important benefits. Further, since financial institutions that voluntarily offer these protections could change

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<sup>823</sup> One study which asserts that it covers programs accounting for 90 percent of active GPR cards in circulation found that all financial institutions offered liability and error resolution provisions consistent with those in Regulation E. 2014 CFSI Scorecard at 12 (Mar. 2014).

their terms and conditions at any time, the final rule removes the risk to consumers that these protections could be discontinued.

The Bureau has been unable to obtain data describing the average size of the financial losses consumers currently experience from unauthorized transfers or other errors that are covered by the final rule or the frequency with which these events occur. However, these quantities may be associated with certain observable factors. The average size of a transaction is likely correlated with the loss to the consumer if the consumer is fully liable for the loss. For example, if a consumer were charged for a given purchase twice instead of once or were charged for a transaction that should have been cancelled, the loss would be correlated with the typical size of those transactions.<sup>824</sup> Similarly, the balance typically held in a prepaid account should be correlated with the loss to the consumer if account access is compromised and the consumer is fully liable. Finally, the frequency of transactions is likely correlated with the probability of a loss since transacting with a prepaid account creates exposure to transaction-related errors.

Although data that would permit the Bureau to quantify the typical balances and transaction sizes of prepaid accounts are limited, recent research can provide some information. One study analyzed prepaid accounts from one large program manager's GPR card program and reports whether the prepaid accounts receive periodic government direct deposits (and therefore are subject to the FMS Rule if it is a Federal payment), periodic non-government direct deposits, periodic self-funded loads, occasional reloads, or are never reloaded.<sup>825</sup> It found that 46 percent

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<sup>824</sup> The Bureau recognizes that the risk of loss is likely different for different types of transactions. For example, one study using data from a large program manager's GPR card portfolio shows that fraud rates differ by transaction type. 2012 FRB Kansas City Study at 72 tbl.6.1. Thus, the size of a typical transaction need not be similar to the size of a typical loss on a transaction (conditional on a loss occurring) since the types of transactions most susceptible to fraud may be relatively high-value or low-value.

<sup>825</sup> *Id.* at 43 tbl.2.1. It is worth noting that the shares of load types reported in table 2.1 of this study add up to 102 percent.

of GPR cards analyzed have periodic self-funded reloads and cumulative monthly purchases of \$266.<sup>826</sup> The average lifespan of the cards that have periodic self-funded reloads was 256 days; the median, however, was only 60 days.<sup>827</sup> An additional 13 percent of GPR cards analyzed had occasional reloads, cumulative monthly purchases of \$94, an average life of 489 days, and a median life of 330 days; and 18 percent of GPR cards analyzed had periodic non-government direct deposit, cumulative monthly purchases of \$660, an average life of 925 days, and a median life of 570 days. To the extent that these figures are representative of other prepaid programs, they suggest that approximately three-quarters of GPR cards may be used for significant purchases and are likely not within the current scope of Regulation E (or the FMS Rule). Other researchers have also identified programs that offer GPR cards that consumers regularly load with funds, but are not payroll cards, are active for at least a year and are used for many thousands of dollars in purchases, loads, and cash withdrawals.<sup>828</sup>

Only limited data describing the frequency of transactions is available, and while these frequencies should correlate with the probability of a loss, the Bureau would require additional information to convert these frequencies into probabilities.<sup>829</sup> There is, however, some suggestive information about the risk of loss in data describing the incidence of fraud with GPR cards offered by one large program manager. According to one study using this data, approximately six out of every 10,000 transactions with GPR cards involve fraud, with a loss of

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<sup>826</sup> *Id.* at 43 tbl.2.1, 59 tbl.4.9.

<sup>827</sup> *Id.* at 47 tbl.4.1.

<sup>828</sup> 2012 FRB Philadelphia Study at 67.

<sup>829</sup> GPR cards with periodic self-funded reloads average 5.7 purchases and 6.5 debits per month. GPR cards with occasional reloads average 2.0 purchases and 2.3 debits per month, and GPR cards with periodic non-government direct deposits have 18.1 purchases and 21 debits per month, on average. 2012 FRB Kansas City Study at 50 tbl.4.3, 59 tbl.4.9.

\$9.60 for every \$10,000 transacted.<sup>830</sup> To the extent consumers are the victims of these frauds, and to the extent these average figures are similar for all types of prepaid accounts, these numbers provide some information about one particular risk that consumers encounter in using GPR cards and one benefit of the final rule.

The Bureau believes that some consumers with prepaid accounts could receive important benefits in certain circumstances from the additional protections that are required by the final rule. Further, the share of consumers with prepaid accounts who could potentially receive these benefits may grow over time. One group of industry analysts predicts that the GPR segment of prepaid accounts will grow on average 10 percent each year from 2014 to 2018, and there appears to be sustained interest among consumers in using GPR cards as transaction accounts.<sup>831</sup> While the voluntary provision of limited liability and error resolution protections (including provisional credit) might keep pace with this expansion, it is also possible that growth could lead to new forms of product differentiation, including variation in consumer protections.

To the extent that financial institutions sustain increased losses from the requirement to extend Regulation E's limited liability and error resolution regime, including provisional credit, to all prepaid accounts, the final rule's limited liability and error resolution provisions may result in decreased access to these products if financial institutions are more apt to close accounts that have repeated or unusual error claims or to limit who can open accounts in the first place. The requirement to provide limited liability and error resolution protection for transactions taking place prior to customer identification and verification could also lead financial institutions to

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<sup>830</sup> *Id.* at 72 tbl.6.1.

<sup>831</sup> Mercator 12th Annual Market Forecasts at 12-13. The report addresses the growth rate in the aggregate amount loaded onto cards. This growth rate approximates the growth rate in the number of accounts as long as the amount loaded per account remains fairly stable, but it would overstate the growth rate in the number of accounts if the amount loaded per account is increasing.

prevent prepaid accounts from being used until after such identification and verification or to limit accounts' functionality prior to identification and verification, reducing access for consumers who wish to use accounts before they have been registered or who are unable or unwilling to complete the identification and verification process.<sup>832</sup> Additionally, the final rule's requirements may result in decreased access to prepaid accounts for some consumers if financial institutions implement more rigorous screening requirements. That is, financial institutions may have an increased incentive to identify customers who would be likely to make fraudulent error claims and deny them access to these accounts. This screening may, however, also cause some consumers who would not make such claims to be denied access to these accounts. Further, to the extent that the screening technology correctly identifies those individuals who are likely to make fraudulent error claims, negative externalities arising from these individuals' fraudulent claims activities (which benefit these consumers while imposing costs on other consumers and market participants) are reduced.

*b. Benefits and Costs to Covered Persons*

In general, the costs to financial institutions arising from the final rule's requirements will depend on their current business practices, the number and types of errors that their consumers claim, and any potential future changes that would affect the number and types of errors claimed, separate and apart from the final rule. Implementation of the final rule's requirements would be simplified by the fact that financial institutions offering prepaid accounts generally keep a central record of transactions and track authorized users.

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<sup>832</sup> Financial institutions may already limit account functionality before customer identification and verification in order to comply with existing Federal requirements to perform customer identification prior to establishing prepaid accounts with particular characteristics. The consumer impacts described would take place to the extent the final rule causes financial institutions to further restrict account functionality prior to consumer identification and verification.

The final rule requires that those financial institutions that do not currently offer their consumers limited liability and error resolution protections in accordance with Regulation E establish procedures for complying with the requirements or modify existing procedures (depending on their current practices). Specifically, financial institutions that do not currently offer these protections will need to develop the capacity to give the required disclosures to consumers, receive oral or written error claims, investigate error claims, provide consumers with investigation results in writing, respond to any consumer request for copies of the documents that the institution relied on in making its determination, and correct any errors discovered under the required timeframes.<sup>833</sup> If unable to complete their investigation within the required timeframe (generally 10 business days), financial institutions will be compelled to extend provisional credit (where applicable) and, in the case that a provisionally credited amount is subsequently reversed, notify the consumer.

For those financial institutions that do not currently offer limited liability and error resolution protections in the manner required by the final rule, the extension of these protections will require the establishment or modification of practices and procedures, as well as employee training. The establishment or modification of these practices and procedures will constitute a one-time implementation cost for those financial institutions that do not currently offer limited liability and error resolution in the manner required by Regulation E, and implementing these procedures will constitute an ongoing cost for financial institutions.<sup>834</sup> The costs associated with implementing these procedures would be a function of the number and types of errors that

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<sup>833</sup> Financial institutions often rely on industry partners to perform some or all of these functions.

<sup>834</sup> It is possible that those institutions that currently offer Regulation E compliant error resolution on a voluntary basis will choose to rely on higher-skilled staff or perform additional reviews to assess compliance in light of the Final Rule. CFPB, *Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations, Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions*, at 96 (Nov. 2013), available at [http://files.consumerfinance.gov/f/201311\\_cfpb\\_report\\_findings-relative-costs.pdf](http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf).

consumers claim which, in turn, may be affected by the composition of the customer base and how those customers use their prepaid accounts.

Errors may vary on many dimensions that affect the cost associated with their investigation.<sup>835</sup> In pre-proposal outreach, the Bureau spoke with several financial institutions that immediately resolve disputes involving amounts below a certain de minimis threshold since the amount of funds at issue does not justify the likely cost associated with conducting the investigation. Separately, when an investigation is conducted, resolution times may be affected by the responsiveness of third parties, including merchants and ATM owners, and may be subject to timeframes established by networks or other standard setting bodies.<sup>836</sup> Additionally, the amount of information provided by the consumer and the timeliness of the report can affect the duration of the investigation.<sup>837</sup> For instance, ATM error claims may result from an ATM malfunction that causes the consumer to receive the wrong amount of funds or from unauthorized use. Error claims that occur when an ATM dispenses the incorrect amount of funds are generally resolved when the ATM is balanced; however, in cases involving unauthorized ATM use, it is possible that the investigation may include obtaining and consulting video evidence.

Errors may also vary in terms of their legitimacy. Consumers may assert that an error occurred when one did not occur either to attempt to defraud the financial institution or due to a

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<sup>835</sup> In addition, with the Final Rule's requirement to extend provisional credit, there could be additional monetary costs associated with errors that require an extended timeline for investigation aside from the cost associated with the investigation itself.

<sup>836</sup> Payment card network rules may require the merchant acquirer to reply within a specified timeline in certain instances and may, in turn, require merchants to follow the acquirer's time frame for responding to such requests. See Visa Inc., *Chargeback Management Guidelines for Visa Merchants* at 24 (2014), available at <http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf>.

<sup>837</sup> One program manager reported to the Bureau that, in 85 percent of cases, there were 15 or fewer days between the transaction date and the initial notification date. Another program manager reported that in 76 percent of cases, there were 10 or fewer days between the transaction date and the dispute notification date.

misunderstanding. Since, under EFTA, the burden is on the financial institution to establish that the transaction in question was not an error, it is possible that the financial institution would be liable for errors that may not be legitimate. Because the financial institution is liable for an asserted error unless it can determine the error is not legitimate, a financial institution may incur a cost whether or not the error actually occurred. The Bureau therefore finds it more helpful to classify alleged errors as either accepted or denied, as explained below, when considering the various cases in which a financial institution may incur a cost.

Accepted disputes include situations in which the financial institution credits the consumer's account, either because an error occurred or, where an error did not occur, because an error was asserted and the financial institution could not establish that the transaction was authorized.<sup>838</sup> In the case of accepted disputes, financial institutions that do not currently offer limited liability and error resolution rights consistent with Regulation E will incur one-time and ongoing costs associated with training personnel, as well as one-time and ongoing costs associated with information technology support to track reported disputes, investigations, resolutions, and to produce reports for internal audit and potential supervisory review. Ongoing costs associated with conducting investigations include compensating personnel tasked with dispute intake, obtaining receipts and other documentation from merchants or ATM owners, and communicating investigation findings to the consumer. When the financial institution can neither establish that the EFT was authorized nor receive a credit from the merchant or ATM

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<sup>838</sup> Note that in some limited situations, payment card network rules permit the issuer to perform a merchant chargeback and be reimbursed. See Visa Inc., *Chargeback Management Guidelines for Visa Merchants*, at 43-88 (2014), available at <http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf>.

owner, financial institutions also will incur costs associated with paying funds to consumers.<sup>839</sup>

While the Bureau does not have data that permit it to estimate the magnitude of such costs, the amount paid to consumers may be related to typical balances held in prepaid accounts, discussed above in the context of benefits to consumers.

Additionally, the final rule requires financial institutions to extend provisional credit to consumers asserting an error claim when the length of the investigation exceeds 10 business days, so long as the prepaid account has been through the customer identification and verification processes. In cases where the claim is ultimately accepted, offering provisional credit represents little additional cost to the financial institution over and above any costs associated with error resolution because the amount credited is ultimately due to the consumer following the investigation. Since the financial institution would be required to pay the claim under the error resolution provision, the only cost to the financial institution associated with expediting the availability of funds is the opportunity cost of those funds as applied to another investment for the applicable period. The Bureau expects that this cost is generally negligible.

In contrast, denied disputes occur when the financial institution is able to establish that a transfer was authorized and, therefore, the institution is not ultimately required to return funds to the consumer. In the case of denied disputes, financial institutions that do not currently offer error resolution rights will incur costs associated with conducting investigations, and financial institutions that do not currently offer provisional credit will incur costs associated with crediting accounts when the length of the investigation exceeds 10 business days. Although a financial institution extending provisional credit can subsequently reverse the credit when it is able to

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<sup>839</sup> In pre-proposal outreach, the Bureau spoke with several financial institutions regarding error resolution, and the rate at which error claims were paid out varied greatly. One program manager paid out roughly half of the claims made (including those credited by the merchant), with under 30 percent of all claims paid by the program manager.

establish that the transfer was authorized, the consumer may draw down the funds in the interim or intentionally close the account and abscond with the funds.<sup>840</sup> In such cases, extending provisional credit results in the financial institution losing all or some of the funds that were extended. For provisional credit that can be reclaimed, the financial institution will incur a small opportunity cost of those funds as applied to another investment for the period spanning when the funds were granted and when they could be reclaimed. The Bureau expects that this opportunity cost generally will be negligible.

The Bureau believes that, to a certain extent, financial institutions are able to limit losses associated with error claims. In pre-proposal discussions with financial institutions that provide prepaid accounts, the Bureau learned that financial institutions often close (or could close) accounts that have repeated error claims, thereby limiting their exposure to potential losses, and may add individuals to a watch list. Additionally, industry partners sometimes share information regarding individuals who appear to be instigating fraudulent activity, and one payment card network has plans to create a centralized database to better detect fraud on prepaid cards.<sup>841</sup> Financial institutions can limit account access prior to customer identification and verification and use information provided in the identification and verification process to help limit the risk of fraud. The presence or absence of direct deposit, customer tenure, and card use patterns—including the type of merchant and the existence of prior activity at the merchant or ATM—can

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<sup>840</sup> One program manager told the Bureau that it was unable to reclaim provisional credit extended in roughly 65 percent of the cases in which a merchant could provide proof that the EFT was authorized.

<sup>841</sup> All U.S. Visa prepaid issuing financial institutions and their program managers have been required to report into Visa's Prepaid Clearinghouse Service since June 2015. See Press Release, Visa Inc., *Visa Prepaid Clearinghouse Service Creates Centralized Database to Better Detect and Prevent Fraud Schemes on Prepaid Cards* (Feb. 27, 2014), available at <http://investor.visa.com/news/news-details/2014/Visa-Enhances-Industry-Fraud-Detection-on-Prepaid-Cards/default.aspx>. While the Bureau supports industry efforts to reduce fraud, the Bureau cautions that any entities that maintain or furnish watch lists, screening programs, or other similar services should consider whether and how the Fair Credit Reporting Act or other statutes may apply to its activities.

all be used to predict the likelihood that fraud occurs. The limited liability and error resolution protections required by the final rule may encourage financial institutions to invest in more robust systems to prevent unauthorized transfers.

Several industry commenters said that the application of limited liability and error resolution provisions, and in particular the provisional credit requirements, to prepaid accounts under certain circumstances could increase financial institutions' fraud losses associated with prepaid accounts. Some commenters claimed that fraud risk is especially high for transactions taking place before an account has been registered or in the period shortly after a prepaid account has been opened. One commenter that processes prepaid transactions estimated that providing limited liability and error resolution rights for transactions taking place before a prepaid account is registered would lead to an increase in fraud exposure of one additional basis point, compared to a baseline fraud exposure of between four and five basis points.

The Bureau acknowledges that extending limited liability and error resolution protections, including provisional credit, to prepaid accounts that do not already offer these protections prior to customer identification and verification could increase the fraud exposure of financial institutions. Partly in response to these concerns, the Bureau has determined not to require provisional credit for prepaid accounts that have not successfully completed the financial institution's customer identification and verification process. To the extent that financial institutions nonetheless face increased fraud risk because limited liability and error resolution requirements apply before customer identification and verification, the Bureau notes that financial institutions can limit this risk by restricting a prepaid account's functionality before the identification and verification process is complete. The Bureau understands that currently many prepaid accounts cannot be used prior to customer identification and verification, or are subject

to restrictions on how they can be used or the amount of funds they can hold. To the extent that the requirement to provide limited liability and error resolution protections increases fraud exposure related to transactions prior to identification and verification or early in the account's history, such restrictions may permit financial institutions to reduce fraud exposure.

Although most programs reviewed as part of the Bureau's Study of Prepaid Account Agreements provided error resolution with provisional credit, there was some heterogeneity across programs with respect to the error resolution and provisional credit policies. To the extent that concern regarding the absence of a comprehensive Federal regulatory regime governing error resolution is currently limiting consumer adoption of prepaid accounts, providing for Regulation E limited liability and error resolution coverage, with provisional credit, for prepaid accounts—which include P2P transfer products—may help to facilitate wider adoption of these accounts and could benefit financial institutions. Additionally, since the costs associated with complying with the final rule vary across financial institutions, those that are already offering these protections may benefit if competitors need to raise prices or reduce the quality of their products to cover the costs associated with extending these protections to consumers. However, those financial institutions that currently offer these protections on a voluntary basis will lose the option of ceasing to offer such protections to consumers in the future.

#### *4. Requiring the Posting and Provision of Prepaid Account Agreements*

Section 1005.19 of the final rule requires issuers to submit agreements governing prepaid accounts that they offer to the Bureau on a rolling basis. The Bureau intends to post these agreements on a publicly available website established and maintained by the Bureau in the

future.<sup>842</sup> Issuers are not required to submit agreements to the Bureau if they qualify for one of two exceptions: (1) a de minimis exception for those issuers that had fewer than 3,000 open prepaid accounts as of the last day of the calendar quarter<sup>843</sup>; and (2) a product testing exception for those prepaid accounts offered to a limited group of consumers and otherwise meeting the requirements specified in § 1005.19(b)(5). Under § 1005.19(c), issuers also must post and maintain on their publicly available website any prepaid account agreements that the issuer offers to the general public (unless the issuer qualifies for the de minimis or product testing exceptions); this requirement does not apply to accounts, such as payroll card accounts or government benefit accounts, that are not offered to the general public.

In addition to these requirements, § 1009.19(d) requires that issuers provide access to individual account agreements to any consumer holding an open prepaid account, unless such agreements are required to be posted on the issuer's website pursuant to § 1005.19(c). An issuer may fulfill this requirement by posting and maintaining the consumer's agreement on its website or by promptly providing a copy of the agreement in response to a consumer's request.<sup>844</sup>

#### *a. Benefits and Costs to Consumers*

The final rule will generally increase the amount of information available to consumers regarding prepaid accounts both when shopping for a prepaid account and after acquisition of the prepaid account. Having online access to account agreements (both on the Bureau's website and

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<sup>842</sup> Only those agreements offered as of the last business day of the preceding calendar quarter that have not been previously submitted as well as those agreements that have been amended must be submitted. § 1005.19 (b)(1)(ii) and (iii). In addition, the issuer must notify the Bureau of any prepaid account agreement previously submitted that the issuer is withdrawing. § 1005.19 (b)(1)(iv).

<sup>843</sup> § 1005.19(b)(4).

<sup>844</sup> If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer must provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer is required to send to the consumer or otherwise make the copy of the consumer's agreement available no later than five business days after the issuer receives the consumer's request.

on the issuer's website) will enable suitably motivated consumers to more easily compare the fees, as well as other terms and conditions, of various prepaid account products. Entities may use the information in the repository to develop more competitive products or extract information that they could sell or otherwise provide to consumers or third parties, for example in the form of tools that consumer can use to compare the terms of different prepaid accounts. As discussed in more detail above with respect to the final rule's pre-acquisition disclosure requirements, consumers benefit from having more information about available products and their terms because it helps them to make better choices and because it can lead to additional competition in the market for prepaid accounts. Increased competition could benefit consumers through lower prices, higher quality products, or both.

For those consumers who have already acquired a prepaid account, access to their own account's terms and conditions, regardless of whether the account is currently offered to the public, could be helpful should a question arise regarding the terms of the account. Given that some accounts are held for a period of years<sup>845</sup>, it is possible that consumers might misplace the initial disclosures provided with their prepaid accounts. Having the terms and conditions available post-acquisition could be helpful if a consumer wishes to assert an error or if other questions arise regarding the account.

Actual and potential consumer holders of prepaid accounts could also benefit from the requirement that issuers provide prepaid account agreements to the Bureau on a rolling basis. Provision of agreements to the Bureau will facilitate the Bureau's market monitoring, helping to ensure that prepaid accounts comply with regulatory requirements. Knowing that agreements must be provided to the Bureau and posted on the issuer's website could serve as an impetus for

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<sup>845</sup> See, e.g., 2012 FRB Kansas City Study at 47 chart 4.1 (finding mean life spans of multiple years for some categories of prepaid accounts).

prepaid account issuers to ensure that they are complying with applicable regulatory requirements because public posting will make it more likely that agreement terms or disclosures that do not comply with such requirements are discovered.

*b. Benefits and Costs to Covered Persons*

Under the final rule, issuers of prepaid accounts offered to the public that do not qualify for the de minimis or testing exceptions will be required to establish procedures that ensure they provide agreements to the Bureau when required by the final rule and notify the Bureau when they withdraw an agreement. In addition, issuers will need to ensure that any submission includes the elements described in § 1005.19(b)(1). The Bureau expects that the burden imposed by this reporting requirement will be minimal, as issuers are required to maintain current account agreements for other purposes.

In addition, issuers of prepaid accounts that are offered to the public are also required to post prepaid account agreements on their publicly available website. Many issuers of prepaid accounts currently make account agreements available on their websites, but the final rule requires that issuers that do not qualify for the de minimis exception post and maintain any agreements currently offered to the public that do not qualify for the product testing exception. Therefore, issuers will need to ensure that their websites include current agreements. The Bureau anticipates that some issuers will incur costs to make required agreements publicly available on their websites.

The final rule also requires that all issuers provide consumers with access to the agreement for their own prepaid account, unless such agreements are required to be posted on the issuer's website pursuant to § 1005.19(c). For those issuers choosing to comply with this requirement by posting the relevant agreements online, the issuer must ensure that its website

includes all agreements for open accounts and ensure that the agreements posted online are complete and up-to-date should product offerings evolve. For those issuers choosing to comply with the requirement by mailing a paper copy of the agreement or otherwise making a copy of the agreement available in response to a consumer request, the cost associated with this provision will depend on the frequency with which consumers make requests for such information. Costs associated with fulfilling such requests could consist of customer service agent time spent receiving and responding to a request made via telephone, as well as postage or other materials should the issuer respond to the inquiry with a paper copy of the agreement. Those issuers choosing to comply in this manner may also incur implementation costs associated with training customer service agents to handle such requests and/or changing existing IVR menu options.

Greater availability of information about the terms of available prepaid accounts could increase competition by making it easier for consumers to compare account costs and features across different prepaid accounts. This reduction in consumer search costs could result in lower prices, which could reduce profits for issuers of prepaid accounts.

The proposed rule would have required agreements for all prepaid accounts that do not qualify for the product testing exception, including payroll card accounts and other accounts not offered to the general public, to be posted to the issuer's publicly available website. Several commenters noted that issuers of payroll card accounts in particular may have different account agreements for potentially thousands of different employers, and that the burden of maintaining a public website making such a large number of agreements available could be especially high. Because the final rule does not require issuers to post publicly available versions of agreements for prepaid accounts that are not offered to the general public, issuers will not bear the burden of making such agreements available on their websites, while consumers will still have access to

their own agreements pursuant to § 1009.19(d), and such agreements will be available to the public through the Bureau's future website.

#### *5. Requirements Applicable to Covered Separate Credit Features*

The final rule provides new protections for consumers with respect to certain overdraft credit features offered in connection with prepaid accounts. As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliate, or its business partner (except as described in new § 1026.61(a)(4)). New § 1026.61(b) generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Under final § 1026.2(a)(15)(i), a prepaid card is a credit card under Regulation Z when it is a “hybrid prepaid-credit card.” New § 1026.61(a)(2)(i) provides that a prepaid card is a “hybrid prepaid-credit card” with respect to a separate credit feature if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. A “covered separate credit feature” is defined in new § 1026.61(a)(2) to mean a separate credit feature accessible by a hybrid prepaid-credit card.

Certain provisions in Regulation Z apply to “creditors” and other provisions apply to “card issuers.” Under the final rule, a person that offers a covered separate credit feature accessible by a hybrid prepaid-credit card is both a “card issuer” and a “creditor” under

Regulation Z. As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of “open-end credit” and that credit will not be home-secured. A card issuer of a hybrid prepaid-credit card that extends open-end credit (and thus charges a finance charge for the credit) that is not home-secured in connection with the covered separate credit feature is a “creditor” for purposes of the rules governing open-end (not home-secured) credit plans in subpart B in connection with the covered separate credit feature. The card issuer also must comply with the credit card rules set forth in subparts B and G with respect to the covered separate credit feature and the hybrid prepaid-credit card.<sup>846</sup> In addition, the final rule includes modifications to Regulation E that provide new consumer protections for prepaid accounts accessible by a hybrid prepaid-credit card. These changes subject providers to a number of new requirements, which are summarized below.

The final rule excludes prepaid cards from coverage as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card when it accesses a “non-covered separate credit feature.” A non-covered separate credit feature is a separate credit feature that either: (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Although prepaid cards that access non-covered separate credit features are not considered hybrid prepaid-credit cards, the non-covered separate credit feature is often subject to Regulation Z in its own right, depending on its terms

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<sup>846</sup> As discussed in more detail above in the section-by-section analysis of § 1026.2(a)(17), a person who offers a covered separate credit feature accessible by a hybrid prepaid-credit card and does not impose a finance charge is not offering open-end credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such a person would still be subject to certain Regulation Z requirements under certain circumstances.

and conditions. Second, under new § 1026.61(a)(4), a prepaid card also is not a credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees. Under the final rule, this incidental credit is generally subject to Regulation E, instead of Regulation Z.

By generally classifying prepaid cards that access covered separate credit features as credit cards, the final rule makes existing credit card provisions in Regulation Z that restrict the structure and types of fees that providers may impose applicable to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. As discussed above, the Bureau anticipates that most covered separate credit features will meet the definition of “open-end credit” and these credit plans will not be home-secured. Accordingly, the provisions applicable to open-end consumer credit plans are of particular importance in considering the potential impacts of the final rule. For example, existing Regulation Z § 1026.52(a) generally prohibits card issuers from imposing fees in excess of 25 percent of the credit limit during the first year following the opening of a credit card account under an open-end (not home-secured) consumer credit plan. Under the final rule, this restriction applies to credit-related fees assessed in connection with covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. In addition, § 1026.52(b) limits penalty fees, and § 1026.56 prohibits over-the-limit fees unless the consumer consents by opting-in to such fees, with respect to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans.

The final rule also modifies Regulation E to specify in § 1005.18(g)(1) that a financial institution generally must provide to any prepaid account without a covered separate credit

feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature. The final rule permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. However, § 1005.18(g)(1) prohibits a financial institution from charging a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature.

In addition to these restrictions on fee structure and type, certain newly applicable provisions of Regulations E and Z restrict how a financial institution may obtain repayment of a balance incurred on a covered separate credit feature accessible by a hybrid prepaid-credit card. The final rule, in § 1005.10(e)(1), applies the EFTA compulsory use prohibition to covered separate credit features accessible by a hybrid prepaid-credit card. Accordingly, creditors are prohibited from requiring the electronic repayment of credit extended through a covered separate credit feature accessible by a hybrid prepaid-credit card on a preauthorized, recurring basis.<sup>847</sup> In particular, creditors are required to offer prepaid account consumers an alternative to the automatic repayment of credit balances, such as a consumer-initiated transfer of funds from an asset account to the credit account. While consumers may voluntarily agree to an automatic repayment plan for their convenience, such voluntary plans are subject to certain restrictions.

In particular, the final rule's provisions ensure a minimum period of time between when a debt is incurred and when the debt is due to be repaid for covered separate credit features

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<sup>847</sup> However, a creditor may offer an incentive to consumers for agreeing to repayment by preauthorized, recurring EFTs.

accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. Specifically, with regard to such plans, the final rule requires card issuers to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.<sup>848</sup> In addition to requiring card issuers to obtain the consumer's written, signed agreement to any automatic repayment with respect to a deposit account held with the card issuer, Regulation Z § 1026.12(d) prevents card issuers from deducting a payment more frequently than once per calendar month under any such automatic repayment plan.

Pursuant to Regulation Z as amended by the final rule, card issuers offering hybrid prepaid-credit cards must comply with a number of requirements governing solicitation and application. During the 30 days following prepaid account registration, § 1026.61(c) prohibits a card issuer from opening a covered separate credit feature accessible by a hybrid prepaid-credit card, providing a solicitation or application to open such a credit feature, or allowing an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card. Currently, § 1026.12(a)(1) prohibits unsolicited issuance of credit cards. Under the final rule, § 1026.12(a)(1) applies to hybrid prepaid-credit cards, and a card issuer may only attach a covered separate credit feature to a prepaid card in response to an oral or written request or application for the card. Any credit card applications or solicitations offered to consumers for a covered separate credit feature must comply with the requirements specified in § 1026.60. In evaluating an application, a card issuer is required by current § 1026.51(a) to establish and maintain reasonable written policies and procedures to consider the consumer's income or assets and current obligations in evaluating the consumer's ability to make the required minimum

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<sup>848</sup> See the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

periodic payments under the terms of the plan. The final rule applies this ability to pay requirement to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans.

Current Regulation Z also includes a number of additional disclosure requirements that the final rule applies to covered separate credit features accessible by a hybrid prepaid-credit card. Before the consumer makes a transaction using a covered separate credit feature accessible by a hybrid prepaid-credit card, creditors are required to provide the account-opening disclosures required by § 1026.6(b). Moreover, the final rule requires creditors to comply with § 1026.7 and provide a periodic statement for each billing cycle in which the account has a debit or credit balance of more than \$1 or in which a finance charge has been imposed. This periodic statement requirement supplements the prepaid account periodic statement that is required by Regulation E.<sup>849</sup> In addition, creditors generally are obligated to provide the disclosures described in § 1026.9(c)(2) when changing the terms of the covered separate credit feature.

Because of statutory differences, transactions performed using a covered separate credit feature accessible by a hybrid prepaid-credit card may, in some circumstances, be afforded liability and error resolution protections that exceed those applicable to transactions exclusively involving funds drawn from the prepaid asset account. For those credit card transactions subject to Regulation Z's liability limitations, current § 1026.12(b) restricts cardholder liability to \$50 in the event of unauthorized use. By contrast, Regulation E, in current § 1005.6(b), permits a

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<sup>849</sup> Instead of providing a prepaid account periodic statement as required under Regulation E, final Regulation E § 1005.18(c) provides that a financial institution is not required to provide periodic statements if it makes available to the consumer balance information by telephone, 12 months of electronic account transaction history, and upon the consumer's request, 24 months of written account transaction history. As mentioned above, § 1026.5(b)(2) specifies that for credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.

financial institution to hold a consumer liable in the event of unauthorized use for up to \$500 if the consumer does not report the loss in a timely manner.<sup>850</sup> In addition, current Regulation Z's definition of billing error is more expansive than Regulation E's definition of error and includes an extension of credit for property or services not accepted by the consumer (or the consumer's designee) or not delivered as agreed. *Compare* § 1026.13(a), *with* § 1005.11(a).

Because Regulation Z and Regulation E provide for different liability limitations and error resolution procedures, the final rule specifies in Regulation E § 1026.12(a)(1)(iv)(B) and Regulation Z § 1026.13(i)(2) which limitations and error resolution procedures apply to transactions made with a hybrid prepaid-credit card.<sup>851</sup> For those transactions that exclusively draw on a covered separate credit feature, the final rule specifies that Regulation Z's liability limitations and error resolution procedures apply. For those transactions that solely debit a prepaid asset account and do not draw on a covered separate credit feature, the final rule specifies that Regulation E's liability limitations and error resolution procedures apply. Finally, for those transactions that both debit a prepaid asset account and draw on a covered separate credit feature, Regulation E's liability limitations and error resolution procedures generally apply, with the exception of the error resolution provisions of § 1026.13(d) and (g) of Regulation Z, which apply to the credit portion of the transaction.

The baseline for the Bureau's consideration of the benefits, costs, and impacts arising from the final rule is the current market for prepaid accounts. However, to inform the rulemaking, the Bureau also considers the potential future impacts of the final rule by comparing

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<sup>850</sup> Irrespective of whether a transaction is subject to a liability limitation specified by Regulation E or Z, payment card networks' "zero liability" policies may further limit consumers' liability for unauthorized transactions.

<sup>851</sup> See also existing Regulation Z § 1026.12(g), which cross-references Regulation E § 1005.12(a), for guidance on whether Regulation Z or Regulation E applies regarding issuance and liability for unauthorized use, in instances involving both credit and EFT aspects.

the likely future development of the market for these products to how the market might have evolved in the absence of the final rule. Consistent with the baseline used for discussion of the other final rule provisions, this baseline incorporates both the existing regulatory structure and economic attributes of the relevant market. Most notably, this baseline includes underlying consumer preferences and the current set of incumbent firms and potential entrants.

Although a number of financial institutions offer prepaid accounts to consumers, the vast majority do not currently offer overdraft services in connection with these accounts and thus their current products are not directly impacted by the various credit provisions of the final rule.<sup>852</sup> However, one of the largest prepaid account program managers offers an overdraft service in connection with its prepaid accounts, which include both GPR cards and payroll card accounts. The Bureau's understanding is that the credit limits extended to consumers using these overdraft services are typically smaller than credit limits offered by credit card accounts, and consumers typically pay a per transaction fee, which does not vary with the size of the overdraft, to use the feature.<sup>853</sup> The Bureau understands that providers voluntarily choose to limit the number of fees that a consumer may incur during a specified period, and providers may waive fees for consumers who repay the overdraft within 24 hours or who overdraft by a de minimis amount. Further, the Bureau understands that providers require consumers to opt-in to the service and only offer the service to consumers who meet certain eligibility criteria.

Financial institutions currently offering prepaid accounts subject to a negative balance fee that wish to continue to charge such fees will need to restructure these accounts to comply with

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<sup>852</sup> One source suggests that government benefit card program revenue from overdraft fees “virtually disappeared” in 2014. 2015 FRB Government Prepaid Cards Report at 1. In 2015, overdraft fees accounted for less than 0.1 percent of total cardholder fee revenue for government benefit card programs. 2016 FRB Government Prepaid Cards Report at 8.

<sup>853</sup> See, e.g., 2012 NetSpend WSJ Article.

the final rule's credit provisions. There is little evidence regarding how common such fees are in practice. In the Study of Prepaid Account Agreements conducted in connection with the proposed rule, the Bureau found that roughly 7 percent of reviewed agreements noted a negative balance fee in their terms and conditions.<sup>854</sup> In response to the proposal, one credit union league commenter stated that 91 percent of member credit union survey respondents stated that they do not charge a sustained negative balance fee. One office of a State Attorney General commented that one-third of 38 employers it surveyed used payroll card programs that included overdraft or negative balance fees, though it is unclear how many distinct prepaid account providers this figure represents. Rather than trigger coverage under the final rule's credit provisions, the Bureau believes that most financial institutions that currently reserve the right to impose negative balance fees will no longer do so.

Although there are few prepaid providers currently offering overdraft services, the final rule's restrictions will affect a significant portion of the fee-based revenue generated by those prepaid programs offering overdraft. According to the office of a State Attorney General, overdraft fees and declined balance fees may comprise a substantial portion of the fee-based revenue for financial institutions offering payroll card programs, stating that, in its survey of 38 employers' payroll card programs, overdraft fees comprised over 40 percent of the fees assessed by those vendors that charge them.

Consumers regularly using overdraft services offered in connection with prepaid accounts represent only a small minority of all prepaid account consumers. The Bureau understands that the small number of prepaid account providers that currently offer overdraft services condition

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<sup>854</sup> Study of Prepaid Account Agreements at 25-26. This percentage excludes those agreements designated as offering opt-in overdraft services (24 of 325 reviewed agreements). Including those agreements with formal opt-in overdraft services, roughly 10 percent noted a negative balance fee. *Id.* at 26.

consumer eligibility on receipt of a regularly occurring direct deposit exceeding a predetermined threshold. Additionally, consumers must affirmatively choose to activate, or opt-in to, the service. Therefore, only those consumers who both meet the eligibility requirements and affirmatively choose to use the service are able to overdraft. A reasonable estimate of current market activity suggests that less than 1 percent of prepaid accountholders regularly use overdraft features offered in connection with their prepaid accounts.<sup>855</sup> Thus, the benefits, costs, and impacts arising from the final rule's overdraft credit provisions will have a limited effect on prepaid account consumers generally, as described more fully below, even though those consumers currently relying on overdraft services may be affected by changed product features, altered eligibility requirements, or loss of access.<sup>856</sup>

In response to the proposal, a few industry commenters stated that the Bureau's treatment of overdraft services as credit subject to Regulation Z did not appear to be supported by any data,

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<sup>855</sup> Although NetSpend is a significant prepaid account program manager and offers overdraft services in connection with some of its GPR and payroll card products, a news article reported that only 6 percent of NetSpend's customers regularly use overdraft. 2012 NetSpend WSJ Article. In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015, and 49 percent of those active cards had direct deposit. Total Sys. Serv., Inc., Quarterly Report (Form 10-Q), at 27, available at <http://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d97203d10q.htm> (for the quarterly period ended Sept. 30, 2015).

Focusing attention only on GPR card and payroll card accounts, which excludes other prepaid account products and therefore underestimates the market size, one projection estimated that there would be 22.4 million active prepaid debit and payroll cards in the United States as of 2014. Aite Group LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity*, at 13 fig.5 (Nov. 2012). Recent reports are largely consistent with this projection. One recent report estimated that there were 6.0 million active payroll cards as of 2014. Aite Group LLC, *Checkmate: U.S. Payroll Card Programs Trump Paper Checks*, at 8 fig.4 (Apr. 2015). A second recent study estimated that there were 16.1 million GPR cards in circulation. Bob Rohr, First Annapolis, *Chase Enhances Competitive Positioning of Liquid*, Navigator: Thought Leadership on the Global Payments Industry, at 5 fig.2 (Sept. 2015), available at [http://www.firstannapolis.com/wp-content/uploads/2015/09/September-2015\\_First-Annapolis-Navigator1.pdf](http://www.firstannapolis.com/wp-content/uploads/2015/09/September-2015_First-Annapolis-Navigator1.pdf).

<sup>856</sup> For example, changes in pricing structure or other protections may make covered separate credit features accessible by a hybrid prepaid-credit card either more or less desirable to a consumer relative to current overdraft services offered in connection with prepaid accounts. It is also possible that changes in the profitability of offering this product could lead those few current providers to change business models and, in so doing, potentially impact both those consumers using covered separate credit features accessible by a hybrid prepaid-credit card as well as prepaid accountholders not using such features.

and they cited a lack of Bureau complaint data regarding overdraft on prepaid cards. Because relatively few consumers use overdraft services in connection with their prepaid accounts, the Bureau does not consider the volume of complaints to be informative regarding the benefits and costs of the final rule's treatment of overdraft services as credit. Further, because prepaid account providers offer overdraft services to consumers in a relatively uniform manner, there is neither an accessible counterfactual nor a natural experiment available that would enable the Bureau to evaluate alternative credit regulatory regimes.

Industry commenters also suggested that the Bureau's consumer testing did not support the Bureau's approach to regulating overdraft credit features offered in connection with prepaid accounts, stating that the testing supported a disclosure-based approach. The Bureau notes that, while consumer testing may inform the composition of a disclosure, it was not designed to evaluate behavioral responses to alternative credit regulatory regimes and, in any event, cannot capture strategic responses by industry to new regulatory requirements.

*a. Benefits and Costs to Consumers*

The Bureau believes that the final rule's requirements concerning disclosures, liability limitations, and error resolution procedures for covered separate credit features accessible by a hybrid prepaid-credit card provide a number of consumer benefits, aligning with those conferred by Congress on credit card accountholders under TILA. In some cases, the final rule strengthens consumer protections relative to those protections offered by current industry practices. In other cases, the final rule codifies requirements that, though largely consistent with current practices, are not mandatory under Federal law.

The Bureau believes that the final rule's requirements concerning credit-related disclosures, liability limitations, and error resolution procedures will have a minimal impact on

which consumers have access to covered separate credit features accessible by a hybrid prepaid-credit card and the amount of credit offered. Although the credit-related disclosures provided to consumers seeking to add a covered separate credit feature accessible by a hybrid prepaid-credit card may motivate some consumers to choose not to apply for such a feature, the incremental cost associated with producing and distributing such disclosures, considering that providers must give various other disclosures to consumers acquiring a prepaid account, is modest. In addition, providers may further mitigate costs by obtaining E-Sign consent from the consumer and delivering subsequent credit-related disclosures in electronic form. The credit limits that providers currently offer consumers in connection with overdraft services offered in connection with prepaid accounts already serve to limit liability, so the additional requirements with respect to error resolution and liability limitations for covered separate features accessible by a hybrid prepaid-credit card should not prompt providers to engage in additional screening behaviors. These costs should not meaningfully affect which consumers are given the option to add a covered separate credit feature or the cost of that credit.

In contrast, certain other credit-related provisions of the final rule, including provisions that restrict the type and structure of certain fees and the timing of repayment, will likely have a significant impact on which consumers have access to covered separate credit features accessible by a hybrid prepaid-credit card, the amount of credit offered, and the payment terms associated with the credit. As will be discussed below, these impacts likely will occur because providers choosing to offer covered separate credit features accessible by a hybrid prepaid-credit card likely will modify their current fee structures to comply with the rule. In addition, providers likely will change eligibility criteria for covered separate credit features accessible by a hybrid

prepaid-credit card due to the increased credit risk resulting from the final rule's provisions addressing the timing of repayment.

The benefits, costs, and impacts arising from the final rule's credit-related provisions likely will vary with the consumer's current intensity and intentionality of use of overdraft services. As described above, most consumers do not currently use overdraft services in connection with their prepaid accounts. Consumers use prepaid accounts for varied reasons. Some consumers rely on these accounts to aid in controlling spending or to facilitate budgeting.<sup>857</sup> Such consumers are unlikely to choose to use covered separate credit features accessible by a hybrid prepaid-credit card. By contrast, consumers with different motivations for using prepaid accounts may desire access to covered separate credit features and may rely on such features provided they meet the program's eligibility requirements.<sup>858</sup>

Consumers who currently use prepaid accounts that offer overdraft services will experience the impacts of the final rule's credit-related provisions most directly. Some consumers who currently knowingly use overdraft services in connection with their prepaid accounts rely on such services only occasionally while others choose to rely on such services as a source of credit with regularity. The Bureau received extensive consumer comment in response to the proposed rule, including comments that were coordinated as part of a letter-writing campaign organized by a program manager that offers overdraft services in connection with some of its prepaid account products. These comments stated, among other things, that

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<sup>857</sup> Several studies, as well as the Bureau's focus group research, indicate that some consumers view spending control or budgeting as a benefit offered by prepaid accounts. *See, e.g.*, 2014 Pew Survey; The Pew Charitable Trusts, *Key Focus Group Findings on Prepaid Debit Cards* (Apr. 2012), available at [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2012/FSP1201420Pew20DebitCardsR10A4512pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/FSP1201420Pew20DebitCardsR10A4512pdf.pdf); *see also* ICF Report I at 5.

<sup>858</sup> These requirements generally include receipt of a regularly occurring direct deposit in excess of a specified threshold.

consumers benefit from having access to overdraft services to make emergency or otherwise unexpected purchases. Some consumer commenters stated that the overdraft services offered by their prepaid provider were cheaper and less risky than alternatives, such as payday loans. In addition to this intentional reliance on overdraft services as source of credit, eligible consumers who have opted-in to an overdraft service may also unintentionally overdraw their prepaid accounts if they do not monitor their prepaid account balances.<sup>859</sup>

The Bureau expects that the final rule's restrictions on certain fees potentially charged to covered separate credit features accessible by a hybrid prepaid-credit card will incentivize, and in some cases require, those providers offering covered separate credit features accessible by a hybrid prepaid-credit card to change their pricing structures. Most notably, the final rule subjects most fees charged during the first year following the opening of a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan, other than periodic interest rates, to a cap of 25 percent of the initial credit line.<sup>860</sup> Currently, consumers who rely on an overdraft service offered in connection with their prepaid account generally pay a per transaction fee, which does not vary with the size of the overdraft, to use the feature.<sup>861</sup> This is similar to the fee structure typically used for checking account overdraft products, and these fees can be high relative to the amount of credit extended. Therefore, the final rule's restriction on the amount of fees that may be collected in the first year will be a binding constraint on the card issuer for all but infrequent users of covered separate

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<sup>859</sup> Some providers currently mitigate this possibility by requiring overdraft users to sign up for text or email alerts or by other mechanisms, even though they are not required by Federal law to do so.

<sup>860</sup> This cap already applies to credit card accounts under an open-end (not home-secured) consumer credit plan pursuant to the CARD Act.

<sup>861</sup> For example, consumers may pay \$15 per overdrawn transaction to access a credit line of \$100. *See, e.g.*, 2012 NetSpend WSJ Article. Although providers may limit the number of fees that a consumer may incur during a specified period or opt not to charge for overdrafts that cause an account to go negative by a de minimis amount, this choice is voluntary.

credit features accessible by a hybrid prepaid-credit card. Considering the current pricing structure of prepaid account programs that offer overdraft services, the final rule's requirement could translate directly into lower transaction-based fees, at least during the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card, for consumers using such features.<sup>862</sup>

Because this provision restricts the level of certain fees and not others, it is likely that providers that currently offer overdraft services in connection with their prepaid accounts will change prepaid account pricing structures and raise fees not subject to the restriction (or create new fees).<sup>863</sup> Issuers of hybrid prepaid-credit cards could respond to the final rule's fee provisions by either raising fees charged in connection with the prepaid account that do not relate to the covered separate credit feature for all prepaid accountholders, assessing an application fee for the covered separate credit feature to those prepaid accountholders who apply for such credit, or shifting to a pricing structure based on a periodic interest rate.<sup>864</sup> However, each of these options is likely to decrease demand relative to the present for either prepaid accounts or covered separate credit features. The quantity of prepaid accounts demanded from providers that offer covered separate credit features accessible by a hybrid prepaid-credit card could decrease if these

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<sup>862</sup> It is possible that some providers could choose to issue a change-in-terms notice to consumers after the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card and restore the present fee structure for consumers who have held their card for at least one year. However, the Bureau believes that such an approach is not likely to be adopted because: (1) a provider engaging in such a strategy risks losing non-overdraft related fee revenue, which may be substantial, should consumers respond to such a strategy by choosing a different product; and (2) a provider would potentially bear additional administrative costs associated with maintaining multiple fee structures within the same program. See Fumiko Hayashi & Emily Cuddy, *Recurrent Overdrafts: A Deliberate Decision by Some Prepaid Cardholders?*, at 32 tbl.4 (Fed. Reserve Bank of Kan. City, Working Paper No. RWP 14-08, 2015), available at <https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-08.pdf> (showing that non-overdraft related fees comprise well over half of fees collected from overdrafters on average for one provider).

<sup>863</sup> If providers are profit-maximizing firms, their current choice not to offer an alternative fee structure compliant with the final rule's provisions suggests that their profits would decrease under such an alternative fee arrangement given the present industry structure.

<sup>864</sup> Like an application fee, periodic interest would not be subject to the restriction.

providers respond to the final rule's credit pricing restrictions by generally raising prepaid account fees that are unrelated to the covered separate credit feature.<sup>865</sup> Alternatively, if providers respond by imposing or raising an application fee, the number of consumers demanding credit could decrease. This could occur because an up-front application fee is more salient for consumers than the current add-on pricing model, which relies on back-end transaction-based fees, or because consumers are less likely to have available funds to pay a larger, up-front fee. Similarly, shifting to a pricing structure based on a periodic interest rate would require that card issuers disclose to consumers a comparatively large, and therefore potentially salient, interest rate (if current credit limits and repayment intervals are retained). It is also possible that providers may choose not to offer covered separate credit features accessible by a hybrid prepaid-credit card or to offer these products to a more select set of consumers, relative to the baseline.

Provider responses to the final rule's provisions may cause those consumers who use overdraft services infrequently to pay higher prices for the covered separate credit feature or to choose to use less credit. For example, if providers respond to the pricing restrictions by charging consumers a high application fee to access credit, those consumers who anticipate occasional use may choose not to apply for credit because they may not be willing to pay a salient and transparent up-front fee (unless they highly value the possibility of having this credit readily available). This could benefit some consumers by preventing them from inadvertently

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<sup>865</sup> Because the terms and conditions for transactions accessing the prepaid account cannot vary based on whether the prepaid accountholder accepts a covered separate credit feature accessible by a hybrid prepaid-credit card, providers are unable to target an increased prepaid account fee solely on those prepaid accountholders who accept the credit feature. Therefore, providers likely will target fees that are positively correlated with a consumer's demand for the covered separate credit feature, such as an application fee, for potential increases. This follows because a prepaid accountholder who desires a covered separate credit feature is less likely to switch to a substitute product in response to a fee increase than a prepaid accountholder who does not desire a covered separate credit feature (and therefore has more available substitute prepaid products from which to choose).

accessing a credit feature (after having opted-in) and incurring the attendant fees. However, if an unanticipated need for funds were to arise, some of these consumers may need to adapt their household budgets in other ways, which may include relying on other credit sources that are potentially higher cost or less convenient.<sup>866</sup> If a consumer needs to rely on another credit source, managing a relationship with an additional financial services provider could also result in efficiency losses, and the consumer may find understanding a second provider's terms and conditions and tracking account balances and due dates more costly than relying on one provider for both the prepaid account and credit feature.

As noted above, some consumers who frequently use overdraft services may not have developed account management skills.<sup>867</sup> Other such consumers may accurately anticipate their use of overdraft services but still prefer to use overdraft because they perceive overdraft services to be their best available source of short-term credit. As described above, providers will not be able to maintain the current per transaction fee structure for those consumers who use the covered separate credit feature accessible by a hybrid prepaid-credit card more than occasionally in the first year following account opening (assuming that the credit limit remains unchanged).<sup>868</sup> Providers may respond to the final rule's fee restrictions by raising other prepaid account fees not related to the covered separate credit feature or by relying on an up-front fee, such as an

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<sup>866</sup> Consumers may not have the funds to pay an application fee at the point when they need credit.

The fees charged currently for overdraft services in connection with prepaid accounts, which generally range from \$15 to \$35 per transaction, are typically lower than checking account overdraft fees. According to data obtained from one research firm, the Bureau found that the median overdraft fee among the 33 institutions monitored by the research firm was \$34 in 2012, and the median overdraft fee across nearly 800 smaller banks and credit unions was \$30 in 2012. CFPB Overdraft White Paper at 52.

<sup>867</sup> According to one study, 41 percent of prepaid users (who currently or previously had a checking account) had either closed a checking account themselves or had an account closed by an institution because of overdraft or bounced check fees. 2014 Pew Survey at 8.

<sup>868</sup> As discussed above, consumers who opt-in to overdraft services generally pay a flat fee per overdraft. At present, there is generally no fee associated with opting-in to overdraft services offered in connection with a prepaid account.

application fee, or periodic interest rate. However, consumers may find the payment of an up-front fee or the disclosure of a periodic interest rate highly salient. Many prepaid accountholders may not be willing to pay a one-time application fee or periodic interest rate of the magnitude that providers would need to charge to rationalize offering the credit feature. Given this response, the profit generated from an up-front fee or a periodic interest rate may not be sufficient to rationalize offering a covered separate credit feature.

Consumers who currently use overdraft features frequently will pay lower fees to access covered separate credit features under the final rule to the extent that they are able to access such services and choose to do so despite a salient up-front fee.<sup>869</sup> Furthermore, those consumers choosing to obtain a covered separate credit feature accessible by a hybrid prepaid-credit card despite a high up-front fee will have increased incentive to utilize it once purchased because the marginal cost associated with accessing the credit will be lower than under the current per transaction pricing structure.

The final rule also likely will affect which prepaid account consumers are eligible for covered separate credit features accessible by a hybrid prepaid-credit card. The final rule requires that card issuers establish and maintain reasonable written policies and procedures for considering the consumer's ability to make required minimum payments in deciding whether to offer the consumer a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. Furthermore, to attempt to mitigate the effects on profitability of the additional credit risk borne in complying with the final rule's credit-related provisions, it is likely that providers offering covered separate credit features accessible by a hybrid prepaid-credit card (or considering doing so) will alter the eligibility

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<sup>869</sup> As described above, those consumers who are no longer able to access such services will potentially pay higher fees if they choose to rely on other types of consumer credit.

criteria. As a result, some consumers who are currently eligible (or would otherwise become eligible in the future) may lose (or not obtain) eligibility, and these consumers would either need to decrease consumption or rely upon alternative (and potentially higher cost) fund sources.

Other provisions of the final rule provide consumers with additional control over their funds by ensuring that there is a minimum period of time between when debts are incurred and when they are due to be repaid. The final rule requires that for covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans, card issuers adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.<sup>870</sup> Therefore, card issuers may not require that debts be repaid immediately from the next deposit into the consumer's asset account. In addition, the Regulation Z prohibition on offsets gives consumers discretion to decide whether to use funds deposited into their prepaid accounts to pay off debts incurred in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card or for another use that they deem a higher priority. Although this no-offset provision increases the onus on the consumer to budget for the debt and to remember to pay it to avoid additional fees or other adverse effects, consumers would still have the option of setting up an automatic payment around the fixed monthly payment due date to avoid this result if the creditor chooses to offer this capability. Moreover, under the final rule, a card issuer may sweep funds only periodically (and no more than once per calendar month) from the prepaid asset account to repay a debt, so long as it has the consumer's written authorization to do so. This restriction on the frequency of sweeps and the required delay that results from the requirement relating to the timing of periodic statements allow consumers to benefit from additional control of their funds.

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<sup>870</sup> See the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

These restrictions on the ability of a card issuer to apply prepaid account funds to outstanding debts incurred through the use of the covered separate credit feature will increase the credit risk associated with offering covered separate credit features accessible by a hybrid prepaid-credit card and, all else equal, will decrease their profitability. To compensate for this risk, providers may respond by offering less credit to consumers, charging higher fees for credit extended, or increasing collections activity.<sup>871</sup> One industry commenter noted that the cost for consumers to access credit will increase if it becomes more difficult for creditors to recover debts and stated that providers may resort to the use of debt collectors if they are unable to exercise offset rights. The commenter predicted that the Bureau's proposal would increase the cost of borrowing, and consumers would be more likely to have delinquent accounts. The Bureau recognizes that the cost for some consumers to access this credit may increase, but the protections required by the final rule decrease the risk faced by consumers in using these features. Another industry commenter stated that a decision to remove or reduce an overdraft credit line could have an adverse impact on a consumer's credit score should creditors share consumer credit limits and utilization with reporting agencies. The Bureau's understanding is that providers do not currently share credit limits or utilization with reporting agencies for overdraft services, and the Bureau notes that if creditors were to decide to share consumer credit limits and utilization with reporting agencies, the impact on a consumer's credit score of such reporting may be positive as well as negative, depending on the consumer's utilization and payment behavior.

Other provisions of the final rule provide potential benefits to consumers. The final rule requires providers offering covered separate credit features accessible by a hybrid prepaid-credit

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<sup>871</sup> The final rule limits the magnitude of certain fees charged in connection with covered separate credit features accessible by a hybrid prepaid-credit card so any change in fee levels must comply with these restrictions.

card to adhere to certain requirements that restrict when they may offer these features to consumers. By temporally separating the option to add a covered separate credit feature from the choice to acquire a prepaid account, these restrictions provide the prepaid accountholder with additional transparency and ensure that the consumer has the opportunity to become informed and consider options when applying for credit.<sup>872</sup> Periodic statements and other disclosures required by the final rule, as well as the requirement that the covered separate credit feature be structured as a separate account or sub-account, will aid transparency and better enable consumers to monitor their accounts. Consumers potentially will receive separate periodic statements for their prepaid account (or an electronic history of transactions for the prepaid account) and their covered separate credit feature accessible by a hybrid prepaid-credit card, though the two periodic statements may be combined if the combined statement meets the requirements of both Regulations E and Z. The periodic statement requirement ensures that consumers receive important information regarding transactions performed and fees incurred using their covered separate credit feature. Absent this requirement, creditors may choose not to disclose all such information pertaining to the covered separate credit feature. In addition, for statutory reasons, transactions solely accessing the covered separate credit feature are subject to stronger liability limitations and error resolution protections than those transactions that do not access the credit feature.<sup>873</sup> The Bureau anticipates that these particular requirements will have a

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<sup>872</sup> The final rule provides that card issuers must adhere to timing requirements regarding solicitation and application that generally prevent card issuers from doing any of the following within 30 days of prepaid account registration: (1) opening a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) making a solicitation or providing an application for such a feature; or (3) allowing an existing credit feature to become such a covered separate credit feature accessible by a hybrid prepaid-credit card.

<sup>873</sup> Those transactions that access both the prepaid asset account and the covered separate credit feature generally are subject to Regulation E's liability limitations and error resolution procedures, as well as some of Regulation Z's error resolution procedures, described in existing § 1026.13(d) and (g).

modest incremental impact on consumer access to credit beyond the impacts arising from the other new provisions, as discussed above.

The Bureau also considered, among other options, extending the Regulation E overdraft opt-in regime, described in § 1005.17, to prepaid accounts. Industry commenters advocated this approach, as well as variations that included additional protections (such as a cap on the number of overdraft fees). One industry commenter noted that consumers may want optional overdraft services provided under Regulation E but may not want credit card services under Regulation Z. The commenter stated that consumers use overdraft services in a manner indicating conscientious use of the service and that a Regulation E disclosure and opt-in approach is sufficient to protect consumers who do not want overdraft services and to ensure that consumers who want overdraft services understand the terms of the service. Commenters also asserted that consumer confusion could result from treating prepaid overdraft services differently from deposit account overdraft services.<sup>874</sup> The Bureau believes that the disclosure requirements of the final rule, including the restrictions on the timing of solicitation and application for covered separate credit features, should mitigate potential consumer confusion and distinguish the prepaid card account from any optional covered separate credit feature that may subsequently be accessed using a hybrid prepaid-credit card.

The few financial institutions that currently provide overdraft services in connection with prepaid accounts generally act consistently with the Regulation E opt-in regime. However, the Bureau learned through comments that many additional financial institutions would offer overdraft services in connection with their prepaid accounts if it were to adopt a Regulation E

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<sup>874</sup> For example, one industry trade association commenter noted that subjecting overdraft services to Regulation Z could result in consumer confusion and that consumers may mistakenly purchase prepaid cards believing that they are credit cards.

opt-in approach. Relative to the approach taken in the final rule, the Regulation E opt-in approach could potentially result in more widespread consumer use of overdraft services in connection with prepaid accounts. This could result from additional entry by providers due to the resolution of the regulatory uncertainty that currently deters their entry and from increased marketing activities by both incumbents and entrants aimed at growing demand for overdraft services offered in connection with prepaid accounts. However, under a Regulation E opt-in approach, consumers using services that would be considered covered separate credit features accessible by a hybrid prepaid-credit card under the final rule would not enjoy the protections required by Regulation Z and other benefits, as discussed above.<sup>875</sup>

The Bureau believes that industry pricing could evolve to a structure that approximates the checking account overdraft pricing structure, which is heavily reliant on back-end pricing via overdraft fees, under a Regulation E opt-in approach.<sup>876</sup> This could result in some consumers potentially paying higher fees for overdraft services than they do at present (or than they would under the final rule), but it also could result in other consumers paying less for their prepaid accounts if growth in demand for overdraft services or competitive pressures prompt providers to adopt alternative fee schedules. Relative to the final rule, adopting a Regulation E opt-in approach could result in higher prices for overdraft services for consumers who can obtain these services because the final rule's restrictions on the pricing of covered separate credit features accessible by a hybrid prepaid-credit card would not apply.

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<sup>875</sup> As discussed above, the Bureau is engaged in research and other activity in anticipation of a separate rulemaking regarding checking account overdraft products and practices. The Bureau expects that the rulemaking will consider whether additional regulatory protections are warranted for those products and practices.

<sup>876</sup> In a study of several large banks' checking account overdraft programs, the Bureau found that, for opted-in consumers, overdraft and NSF fees accounted for about 75 percent of their total checking account fees and averaged over \$250 per year. CFPB, *Data Point: Checking Account Overdraft*, at 5 (July 2014), available at [http://files.consumerfinance.gov/f/201407\\_cfpb\\_report\\_data-point\\_overdrafts.pdf](http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf).

In the proposed rule, the Bureau also considered an alternative variant of the Regulation Z approach that subjected a broader set of transactions to coverage, including incidental credit extended in the form of a negative balance on a prepaid account in most situations.<sup>877</sup> Under the proposal, all per transaction fees for credit transactions were finance charges, even if they were the same amount as the fee charged for transactions paid entirely with funds available in the prepaid account. The Bureau received extensive comment addressing the proposed rule's definition of finance charge. Commenters noted that a negative balance could result from force pay and other situations where the issuer does not authorize the transaction and explained that the proposed rule's definition of finance charge could consider prepaid cards to be credit cards if the financial institution charged per transaction fees for these overdrafts, even if the per transaction fee were the same as the per transaction fee charged to access prepaid account funds. Many industry commenters were concerned that because of the breadth of the fees that would be considered finance charges under the proposal, a prepaid account issuer either could not charge general transaction fees on the prepaid account or would have to waive certain fees on any transaction that happened to involve credit, as defined under the proposal, to avoid triggering the credit card rules. One industry commenter estimated that such transactions, which can occur in connection with gasoline purchases, hotel stays, and other common consumer transactions, account for 10 percent of all prepaid card transactions.

Commenters discussed burdens to both industry and consumers arising from the application of the proposed rule's credit provisions in these situations. Commenters stated that the proposed rule's approach would have the consequence of causing financial institutions

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<sup>877</sup> Under the proposal, Regulation Z did not apply when the prepaid card only accessed credit not subject to any finance charge, as defined in proposed § 1026.4, or any fee described in proposed § 1026.4(c), and any credit accessed was not payable by written agreement in more than four installments.

issuing prepaid cards that do not have credit features to eliminate per transaction (“pay-as-you-go”) pricing plans and prepaid card use outside of the United States, impose stricter authorization rules, hold authorizations for longer periods than they do currently, or freeze cardholder funds, thereby inconveniencing consumers. Further, commenters argued that providers would need to implement new fee logic patterns, among other adjustments.

The final rule’s approach to these issues mitigates these concerns. Under new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the provider generally does not charge credit-related fees for the credit. This exception is intended to exempt three types of credit so long as the provider generally does not charge credit-related fees for the credit: (1) incidental credit related to “force pay” transactions; (2) a de minimis \$10 payment cushion; and (3) a delayed load cushion where credit is extended while a load of funds from an asset account is pending. New § 1026.61(a)(4)(ii)(B) allows a provider to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account.

The final rule’s approach of not subjecting incidental credit to the Regulation Z requirements will avoid the costs associated with subjecting products to coverage due to force pay transactions and delayed load situations. Further, the de minimis payment cushion exemption will encourage providers to extend small amounts of credit to consumers (at no additional cost) relative to the approach in the proposed rule. The Bureau believes that, in general, these provisions will benefit consumers and providers alike.

*b. Benefits and Costs to Covered Persons*

This discussion covers many of the same issues already addressed in the preceding section. The final rule introduces additional requirements for prepaid account providers that offer covered separate credit features accessible by a hybrid prepaid-credit card.<sup>878</sup> As discussed above, the Bureau's understanding is that few financial institutions currently offer prepaid accounts with overdraft services. By restricting how providers may offer overdraft services to prepaid accountholders, the final rule's provisions may limit the economic viability of some current business practices. Because overdraft services currently offered in the market do not conform to the final rule's requirements, providers offering covered separate credit features accessible by a hybrid prepaid-credit card will need to restructure existing programs if they wish to continue offering the product. The final rule's requirements could adversely affect the profitability of existing overdraft programs and may lead some current providers to discontinue offering such services.<sup>879</sup>

The Bureau also understands that other firms currently might be considering offering covered separate credit features accessible by a hybrid prepaid-credit card in the future. The final rule's requirements decrease the likelihood that such entry will occur. For example, the final rule's provision subjecting most fees charged during the first year (other than periodic interest rates) of the covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan to a cap of 25 percent of the initial credit line prevents providers from implementing certain pricing structures. These additional

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<sup>878</sup> These obligations fall on the financial institution, card issuer, or creditor depending on the provision. In some cases, the same entity may fulfill multiple roles.

<sup>879</sup> The final rule's additional restrictions constrain provider choice regarding fee schedules relative to the present and, at best, will have a neutral impact on profitability, all else equal.

constraints likely will reduce the potential profitability of offering covered separate credit features accessible by a hybrid prepaid-credit card.

Several industry commenters stated that the additional costs imposed by the final rule's credit-related requirements will motivate those few prepaid account providers offering overdraft services to stop doing so or to offer it in a form that is more costly and less convenient to consumers. By contrast, one consumer advocate commenter suggested that by providing additional regulatory clarity, the final rule's provisions may lead more financial institutions offering prepaid accounts to choose to offer related credit features. While the Bureau recognizes that regulatory uncertainty has likely discouraged the widespread availability of related credit features, the Bureau considers it unlikely that greater regulatory clarity alone could offset the costs of the new regulatory requirements sufficiently so that more financial institutions would offer prepaid accounts with related credit features.

The final rule limits the types of fees that card issuers may charge during the first year after a consumer holder of a prepaid account opens a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. Among other restrictions, the final rule subjects most fees charged during the first year of the covered separate credit feature (other than periodic interest rates) to a cap of 25 percent of the initial credit line. Given the pricing structure and size of the lines of credit offered in conjunction with current prepaid overdraft offerings, the Bureau believes the final rule's fee cap requirement generally will be binding for any consumer incurring more than one overdraft fee in the first year after the opening of the covered separate credit feature accessible by a hybrid

prepaid-credit card.<sup>880</sup> Because this restriction could mean that some consumers pay fewer fees subject to the cap, providers will experience a reduction in revenues.

Providers may respond to this revenue reduction by adopting an alternative pricing structure that is less reliant on transaction-based fees to access covered separate credit features, but adoption of such an alternative pricing structure is likely to result in decreased demand for covered separate credit features or prepaid accounts generally. For example, providers may choose to adopt a pricing structure that includes higher fees for non-credit related features of the prepaid account. However, adopting such a pricing strategy would potentially put these providers at a competitive disadvantage because it would mean raising the price of holding a prepaid account for any consumer relying on the non-credit related features targeted for the price increase, including consumers who do not use covered separate credit features accessible by a hybrid prepaid-credit card. In response to such a price increase, consumers not seeking a covered separate credit feature accessible by a hybrid prepaid-credit card may turn to prepaid accounts offered by other financial institutions.

Alternatively, providers may adopt a pricing structure in which a fee is collected during the application process prior to the opening of the covered separate credit feature (and thus is not subject to the cap), or they may choose to charge a periodic interest rate. However, when faced with the option of pre-paying for overdraft services, consumers may be less willing to incur up-front charges for the service than they are under the current per transaction pricing structure, which relies on back-end fees. In addition, consumers may find disclosure of the periodic

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<sup>880</sup> The Bureau believes that current transaction-based charges for overdrafts range from \$15 to \$35. Assuming a credit line of \$100, the new restriction implies that the card issuer may collect, at most, one overdraft fee (or \$25) in the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card. It is possible that card issuers would be willing to extend larger credit lines to consumers than they do at present. However, issuers would incur more risk in doing so and likely would need to develop more robust underwriting procedures, both to ensure a sufficient return and to comply with Regulation Z's ability-to-pay requirement.

interest rate to be a salient deterrent to opening a covered separate credit feature accessible by a hybrid prepaid-credit card, especially at rate that providers may need to charge to rationalize offering the feature. Regardless of the alternative fee schedule adopted, the small group of prepaid account providers that offer covered separate credit features accessible by a hybrid prepaid-credit card will earn lower profits than they do at present (all else equal).

Other provisions of the final rule also decrease the profitability of offering covered separate credit features accessible by a hybrid prepaid-credit card. The final rule restricts a creditor's ability to access assets held in a consumer's prepaid account, permitting creditors to sweep funds from the prepaid account only monthly to repay a debt incurred by an associated covered separate credit feature.<sup>881</sup> As noted by commenters, creditors that do not obtain the consumer's written consent to sweep funds will need to offer consumers an alternative means of repaying the balance, which could require updating current systems or adopting new systems. Commenters also noted that credit cards and prepaid cards rely on different payment processing systems, so changing to a Regulation Z compliant system would likely imply substantial implementation costs.<sup>882</sup>

Aside from these implementation costs, the final rule's restriction on sweeps raises the ongoing cost to creditors associated with offering these accounts by increasing the risk of default.<sup>883</sup> In addition, the final rule's requirement that with respect to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured)

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<sup>881</sup> Creditors must obtain the consumer's consent to sweep funds. Because they may sweep funds only monthly, creditors will maintain debts on their books for a longer period, relative to the present where sweeps occur with the next incoming deposit, and will incur a small opportunity cost in connection with decreased access to funds so long as they do not charge consumers a periodic interest rate.

<sup>882</sup> One commenter estimated that most small financial institutions would incur a total approximate cost of \$95,000 to implement the Regulation Z requirements. However, the basis for this estimate is unclear.

<sup>883</sup> Providers may pass on some of these increased costs to consumers by increasing prices for the prepaid account and the covered separate credit feature.

consumer credit plans, card issuers adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date ensures a time gap between when a debt is incurred and when it must be repaid. To manage this additional credit risk, card issuers may choose to offer less credit to consumers or to charge higher fees (or a periodic interest rate) for credit extended.

To comply with the final rule's provisions, the few prepaid providers that currently offer overdraft services will incur implementation costs associated with educating consumers about any product changes, developing new disclosures, and designing and executing new procedures. Industry commenters noted that credit card regulatory expertise may not currently exist in-house and that providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card may need to acquire such expertise. In addition, one provider that currently offers overdraft services in connection with some of its prepaid products commented that modifying its business to apply Regulation Z would cause it to incur costs associated with developing a billing system and accepting alternative forms of payment, among other costs. Providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card will need to ensure that any solicitation and application materials conform to Regulation Z's requirements. This may require providers to produce new disclosures or modify existing disclosures. Providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card additionally are required to comply with the final rule's timing requirements with respect to the solicitation of consumer holders of prepaid accounts, application, and account opening.

Card issuers are also required to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make required minimum payments when

deciding to offer a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. As noted above, card issuers should incur minimal additional burden from these provisions because they can assess the consumer's ability-to-pay at low cost. Given providers' increased incentive to screen applicants due to their inability to sweep incoming funds immediately from the prepaid asset account to pay a debt incurred on the covered separate credit feature, the incremental impact of this provision on operational costs is minimal.<sup>884</sup>

Providers will also incur ongoing costs in adhering to other provisions of the final rule. These costs include those associated with providing periodic statements for covered separate credit features accessible by a hybrid prepaid-credit card as well as additional disclosures in certain circumstances, such as when certain account terms change. Specifically, providers will incur costs designing these disclosures and ensuring that they comply with Regulation Z. In some cases, providers will also incur costs associated with printing and distributing these disclosures.<sup>885</sup> Finally, to the extent that Regulation Z's liability limitations and error resolution provisions apply, providers may incur additional costs due to Regulation Z's more restrictive limitations on consumer liability and expanded definition of error. However, these costs should be minimal if credit lines do not increase relative to the present.

Because the final rule's provisions could affect consumer choice, the small number of prepaid providers that currently offer overdraft services may experience changes in the size or composition of the customer base seeking this product. Adjustments in aggregate market demand or consumer substitution to or from other providers within the market could affect these

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<sup>884</sup> If fewer consumers qualify for the product as a result of the final rule's requirement to assess the consumer's ability to make the required minimum payments, provider revenues could decrease.

<sup>885</sup> Providers could mitigate some of these costs by obtaining E-Sign consent from the consumer.

providers' profits. For example, if financial institutions currently offering prepaid accounts with overdraft services make their products less desirable to consumers who value credit by not offering covered separate credit features or by charging higher fees to hold prepaid accounts, those financial institutions offering prepaid accounts without covered separate credit features could benefit as consumers substitute away from products offering covered separate credit features.

In terms of alternatives, the Bureau also considered extending the Regulation E opt-in regime to prepaid accounts. Several industry commenters urged the Bureau to adopt a Regulation E opt-in approach, stating that it would provide consumers sufficient protection and would be less costly to implement than covering overdraft services under Regulation Z. Those few providers that currently offer overdraft services in connection with their prepaid accounts largely adhere to the Regulation E opt-in requirements, and therefore they would incur minimal additional costs in implementing such an approach, relative to the baseline of the current market. Based on comments received in response to the proposal, the Bureau believes that resolving the regulatory uncertainty that currently deters some providers from offering overdraft services by adopting a Regulation E opt-in approach would lead many more prepaid providers to offer overdraft services in connection with their prepaid accounts than offer such products currently. In addition, given the additional costs imposed by the Regulation Z approach relative to the Regulation E opt-in approach, more financial institutions offering prepaid accounts may have found it economically viable to offer overdraft services in the future under a Regulation E opt-in regime relative to the approach adopted by the final rule.

The Bureau also considered an alternative variant of the Regulation Z approach in the proposed rule that subjected a broader set of transactions to coverage, including those

transactions accessing credit outside the course of a transaction; credit offered by parties unrelated to the prepaid account issuer, its affiliates, or its business partners; and credit extended as a negative balance on a prepaid account that would have been subject to a per transaction fee (even if the amount of the fee were the same as the amount charged for transactions paid entirely with funds available in the prepaid account). As discussed above, commenters suggested that this approach would impose a number of costs on industry, including: (1) potential compliance issues when the consumer attaches an unrelated credit feature to the prepaid account without the knowledge of the unrelated third-party creditor; and (2) interruptions to the flow of funds in contexts, such as force pay transactions, where an account balance may become negative and a transaction-related fee (that is the same as the fee charged for transactions paid entirely with funds available in the prepaid account) may be imposed, even though the prepaid account issuer does not authorize the credit extension.

The final rule's approach mitigates these concerns by excluding prepaid cards from coverage as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to "non-covered separate credit features," which means that the separate credit feature either: (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. New § 1026.61(a)(4)(ii)(B) allows a provider to qualify for the exception in new § 1026.61(a)(4) even

if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account.

#### *F. Potential Specific Impacts of the Final Rule*

##### *1. Depository Institutions and Credit Unions with \$10 Billion or Less in Total Assets, as Described in Section 1026*

The final rule's requirements apply uniformly across covered financial institutions without regard for their asset size.<sup>886</sup> Among those depository institutions and credit unions that the Bureau believes are directly affected by the final rule, roughly 67 percent have \$10 billion or less in total assets.<sup>887</sup> The impact of the final rule on depository institutions and credit unions will depend on a number of factors, including: (1) whether the institution offers prepaid accounts; (2) the relative contribution of prepaid account earnings to overall firm profits; and (3) the cost of complying with the final rule (which depends on both present prepaid account offerings and the regulations to which those accounts are currently subject).

With respect to most provisions, the Bureau does not expect that the final rule will have a unique impact on depository institutions and credit unions with \$10 billion or less in total assets, as described in section 1026. One exception pertains to the provisions addressing covered separate credit features accessible by a hybrid prepaid-credit card. Issuers with consolidated assets of less than \$10 billion are exempt from the Board's Regulation II restrictions on debit

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<sup>886</sup> The de minimis exception for providing prepaid account agreements to the Bureau and posting them to a website is a function of the number of open accounts, not the asset size of the issuer.

<sup>887</sup> These figures reflect asset sizes reported as of December 2015 in the Federal Financial Institutions Examination Council 041 Call Report and the NCUA 5300 Call Report. Depository institutions and credit unions offering white label programs or programs through certain agent relationships were not included in arriving at this statistic.

card interchange fees.<sup>888</sup> Additionally, for issuers with over \$10 billion in assets, Regulation II's interchange fee restrictions do not apply to electronic debit transactions made using debit cards provided pursuant to certain government-administered payment programs or using certain reloadable, general-use prepaid cards.<sup>889</sup> However, these exemptions for issuers with over \$10 billion in assets do not apply if a cardholder may incur a fee or charge for an overdraft<sup>890</sup> (unless the fee or charge is imposed for transferring funds from another asset account to cover a shortfall in the account accessible by the card).<sup>891</sup> Because they would be subject to Regulation II's restrictions on debit interchange fees if they offered overdraft services in connection with prepaid accounts, financial institutions with greater than \$10 billion in assets presently have less incentive to offer overdraft services than similarly situated depository institutions with less than \$10 billion in assets. Therefore, the new consumer protections applicable to covered separate credit features accessible by a hybrid prepaid-credit card may be more likely to have an impact on those institutions with less than \$10 billion in assets. One credit union commenter agreed with this conclusion but did not provide specific rationale for why the impact on those institutions with less than \$10 billion in assets would differ from the impact on institutions with greater than \$10 billion in assets.

## *2. Impact of the Final Rule's Provisions on Consumers in Rural Areas*

Consumers in rural areas may derive benefits from the final rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may differ from other consumers in terms of their reliance on prepaid accounts as well as

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<sup>888</sup> 12 CFR 235.5(a).

<sup>889</sup> 12 CFR 235.5(b) and (c).

<sup>890</sup> Here, an overdraft includes a shortage of funds or a transaction processed for an amount exceeding the account balance.

<sup>891</sup> 12 CFR 235.5(d)(1).

their ability to use online disclosures for shopping by accessing the internet.<sup>892</sup> The Bureau is not aware of evidence that states whether consumers in rural areas are more likely to acquire prepaid accounts, to use prepaid accounts that do not currently follow Regulation E's limited liability and error resolution regime, or to use covered separate credit features accessible by a hybrid prepaid-credit card.<sup>893</sup>

### **VIII. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA),<sup>894</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>895</sup> requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.<sup>896</sup> The RFA defines a "small business" as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.<sup>897</sup>

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<sup>892</sup> Broadband availability may be more limited in rural areas. See Nat'l Telecomm. and Info. Admin., *U.S. Broadband Availability: June 2010—June 2012*, at 10 (May 2013), available at [http://www.ntia.doc.gov/files/ntia/publications/usbb\\_avail\\_report\\_05102013.pdf](http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf).

<sup>893</sup> One study found that consumers living in rural areas were more likely to deposit tax refunds onto a prepaid card than consumers living in urban areas. Caroline Ratcliff et al., Urban Inst., *Prepaid Cards at Tax Time and Beyond*, at 26 (Mar. 2014), available at <http://www.urban.org/UploadedPDF/413082-prepaid-cards-at-tax-time-report.pdf>. Another study reports prepaid debit card use by metropolitan status and did not find a robust relationship between whether a household was in a metropolitan area and prepaid debit card use. 2013 FDIC Survey at 41.

<sup>894</sup> Public Law 96-354, 94 Stat. 1164 (1980).

<sup>895</sup> Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

<sup>896</sup> 5 U.S.C. 601-612. The term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment]." 5 U.S.C. 601(4). The term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment]." 5 U.S.C. 601(5). Aside from credit unions, the Bureau does not believe that any small not-for-profit organizations are regulated by the final rule for RFA purposes. In its Study of Prepaid Account Agreements, the Bureau did not locate any small governmental jurisdictions regulated by the final rule for RFA purposes.

<sup>897</sup> 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.<sup>898</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.<sup>899</sup>

The undersigned certified that the proposed rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. In the proposed rule, the Bureau requested comment regarding its methodology for estimating burden on small entities as well as relevant data. The Bureau received little comment with respect to these issues. However, the Bureau addresses the comments received and integrates additional information provided by commenters into its analysis of these issues when available and informative. Upon considering relevant comments as well as the modifications to the proposed rule that were made in developing the final rule, the conclusion that the rule will not have a significant economic impact on a substantial number of small entities is unchanged. Therefore, a FRFA is not required.<sup>900</sup>

#### *A. Overview of Analysis*

The analysis below evaluates the economic impact of the final rule on directly affected small entities as defined by the RFA. The Bureau considers an entity to be “directly affected” by the final rule for RFA purposes if it issues prepaid accounts, manages a prepaid account

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<sup>898</sup> 5 U.S.C. 601 *et seq.*

<sup>899</sup> 5 U.S.C. 609.

<sup>900</sup> 5 U.S.C. 605(b).

program, or offers covered separate credit features accessible by a hybrid prepaid-credit card.<sup>901</sup>

This analysis establishes that directly affected small banks and credit unions each represent a fraction of 1 percent of all small banks and credit unions. Further, the analysis also establishes that directly affected small or potentially small non-bank entities comprise roughly 4 percent of all small entities within the relevant North American Industry Classification System (NAICS) code.<sup>902</sup> These percentages do not comprise a substantial number of small entities for purposes of the RFA.

Further, this analysis also establishes that the only small non-bank entities likely to experience a significant economic impact from the final rule are those that currently: (1) do not provide limited liability protections to consumers; (2) do not provide error resolution protections to consumers; or (3) offer products that would be considered covered separate credit features accessible by a hybrid prepaid-credit card.<sup>903</sup> The Bureau concludes that less than 1 percent of all small non-bank entities within the relevant NAICS code will experience a significant economic impact from the final rule. This does not comprise a significant economic impact on a substantial number of small entities for purposes of the RFA.

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<sup>901</sup> The final rule directly regulates financial institutions, card issuers, and creditors. In many cases, entities other than financial institutions perform program management functions. To inform the rulemaking, the Bureau additionally considers the impact of the final rule on such entities even though the final rule does not directly regulate these entities for RFA purposes.

<sup>902</sup> The North American Industry Classification System (NAICS) is the standard used by the SBA to match small business size standards to industries. For this analysis, the Bureau considers directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).

<sup>903</sup> A few commenters noted that the proposal's approach of limiting the exemption to the requirement to provide the long-form disclosure pre-acquisition to those retailers selling products from at least two different issuing financial institutions would potentially have a disproportionate impact on small retailers. The final rule mitigates this concern by broadening the type of entity that qualifies for the alternative timing regime. Further, such retailers are not "directly affected" by the final rule for RFA purposes, and even if they were, limiting the exemption would not cause these retailers to experience a significant economic impact.

## *B. Number and Classes of Directly Affected Entities*

The provisions of the final rule apply to any account meeting the criteria described in § 1005.2(b)(3). Providers of these accounts include issuers and program managers. Prepaid account issuers are typically banks and credit unions, and program managers are typically non-banks.<sup>904</sup> Some issuers also act as the program manager for some or all of the prepaid accounts that they issue. While most of the final rule does not directly regulate prepaid program managers for RFA purposes if they are not financial institutions, the Bureau exercises its discretion to take a comprehensive approach that considers both prepaid account issuers and program managers in determining whether the final rule will have a significant economic impact on a substantial number of small entities.<sup>905</sup> Financial institutions, creditors, and card issuers must also comply with the final rule's requirements pertaining to credit.<sup>906</sup>

Because the Bureau is not aware of a comprehensive list of entities that actively issue or manage prepaid accounts or a comprehensive list of prepaid account programs, the Bureau compiled its own list of known prepaid account issuers and program managers in connection with the proposed rule.<sup>907</sup> Table 1 reports estimated counts of banks, credit unions, and non-

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<sup>904</sup> P2P payment products and other non-Visa or non-MasterCard branded prepaid products are sometimes issued by non-bank entities.

<sup>905</sup> To determine whether the economic impact is significant, the Bureau compares the total revenues earned by both the program manager and the issuer to the total costs incurred by these entities resulting from the final rule. In some cases, the same entity performs both the issuing and program management functions, and in other cases, different entities perform these functions.

<sup>906</sup> Currently, the non-bank program manager fulfills these roles for those prepaid products that offer overdraft services although the creditor may be an entity distinct from the program manager or issuer.

<sup>907</sup> This list was compiled using information gathered from the Bureau's review of publicly available information and industry outreach. This compilation includes all issuers and program managers whose prepaid account agreements were included in the Study of Prepaid Account Agreements. The Bureau also included other issuers and program managers identified in its pre-proposal review of publicly available information even though account agreements for their prepaid programs were not located. The Bureau does not believe that modifications made to the proposed rule to arrive at the final rule will increase the number of directly affected entities and therefore retains the estimates of total entity counts obtained in connection with the proposed rule.

bank entities identified by the Bureau as likely directly affected by the final rule. Table 1 also reports the total number of entities, as well as the total number of small or potentially small entities, within each relevant NAICS code to provide context for those counts.<sup>908</sup>

*Banks and credit unions.* Based on its Study of Prepaid Account Agreements, outreach to interested stakeholders and other regulatory agencies, review of industry studies, and consideration of comments received in response to the proposed rule, the Bureau has determined that the final rule will directly affect very few small banks or credit unions.

Several commenters to the proposed rule suggested that the Bureau undercounted the number of small banks or credit unions directly affected by the proposed rule's provisions. However, those commenters appeared to include banks or credit unions that offer prepaid cards through a vendor or bankers' bank in concluding that the Bureau undercounted the number of directly affected small banks or credit unions. As described in the proposed rule, the Bureau does not consider those entities directly affected by the final rule and therefore does not include such entities in its counts (to the extent that they could be identified).<sup>909</sup>

In such relationships, a distinct vendor or banker's bank generally handles most compliance duties. The Bureau considered such entities, which generally perform these duties on behalf of program participants, to be directly affected by the final rule for RFA purposes but did not include program participants (to the extent that they could be identified as such by the Bureau). Program participants that rely on white-label providers or other agent-based relationships generally include small banks or credit unions that offer prepaid products as a

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<sup>908</sup> Because many of the directly affected non-bank entities are privately held firms, information regarding their size was difficult to obtain, so a reliable size classification could not be made. In addition, one bank's size could not be classified because multiple banks shared the same name. Therefore, out of an abundance of caution, the Bureau considered any entity for which a size classification could not be made to be "potentially small."

<sup>909</sup> 79 FR 77102, 77284 n.536 (Dec. 23, 2014).

convenience to their customers. One trade association commenter stated that small banks participating in these programs may retain certain responsibilities, including retrieving and replacing disclosures and verifying vendor compliance. The Bureau believes that these costs would not comprise a significant economic impact for such entities. Further, the Bureau understands that prepaid accounts offered through these arrangements generally provide limited liability and error resolution protections and do not provide overdraft services. Therefore, the concern raised by commenters does not affect the Bureau's conclusion for RFA purposes because such entities would not experience a significant economic impact, as discussed below, even if they were included in the Bureau's counts.

A few industry commenters also suggested that the rule would affect entities that do not currently offer prepaid products but may wish to do so in the future. For purposes of the RFA, the Bureau uses the set of current market participants as the baseline and therefore considers the impact of the final rule only on entities that currently offer products that meet the final rule's criteria for a prepaid account.

For this analysis, the Bureau considered small those banks and credit unions averaging less than \$550 million in assets across the institution's four quarterly Call Report entries for 2012.<sup>910</sup> As shown in Table 1, the Bureau identified 19 directly affected small or potentially small banks and six directly affected small credit unions.<sup>911</sup> These entities constitute less than 1 percent of small banks and credit unions. This fraction does not comprise a substantial number

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<sup>910</sup> The Bureau obtained similar classifications using assets reported in later year Call Reports. The SBA considers small those banks and credit unions with less than \$550 million in assets. U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Feb. 2016), available at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>911</sup> Using asset sizes for 2013 and 2014 to assign a size classification yielded 17 small or potentially small banks and five small credit unions. Using asset sizes for 2015 yielded 16 small or potentially small banks and five small credit unions.

of small entities under the RFA. Because the number of directly affected small or potentially small banks and credit unions was so small, the Bureau did not evaluate whether the economic impact of the final rule on small banks and credit unions is significant.<sup>912</sup>

*Non-bank entities.* As described above, directly affected non-bank entities are primarily prepaid program managers but also include issuers of P2P payment products and other non-Visa or non-MasterCard branded prepaid products. For this analysis, the Bureau considered directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).<sup>913</sup> The SBA considers small those non-bank entities within NAICS code 522320 with average annual receipts less than \$38.5 million.<sup>914</sup> The Bureau used revenue estimates obtained by reviewing publicly available information as a proxy for receipts in evaluating the entity's size. The Bureau considered small those entities estimated to have less than \$38.5 million in annual revenues.<sup>915</sup>

The Bureau identified 127 non-bank entities that the final rule will directly affect. The Bureau could classify the size of 44 such entities, and approximately 30 percent of these entities (13 entities) were classified as small. It is likely, however, that many of the remaining 83 non-

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<sup>912</sup> As discussed below, the Bureau found that there was not a significant economic impact on a substantial number of small non-bank entities, and the Bureau has no reason to believe that the impact would be meaningfully greater for banks and credit unions.

<sup>913</sup> According to the Census Bureau, NAICS code 522320 corresponds to “establishments primarily engaged in providing one or more of the following: (1) financial transaction processing (except central bank); (2) reserve and liquidity services (except central bank); and/or (3) check or other financial instrument clearinghouse services (except central bank).” One illustrative example given by the Census Bureau is “electronic funds [*sic*] transfer services.” U.S. Census Bureau, *2007 NAICS Definition*, available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522320&search=2007>. FinCEN relied on NAICS code 522320 in its Prepaid Access Rule. See 76 FR 45403, 45414 (July 29, 2011).

<sup>914</sup> U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Feb. 2016), available at [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>915</sup> When available, the Bureau used publicly available revenue estimates for 2012, which coincides with the most recent Economic Census. When revenue estimates from 2012 were not available, the Bureau used available information from recent years.

bank entities that the Bureau was unable to classify are small as well. Therefore, the Bureau classified these entities as potentially small. Applying these classifications, the number of directly affected small or potentially small non-bank entities is a modest percentage of all small entities within the relevant NAICS code (4 percent).<sup>916</sup> This does not comprise a substantial number of small entities under the RFA. Nonetheless, the Bureau evaluated the impacts of the final rule's provisions on these entities to inform the rulemaking more fully.

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<sup>916</sup> In its Regulatory Flexibility Act analysis for its Prepaid Access Rulemaking, FinCEN relied on commercial database information (Dun and Bradstreet, D&B Duns Market Identifiers Plus (US)) and narrowed its count to those entities within NAICS code 522320 that perform either EFTs or electronic financial payment services. FinCEN estimated that 700 entities met this classification. Using the SBA threshold of \$7 million in average annual receipts that was in effect at the time, FinCEN estimated that 93 percent (or 651) of these entities were small. *See* 76 FR 45403, 45414-15 (July 29, 2011).

Currently, the SBA considers entities within NAICS code 522320 with less than \$38.5 million in average annual receipts to be small. It follows that *at least* 651 entities meeting FinCEN's narrower classification would be considered small so long as the total number of entities meeting the narrower classification is unchanged. The Bureau concludes that under the narrower classification used by FinCEN, directly affected small or potentially small non-bank entities comprise, at most, 15 percent (96/651) of all small entities.

**Table 1: Covered Providers and Directly Affected Small Entities**

Category	NAICS Code	Total Entities <sup>a</sup>	Total Small Entities <sup>b</sup>	Directly Affected Entities Identified	Directly Affected Small Entities and Potentially Small Entities Identified	Directly Affected Small Entities Identified
Commercial Banking <sup>c</sup>	522110	7,150	5,939	71	19	18
Credit Unions	522130	6,960	6,582	16	6	6
Non-Bank Entities	522320	2,465	2,325	127	96	13

<sup>a</sup> For banks and credit unions, the total entity count includes those entities operating in the fourth quarter of 2012 as indicated by their respective call reports. For non-bank entities, total entity counts are derived from the U. S. Census Bureau’s Statistics of U.S. Businesses (“SUSB”), which relies on information from the 2012 Economic Census.

<sup>b</sup> The SBA’s small entity threshold for commercial banks and credit unions is \$550 million in assets, and the SBA small entity threshold for NAICS code 522320 is \$38.5 million in average annual receipts.

In order to determine which banks and credit unions are small, the quarterly asset sizes (for 2012) for those entities operating as of the fourth quarter of 2012 were averaged, and those banks and credit unions averaging less than \$550 million in assets were classified as small. For those entities only operating for part of the year, the quarters from which assets were available were used to obtain the average.

The total number of small non-bank entities was derived from the firm count reported in the latest available SUSB (2012) using the percentage of entities within the reported NAICS code that were small according to reported receipts size.

<sup>c</sup> All banks are included here regardless of charter type. The vast majority of directly affected bank entities are commercial banks (and correspond to NAICS Code 522110), although there are five savings banks, one savings and loan association, and one industrial bank included in these counts.

Note: Counts exclude white-label and agent bank program participants to the extent that they were identified by the Bureau.

### *C. Impacts of Provisions on Directly Affected Non-Bank Entities*

The following discussion summarizes the economic impacts arising from the major provisions of the final rule on directly affected small non-bank entities. Most of the final rule does not directly regulate these entities for RFA purposes if they are not financial institutions.<sup>917</sup> However, prepaid account issuers may work with small non-bank entities (generally program managers) to comply with the final rule. Aside from the credit-related provisions and the extension of Regulation E’s limited liability and error resolution regime, other than provisional

<sup>917</sup> With regard to the final rule’s credit provisions, however, non-bank entities may be directly regulated if they are creditors or card issuers.

credit requirements, to all prepaid accounts,<sup>918</sup> most provisions of the final rule will result in minimal burden for small non-bank entities. The Bureau discusses these impacts in detail below, using the current market as the baseline. In addition, the Bureau briefly discusses other provisions that potentially affect small non-bank entities.

### *1. Credit-Related Requirements*

The final rule's provisions relating to credit could cause those entities that currently offer overdraft services in connection with prepaid accounts to experience a significant economic impact in complying with the final rule's requirements. These impacts are discussed in more detail in the section 1022(b)(2)(A) consideration of benefits, costs, and impacts above.

However, the Bureau's understanding is that two small or potentially small non-bank entities, at most, offer products that would be considered covered separate credit features accessible by a hybrid prepaid-credit card.<sup>919</sup>

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<sup>918</sup> The final rule only extends the Regulation E provisional credit requirements to prepaid accounts for which the financial institution has completed the customer identification and verification process. These protections are currently required for payroll card accounts and government benefit accounts. The exception for unverified accounts does not extend to payroll card accounts or government benefit accounts.

<sup>919</sup> In addition, those entities currently charging negative balance fees must restructure accounts to comply with the final rule's credit-related provisions if they wish to continue to charge these fees. As discussed above, the Bureau found in its Study of Prepaid Account Agreements that some prepaid programs may impose a fee if a prepaid account has a negative balance. Evaluated on a program level (and not an entity/provider level) and excluding those agreements for those programs designated as offering opt-in overdraft services, the Study found that roughly 7 percent of reviewed agreements noted such a fee in their terms and conditions. To avoid triggering coverage under the credit provisions of the final rule, the Bureau believes that most providers will choose not to impose negative balance fees.

There is little evidence regarding how common such fees are in practice. One credit union league commenter stated that 91 percent of member credit union survey respondents stated that they do not charge a sustained negative balance fee, but they did not clarify if survey respondents were addressing negative balance fees assessed on prepaid accounts in particular. Even if 9 percent of credit unions offering prepaid accounts charge such fees, there is not a substantial number of credit unions directly affected by this provision. Another commenter stated that one-third of 38 employers surveyed used payroll card vendors with programs that included overdraft or negative balance fees. However, it is unclear how many distinct program managers this data included because the study reported statistics in terms of employer respondents and not in terms of the number of entities offering payroll card programs

## *2. Limited Liability and Error Resolution Requirements*

The final rule requires financial institutions offering prepaid accounts to comply with Regulation E's limited liability and error resolution regime, with some modification to the requirement to extend provisional credit. For accounts subject to Regulation E's limited liability and error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was authorized.<sup>920</sup> Specifically, after receiving notice that a consumer believes that an EFT was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. EFTA and Regulation E further state that if the financial institution is unable to complete the investigation within 10 business days, the institution may take up to 45 days to complete the investigation if it provisionally re-credits the consumer's account for the amount of the alleged error.<sup>921</sup> If the financial institution ultimately can establish that the transfer in question was not an error, it can reverse the provisional credit.

Under EFTA and Regulation E,<sup>922</sup> a consumer may be held liable for an unauthorized EFT resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. If the consumer provides notice to the financial institution within two business days of learning of the loss or theft, the consumer's liability is the lesser of \$50 or the amount of any unauthorized transfers made before giving notice. If notice is not given within two business days, the consumer's liability is the lesser of \$500 or the sum of (1) the lesser of \$50 or the amount of unauthorized transfers occurring within two business days of learning of the loss or theft and (2) the amount of

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<sup>920</sup> EFTA section 909(b).

<sup>921</sup> The timeline is somewhat different for certain types of transactions and for new accounts.

<sup>922</sup> EFTA section 909; § 1005.6.

unauthorized transfers that occur after two business days but before notice is given to the financial institution.<sup>923</sup> If a consumer's periodic statement shows an unauthorized transfer, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent or face unlimited liability for all unauthorized transfers made after the 60-day period.

Current Regulation E applies to some prepaid products that are included in the final rule's definition of prepaid account—namely payroll card accounts and certain accounts used for distribution of government benefits.<sup>924</sup> Further, many financial institutions currently provide prepaid products, which are considered prepaid accounts under the final rule, that offer limited liability and error resolution protections even though the financial institution is not directly required to do so by Regulation E at present. There are many factors influencing current business practices with respect to these protections. First, as discussed in greater detail above, the FMS Rule extends Regulation E's payroll card account protections to prepaid cards that receive Federal payments. Because it may be difficult to distinguish prepaid accounts that receive Federal payments from those that do not receive such payments, financial institutions may choose to extend these protections to all prepaid accounts. Second, as discussed in more detail below, the Bureau's market research suggests that many financial institutions choose to provide these protections to consumers by contract as part of their customer service offerings. Finally, payment card network associations' rules require that financial institutions limit

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<sup>923</sup> Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

<sup>924</sup> Under current Regulation E, covered government benefit programs do not need to provide periodic statements or online access to account information so long as they provide balance information to benefits recipients via telephone and electronic terminals and at least 60 days of written account history upon request. Needs-tested EBT programs established or administered under State or local law are exempt from Regulation E. § 1005.15(a).

consumers' liability for unauthorized charges and remedy certain errors related to transactions that occur over their networks and may require that financial institutions extend provisional credit within a shorter timeframe than required by EFTA and Regulation E for losses from unauthorized card use.<sup>925</sup>

*Limited liability protections.* The Bureau's market research conducted in connection with the proposed rule, including its Study of Prepaid Account Agreements, strongly suggested that the vast majority of directly affected small or potentially small non-bank entities extend some form of limited liability protections to consumers. Table 2 summarizes the Bureau's findings from its Study of Prepaid Account Agreements regarding industry practice with respect to limited liability. Of the 96 directly affected small or potentially small non-bank entities identified by the Bureau, 15 entities only offered payroll card accounts, to the Bureau's knowledge, and therefore were required to provide Regulation E's limited liability protections to consumers. The Bureau was able to locate an agreement for at least one prepaid account program for all but 14 of the remaining 81 entities.

In its Study of Prepaid Account Agreements, the Bureau examined the language in prepaid account agreements that addressed limitations on consumers' liability for unauthorized transfers to assess whether each program contractually provided the limited liability protections that Regulation E requires for covered accounts. For each entity with at least one available prepaid account agreement (and offering at least one non-payroll card program),<sup>926</sup> the Bureau classified the entity's limited liability protections as belonging to one of three categories: (1)

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<sup>925</sup> See, e.g., Visa Inc., *Zero Liability*, available at <https://www.visa.com/chip/personal/security/zero-liability.jsp> (last visited Oct. 1, 2016); MasterCard Inc., *Zero Liability Protection*, available at <http://www.mastercard.us/zero-liability.html> (last visited Oct. 1, 2016).

<sup>926</sup> The Bureau did not identify any directly affected small or potentially small non-bank entities that exclusively offered government benefit programs.

liability limitations consistent with Regulation E's requirements or better for all reviewed agreements; (2) some liability limitations but less than what is required by Regulation E; and (3) no limited liability protections.<sup>927</sup>

Table 2 reports the results of this review. The Bureau determined that approximately 75 percent (16 percent + 59 percent) of all small or potentially small non-bank entities likely to be directly affected by the final rule provided protections at least as comprehensive as those required by Regulation E. The Bureau found that 4 percent of small or potentially small non-bank entities provided some liability limitations (but less than what Regulation E requires for at least one program). Six percent of small or potentially small non-bank entities had at least one agreement that did not mention any liability limitations.<sup>928</sup> The Bureau was unable to locate any account agreements for the remaining 15 percent of small or potentially small non-bank entities.

The final column of Table 2 reports the relative frequency of limited liability protections offered by directly affected small or potentially small non-bank entities with at least one available agreement (or which only offer payroll card accounts). Within this narrower group of entities, 88 percent (18 percent + 70 percent) provided liability limitations at least as comprehensive as Regulation E's requirements for all reviewed programs, and thus, will not need to change their practices to comply with the final rule. An additional 5 percent provided some liability limitations for at least one of their programs and thus will incur only a portion of

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<sup>927</sup> The Bureau reviewed available prepaid account agreements, as described in its Study of Prepaid Account Agreements. In some instances, a small or potentially small non-bank entity offered multiple programs that appeared to provide different levels of limited liability protection. When a non-bank entity offered multiple programs with different levels of protection, the Bureau classified the entity according to the program providing the lowest level of protection for consumers. The Bureau classified error resolution policies similarly.

<sup>928</sup> One of these six entities also did not provide error resolution protections (see below).

the total burden arising from the final rule’s requirement to extend Regulation E’s limited liability protections.<sup>929</sup>

**Table 2: Current Industry Practice with Respect to Limited Liability Among Directly Affected Non-Bank Entities of Small or Potentially Small Size**

Current Business Practice	Number of Directly Affected Small or Potentially Small Non-Bank Entities	Percent of All Directly Affected Small or Potentially Small Non-Bank Entities	Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Liability Limitations Consistent with Regulation E or Better (for all reviewed agreements, excluding payroll only providers)	57	59%	70%
Some Liability Limitations, Less than What is Provided for Under Regulation E (for at least some reviewed agreements)	4	4%	5%
No Limited Liability Protections (for at least some reviewed agreements)	6	6%	7%
Could not Locate any Account Agreements (excluding payroll only providers)	14	15%	NA
Total Number of Directly Affected Small or Potentially Small Non-Bank Entities	96	100%	100%

*Error resolution protections.* The Bureau’s market research performed in connection with the proposed rule, including its Study of Prepaid Account Agreements, strongly suggested that the majority of directly affected small or potentially small non-bank entities extended some

<sup>929</sup> The Bureau repeated this analysis restricting attention to just those 13 non-bank entities that it could classify as small. Of these entities, 12 provided liability limitations consistent with Regulation E (or only offered payroll card accounts). The one remaining entity did not have an available account agreement.

form of error resolution protections to consumers. Table 3 summarizes the Study's findings regarding industry practice with respect to error resolution and provisional credit for the 96 directly affected small or potentially small non-bank entities identified by the Bureau.

In its Study of Prepaid Account Agreements, the Bureau examined relevant language in prepaid account agreements addressing error resolution to assess whether each program contractually provided the same error resolution protections that Regulation E requires for covered accounts. For each small or potentially small non-bank entity with at least one available prepaid account agreement, the Bureau classified the entity's error resolution protections as belonging to one of four categories: (1) full error resolution, consistent with Regulation E, with provisional credit for all consumers when the error is not resolved within a defined period of time (for all reviewed agreements); (2) error resolution with limitations on provisional credit; (3) error resolution with no mention of provisional credit; and (4) no error resolution.

Table 3 reports the results of that review. The Bureau determined that approximately 58 percent (16 percent + 42 percent) of all small or potentially small non-bank entities directly affected by the final rule provided full error resolution with provisional credit for all reviewed programs.<sup>930</sup> Therefore, over half of small or potentially small non-bank entities will not need to change their error resolution or provisional credit practices to comply with the final rule. Further, an additional 18 percent of entities provided error resolution protections but only offered provisional credit in limited circumstances. These non-bank entities will experience only a portion of the total increase in burden associated with the final rule's requirement that a financial institution extend provisional credit to all consumers whose prepaid accounts have been verified when an error is not resolved within a defined period. An additional 8 percent of entities offered

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<sup>930</sup> The percentages cited in this paragraph may not add up to 100 percent due to rounding.

error resolution to consumers but will potentially incur the entire increase in burden associated with extending provisional credit because they do not currently offer it. Only 2 percent of small or potentially small non-bank entities (two entities) provided no error resolution protections for at least one of their prepaid programs and, therefore, will incur the entire burden associated with providing error resolution and provisional credit for at least one program.

The final column of Table 3 reports the relative frequency of the error resolution policies for those directly affected small or potentially small non-bank entities for which the Bureau could locate at least one program's agreement (or that only offer payroll card accounts). Within this group of directly affected entities, 67 percent (18 percent + 49 percent) provided full error resolution with provisional credit for all reviewed programs and thus will not need to change their policies. An additional 21 percent will incur only a portion of the total burden arising from the final rule's provisional credit requirements.<sup>931</sup>

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<sup>931</sup> The Bureau repeated this analysis restricting attention to the 13 non-bank entities that could be classified as small. The distribution of policies was as follows: 31 percent of entities complied with Regulation E because they only offered payroll card accounts; 46 percent provided full error resolution with provisional credit for all reviewed agreements (excluding payroll only providers); 8 percent provided error resolution with limitations on provisional credit for at least some reviewed agreements; 8 percent provided error resolution with no mention of provisional credit for at least some reviewed agreements; and 0 percent did not provide error resolution protections. Prepaid account agreements could not be located for 8 percent of the small non-bank entities.

**Table 3: Current Industry Practice with Respect to Error Resolution and Provisional Credit Among Directly Affected Non-Bank Entities of Small or Potentially Small Size**

<b>Current Business Practice</b>	<b>Number of Directly Affected Small or Potentially Small Non-Bank Entities</b>	<b>Percent of All Directly Affected Small or Potentially Small Non-Bank Entities</b>	<b>Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)</b>
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Full Error Resolution with Provisional Credit (for all reviewed agreements, excluding payroll only providers)	40	42%	49%
Error Resolution with Limitations on Provisional Credit (for at least some reviewed agreements)	17	18%	21%
Error Resolution but No Provisional Credit (for at least some reviewed agreements)	8	8%	10%
No Error Resolution Coverage (for at least some reviewed agreements)	2	2%	2%
Could not Locate a Prepaid Account Agreement (excluding payroll only providers)	14	15%	NA
<b>Total Number of Directly Affected Small or Potentially Small Non-Bank Entities</b>	<b>96</b>	<b>100%</b>	<b>100%</b>

*Costs associated with limited liability and error resolution protections.* Those few directly affected small or potentially small non-bank entities that do not provide limited liability or error resolution protections to consumers will incur costs associated with providing these protections. As described in the section 1022(b)(2)(A) discussion, these entities will incur one-time implementation costs associated with the establishment or modification of policies and procedures to extend these protections (in addition to increased ongoing operational costs). This

includes costs associated with developing the capacity to: (1) give required error resolution notices to consumers; (2) receive oral or written error claims; (3) investigate error claims; (4) provide consumers with investigation results in writing; (5) respond to any consumer requests for copies of the documents that the institution relied upon in making its determination of whether the transaction was authorized; and (6) correct any errors discovered within the required timeframes. The establishment of these policies and procedures will constitute a one-time cost for those few small or potentially small non-bank entities that do not offer limited liability or error resolution protections to consumers. Implementing these procedures and paying out claims and provisional credit will create ongoing costs.<sup>932</sup>

Both those directly affected small or potentially small non-bank entities that offer limited liability and error resolution protections to consumers but do not provide provisional credit and those entities that provide liability protections or provisional credit in a more limited form than required by the final rule will incur costs arising from the final rule. The costs associated with paying out claims will increase for those directly affected entities offering less comprehensive liability protections than required by the final rule. Further, directly affected entities that do not offer provisional credit (or that offer it in a more limited form) will be unable to use funds extended as provisional credit during the investigation period for other uses and will therefore incur a small opportunity cost. Finally, an entity that extends provisional credit and subsequently

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<sup>932</sup> This discussion assumes that the burdens associated with the requirements to provide liability and error resolution protections are borne by a non-bank program manager. However, in practice, some banks or credit unions may perform these functions themselves, rather than rely on a non-bank program manager. Further, non-bank program managers tasked with the functions associated with resolving errors by issuing banks may in turn rely on industry partners, including processors. The Bureau's understanding from discussion with industry participants in developing the proposed rule is that processors may charge a fixed fee per dispute as well as a variable fee component that depends on the complexity of the dispute and investigation.

determines that an alleged error was, in fact, an authorized transfer could incur additional costs if it is unable to reclaim provisional credit previously extended.

The costs associated with providing these consumer protections may vary across covered entities for several reasons. For example, an entity's customer base may influence both the type of errors reported (and therefore the costs associated with investigations) as well as the likelihood of reclaiming provisional credit previously extended. The initial screening procedures used by a prepaid account provider to determine account eligibility, as well as ongoing monitoring of accounts, likely affect realized losses. Although small entities could be at a disadvantage with respect to fraud screening relative to larger entities that may have access to more information or more sophisticated screening technologies, small entities are sometimes able to rely on industry partners to screen for and to investigate potential fraud.<sup>933</sup> Small entities may choose to limit fraud liability by closing accounts that have repeated error claims or by not offering accounts to individuals who previously engaged in potentially fraudulent activity.

As discussed in the proposed rule, the Bureau conducted pre-proposal industry outreach to attempt to determine the costs borne by prepaid account providers to implement Regulation E compliant error resolution, including provisional credit. Estimates of the ongoing costs associated with providing error resolution with provisional credit varied. During this outreach, one program manager, which provided limited liability and error resolution protections with provisional credit consistent with Regulation E to all consumers, stated that it reserved \$0.35 per active cardholder per month for fraud losses (including both losses related to Regulation E error claims as well as other types of fraud). During pre-proposal outreach, another program manager,

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<sup>933</sup> In pre-proposal outreach, one potentially small program manager told the Bureau that it receives information from its processor regarding whether a consumer had filed unsubstantiated disputes with other prepaid programs serviced by the processor.

which also provided limited liability and error resolution with provisional credit consistent with Regulation E, stated that it incurred total fraud losses related to Regulation E that translated to roughly \$0.22 per cardholder per month. One commenter to the proposed rule that processes prepaid transactions estimated that the prepaid industry generally experiences fraud losses of between four and five basis points when the cardholder's identity is known. The commenter estimated that providing limited liability and error resolution rights for transactions taking place before a prepaid account is registered would lead to an increase in fraud exposure of one additional basis point. However, the Bureau notes that the final rule does not require that financial institutions offer provisional credit to holders of unverified prepaid accounts.

Those small or potentially small non-bank entities that provide limited liability and error resolution protections to consumers but give provisional credit only in limited circumstances (or not at all) will sustain increased ongoing operational costs. The Bureau did not receive comment explicitly addressing the incremental cost associated with extending provisional credit incurred by those entities that otherwise provide error resolution protections. However, estimates derived from available information suggest that the magnitude of the ongoing cost of providing these protections is roughly one-third of the total ongoing cost associated with fraud losses (including those specifically related to provisional credit).<sup>934</sup> If the upper bound of overall fraud losses,

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<sup>934</sup> During pre-proposal outreach, one program manager told the Bureau that when extended provisional credit to all accounts (having previously only provided provisional credit to those accounts receiving Federal payments), its losses from providing provisional credit increased by four to six times the previous level, and overall fraud losses increased 40 percent (including the increased losses arising from extending provisional credit). Assuming that there was no change in fraud losses not relating to provisional credit, this implies that provisional credit accounted for between 7 and 10 percent of the initial level of fraud losses and just over a third of the final fraud losses. This is shown as follows. Let E=fraud losses not relating to provisional credit, P=fraud losses relating to provisional credit, and L=total fraud losses prior to the expansion of provisional credit coverage to all consumers. Therefore,  $L=P+E$  prior to the expansion of provisional credit coverage to all consumers. After the expansion of provisional credit coverage to all consumers (and assuming no change in E), it follows that (i.)  $1.4L = 5P + E$  if losses increase by four times the previous level and (ii.)  $1.4L = 7P + E$  if losses increase by six times the previous level. The percentage of initial fraud losses accounted for by provisional credit is represented by P/L. Rearranging (i.) gives  $P/L = 0.4/4 = 10$  percent, and rearranging (ii.) gives  $P/L = 0.4/6 = 6.7$  percent. In the scenario described by (i.), a four time increase,

including losses associated with providing provisional credit, is assumed to be \$0.22 to \$0.35 per active cardholder per month (based on the information above), it follows that the cost to extend provisional credit to all consumers is roughly \$0.08 to \$0.12 per active cardholder per month. Because many financial institutions currently provide provisional credit (albeit in limited circumstances), the impact of this provision is further mitigated.

### *3. Other Major Provisions Potentially Affecting Small Entities*

The final rule includes a number of additional requirements that are fully applicable to small entities. The final rule requires financial institutions to comply with the following provisions. For the reasons stated below, the cumulative burdens arising from these provisions, which are more extensively described in the section 1022(b)(2)(A) discussion above, are expected to be minimal for small non-bank entities.

*Pre-acquisition disclosure requirements.* The final rule requires that financial institutions disclose fees to consumers in a specifically described disclosure form (the “short form”). The short form disclosure includes a “static” portion containing specified subset of fees, an “additional fee types” portion that states the total number of fee types that are charged for the prepaid account but which are not disclosed in the static portion of the form, the two fee types that generated the most revenue from consumers during the prior 24-month period that are not disclosed in the static portion of the form, and certain other information.<sup>935</sup> In addition to the

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fraud losses not relating to provisional credit (E) account for 90 percent of the total fraud losses before the increase. In the scenario described by (ii.), a six time increase, (E) accounts for 93.3 percent of the total fraud losses before the increase. Assuming that E does not change, the percentage of final fraud losses accounted for by provisional credit once extended to all accounts in scenario (i.) is  $5(.10)/[5(.10)+.90] = 36$  percent and  $7(.067)/[7(.067)+.933] = 34$  percent in scenario (ii.).

<sup>935</sup> Additionally, a short form disclosure for a payroll card account or government benefit account must include either (1) a statement that consumers are not required to accept such an account that directs the consumer to ask about other ways to receive wages, salary, or benefits, or (2) a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and a statement that directs the consumer to choose one.

short form disclosure, financial institutions are required to provide a disclosure that includes a full listing of fees and related conditions, together with certain other information, in accordance with certain formatting requirements (the “long form”).

Financial institutions will need to review and revise existing disclosures to ensure that they conform to the new requirements and will incur one-time implementation costs to do so. Because certain disclosure requirements depend on the channel through which the prepaid account is distributed, the magnitude of the burden associated these requirements will depend on how the prepaid account is distributed.<sup>936</sup> For those prepaid accounts distributed in a retail location, the final rule requires that the product’s packaging material include the short form disclosure and that the long form disclosure be accessible by telephone and online. Financial institutions distributing prepaid accounts online are required to provide the short form and long form disclosures online, and those financial institutions distributing prepaid accounts in person (other than in a retail location) are required to provide both forms in print. For transactions conducted by telephone, financial institutions are required to provide the short form disclosure information orally, to inform consumers of the existence of the long form disclosure and its availability by telephone and on a website, and to provide the information in the long form disclosure to the consumer upon request.

From industry outreach conducted in connection with the proposed rule, the Bureau learned that small non-bank entities typically do not distribute prepaid accounts through the retail channel.<sup>937</sup> To the extent that they distribute accounts through the retail channel, small non-bank

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<sup>936</sup> These channels include retail distribution, online distribution, and in-person distribution (other than in a retail location), among others. The impacts on financial institutions relying on each of these channels to distribute prepaid accounts are described in the section 1022(b)(2)(A) discussion.

<sup>937</sup> This is, in part, due to the potentially high fixed costs associated with distributing prepaid accounts through this channel. If a small, non-bank entity performs program management functions to offer a white label solution in a

entities generally rely on this channel for a limited proportion of their overall portfolio. Small non-bank entities distributing accounts through non-retail channels will incur a one-time cost to review and edit existing disclosures to ensure that they include all applicable fees and follow the specified formatting requirements. This may include acquiring the capability to determine which fees must be disclosed in the revenue-based fee portion of the short form disclosure if such information is not already readily accessible. Small non-bank entities will need to revise the disclosures they currently provide to comply with the final rule's requirements. This will require small non-bank entities distributing prepaid accounts online to update websites. Those small non-bank entities distributing prepaid accounts orally by telephone may need to update interactive voice response (IVR) systems, scripts, and training for live customer service agents.

As described in the section 1022(b)(2)(A) discussion, the pre-acquisition disclosure requirements also impose ongoing operational costs. To determine the composition of the short form disclosure, small non-bank entities will need to review revenue data on an annual biennial basis to ascertain which fees should be included in the revenue-based part of the short form disclosure. Absent a need to revise the short form disclosure, reviewing the information necessary to make these determinations should comprise minimal ongoing cost. If a revision to the disclosure is necessary, small non-bank entities will incur costs associated with these revisions. Small non-bank entities will incur costs, believed to be minimal, to update websites and phone systems to include the revised disclosures, if applicable. The Bureau believes that the costs associated with updates to written and electronic disclosures are minimal.

*Requirements pertaining to consumer access to account information.* Other key provisions of the final rule potentially triggering burden include expansions to requirements to

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retail environment, it could incur some implementation costs depending on the terms of the contract. The Bureau's understanding is that few such small, non-bank entities exist.

provide consumer access to account information (largely extending the current payroll card account periodic statement alternative to all prepaid accounts with certain modifications) and the establishment of certain additional disclosures related to consumer access to account information. Financial institutions offering prepaid accounts are required to comply with Regulation E's periodic statement requirement, but the final rule also provides an alternative means of compliance with this requirement. Specifically, financial institutions are not required to furnish periodic statements to consumers so long as they provide the following at no cost to the consumer: (1) access to the prepaid account balance through a readily available telephone line; (2) access to at least 12 months of account transaction history online; and (3) at least 24 months of written account transaction history upon the consumer's request. Regardless of whether the financial institution chooses to provide periodic statements or implement the alternative, the financial institution must disclose to the consumer a summary total of the amount of all fees it assessed against the consumer's prepaid account, for both the prior calendar month as well as the calendar year to date.

Although not all covered financial institutions are required to make transaction history available to consumers under current Regulation E, current industry practice is to provide consumers with electronic access to at least 60 days of transaction history. Regulation E requires financial institutions to provide payroll card accountholders with electronic access to at least 60 days of account history if they do not furnish periodic statements. Additionally, the FMS Rule requires that consumers holding accounts that receive Federal payments have access to at least 60 days of account history. In addition, the Bureau understands from industry outreach conducted in connection with the proposed rule that some financial institutions make available online more than 60 days of transaction history, ranging from six months to the entire life of the

prepaid account. The final rule requires that those financial institutions relying on the alternative means of complying with Regulation E's periodic statement requirement provide 12 months of electronic history as well as 24 months of written account history on request. Additionally, financial institutions offering prepaid accounts will need to modify existing transaction history reporting or periodic statements to include the required summary total of fees.

The costs associated with implementing these provisions depend on the extent to which the financial institution relies on outside vendors to perform information technology functions. For those covered entities maintaining in-house information technology platforms, the cost associated with updating systems to maintain this information and providing additional electronic storage media should be limited. Those covered entities that format their own periodic statements or transaction histories, and do not currently display the required summary total of fees on their periodic statements or transaction histories, will incur a one-time implementation cost to modify these disclosures.<sup>938</sup>

Many small non-bank entities rely on processors to provide online hosting of consumer account histories. The Bureau's understanding from outreach conducted in connection with the proposed rule is that entities outsourcing this function pay processors a fee per prepaid account. This fee may depend on the extent of account history provided to consumers as well as the total number of accounts hosted by the processor.<sup>939</sup> These entities generally rely on their processor

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<sup>938</sup> During outreach conducted in connection with the proposed rule, one program manager estimated that it would cost approximately \$15,000 to modify its website to provide the summary total of fees as well as a summary total of the total amount of deposits to the account and the total amount of all debits made to the prepaid account. Because the proposed rule's approach required additional modifications, this should be an upper bound on the estimated cost to this program manager of modifying its website to display only the summary total of fees required by the final rule.

<sup>939</sup> During outreach conducted in connection with the proposed rule, one non-bank program manager that relies on a processor for this function stated that its processor charged fees for data storage on a per-account basis at activation. Costs were generally increasing from \$0.08 per account for three months of transaction history to \$0.19 per account

to modify periodic statements or electronic transaction histories to display the required summary total of fees.<sup>940</sup> However, one non-bank program manager predicted that its processor would offer such a modification as part of its standard package of services at no additional cost if such summary totals were a regulatory requirement.

As discussed in the section 1022(b)(2)(A) consideration of benefits, costs, and impacts, the Bureau's understanding from industry outreach is that most covered financial institutions provide consumers with telephone access to balance information. Therefore, the Bureau regards the potential burdens associated with these provisions to be de minimis and not likely, considered separately or cumulatively, to result in a significant economic impact.

*Submission and posting of account agreements.* The final rule also requires prepaid account issuers to submit copies of their agreements to the Bureau on a rolling basis and to post the agreements that they offer to the general public on their publicly available websites. For any issuer that is not required by § 1005.19(c) to post agreements on its own publicly available website, the final rule requires that the issuer provide access to individual account agreements to any consumer holding an open prepaid account. An issuer may fulfill this requirement by posting and maintaining the consumer's agreement on its website or by promptly providing a copy of the agreement in response to a consumer's request.<sup>941</sup>

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for one year of transaction history. This program manager also suggested that, because processor prices decrease with scale, it paid among the highest prices charged by the processor because it was operating at low scale.

<sup>940</sup> During outreach conducted in connection with the proposed rule, one non-bank program manager stated that its processor quoted a one-time cost of \$65,000 associated with providing the summary totals required by the proposed rule on its processor-hosted website (in response to an ad-hoc request). In all probability, this represents an upper bound for the true development cost because this number likely includes a mark-up over the true cost of providing the service, and the final rule does not require all of the summary totals included in the proposed rule.

<sup>941</sup> If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer must provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer is required to send to the consumer or otherwise make the copy of the consumer's agreement available no later than five business days after the issuer receives the consumer's request.

The Bureau believes that the costs associated with submitting new and updated agreements to the Bureau (and withdrawing old agreements) and responding to consumer requests will be minimal because, in most cases, entities will comply with the requirement through electronic submission of the agreement to the Bureau and by posting copies of their agreement on a preexisting publicly available website. For those entities that choose not to post agreements online, the cost associated with responding to ad hoc consumer requests for copies of account agreements would include the one-time cost of training customer service agents and ongoing costs for postage.

#### *D. Conclusion*

To determine whether the economic impact of the final rule will be significant, the Bureau compared estimates of the cumulative costs imposed by the provisions on directly affected small or potentially small non-bank entities to estimates of revenues earned by these entities.<sup>942</sup> To determine whether the final rule is likely to have a significant economic impact on directly affected small non-bank entities, the Bureau compares an estimate of revenues earned by the entities to an estimate of the aggregate potential costs incurred by these entities to comply with the final rule's provisions.<sup>943</sup>

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<sup>942</sup> The Bureau did not separately consider the costs borne by small banks and credit unions because the final rule will not directly affect a substantial number of such entities, as shown above. However, it is worth noting that issuers (typically banks and credit unions) and program managers (frequently non-banks) jointly earn revenues and bear costs. The current policies of small non-bank entities are considered in determining if the economic impact of the final rule will be significant.

<sup>943</sup> The revenue split between the issuer and the program manager varies across prepaid programs that rely on distinct firms to perform these functions. In this analysis, the Bureau does not take a position as to whether the prepaid account issuer or the program manager assumes the burdens imposed by the final rule's provisions. However, it is worth noting, for purposes of considering the economic impact of the final rule's requirements with respect to error resolution and limited liability, that a program manager that assumes fraud risk likely has the ability to determine the fees charged to consumers, to control screening procedures, or to take other actions to mitigate fraud losses.

*Revenues.* Because both revenue information and metrics describing the number of active prepaid accounts were not generally available (at the entity level) for directly affected small or potentially small non-bank entities, the Bureau relied on findings from industry studies (which may cover programs offered by entities that are not small or potentially small) to derive an estimate of the likely fee and interchange revenue earned per cardholder per month for certain types of prepaid accounts.<sup>944</sup> Although entities offering prepaid accounts may derive revenue from many sources, including other lines of business, the Bureau conservatively assumed that small entities only derive revenues from fees paid by cardholders and interchange fees. The Bureau obtained revenue estimates \$9.98 per active cardholder per month for GPR accounts distributed online and \$6.77 per active cardholder per month for payroll card accounts.<sup>945</sup>

*Costs.* The Bureau does not derive a cost per active cardholder per month incurred by small non-bank entities arising from the rule's provisions relating to credit. One credit union service organization commenter estimated that it would take most small financial institutions \$95,000 to comply with the credit-related provisions of the final rule. However, the Bureau assumes that final rule's provisions regarding credit will constitute a significant economic impact

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<sup>944</sup> See 2012 FRB Philadelphia Study; see also 2012 FRB Kansas City Study. One credit union commenter estimated that average annual prepaid profits were \$5,000 per small financial institution, but it did not provide revenue information nor did it clarify whether these were profits earned by financial institutions that offer prepaid cards through a vendor. Another commenter suggested that the data relied upon by the Bureau was old and that prices in the industry have decreased, but the commenter did not provide an alternative preferred source of data nor did the commenter argue that revenues per cardholder have decreased.

<sup>945</sup> Using this approach, the Bureau obtained a revenue estimate of \$9.14 per active cardholder per month for GPR accounts distributed in a retail setting, but the Bureau notes that its understanding from pre-proposal industry outreach is that small non-bank entities typically do not distribute prepaid accounts in a retail setting. The Bureau obtained revenue estimates by combining information from tables 5.7 and 5.8 from the 2012 FRB Philadelphia Study. For example, the Bureau estimated revenues earned from GPR accounts distributed online in the following manner. First, using information in table 5.7, the difference between the interchange received and the interchange paid ( $\$23.35 - \$6.41 = \$16.94$ ) determined the net interchange. Next, the ratio of total revenues (assuming that these are composed of only cardholder fees and net interchange earned) to cardholder fees was obtained ( $(\$76.00 + \$16.94) / \$76.00 = 1.223$ ). This inflator was applied to cardholder fees reported in table 5.8 ( $1.223 * \$8.16 = \$9.98$ ).

on those small non-bank entities that currently offer overdraft services in connection with their prepaid products.

As described above, the Bureau estimates that those entities that do not offer any form of limited liability or error resolution protections to consumers will sustain an increase in ongoing costs of \$0.22 to \$0.35 per active cardholder per month. In addition, these entities will incur costs associated with implementing Regulation E compliant limited liability and error resolution protections.

The Bureau estimates that those entities that currently provide limited liability and error resolution protections without provisional credit will experience an increase in ongoing costs of roughly \$0.08 to \$0.12 per active cardholder per month (or up to one-third of the ongoing costs incurred by those entities that do not provide any form of limited liability or error resolution protections). In addition, these entities will incur costs associated with implementing the administration of provisional credit. The one-time implementation costs for these activities should be minimal for those entities already otherwise providing error resolution.

The Bureau does not have information that would enable it to isolate the ongoing cost associated with extending Regulation E's limited liability protections from the ongoing cost of providing error resolution generally. However, to the extent that ongoing fraud loss estimates provided to the Bureau during pre-proposal outreach include the cost associated with providing liability limitations, these costs may be, at most, \$0.23 per cardholder per month.<sup>946</sup> Given this uncertainty, the Bureau conservatively assumes that the absence of either limited liability

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<sup>946</sup> If the ongoing cost of providing limited liability, error resolution, and provisional credit protections is \$0.35 per active cardholder per month, and provisional credit represents \$0.12 of that total, then the ongoing cost associated with providing limited liability protections could be, at most, \$0.23 per active cardholder per month.

protections or error resolution protections could cause an entity to experience a significant economic impact.

With respect to other costs, those small or potentially small entities offering prepaid accounts typically do not provide these accounts through the retail channel. Therefore, the costs associated with the pre-acquisition disclosure requirements, expressed on a per active cardholder per month basis, are minimal.<sup>947</sup> As discussed above, the ongoing operational and one-time implementation costs associated with the final rule's requirements regarding access to account information will vary depending on whether the entity performs these functions in-house or relies on an external processor. Some entities will incur costs associated with making available additional transaction history. From the Study of Prepaid Account Agreements, the industry standard appears to be to provide at least 60 days of transaction history information online. Pre-proposal outreach suggested that those entities that rely on a processor may expect an upper bound cost of \$0.01 per active cardholder per month to make additional transaction history information available.<sup>948</sup> In addition, the Bureau estimates the upper bound of the cost associated with modifying transaction histories or statements to include the required fee totals to be less than \$0.01 per active cardholder per month for those performing the software

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<sup>947</sup> For those entities distributing prepaid accounts via the telephone, the costs associated with the pre-acquisition disclosure requirements, which are considered more extensively in the section 1022(b)(2)(A) discussion, are estimated to be \$0.03 per active cardholder per month (assuming that 5 percent of consumers acquiring an account via the telephone request that the long form be read to them and an average card life of 11 months). According to the 2012 FRB Kansas City Study, the mean lifespan for prepaid cards included in its analysis was 347 days. 2012 FRB Kansas City Study at 47 tbl.4.1.

The costs associated with providing the pre-acquisition disclosure for accounts distributed online are minimal because they consist largely of a website update. According to one survey, online distribution is nine times as common as phone distribution. 2014 Pew Survey at 5. Therefore, accounting for the relative frequency of the distribution channel, the costs associated with the pre-acquisition disclosure requirements, expressed on an active cardholder per month basis, are de minimis.

<sup>948</sup> One program manager operating at small scale reported that its costs were \$0.08 per account for three months of transaction history and \$0.19 per account for one year of transaction history. The processor charged these costs at activation (one time). Given an average GPR card account life of 11 months, this translates to an increase in costs of \$0.01 per active cardholder per month.

modification in-house and \$0.02 per active cardholder per month for those relying on a processor to perform the modification.<sup>949</sup> The cost associated with submitting agreements to the Bureau and with responding to consumer requests for agreements is minimal, as described above in the section 1022(b)(2)(A) consideration of benefits, costs, and impacts.

Further, the Bureau believes that non-compliance related economic costs, such as potential future changes in market share arising from the new disclosure requirements, are minimal for all provisions except for those concerning covered separate credit features accessible by a hybrid prepaid-credit card. Such non-compliance related economic costs, including potential costs relating to disclosure, are difficult to predict, and the Bureau does not have reason to believe that they would cause small entities to experience a significant economic impact. In the aggregate, the costs not related to credit, error resolution, and limited liability are estimated to comprise at most \$0.06 per active cardholder per month.

*Entities experiencing a significant economic impact.* Considering the revenue estimates described above, the Bureau concludes that those few small or potentially small non-bank entities that provide prepaid accounts that lack either limited liability or error resolution protections will likely experience a significant economic impact.<sup>950</sup> In addition, the Bureau

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<sup>949</sup> To derive these estimates, the Bureau assumes that a small non-bank program manager earns \$3 million in annual revenues. This was the median revenue estimate identified by the Bureau for those small non-bank program managers for which a revenue estimate was located in publicly available information. Using the estimate of \$9.98 in revenues per active cardholder per month cited above for GPR card revenues, this translates to roughly 300,601 (\$3,000,000/\$9.98) active cardholder-months on an annual basis. The Bureau assumes that these fixed implementation costs are spread out over a five year period (or over 1,503,005 active cardholder-months). Therefore, the upper bound of the cost associated with modifying transaction histories or statements to include the required fee totals is estimated to be \$0.01 per active cardholder per month, using the cost estimate of \$15,000 quoted above, (\$15,000/1,503,005) for those entities performing the software modification in-house and \$0.02 per active cardholder per month, taking the average of the two cost estimates (\$65,000 and \$0) quoted above,  $((\$65,000+\$0)/(2*1,503,005))$  for those entities relying on a processor to perform the modification.

<sup>950</sup> It is worth noting that this approach does not take into account the likely cost and revenue structure of P2P payment programs that may offer prepaid accounts to consumers. However, the Bureau identified only four small or potentially small non-bank entities offering P2P payment programs. One of these entities does not provide error resolution protections for consumers so the Bureau assumes that it will incur a significant economic impact.

assumes that those entities currently offering overdraft services in connection with prepaid accounts may experience a significant economic impact from the final rule's provisions.

In sum, the Bureau believes that there are approximately 14 directly affected small or potentially small non-bank entities are likely to experience a significant economic impact from the final rule's provisions. In arriving at this conclusion, the Bureau used the observed distribution of error resolution and limited liability protections to impute likely levels of protection for those entities for which no account agreement is available.<sup>951</sup> The Bureau assumes that the two directly affected small or potentially small non-bank entities that offer covered separate credit features accessible by a hybrid prepaid-credit card will experience a significant economic impact from the final rule's provisions. In addition, the Bureau conservatively assumes that all 12 entities that currently provide liability limitations less than provided by Regulation E will incur a significant economic impact.<sup>952</sup> Two of these entities also do not provide error resolution protections.

These 14 entities comprise less than 1 percent of the 2,325 small non-bank entities in the relevant NAICS code. The Bureau also believes that roughly 2 percent of all small non-bank

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Therefore, this information omission, at most, could result in failing to attribute a significant economic impact to three small or potentially small non-bank entities.

<sup>951</sup> The Bureau excludes payroll only providers from the observed distribution when imputing the likely protections for those 14 small or potentially small non-bank entities for which the Bureau could not locate account agreements. With respect to limited liability, 12 entities are imputed to provide liability limitations consistent with Regulation E, one entity is imputed to provide liability limitations that are less comprehensive than what Regulation E provides, and one entity is imputed to not provide liability limitations. With respect to error resolution, eight entities are imputed to provide error resolution consistently with Regulation E (including provisional credit), four entities are imputed to provide error resolution consistently with Regulation E but with limitations on provisional credit, and two entities are imputed to provide error resolution consistently with Regulation E but no provisional credit.

<sup>952</sup> These 12 entities include six entities that do not provide liability limitations, four entities that provide liability limitations that are not as comprehensive as required by Regulation E, one entity imputed to not provide liability limitations, and one entity imputed to provide liability limitations that are not as comprehensive as those required by Regulation E.

entities in the relevant NAICS code that perform either EFTs or electronic payment services will experience a significant economic impact.<sup>953</sup>

#### *E. Certification*

Accordingly, the undersigned certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

### **IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>954</sup> Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

On December 23, 2014, notice of the proposed rule was published in the *Federal Register*. The Bureau invited comment on the burden estimates and any other aspect of the proposed collections of information, including suggestions for reducing the burden. The comment period for the proposal expired on March 23, 2015.

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<sup>953</sup> To derive this estimate, the Bureau assumes that 700 entities are within the NAICS code 522320 and perform either EFTs or electronic payment services. This is consistent with the number relied upon in FinCEN's Prepaid Access Rule. *See* 76 FR 45403 (July 29, 2011). Using a threshold of \$7 million in annual receipts (the SBA threshold at the time), FinCEN estimated that 93 percent, or 651, of these entities were small. At present, the SBA considers entities within NAICS code 522320 with under \$38.5 million in annual receipts to be small. Therefore, the Bureau further assumes that *at least* 651 of these entities are small. The Bureau conservatively uses a denominator of 651 to obtain this estimate.

<sup>954</sup> 44 U.S.C. 3501 *et seq.*

The Bureau received one comment specifically addressing the PRA notice. A commenter from a university research center summarized the quantitative information presented in the PRA notice and asked why the analysis of regulatory costs did not include an estimate of how the proposal would affect prepaid account users and sellers beyond initial regulatory compliance. The Bureau considered the benefits and costs to consumers of the proposed rule, as well as the impact on access to credit, in the discussion pursuant to Dodd-Frank Act section 1022(b). Regarding PRA burden specifically, however, there is no impact on consumers from this rulemaking since only business entities are respondents with respect to the information collections that are materially affected. Regarding program managers and issuers, the Bureau used current market information about costs and other data as well as data on the numbers of users to estimate both the one-time and the ongoing PRA burden of the information collections in the rule. Ongoing PRA burden accounts for burden from the information collections beyond initial regulatory compliance.

The final rule amends 12 CFR part 1005, Electronic Fund Transfers (Regulation E) and 12 CFR part 1026, Truth in Lending (Regulation Z). Regulation E and Regulation Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170-0014 (Electronic Fund Transfer Act (Regulation E) 12 CFR 1005). The Bureau's OMB control number for Regulation Z is 3170-0015 (Truth in Lending Act (Regulation Z) 12 CFR 1026). As described below, the final rule amends the collections of information currently in Regulation E and Regulation Z subparts B and G. The frequency of response is on occasion. These information collections are required to provide benefits for consumers and are mandatory. The only information the Bureau collects under the final rule are the account agreements for prepaid account programs, so no issue of confidentiality arises. The

affected public includes businesses, government agencies and other for-profit and not-for-profit organizations. The Bureau is not aware of any small not-for-profit organizations, aside from credit unions, that are directly affected by the final rule.

The Bureau generally accounts for the paperwork burden associated with Regulation E and Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository financial institutions and insured credit unions with more than \$10 billion in total assets, their depository institution affiliates (together, the Bureau depository respondents), and certain non-depository financial institutions (the Bureau non-depository respondents), such as prepaid account program managers. The Bureau and the FTC generally both have enforcement authority over non-depository financial institutions under Regulation E and Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden on Bureau non-depository respondents. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the total paperwork burden for the financial institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

For Regulation E, using the Bureau's burden estimation methodology discussed below, the estimated burden for the approximately 181 prepaid account providers likely subject to the final rule, including Bureau respondents, is one-time burden of 155,347 hours and ongoing burden of 14,304 hours. The Bureau allocates to itself 76,343 hours of one-time burden: Bureau depository respondents account for 15,504 hours while Bureau non-depository respondents account for 121,678 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining one-time burden ( $155,347 - 15,504 - 121,678 = 18,165$  hours) is allocated to the other Federal agencies that have administrative enforcement authority over banks and credit unions not

subject to the Bureau's administrative enforcement authority. Similarly, the Bureau allocates to itself 7,207 hours of ongoing burden: Bureau depository respondents account for 1,410 hours while Bureau non-depository respondents account for 11,595 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining ongoing burden ( $14,304 - 1,410 - 11,595 = 1,299$  hours) is allocated to the other Federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority.

For Regulation Z, using the Bureau's burden estimation methodology discussed below, the estimated burden for three non-depository institutions subject to the final rule would be one-time burden of 460 hours and ongoing burden of 6,491 hours. The Bureau allocates to itself half of both these burden estimates (230 hours and 3,245 hours, respectively) and half to the FTC.

The aggregate estimates of total burdens presented in this part are based on estimated burden hours that are averages across respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent. The Bureau used existing burden estimates, information obtained through industry research and outreach, and information provided in comments on the proposed rule to develop the figures presented below.

Most prepaid account programs already comply with the current requirements of Regulation E, as they apply to payroll card accounts. The additional requirements in the final rule would, with a few exceptions, require small extensions or revisions to existing practices after the initial costs. There are several participants in the prepaid account supply chain and the activities of the participants may vary across prepaid account programs. The Bureau understands that, in general, the respondents for purposes of PRA are program managers, except for the

collection required by § 1005.19 (internet posting of prepaid account agreements and submission to the Bureau), where the respondents will likely be prepaid account issuers.<sup>955</sup>

Regarding the new requirements in Regulation E, the Bureau's PRA burden estimation methodology assumes that one-time burden from the short form and long form disclosure requirements and the access to account information requirement depends on the number of fee schedules. The number of responses-per-respondent for these information collections is the number of fee schedules per program manager. The one-time burden from the error resolution requirements arises from the relatively few programs that do not already meet the requirements. The number of responses-per-respondent for this information collection is the number of non-compliant programs per program manager. We assume that the one-time burden from the rolling submission of account agreements, which includes fee schedules, depends primarily on the fee schedule, and therefore the number of responses-per-respondent for this information collection is the number of fee schedules per issuer. Ongoing burden may increase with the above factors as well as with the number of customers.

#### *A. Regulation E*

As discussed further below, the final rule requires financial institutions to make available to consumers disclosures before a consumer acquires a prepaid account. These disclosures take two forms: a short form disclosure highlighting key fees and information that the Bureau believes are most important for consumers to know about prior to acquisition and a long form disclosure that sets forth all of the prepaid account's fees and the conditions under which those fees could be imposed as well as certain other information. Second, the final rule extends, with

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<sup>955</sup> An issuer may also be a program manager and issuers can delegate to program managers the submission of prepaid account agreements to the Bureau. These practices would not affect any of the Bureau's estimates of total burden but may affect how the burden is divided among depository institutions and non-depository institutions.

certain modifications, existing error resolution and limited liability provisions for payroll card accounts and certain government benefit accounts to all prepaid accounts.<sup>956</sup> Third, the final rule adopts provisions requiring prepaid account issuers to submit agreements to the Bureau for posting on a publicly-available website established and maintained by the Bureau and to post prepaid account agreements offered to the public on the issuers' own websites. Finally, the final rule, as applicable, revises and clarifies subparts A and B of Regulation E in various places to reflect the new provisions adopted for prepaid accounts. These revisions and clarifications include, among other things, revisions to provisions currently applicable to payroll card accounts and certain government benefit accounts.

The Bureau's Study of Prepaid Account Agreements and review of industry research found that most programs of GPR prepaid accounts and government benefit accounts currently comply with the major provisions of the payroll card requirements of Regulation E. Thus, on an ongoing basis, these accounts will be affected mostly by the modifications adopted in the final rule to the current provisions for payroll card accounts and which will now also hold for GPR prepaid accounts and government benefits accounts.

Providers of prepaid accounts generally provide account opening disclosures, change-in-terms notices, and annual error resolution notices that meet the current requirements of Regulation E. Final § 1005.18(f)(1) expands the account opening requirements of § 1005.7(b)(5) as applied to prepaid accounts to require the disclosure of all fees, not just fees for EFTs.

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<sup>956</sup> All prepaid cards used to distribute Federally-administered benefits (such as Social Security and SSI) and State and local non-needs tested benefits (such as unemployment, child support, and pension payments) are currently covered by Regulation E. However, government agencies are currently not required to provide periodic statements or online access to account information for cards distributing State and local non-needs tested benefits, as long as balance information is made available to benefits recipients via telephone and electronic terminals and a written account history of at least 60 days is given upon request. Needs-tested EBT programs established or administered under State or local law are not currently subject to Regulation E pursuant to existing § 1005.15(a). The final rule does not change this.

However, the Bureau understands that most fees are currently generally disclosed at account opening. Thus, the one-time and ongoing burden from this requirement should be minimal.

Providers offering certain EFT services for prepaid accounts would also need to provide transaction disclosures. For example, a disclosure would be required for transactions conducted at an ATM. The Bureau believes that most or all providers currently give these disclosures. In the alternative, however, these disclosures impose minimal burden as they are machine-generated and do not involve an employee of the institution. For preauthorized transfers to the consumer's account occurring at least once every 60 days, such as direct deposit, the institution would be required to provide notice as to whether the transfer occurred unless positive notice was provided by the payor. In lieu of sending a notice of deposit, the institution may provide a readily available telephone number that the consumer can call to verify receipt of the deposit. Thus, the burden of this requirement is also minimal. For preauthorized transfers from the account, either the institution or the payee would need to notify the consumer of payment variations. Because in the vast majority of instances the payee, rather than the account provider, would satisfy this obligation, the burden on providers is minimal.

Under final § 1005.18(b)(2) and (4), a financial institution is required to make available a short form and a long form disclosure before the consumer acquires the prepaid account, subject to certain exceptions provided in § 1005.18(b)(1). The Bureau estimates that providers, including Bureau respondents, will take 40 hours per prepaid account fee schedule, on average, to develop the short form disclosure and to update systems. Providers will take eight hours every 24 months for each prepaid account fee schedule to evaluate, and if necessary, update the information on the short form disclosure regarding additional fee types. Providers will incur no other ongoing costs for the short form disclosure since they already offer consumers a pre-

acquisition disclosure. The Bureau estimates that providers, including Bureau respondents, will take on average 8 hours per prepaid account fee schedule to develop the long form disclosure and update systems. Most of the content of the long form disclosure is already provided in prepaid account agreements.<sup>957</sup>

Final § 1005.18(f)(3) requires that certain disclosures be made on the actual prepaid account access device. These include the name of the financial institution and the URL of a website and a telephone number that the consumer can use to contact the financial institution about the prepaid account. The Bureau believes that currently all prepaid account access devices provide these disclosures.

Final § 1005.18(c)(1) requires financial institutions to furnish periodic statements unless the provider uses the alternative method of compliance, which requires the financial institution to make available to the consumer the following information: the consumer's account balance, through a readily available telephone line, at least 12 months of transaction history electronically, and written transaction history in response to an oral or written request that covers the 24 months preceding the date the financial institution receives the request. The Bureau expects that most providers will use the alternative method of compliance. The Study of Prepaid Account Agreements found that most prepaid account programs provided electronic access to account information; and while few agreements stated that the program provided at least 12 months of prepaid account transaction history, many programs provided access to account

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<sup>957</sup> Final § 1005.18(b)(4)(vii) requires that the long form disclosure include the disclosures described in § 1026.60(e)(1) or (2)(ii) if at any point a covered separate credit feature accessible by a hybrid prepaid-card (as defined in § 1026.61) may be offered in connection with the prepaid account. This burden is minimal given the Bureau's burden estimation methodology for Regulation Z, as explained below. Final § 1005.18(b)(9) provides that if a financial institution principally uses a foreign language in certain circumstances then it must provide both the short and long form in that same foreign language. The Bureau believes that current industry practice regarding pre-acquisition disclosures in foreign languages is generally consistent with this requirement. The long form disclosure also needs to be provided in English upon request, but this is a minimal one-time and ongoing expense.

information for much longer time frames than what was listed in the account agreements. In addition, several commenters stated that they provided 12 months of electronic transaction history. Regarding the requirement to provide a transaction history in writing pursuant to § 1005.18(c)(1)(iii), few consumers ever request a written transaction history.

Regardless of how a financial institution chooses to comply, final § 1005.18(c)(5) requires that the financial institution disclose to the consumer 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.<sup>958</sup> Prepaid account programs generally do not currently provide these summary totals. The Bureau estimates that providers will take on average 24 hours per prepaid account fee schedule to implement these changes.

The final rule extends to all prepaid accounts the limited liability and error resolution provisions of Regulation E, as they currently apply to payroll card accounts.<sup>959</sup> *See* § 1005.18(e)(1) and (2). As discussed above, the Study of Prepaid Account Agreements and its industry research found that most providers of prepaid accounts provide limited liability and error resolution protections (including provisional credit) generally consistent with the Regulation E requirements for payroll card accounts. The Bureau estimates that providers (including Bureau respondents) that do not fully comply with the payroll card rule's limited liability and error resolution provisions will require 8 hours per non-compliant program to develop fully compliant limited liability and error resolution procedures. Regarding ongoing

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<sup>958</sup> For periodic statements, the monthly summary may be for the statement period or for the prior calendar month; for other transaction histories, it must be for the prior calendar month.

<sup>959</sup> The Bureau is finalizing an exception from the requirement to provide provisional credit for prepaid accounts (other than payroll card accounts and government benefit accounts) for which the financial institution has not completed its consumer identification and verification process with respect to that prepaid account. § 1005.18(e)(3).

costs, Bureau outreach indicates that providers receive perhaps one call per month per customer who actively uses a card and that 95 percent of those calls are resolved without requiring time from a customer service agent. Of the remaining 5 percent, very few calls involve assertions of error, but escalated calls are time consuming and respondents incur an ongoing burden.

If a financial institution changes a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, a financial institution must notify consumers with accounts acquired before October 1, 2017 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, 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 E-Sign consent from the consumer, then the financial institution may notify the consumer electronically. Otherwise, if a financial institution is mailing or delivering written communications to the consumer within the applicable time period, then that financial institution must send a notice in physical form. If the financial institution will not be mailing or delivering communications to the consumer within the applicable time period, then the financial institution will be able to notify the consumer in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Financial institutions with prepaid accounts that offer overdraft credit features are likely to trigger this requirement. For any consumer who has not consented to electronic communications and who will be receiving other physical mailings from the financial institution

in the specified time period, that financial institution will incur a cost of printing the notice, which can be included in the envelope or package which was already scheduled to be delivered. It is unlikely that the financial institution will incur additional mailing costs to send these notices. The remaining notices of change may be sent to consumers electronically. Therefore, the Bureau believes that the cost associated with providing these notices is minimal.

Final § 1005.18(h)(2)(ii) requires that financial institutions notify any consumer, who acquires a prepaid account after the effective date in packaging printed prior to the effective date, of any changes as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been 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 also 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 to notify consumers and provide 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 with another scheduled mailing within the 30 day time period. Financial institutions will incur small costs to print these notices and disclosures, but it is unlikely that financial institutions will incur additional mailing costs. 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.

Final § 1005.19(b) requires certain issuers to submit to the Bureau, on a rolling basis, short form disclosures and prepaid account agreements (including fee schedules) that are offered,

amended or withdrawn. The Bureau estimates that each issuer will initially take 1 hour to register and spend 5 minutes to upload each of 17 agreements (our estimate of the overall average number of fee schedules per issuer). Thus the one-time burden is 145 (= 60 + (5\*17)) minutes or 2.42 hours per issuer. There is considerable uncertainty regarding the number of issuers that will offer, amend or withdraw an issuer agreement each year on an ongoing basis and the number of issuer agreements that each issuer will offer, amend or withdraw. The Bureau's experience with the submission of credit card agreements pursuant to § 1026.58 of Regulation Z suggests that issuers who upload issuer agreements will upload at most 5 issuer agreements annually on an ongoing basis.<sup>960</sup> We assume that every issuer uploads 5 issuer agreements annually on an ongoing basis, so our estimate is an upper bound on the burden.

The estimated burden on Bureau respondents from the final rule's changes to Regulation E are summarized below.

		One-time Burden (Bureau Respondents)					One-time Burden (Bureau Amount)	
		Number of Respondents	Average Burden per Response (hours)	Average Responses per Respondent	Average Burden per Respondent (hours)	Total One-time Burden (hours)	Half the Burden on Bureau Non-DIs (hours)	One-time Bureau Burden (hours)
1005.18(b)(2), 1005.15(c)	Short form disclosure	160	40.00	11.87	474.91	75,985.33	33,718.49	42,266.84
1005.18(b)(4), 1005.15(c)	Long form disclosure	160	8.00	11.87	94.98	15,197.07	6,743.70	8,453.37
1005.18(c)(5), 1005.15(d)	Access to prepaid account information	160	24.00	11.87	284.94	45,591.20	20,231.09	25,360.10
1005.18(e)(2), 1005.11	Error resolution	20	8.00	1.86	14.86	297.14	133.71	163.43
1005.19(b)	Submission of agreements	46	2.42	1.00	2.42	111.32	12.10	99.22
<b>Total</b>						<b>137,182.05</b>	<b>60,839.09</b>	<b>76,342.96</b>

<sup>960</sup> In a recent analysis of submissions for the third quarter of 2014, the Bureau found 103 credit card issuers submitted 429 agreements in a single quarter, so just over four per issuer. 80 FR 21153, 21156. We repeated this analysis using submissions for all of 2014, which is the last year of data available, and found that 210 credit card issuers submitted 1002 agreements, so just under five per issuer. See <http://www.consumerfinance.gov/credit-cards/agreements/>.

		Ongoing burden (Bureau respondents)				Ongoing burden (Bureau amount)	
		Number of Respondents	Average Burden per Response (minutes)	Average Annual Responses per Respondent	Total Ongoing Burden (hours)	Half the burden on Bureau non-DIs (hours)	Ongoing Bureau burden (hours)
1005.18(b)(2)(ix)	Short form additional fee type disclosure	160	240	11.87	7,599.84	3,371.92	4,227.92
1005.18(e)(2), 1005.11	Error resolution	20	30	538.52	5,385.19	2,423.34	2,961.85
1005.19(b)	Submission of agreements	46	5	5.00	19.17	2.08	17.08
<b>Total</b>					<b>13,004.20</b>	<b>5,797.34</b>	<b>7,206.86</b>

## B. Regulation Z

The Bureau understands that approximately 218,000 consumers currently have a form of overdraft protection on their GPR and payroll cards.<sup>961</sup> The Bureau's PRA estimation methodology assumes that the same number will use a credit feature after the final rule takes effect, although this is likely an overestimate.<sup>962</sup> Further, the methodology generally assumes that the per-respondent and per transaction burdens would be consistent with those currently reported for credit card accounts in Regulation Z.

As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business

<sup>961</sup> The Bureau is aware of three providers of overdraft credit features on prepaid accounts and believes that NetSpend is the only significant provider. A recent financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015. Total Sys. Serv., Inc., Form 10-Q, at 27, *available at* <https://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d97203d10q.htm> (for the quarterly period ended Sept. 30, 2015). NetSpend also stated in a news article that only about 6 percent of its customers regularly use overdraft. *See* 2012 NetSpend WSJ Article. Assuming each NetSpend customer has overdraft protection on only one account, there are 216,000 prepaid accounts with overdraft protection. No data is available for the other two providers. The Bureau believes, based on industry data, that the median provider of prepaid accounts likely has about 10,000 customers. Assuming 10 percent have an overdraft service or credit feature on one prepaid account gives an additional 2,000 accounts with overdraft protection.

<sup>962</sup> Current data on the size of the market for credit features on prepaid accounts has limited usefulness in predicting the size of the market under the final rule, since both eligibility criteria and credit features may change as a result. See previous discussions in this supplementary information.

partners (except as described in new § 1026.61(a)(4)).<sup>963</sup> The Bureau anticipates that most of these overdraft credit features covered under the final rule would meet the definition of “open-end credit.”<sup>964</sup> In addition, under the final rule, a prepaid card that accesses such an overdraft credit feature would be a “credit card” under Regulation Z.<sup>965</sup> The overdraft credit features described above would be governed by subparts A, B, D, and G of Regulation Z. Pursuant to Regulation Z, persons offering such plans would be required to comply with the requirements governing information collections. These requirements are as follows.

As discussed below, certain disclosure provisions in Regulation Z apply to “creditors” and other disclosure provisions apply to “card issuers.” Under the final rule, a person that is offering an overdraft credit feature as described above in connection with a prepaid account would be both a “card issuer” and a “creditor” under Regulation Z.

Persons offering an overdraft credit feature described above in connection with a prepaid account are required to inform consumers of costs and terms before they use the credit feature and in general to inform them of certain subsequent changes in the terms of the credit feature. Initial information would need to include the finance charge and other charges, the APR, a description of how balances on which a finance charge is based would be calculated, and any collateral that would secure repayment. If the creditor changes certain terms initially disclosed, or increases the minimum periodic payment, a written change-in-terms notice generally would need to be provided to the consumer at least 45 days prior to the effective date of the change.

Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau

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<sup>963</sup> These overdraft credit features are covered under the term “covered separate credit feature” as defined in new § 1026.61.

<sup>964</sup> This would apply if the creditor establishes a program where the creditor routinely extends credit and may impose finance charges from time to time on an outstanding unpaid balance for credit.

<sup>965</sup> The final rule defines such a prepaid card that is a credit card as a “hybrid prepaid-credit card” in new § 1026.61.

estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau also assumes that for these accounts, the number of account opening disclosures equals the number of accounts in any year.<sup>966</sup>

Creditors are required to provide a written statement of activity for each billing cycle (*i.e.*, periodic statement). The statement has to be provided for each account that has a balance of more than \$1 or on which a finance charge is imposed, and it has to include a description of activity on the account, opening and closing balances, finance charges imposed, and payment information. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 80 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account.

Creditors are required to notify consumers about their rights and responsibilities regarding billing errors. Creditors have to provide either a complete statement of billing rights each year or a summary on each periodic statement. If a consumer alleges a billing error, the creditor must provide an acknowledgment, within 30 days of receipt, that the creditor received the consumer's error notice and must report on the results of its investigation within 90 days. If a billing error did not occur, the creditor must provide an explanation as to why the creditor believed an error did not occur and provide documentary evidence to the consumer upon request. The creditor must also give notice of the portion of the disputed amount and related finance or other charges that the consumer still owed and notice of when payment was due. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau further assumes that, based on discussions with

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<sup>966</sup> In one recent analysis, the median life span for GPR cards with occasional reloads was 330 days and 570 days for GPR cards with periodic non-government direct deposit. 2012 FRB Kansas City Study at 47 tbl.4.1.

industry, in any year 1.5 percent of customers will assert errors that require significant time from customer service representatives.

Persons offering an overdraft credit feature discussed above in connection with a prepaid account are required, when advertising their product, to include certain basic credit information if the advertisement refers to specified credit terms or costs. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.

Persons offering an overdraft credit feature described above in connection with a prepaid account are required to send the Bureau copies of the overdraft credit feature agreement. The Bureau estimates each card issuer will take 5 minutes to upload each agreement. We assume the same overall average number of agreements per issuer as above (which will not be representative of any of the three), so each issuer will initially take 85 minutes to upload 17 agreements and will upload 5 agreements annually on an ongoing basis.

Finally, persons offering overdraft credit features as described above in connection with a prepaid account must provide additional disclosures with solicitations and applications. Such card issuers must disclose key terms of the account, such as the APR, information about variable rates, and fees such as annual fees, minimum finance charges, and transaction fees for purchases. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.<sup>967</sup>

The estimated burden on Bureau respondents from the changes to Regulation Z are summarized below.

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<sup>967</sup> The recordkeeping requirement in § 1026.25 does not specify the kind of records that must be retained, so for purposes of PRA the paperwork burden is minimal.

		<b>One-time burden (Bureau Respondents)</b>				
		<b>Number of Respondents</b>	<b>Average Burden per Response (hours)</b>	<b>Average</b>	<b>Total One-time Burden (hours)</b>	<b>Bureau Amount</b>
				<b>Responses per Respondent</b>		
1026.6(b)	Account opening disclosures	3	8	1	24.00	12.00
1026.7(b)	Periodic statements	3	80	1	240.00	120.00
1026.9	Change in terms	3	8	1	24.00	12.00
1026.13	Error resolution	3	8	1	24.00	12.00
1026.16	Advertising	3	40	1	120.00	60.00
1026.58	Internet posting of credit card agreements	3	1.42	1	4.25	2.13
1026.60(a)(2)	Application and solicitation disclosures	3	8	1	24.00	12.00
<b>Total</b>					<b>460.25</b>	<b>230.13</b>

		<b>Ongoing burden (Bureau Respondents)</b>				
		<b>Number of Respondents</b>	<b>Average Burden per Response (minutes)</b>	<b>Average Annual</b>	<b>Total Ongoing Burden (hours)</b>	<b>Bureau Amount</b>
				<b>Responses per Respondent</b>		
1026.6(b)	Account opening disclosures	3	0.25	78,667	983.33	491.67
1026.7(b)	Periodic statements	3	0.0625	944,000	2,950.00	1,475.00
1026.9	Change in terms	3	0.125	78,667	491.67	245.83
1026.13	Error resolution	3	30	1,180	1,770.00	885.00
1026.16	Advertising	3	25	5	6.25	3.13
1026.58	Internet posting of credit card agreements	3	5	5	1.25	0.63
1026.60(a)(2)	Application and solicitation disclosures	3	480	12	288.00	144.00
<b>Total</b>					<b>6,490.50</b>	<b>3,245.25</b>

The Consumer Financial Protection Bureau has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: The Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, D.C., 20503, or by the internet to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to [CFPB\\_Public\\_PRA@cfpb.gov](mailto:CFPB_Public_PRA@cfpb.gov).

## List of Subjects

### 12 CFR Part 1005

Automated teller machines, Banks, Banking, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittances, Reporting and recordkeeping requirements, Savings Associations.

### 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

## Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR parts 1005 and 1026 as follows:

### **PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)**

1. The authority citation for part 1005 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5532, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o-1.

### **Subpart A—General**

2. Section 1005.2 is amended by revising paragraphs (b)(2) and (3) to read as follows:

#### **§ 1005.2 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(3) The term includes a prepaid account.

(i) "Prepaid account" means:

(A) A "payroll card account," which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person; or

(B) A "government benefit account," as defined in § 1005.15(a)(2); or

(C) An account that is marketed or labeled as "prepaid" and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines; or

(D) An account:

(1) That is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter,

(2) Whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, and

(3) That is not a checking account, share draft account, or negotiable order of withdrawal account.

(ii) For purposes of paragraphs (b)(3)(i)(C) and (D) of this section, the term "prepaid account" does not include:

(A) An account that is loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement;

(B) An account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments;

(C) The person-to-person functionality of an account established by or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities;

(D)(1) A gift certificate as defined in § 1005.20(a)(1) and (b);

(2) A store gift card as defined in § 1005.20(a)(2) and (b);

(3) A loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); or

(4) A general-use prepaid card as defined in § 1005.20(a)(3) and (b) that is both marketed and labeled as a gift card or gift certificate; or

(E) An account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency, as set forth in § 1005.15(a)(2).

\* \* \* \* \*

3. Section 1005.10 is amended by revising paragraph (e)(1) to read as follows:

**§ 1005.10 Preauthorized transfers.**

\* \* \* \* \*

(e) *Compulsory use*—(1) *Credit*. No financial institution or other person may condition an extension of credit to a consumer on the consumer’s repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer’s account. This exception does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

\* \* \* \* \*

4. Section 1005.11 is amended by revising paragraphs (c)(2)(i)(A) and (B) and adding paragraph (c)(2)(i)(C) to read as follows:

**§ 1005.11 Procedures for resolving errors.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error;

(B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220); or

(C) The alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not completed its consumer identification and verification process, as set forth in § 1005.18(e)(3)(ii).

\* \* \* \* \*

5. Section 1005.12 is amended by revising paragraphs (a)(1)(ii), (a)(1)(iv), and (a)(2)(i) and (ii) and adding paragraph (a)(2)(iii) to read as follows:

**§ 1005.12 Relation to other laws.**

(a) \* \* \*

(1) \* \* \*

(ii) The issuance of an access device (other than an access device for a prepaid account) that permits credit extensions (under a preexisting agreement between a consumer and a financial

institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a) of this part;

\* \* \* \* \*

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving:

(A) Except with respect to a prepaid account, an extension of credit that is incident to an electronic fund transfer that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a);

(B) With respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, an extension of credit that is incident to an electronic fund transfer that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction;

(C) Transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4); and

(D) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, transactions that access the prepaid account, as applicable.

(2) \* \* \*

(i) The addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z (12 CFR part 1026);

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device; and

(iii) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a consumer's liability for unauthorized use and the investigation of errors involving transactions that access the non-covered separate credit feature, as applicable.

\* \* \* \* \*

6. Section 1005.15 is revised to read as follows:

**§ 1005.15 Electronic fund transfer of government benefits.**

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the Act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the Act and this part except as modified by this section.

(2) For purposes of this section, the term “account” or “government benefit account” means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals,

but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Pre-acquisition disclosure requirements.* (1) Before a consumer acquires a government benefit account, a government agency shall comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b).

(2) *Additional content for government benefit accounts—(i) Statement regarding consumer’s payment options.* As part of its short form pre-acquisition disclosures, the agency must provide a statement that the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive their benefit payments from the agency instead of receiving them via the account, using the following clause or a substantially similar clause: “You do not have to accept this benefits card. Ask about other ways to receive your benefits.” Alternatively, an agency may provide a statement that the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and directing the consumer to indicate which option the consumer chooses using the following clause or a substantially similar clause: “You have several options to receive your payments: [list of options available to the consumer]; or this benefits card. Tell the benefits office which option you choose.” This statement must be located above the information required by § 1005.18(b)(2)(i) through (iv). This statement must appear in a

minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by § 1005.18(b)(2)(i) through (iv).

(ii) *Statement regarding state-required information or other fee discounts and waivers.*

An agency may, but is not required to, include a statement in one additional line of text in the short form disclosure directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to § 1005.18(b)(3)(i) and (ii), or, if no such statements are disclosed, above the statement required by § 1005.18(b)(2)(x). This statement must appear in the same type size used to disclose variable fee information pursuant to § 1005.18(b)(3)(i) and (ii), or, if none, the same type size used for the information required by § 1005.18(b)(2)(x) through (xiii).

(3) *Form of disclosures.* When a short form disclosure required by paragraph (c) of this section is provided in writing or electronically, the information required by § 1005.18(b)(2)(i) through (ix) shall be provided in the form of a table. Except as provided in § 1005.18(b)(6)(iii)(B), the short form disclosure required by § 1005.18(b)(2) shall be provided in a form substantially similar to Model Form A-10(a) of appendix A of this part. Sample Form A-10(f) in appendix A of this part provides an example of the long form disclosure required by § 1005.18(b)(4) when the agency does not offer multiple service plans.

(d) *Access to account information—(1) Periodic statement alternative.* A government agency need not furnish periodic statements required by § 1005.9(b) if the agency makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer);

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 12 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the agency receives the consumer's request.

(2) *Additional access to account information requirements.* For government benefit accounts, a government agency shall comply with the account information requirements applicable to prepaid accounts as set forth in § 1005.18(c)(3) through (5).

(e) *Modified disclosure, limitations on liability, and error resolution requirements.* A government agency that provides information under paragraph (d)(1) of this section shall comply with the following:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 1005.7(b) by disclosing:

(i) *Access to account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a Web site, and 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.

The disclosure required by this paragraph (e)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph (a) of appendix A-5 of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A-5 of this part, in place of the notice required by § 1005.7(b)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A-5 of this part, in place of the notice required by § 1005.8(b). Alternatively, the agency may include on or with each electronic or written history provided in accordance with paragraph (d)(1) of this section, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) in appendix A-3 of this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) *Modified limitations on liability requirements.* (i) For purposes of § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the unauthorized transfer; or

(B) The date the agency sends a written history of the consumer's account transactions requested by the consumer under paragraph (d)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) An agency may comply with paragraph (e)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any

transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) *Modified error resolution requirements.* (i) The agency shall comply with the requirements of § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the agency sends a written history of the consumer's account transactions requested by the consumer under paragraph (d)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(4)(i) of this section, an agency complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the agency within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

(f) *Disclosure of fees and other information.* For government benefit accounts, a government agency shall comply with the disclosure and change-in-terms requirements applicable to prepaid accounts as set forth in § 1005.18(f).

(g) *Government benefit accounts accessible by hybrid prepaid-credit cards.* For government benefit accounts accessible by hybrid prepaid-credit cards as defined in Regulation Z, 12 CFR 1026.61, a government agency shall comply with prohibitions and requirements applicable to prepaid accounts as set forth in § 1005.18(g).

7. Section 1005.17 is amended by revising paragraphs (a)(2) and (3) and adding paragraph (a)(4) to read as follows:

**§ 1005.17 Requirements for overdraft services.**

(a) \* \* \*

(2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account;

(3) A line of credit or other transaction exempt from Regulation Z (12 CFR part 1026) pursuant to 12 CFR 1026.3(d); or

(4) A covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61; or credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of 12 CFR 1026.61(a)(4).

\* \* \* \* \*

8. Section 1005.18 is revised to read as follows:

**§ 1005.18 Requirements for financial institutions offering prepaid accounts.**

(a) *Coverage.* A financial institution shall comply with all applicable requirements of the Act and this part with respect to prepaid accounts except as modified by this section. For rules governing government benefit accounts, see § 1005.15.

(b) *Pre-acquisition disclosure requirements—(1) Timing of disclosures—(i) General.* Except as provided in paragraphs (b)(1)(ii) or (iii) of this section, a financial institution shall provide the disclosures required by paragraph (b) of this section before a consumer acquires a prepaid account.

(ii) *Disclosures for prepaid accounts acquired in retail locations.* A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section

before a consumer acquires a prepaid account in person at a retail location if the following conditions are met:

(A) The prepaid account access device is contained inside the packaging material.

(B) The disclosures required by paragraph (b)(2) of this section are provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material.

(C) The disclosures required by paragraph (b)(2) of this section include the information set forth in paragraph (b)(2)(xiii) of this section that allows a consumer to access the information required to be disclosed by paragraph (b)(4) of this section by telephone and via a Web site.

(D) The long form disclosures required by paragraph (b)(4) of this section are provided after the consumer acquires the prepaid account.

(iii) *Disclosures for prepaid accounts acquired orally by telephone.* A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section before a consumer acquires a prepaid account orally by telephone if the following conditions are met:

(A) The financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the information required to be disclosed by paragraph (b)(4) of this section is available both by telephone and on a Web site.

(B) The financial institution makes the information required to be disclosed by paragraph (b)(4) of this section available both by telephone and on a Web site.

(C) The long form disclosures required by paragraph (b)(4) of this section are provided after the consumer acquires the prepaid account.

(2) *Short form disclosure content.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:

(i) *Periodic fee.* The periodic fee charged for holding the prepaid account, assessed on a monthly or other periodic basis, using the term “Monthly fee,” “Annual fee,” or a substantially similar term.

(ii) *Per purchase fee.* The fee for making a purchase using the prepaid account, using the term “Per purchase” or a substantially similar term.

(iii) *ATM withdrawal fees.* Two fees for using an automated teller machine to initiate a withdrawal of cash in the United States from the prepaid account, both within and outside of the financial institution’s network or a network affiliated with the financial institution, using the term “ATM withdrawal” or a substantially similar term, and “in-network” or “out-of-network,” respectively, or substantially similar terms.

(iv) *Cash reload fee.* The fee for reloading cash into the prepaid account using the term “Cash reload” or a substantially similar term. The fee disclosed must be the total of all charges from the financial institution and any third parties for a cash reload.

(v) *ATM balance inquiry fees.* Two fees for using an automated teller machine to check the balance of the prepaid account in the United States, both within and outside of the financial institution’s network or a network affiliated with the financial institution, using the term “ATM balance inquiry” or a substantially similar term, and “in-network” or “out-of-network,” respectively, or substantially similar terms.

(vi) *Customer service fees.* Two fees for calling the financial institution about the prepaid account, both for calling an interactive voice response system and a live customer

service agent, using the term “Customer service” or a substantially similar term, and “automated” or “live agent,” or substantially similar terms, respectively, and “per call” or a substantially similar term. When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, disclose only the fee for calling the live agent customer service about the prepaid account, using the term “Live customer service” or a substantially similar term and “per call” or a substantially similar term.

(vii) *Inactivity fee.* The fee for non-use, dormancy, or inactivity of the prepaid account, using the term “Inactivity” or a substantially similar term, as well as the conditions that trigger the financial institution to impose that fee.

(viii) *Statements regarding additional fee types—(A) Statement regarding number of additional fee types charged.* A statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: “We charge [x] other types of fees.” The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding:

(1) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section; and

(2) Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(B) *Statement directing consumers to disclosure of additional fee types.* If a financial institution makes a disclosure pursuant to paragraph (b)(2)(ix) of this section, a statement directing consumers to that disclosure, located after but on the same line of text as the statement

regarding the number of additional fee types required by paragraph (b)(2)(viii)(A) of this section, using the following clause or a substantially similar clause: “Here are some of them:”.

(ix) *Disclosure of additional fee types—(A) Determination of which additional fee types to disclose.* The two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in paragraphs (b)(2)(ix)(D) and (E) of this section, excluding:

(1) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section;

(2) Any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in paragraphs (b)(2)(ix)(D) and (E) of this section; and

(3) Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(B) *Disclosure of fewer than two additional fee types.* A financial institution that has only one additional fee type that satisfies the criteria in paragraph (b)(2)(ix)(A) of this section must disclose that one additional fee type; it may, but is not required to, also disclose another additional fee type of its choice. A financial institution that has no additional fee types that satisfy the criteria in paragraph (b)(2)(ix)(A) of this section is not required to make a disclosure under this paragraph (b)(2)(ix); it may, but is not required to, disclose one or two fee types of its choice.

(C) *Fee variations in additional fee types.* If an additional fee type required to be disclosed pursuant to paragraph (b)(2)(ix)(A) of this section has more than two fee variations, or

when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with paragraph (b)(3)(i) of this section. Except when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraph (b)(7)(ii)(B)(1) of this section. If a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section, except that the financial institution would disclose only the one fee variation name and fee amount instead of two.

*(D) Timing of initial assessment of additional fee type disclosure—(1) Existing prepaid account programs as of October 1, 2017.* For a prepaid account program in effect as of October 1, 2017, the financial institution must disclose the additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014.

*(2) Existing prepaid account programs as of October 1, 2017 with unavailable data.* If a financial institution does not have 24 months of fee revenue data for a particular prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it

reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017.

(3) *New prepaid account programs created on or after October 1, 2017.* For a prepaid account program created on or after October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the first 24 months of the program.

(E) *Timing of periodic reassessment and update of additional fee types disclosure—(1) General.* A financial institution must reassess its additional fee types disclosure periodically as described in paragraph (b)(2)(ix)(E)(2) of this section and upon a fee schedule change as described in paragraph (b)(2)(ix)(E)(3) of this section. The financial institution must update its additional fee types disclosure if the previous disclosure no longer complies with the requirements of this paragraph (b)(2)(ix).

(2) *Periodic reassessment.* A financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of this paragraph (b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(4) of this section. A financial institution may, but is not required to, carry out this reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences.

(3) *Fee schedule change.* If a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of this paragraph

(b)(2)(ix) for the 24 months following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of this paragraph (b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(4) of this section. If an immediate change in terms and conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system as described in § 1005.8(a)(2) and that change affects the prepaid account program's fee schedule, the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the change permanent, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(4) of this section.

*(4) Update printing exception.* Notwithstanding the requirements to update additional fee types disclosures in paragraph (b)(2)(ix)(E) of this section, a financial institution is not required to update the listing of additional fee types that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to paragraph (b)(2)(ix)(E)(2) of this section or prior to a fee schedule change pursuant to paragraph (b)(2)(ix)(E)(3) of this section.

*(x) Statement regarding overdraft credit features.* If a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered at any point to a consumer in connection with the prepaid account, a statement that overdraft/credit may be offered, the time period after which it may be offered, and that fees would apply, using the following clause or a substantially similar clause: "You may be offered overdraft/credit after [x] days. Fees would apply." If no such credit feature will be offered at

any point to a consumer in connection with the prepaid account, a statement that no overdraft credit feature is offered, using the following clause or a substantially similar clause: “No overdraft/credit feature.”

(xi) *Statement regarding registration and FDIC or NCUA insurance.* A statement regarding the prepaid account program’s eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable, as follows:

(A) *Account is insurance eligible and does not have pre-acquisition customer identification/verification.* If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: “Register your card for [FDIC insurance eligibility] [NCUA insurance, if eligible,] and other protections.”

(B) *Account is not insurance eligible and does not have pre-acquisition customer identification/verification.* If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: “Not [FDIC] [NCUA] insured. Register your card for other protections.”

(C) *Account is insurance eligible and has pre-acquisition customer identification/verification.* If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened, using the following clause or a substantially similar clause: “Your funds are [eligible for FDIC insurance] [NCUA insured, if eligible].”

(D) *Account is not insurance eligible and has pre-acquisition customer identification/verification.* If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid account program before the account is opened, using the following clause or a substantially similar clause: “Your funds are not [FDIC] [NCUA] insured.”

(E) *No customer identification/verification.* If a prepaid account program is set up such that there is no customer identification and verification process for any prepaid accounts within the prepaid account program, using the following clause or a substantially similar clause: “Treat this card like cash. Not [FDIC] [NCUA] insured.”

(xii) *Statement regarding CFPB Web site.* A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau ([cfpb.gov/prepaid](http://cfpb.gov/prepaid)) for general information about prepaid accounts, using the following clause or a substantially similar clause: “For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid).”

(xiii) *Statement regarding information on all fees and services.* A statement directing the consumer to the location of the long form disclosure required by paragraph (b)(4) of this section to find details and conditions for all fees and services. For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, this statement must also include a telephone number and a Web site URL that a consumer may use to directly access, respectively, an oral and an electronic version of the long form disclosure required under paragraph (b)(4) of this section. The disclosure required by this paragraph must be made using the following clause or a substantially similar clause: “Find details and conditions for all fees and services in [location]” or, for prepaid accounts offered at

retail locations pursuant to paragraph (b)(1)(ii) of this section, made using the following clause or a substantially similar clause: “Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [Web site].” The Web site URL may not exceed 22 characters and must be meaningfully named. A financial institution may, but is not required to, disclose an SMS code at the end of the statement disclosing the telephone number and Web site URL, if the SMS code can be accommodated on the same line of text as the statement required by this paragraph.

(xiv) *Additional content for payroll card accounts—(A) Statement regarding wage or salary payment options.* For payroll card accounts, a statement that the consumer does not have to accept the payroll card account and directing the consumer to ask about other ways to receive wages or salary from the employer instead of receiving them via the payroll card account using the following clause or a substantially similar clause: “You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.” Alternatively, a financial institution may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the consumer chooses using the following clause or a substantially similar clause: “You have several options to receive your wages: [list of options available to the consumer]; or this payroll card. Tell your employer which option you choose.” This statement must be located above the information required by paragraphs (b)(2)(i) through (iv).

(B) *Statement regarding state-required information or other fee discounts and waivers.* For payroll card accounts, a financial institution may, but is not required to, include a statement in one additional line of text directing the consumer to a particular location outside the short

form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to paragraphs (b)(3)(i) and (ii) of this section, or, if no such statements are disclosed, above the statement required by paragraph (b)(2)(x) of this section.

(3) *Short form disclosure of variable fees and third-party fees and prohibition on disclosure of finance charges—(i) General disclosure of variable fees.* If the amount of any fee that is required to be disclosed in the short form disclosure pursuant to paragraphs (b)(2)(i) through (vii) and (ix) of this section could vary, a financial institution shall disclose the highest amount it may impose for that fee, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, using the following clause or a substantially similar clause: “This fee can be lower depending on how and where this card is used.” Except as provided in paragraph (b)(3)(ii) of this section, a financial institution must use the same symbol and statement for all fees that could vary. The linked statement must be located above the statement required by paragraph (b)(2)(x) of this section.

(ii) *Disclosure of variable periodic fee.* If the amount of the periodic fee disclosed in the short form disclosure pursuant to paragraph (b)(2)(i) of this section could vary, as an alternative to the disclosure required by paragraph (b)(3)(i) of this section, the financial institution may disclose the highest amount it may impose for the periodic fee, followed by a symbol, such as a dagger, that is different from the symbol the financial institution uses pursuant to paragraph (b)(3)(i) of this section, to indicate that a waiver of the fee or a lower fee might apply, linked to a statement in one additional line of text disclosing the waiver or reduced fee amount and

explaining the circumstances under which the fee waiver or reduction may occur. The linked statement must be located directly above or in place of the linked statement required by paragraph (b)(3)(i) of this section, as applicable.

(iii) *Single disclosure for like fees.* As an alternative to the two-tier fee disclosure required by paragraphs (b)(2)(iii), (v), and (vi) of this section and any two-tier fee required by paragraph (b)(2)(ix) of this section, a financial institution may disclose a single fee amount when the amount is the same for both fees.

(iv) *Third-party fees in general.* Except as provided in paragraph (b)(3)(v) of this section, a financial institution may not include any third-party fees in a disclosure made pursuant to paragraph (b)(2) of this section.

(v) *Third-party cash reload fees.* Any third-party fee included in the cash reload fee disclosed in the short form pursuant to paragraph (b)(2)(iv) of this section must be the highest fee known by the financial institution at the time it prints, or otherwise prepares, the short form disclosure required by paragraph (b)(2) of this section. A financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure.

(vi) *Prohibition on disclosure of finance charges.* A financial institution may not include in a disclosure made pursuant to paragraphs (b)(2)(i) through (ix) of this section any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(4) *Long form disclosure content.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:

(i) *Title for long form disclosure.* A heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid account program.

(ii) *Fees.* All fees that may be imposed in connection with a prepaid account. For each fee, the financial institution must disclose the amount of the fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. A financial institution may not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed. A financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer. The financial institution must also disclose any third-party fee amounts known to the financial institution that may apply. For any such third-party fee disclosed, the financial institution may, but is not required to, include either or both a statement that the fee is accurate as of or through a specific date or that the third-party fee is subject to change. If a third-party fee may apply but the amount of that fee is not known by the financial institution, it must include a statement indicating that the third-party fee may apply without specifying the fee amount. A financial institution is not required to revise the long form disclosure required by paragraph (b)(4) of this section to reflect a fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure.

(iii) *Statement regarding registration and FDIC or NCUA insurance.* The statement required by paragraph (b)(2)(xi) of this section, together with an explanation of FDIC or NCUA

insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

(iv) *Statement regarding overdraft credit features.* The statement required by paragraph (b)(2)(x) of this section.

(v) *Statement regarding financial institution contact information.* A statement directing the consumer to a telephone number, mailing address, and Web site URL of the person or office that a consumer may contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a copy of transaction history pursuant to paragraph (c)(1)(iii) of this section if the financial institution does not provide periodic statements pursuant to § 1005.9(b), or to notify the financial institution when the consumer believes that an unauthorized electronic fund transfer occurred as required by § 1005.7(b)(2) and paragraph (d)(1)(ii) of this section.

(vi) *Statement regarding CFPB Web site and telephone number.* A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau ([cfpb.gov/prepaid](http://cfpb.gov/prepaid)) for general information about prepaid accounts, and a statement directing the consumer to a Consumer Financial Protection Bureau telephone number (1-855-411-2372) and Web site URL ([cfpb.gov/complaint](http://cfpb.gov/complaint)) to submit a complaint about a prepaid account, using the following clause or a substantially similar clause: “For general information about prepaid accounts, visit *cfpb.gov/prepaid*. If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit *cfpb.gov/complaint*.”

(vii) *Regulation Z disclosures for overdraft credit features.* The disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), in accordance with the requirements for such disclosures in 12 CFR 1026.60, if, at any point, a covered separate credit feature accessible by a hybrid

prepaid-credit card as defined in 12 CFR 1026.61, may be offered in connection with the prepaid account. A financial institution may, but is not required to, include above the Regulation Z disclosures required by this paragraph a heading and other explanatory information introducing the overdraft credit feature. A financial institution is not required to revise the disclosure required by this paragraph to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure.

(5) *Disclosure requirements outside the short form disclosure.* At the time a financial institution provides the short form disclosure, it must also disclose the following information: the name of the financial institution; the name of the prepaid account program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any. In a setting other than in a retail location, this information must be disclosed in close proximity to the short form. In a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material. In a retail location, the purchase price must be disclosed either on the exterior of or in close proximity to the prepaid account access device's packaging material.

(6) *Form of pre-acquisition disclosures—(i) General—(A) Written disclosures.* Except as provided in paragraphs (b)(6)(i)(B) and (C) of this section, disclosures required by paragraph (b) of this section must be in writing.

(B) *Electronic disclosures.* The disclosures required by paragraph (b) of this section must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a Web site when

a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section. Electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via Web browsers or mobile applications, as applicable, and via screen readers. Electronic disclosures provided pursuant to paragraph (b) of this section need not meet the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(C) *Oral disclosures.* Disclosures required by paragraphs (b)(2) and (5) of this section must be provided orally when a consumer acquires a prepaid account orally by telephone as described in paragraph (b)(1)(iii) of this section. For prepaid accounts acquired in retail locations or orally by telephone, disclosures required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(B) or (b)(1)(iii)(B) of this section also must be made orally.

(ii) *Retainable form.* Pursuant to § 1005.4(a)(1), disclosures required by paragraph (b) of this section must be made in a form that a consumer may keep, except for disclosures provided orally pursuant to paragraphs (b)(1)(ii) or (iii) of this section, long form disclosures provided via SMS as permitted by paragraph (b)(2)(xiii) of this section for a prepaid account sold at retail locations pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, and the disclosure of a purchase price pursuant to paragraph (b)(5) of this section that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section.

(iii) *Tabular format*—(A) *General*. When a short form disclosure is provided in writing or electronically, the information required by paragraphs (b)(2)(i) through (ix) of this section shall be provided in the form of a table. Except as provided in paragraph (b)(6)(iii)(B) of this section, the short form disclosures required by paragraph (b)(2) of this section shall be provided in a form substantially similar to Model Forms A-10(a) through (d) in appendix A of this part, as applicable. When a long form disclosure is provided in writing or electronically, the information required by paragraph (b)(4)(ii) of this section shall be provided in the form of a table. Sample Form A-10(f) in appendix A of this part provides an example of the long form disclosure required by paragraph (b)(4) of this section when the financial institution does not offer multiple service plans.

(B) *Multiple service plans*—(1) *Short form disclosure for default service plan*. When a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by paragraphs (b)(2)(i) through (ix) of this section may be provided in the tabular format described in paragraph (b)(6)(iii)(A) of this section for the service plan in which a consumer is initially enrolled by default upon acquiring the prepaid account.

(2) *Short form disclosure for multiple service plans*. As an alternative to disclosing the default service plan pursuant to paragraph (b)(6)(iii)(B)(1) of this section, when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, fee disclosures required by paragraphs (b)(2)(i) through (vii) and (ix) of this section may be provided in the form of a table with separate columns for each service plan, in a form substantially similar to Model Form A-10(e) in appendix A of this part. Column headings must describe each service plan included in the table, using the terms “Pay-as-

you-go plan,” “Monthly plan,” “Annual plan,” or substantially similar terms; or, for multiple service plans offering preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service, column headings must describe each service plan included in the table for the preferred- and non-preferred service plans, as applicable.

(3) *Long form disclosure.* The information in the long form disclosure required by paragraph (b)(4)(ii) of this section must be presented in the form of a table for all service plans.

(7) *Specific formatting requirements for pre-acquisition disclosures—(i) Grouping—(A) Short form disclosure.* The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must be grouped together and provided in that order. The information required by paragraphs (b)(2)(v) through (ix) of this section must be generally grouped together and provided in that order. The information required by paragraphs (b)(3)(i) and (ii) of this section, as applicable, must be generally grouped together and in the location described by paragraphs (b)(3)(i) and (ii) of this section. The information required by paragraphs (b)(2)(x) through (xiii) of this section must be generally grouped together and provided in that order. The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section must be located above the information required by paragraphs (b)(2)(i) through (iv) of this section, as described in paragraph (b)(2)(xiv)(A) of this section. The statement regarding state-required information or other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section, when applicable, must appear in the location described by paragraph (b)(2)(xiv)(B) of this section.

(B) *Long form disclosure.* The information required by paragraph (b)(4)(i) of this section must be located in the first line of the long form disclosure. The information required by paragraph (b)(4)(ii) of this section must be generally grouped together and organized under

subheadings by the categories of function for which a financial institution may impose the fee. Text describing the conditions under which a fee may be imposed must appear in the table required by paragraph (b)(6)(iii)(A) of this section in close proximity to the fee amount. The information in the long form disclosure required by paragraphs (b)(4)(iii) through (vi) of this section must be generally grouped together, provided in that order, and appear below the information required by paragraph (b)(4)(ii) of this section. If, pursuant to § 1005.18(b)(4)(vii), the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), such disclosures must appear below the disclosures required by paragraph (b)(4)(vi) of this section.

(C) *Multiple service plan disclosure.* When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, in lieu of the requirements in paragraph (b)(7)(i)(A) of this section for grouping of the disclosures required by paragraphs (b)(2)(i) through (iv) and (v) through (ix) of this section, the information required by paragraphs (b)(2)(i) through (ix) of this section must be grouped together and provided in that order.

(ii) *Prominence and size—(A) General.* All text used to disclose information in the short form or in the long form disclosure pursuant to paragraphs (b)(2), (b)(3)(i) and (ii), and (b)(4) of this section must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast.

(B) *Short form disclosure—(1) Fees and other information.* The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must appear as follows: fee amounts in bold-faced type; single fee amounts in a minimum type size of 15 points (or 21 pixels); two-tier fee amounts for ATM withdrawal in a minimum type size of 11 points (or

16 pixels) and in no larger a type size than what is used for the single fee amounts; and fee headings in a minimum type size of eight points (or 11 pixels) and in no larger a type size than what is used for the single fee amounts. The information required by paragraphs (b)(2)(v) through (ix) of this section must appear in a minimum type size of eight points (or 11 pixels) and appear in the same or a smaller type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The information required by paragraphs (b)(2)(x) through (xiii) of this section must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required to be disclosed by paragraphs (b)(2)(v) through (ix) of this section. Additionally, the statements disclosed pursuant to paragraphs (b)(2)(viii)(A) and (b)(2)(x) of this section and the telephone number and URL disclosed pursuant to paragraph (b)(2)(xiii) of this section, where applicable, must appear in bold-faced type. The following information must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size that what is used for the information required by paragraphs (b)(2)(x) through (xiii) of this section: text used to distinguish each of the two-tier fees pursuant to paragraphs (b)(2)(iii), (v), (vi), and (ix) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies “per call,” where applicable; and text used to explain the conditions that trigger an inactivity fee and that the fee applies monthly or for the applicable time period, pursuant to paragraph (b)(2)(vii) of this section.

(2) *Variable fees.* The symbols and corresponding statements regarding variable fees disclosed in the short form pursuant to paragraphs (b)(3)(i) and (ii) of this section, when applicable, must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(x) through

(xiii) of this section. A symbol required next to the fee amount pursuant to paragraphs (b)(3)(i) and (ii) of this section must appear in the same type size or pixel size as what is used for the corresponding fee amount.

(3) *Payroll card account additional content.* The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section, when applicable, must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The statement regarding state-required information and other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section must appear in the same type size used to disclose variable fee information pursuant to paragraph (b)(3)(i) and (ii) of this section, or, if none, the same type size used for the information required by paragraphs (b)(2)(x) through (xiii) of this section.

(C) *Long form disclosure.* Long form disclosures required by paragraph (b)(4) of this section must appear in a minimum type size of eight points (or 11 pixels).

(D) *Multiple service plan short form disclosure.* When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, the fee headings required by paragraphs (b)(2)(i) through (iv) of this section must appear in bold-faced type. The information required by paragraphs (b)(2)(i) through (xiii) of this section must appear in a minimum type size of seven points (or nine pixels), except the following must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(i) through (xiii) of this section: text used to distinguish each of the two-tier fees required by paragraphs (b)(2)(iii) and (v) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies “per call,”

where applicable; text used to explain the conditions that trigger an inactivity fee pursuant to paragraph (b)(2)(vii) of this section; and text used to distinguish that fees required by paragraphs (b)(2)(i) and (vii) of this section apply monthly or for the applicable time period.

(iii) *Segregation.* Short form and long form disclosures required by paragraphs (b)(2) and (4) of this section must be segregated from other information and must contain only information that is required or permitted for those disclosures by paragraph (b) of this section.

(8) *Terminology of pre-acquisition disclosures.* Fee names and other terms must be used consistently within and across the disclosures required by paragraph (b) of this section.

(9) *Prepaid accounts acquired in foreign languages—(i) General.* A financial institution must provide the pre-acquisition disclosures required by paragraph (b) of this section in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances:

(A) The financial institution principally uses a foreign language on the prepaid account packaging material;

(B) The financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language.

(ii) *Long form disclosures in English upon request.* A financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to paragraph (b)(9)(i) of this section must also provide the information required to be disclosed in its pre-acquisition long

form disclosure pursuant to paragraph (b)(4) of this section in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language.

(c) *Access to prepaid account information—(1) Periodic statement alternative.* A financial institution need not furnish periodic statements required by § 1005.9(b) if the financial institution makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 12 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the financial institution receives the consumer's request.

(2) *Periodic statement alternative for unverified prepaid accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written history of the consumer's account transactions pursuant to paragraph (c)(1)(iii) of this section for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in paragraph (e)(3)(i)(A) through (C) of this section.

(3) *Information included on electronic or written histories.* The history of account transactions provided under paragraphs (c)(1)(ii) and (iii) of this section must include the information set forth in § 1005.9(b).

(4) *Inclusion of all fees charged.* A financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on any

periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

(5) *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

(d) *Modified disclosure requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(1) *Initial disclosures.* The financial institution shall modify the disclosures under § 1005.7(b) by disclosing:

(i) *Access to account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account transaction history, such as the address of a Web site, and a summary of the consumer's right to receive a written account transaction 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. The disclosure required by this paragraph may be made by providing a notice substantially similar to the notice contained in paragraph (a) of appendix A-7 of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A-7 of this part, in place of the notice required by § 1005.7(b)(10).

(2) *Annual error resolution notice.* The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in

paragraph (b) of appendix A-7 of this part, in place of the notice required by § 1005.8(b).

Alternatively, a financial institution may include on or with each electronic and written account transaction history provided in accordance with paragraph (c)(1) of this section, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) of appendix A-3 of this part, modified as necessary to reflect the error resolution provisions set forth in paragraph (e) of this section.

*(e) Modified limitations on liability and error resolution requirements—(1) Modified limitations on liability requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(i) For purposes of § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic account transaction history made available to the consumer reflects the unauthorized transfer; or

(B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (e)(1)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

*(2) Modified error resolution requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(i) The financial institution shall comply with the requirements of § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic account transaction history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(2)(i) of this section, a financial institution complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

(3) *Error resolution for unverified accounts*—(i) *Provisional credit for errors on accounts that have not been verified.* As set forth in § 1005.11(c)(2)(i)(C), for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting a consumer's account if the financial institution has not completed its consumer identification and verification process with respect to that prepaid account.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not completed its consumer identification and verification process where:

(A) It has not concluded its consumer identification and verification process, provided the financial institution has disclosed to the consumer the risks of not registering the account using a

notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7 of this part.

(B) It has concluded its consumer identification and verification process, but could not verify the identity of the consumer, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7 of this part; or

(C) It does not have a consumer identification and verification process by which the consumer can register the prepaid account.

(iii) *Resolution of pre-verification errors.* If a consumer's account has been verified, the financial institution must comply with the provisions set forth in § 1005.11(c) in full with respect to any errors that satisfy the timing requirements of § 1005.11, or the modified timing requirements in this paragraph (e), as applicable, including with respect to errors that occurred prior to verification.

(A) Notwithstanding paragraph (e)(3)(iii) of this section, if, at the time the financial institution was required to provisionally credit the account (pursuant to § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable), the financial institution has not yet completed its identification and verification process with respect to that account, the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting the account.

(f) *Disclosure of fees and other information—(1) Initial disclosure of fees and other information.* A financial institution must include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to paragraph (b)(4) of this section.

(2) *Change-in-terms notice.* The change-in-terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or paragraph (f)(1) of this section. If a financial institution discloses the amount of a third-party fee in its pre-acquisition long form disclosure pursuant to paragraph (b)(4)(ii) of this section and initial disclosures pursuant to paragraph (f)(1) of this section, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in that fee amount imposed by the third party. If a financial institution provides pursuant to paragraph (f)(1) of this section the Regulation Z disclosures required by paragraph (b)(4)(vii) of this section for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein.

(3) *Disclosures on prepaid account access devices.* The name of the financial institution and the Web site URL and a telephone number a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. If a financial institution does not provide a physical access device in connection with a prepaid account, the disclosure must appear on the Web site, mobile application, or other entry point a consumer must visit to access the prepaid account electronically.

(g) *Prepaid accounts accessible by hybrid prepaid-credit cards—(1) In general.* Except as provided in paragraph (g)(2) of this section, with respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, a financial institution must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature.

(2) *Exception for higher fees or charges.* A financial institution is not prohibited under paragraph (g)(1) of this section from imposing a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature.

(h) *Effective date and special transition rules for disclosure provisions—(1) Effective date generally.* Except as provided in paragraphs (h)(2) and (3) of this section, the requirements of this subpart, as modified by this section, apply to prepaid accounts as defined in § 1005.2(b)(3), including government benefit accounts subject to § 1005.15, beginning October 1, 2017.

(2) *Early disclosures—(i) Exception for disclosures on existing prepaid account access devices and prepaid account packaging materials.* The disclosure requirements of this subpart, as modified by this section, shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017.

(ii) *Disclosures for prepaid accounts acquired on or after October 1, 2017.* This paragraph applies to prepaid accounts acquired by consumers on or after October 1, 2017 via packaging materials that were manufactured, printed, or otherwise produced prior to October 1, 2017.

(A) *Notices of certain changes.* If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or paragraph (f)(2) of this

section for existing customers, the financial institution must provide to the consumer a notice of the change within 30 days of obtaining the consumer's contact information.

(B) *Initial disclosures.* The financial institution must mail or deliver to the consumer initial disclosures pursuant to § 1005.7 and paragraph (f)(1) of this section that have been updated as a result of paragraph (h)(1) of this section taking effect, within 30 days of obtaining the consumer's contact information.

(iii) *Disclosures for prepaid accounts acquired before October 1, 2017.* This paragraph applies to prepaid accounts acquired by consumers before October 1, 2017. If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or paragraph (f)(2) of this section for existing customers, the financial institution must provide to the consumer a notice of the change 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 less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to notify the consumer of the change in accordance with the timing requirements set forth in paragraph (h)(2)(ii)(A) of this section.

(iv) *Method of providing notice to consumers.* With respect to prepaid accounts governed by paragraph (h)(2)(ii) or (iii) of this section, if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*), or is not otherwise already mailing or delivering to the consumer written account-related communications within the respective time periods specified in paragraphs (h)(2)(ii) or (iii) of

this section, the financial institution may provide to the consumer a notice of a change in terms and conditions pursuant to paragraph (h)(2)(ii) or (iii) of this section or required or voluntary updated initial disclosures as a result of paragraph (h)(1) of this section taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

(3) *Account information not available on October 1, 2017—(i) Electronic and written account transaction history.* If, on October 1, 2017, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to paragraph (c)(1)(ii) of this section or to provide 24 months of written account transaction history upon request pursuant to paragraph (c)(1)(iii) of this section, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in paragraphs (c)(1)(ii) and (iii) of this section.

(ii) *Summary totals of fees.* If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to paragraph (c)(5) of this section, the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by paragraph (c)(5) of this section.

9. Section 1005.19 is added to read as follows:

**§ 1005.19 Internet posting of prepaid account agreements.**

(a) *Definitions—(1) Agreement.* For purposes of this section, “agreement” or “prepaid account agreement” means the written document or documents evidencing the terms of the legal

obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. “Agreement” or “prepaid account agreement” also includes fee information, as defined in paragraph (a)(3) of this section.

(2) *Amends.* For purposes of this section, an issuer “amends” an agreement if it makes a substantive change (an “amendment”) to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in paragraph (a)(3) of this section, is deemed to be substantive.

(3) *Fee information.* For purposes of this section, “fee information” means the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to § 1005.18(b)(4).

(4) *Issuer.* For purposes of this section, “issuer” or “prepaid account issuer” means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement.

(5) *Offers.* For purposes of this section, an issuer “offers” an agreement if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public.

(6) *Offers to the general public.* For purposes of this section, an issuer “offers to the general public” an agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.

(7) *Open account.* For purposes of this section, a prepaid account is an “open account” or “open prepaid account” if: there is an outstanding balance in the account; the consumer can load

funds to the account even if the account does not currently hold a balance; or the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, in connection with the account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is considered an “open account” or “open prepaid account.”

(8) *Prepaid account.* For purposes of this section, “prepaid account” means a prepaid account as defined in § 1005.2(b)(3).

(b) *Submission of agreements to the Bureau—(1) Submissions on a rolling basis.* An issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Rolling submissions must be sent to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer any prepaid account agreement as described in paragraphs (b)(1)(ii) through (iv) of this section. Each submission must contain:

(i) Identifying information about the issuer and the agreements submitted, including the issuer’s name, address, and identifying number (such as an RSSD ID number or tax identification number), the effective date of the prepaid account agreement, the name of the program manager, if any, and the names of other relevant parties, if applicable (such as the employer for a payroll card program or the agency for a government benefit program);

(ii) Any prepaid account agreement offered by the issuer that has not been previously submitted to the Bureau;

(iii) Any prepaid account agreement previously submitted to the Bureau that has been amended, as described in paragraph (b)(2) of this section; and

(iv) Notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing, as described in paragraphs (b)(3), (b)(4)(ii), and (b)(5)(ii) of this section.

(2) *Amended agreements.* If a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change comes effective.

(3) *Withdrawal of agreements no longer offered.* If an issuer no longer offers a prepaid account agreement that was previously submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the issuer ceases to offer the agreement, that it is withdrawing the agreement.

(4) *De minimis exception.* (i) An issuer is not required to submit any prepaid account agreements to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. If the issuer has 3,000 or more open prepaid accounts as of the last day of the calendar quarter, the issuer must submit to the Bureau its prepaid account agreements no later than 30 days after the last day of that calendar quarter.

(ii) If an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau.

(5) *Product testing exception.* (i) An issuer is not required to submit a prepaid account agreement to the Bureau if the agreement meets the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section. If the agreement fails to meet the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section as of the last day of the calendar quarter, the issuer must

submit to the Bureau that prepaid account agreement no later than 30 days after the last day of that calendar quarter. An agreement qualifies for the product testing exception if the agreement:

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 3,000 open prepaid accounts; and

(C) Is not offered other than in connection with such a product test.

(ii) If an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement.

(6) *Form and content of agreements submitted to the Bureau—(i) Form and content generally.* (A) Each agreement must contain the provisions of the agreement and the fee information currently in effect.

(B) Agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of this section, and therefore are not required to be included in submissions to the Bureau:

(1) Ancillary disclosures required by state or Federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act;

(2) Solicitation or marketing materials;

(3) Periodic statements; and

(4) Documents that may be sent to the consumer along with the prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Fee information.* Fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. The agreement or addendum thereto must contain all of the fee information, as defined by paragraph (a)(3) of this section.

(iii) *Integrated agreement.* An issuer may not provide provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addendum). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addendum, as appropriate.

(c) *Posting of agreements offered to the general public.* (1) An issuer must post and maintain on its publicly available Web site any prepaid account agreements offered to the general public that the issuer is required to submit to the Bureau under paragraph (b) of this section.

(2) Agreements posted pursuant to this paragraph (c) must conform to the form and content requirements for agreements submitted to the Bureau set forth in paragraph (b)(6) of this section.

(3) The issuer must post and update the agreements posted on its Web site pursuant to this paragraph (c) as frequently as the issuer is required to submit new or amended agreements to the Bureau pursuant to paragraph (b)(2) of this section.

(4) Agreements posted pursuant to this paragraph (c) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible to the public and must be accessible without submission of personally identifiable information.

(d) *Agreements for all open accounts—(1) Availability of an individual consumer’s prepaid account agreement.* With respect to any open prepaid account, an issuer must either:

(i) Post and maintain the consumer’s agreement on its Web site; or

(ii) Promptly provide a copy of the consumer’s agreement to the consumer upon the consumer’s request. If the issuer makes an agreement available upon request, the issuer must provide the consumer with the ability to request a copy of the agreement by telephone. The issuer must send to the consumer a copy of the consumer’s prepaid account agreement no later than five business days after the issuer receives the consumer’s request.

(2) *Form and content of agreements.* (i) Except as provided in this paragraph (d), agreements posted on the issuer’s Web site pursuant to paragraph (d)(1)(i) of this section or sent to the consumer upon the consumer’s request pursuant to paragraph (d)(1)(ii) of this section must conform to the form and content requirements for agreements submitted to the Bureau as set forth in paragraph (b)(6) of this section.

(ii) If the issuer posts an agreement on its Web site under paragraph (d)(1)(i) of this section, the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer.

(iii) Agreements posted or otherwise provided pursuant to this paragraph (d) may contain personally identifiable information relating to the consumer, such as name, address, telephone

number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to this paragraph (d) must set forth the specific provisions and fee information applicable to the particular consumer.

(v) Agreements posted pursuant to paragraph (d)(1)(i) of this section must be updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to paragraph (b)(2) of this section. Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be accurate as of the date the agreement is sent to the consumer.

(vi) Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

(e) *E-Sign Act requirements.* Except as otherwise provided in this section, issuers may provide prepaid account agreements in electronic form under paragraphs (c) and (d) of this section without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(f) *Effective date—(1) Effective date generally.* Except as provided in paragraph (f)(2) of this section, the requirements of this section apply to prepaid accounts beginning on October 1, 2017.

(2) *Delayed effective date for the agreement submission requirement.* The requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to paragraph (b) of

this section is delayed until October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018.

(3) *Requirements to post and provide consumers agreements.* Nothing in paragraph (f)(2) of this section shall affect the requirements to post prepaid account agreements on an issuer's Web site pursuant to paragraphs (c) and (d) of this section or the requirement to provide a copy of the consumer's agreement to the consumer upon request pursuant to paragraph (d) of this section.

### **Subpart B—Requirements for Remittance Transfers**

10. Section 1005.32 is amended by revising paragraph (a)(1)(iii) to read as follows:

#### **§ 1005.32 Estimates.**

(a) \* \* \*

(1) \* \* \*

(iii) The remittance transfer is sent from the sender's account with the institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

\* \* \* \* \*

11. In Appendix A to part 1005:

a. In the table of contents:

i. The entries for A-5 and A-7 are revised.

ii. Entries for A-10(a) through A-10(f) are added.

iii. The entry for reserved A-10 through A-30 is revised to A-11 through A-29.

b. Model Clauses A-5 and A-7 are revised.

c. Model Forms A-10(a) through (f) are added.

d. Model Forms A-11 through A-29 are reserved.

The additions and revisions read as follows:

## **APPENDIX A TO PART 1005—MODEL DISCLOSURE CLAUSES AND FORMS**

### Table of Contents

\* \* \* \* \*

A-5—Model Clauses for Government Agencies (§ 1005.15(e)(1) and (2))

\* \* \* \* \*

A-7—Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

\* \* \* \* \*

A-10(a)—Model Form for Short Form Disclosures for Government Benefit Accounts (§§ 1005.15(c) and 1005.18(b)(2), (3), (6), and (7))

A-10(b)—Model Form for Short Form Disclosures for Payroll Card Accounts (§ 1005.18(b)(2), (3), (6), and (7))

A-10(c)—Model Form for Short Form Disclosures for Prepaid Accounts, Example 1 (§ 1005.18(b)(2), (3), (6), and (7))

A-10(d)—Model Form for Short Form Disclosures for Prepaid Accounts, Example 2 (§ 1005.18(b)(2), (3), (6), and (7))

A-10(e)—Model Form for Short Form Disclosures for Prepaid Accounts with Multiple Service Plans (§ 1005.18(b)(2), (3), (6), and (7))

A-10(f)—Sample Form for Long Form Disclosures for Prepaid Accounts (§ 1005.18(b)(4), (6), and (7))

A-11 through A-29 [Reserved]

\* \* \* \* \*

A-5—MODEL CLAUSES FOR GOVERNMENT AGENCIES (§ 1005.15(E)(1) AND (2))

(a) Disclosure by government agencies of information about obtaining account information for government benefit accounts (§ 1005.15(e)(1)(i)).

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations]. This information, along with a 12-month history of account transactions, is also available online at [Internet address].

You also have the right to obtain at least 24 months of written history of account transactions by calling [telephone number], or by writing to us at [address]. You will not be charged a fee for this information unless you request it more than once per month. [Optional: Or you may request a written history of account transactions by contacting your caseworker.]

(b) Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 1005.15(e)(1)(ii) and (e)(2)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your [agency's name for program] account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your

transactions at any time by calling us at [telephone number] or writing us at [address] [optional: or by contacting your caseworker]. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

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A-7—MODEL CLAUSES FOR FINANCIAL INSTITUTIONS OFFERING PREPAID ACCOUNTS

(§ 1005.18(D) AND (E)(3))

(a) Disclosure by financial institutions of information about obtaining account information for prepaid accounts (§ 1005.18(d)(1)(i)).

You may obtain information about the amount of money you have remaining in your prepaid account by calling [telephone number]. This information, along with a 12-month history of account transactions, is also available online at [Internet address].

[For accounts that are or can be registered:] [If your account is registered with us,] You also have the right to obtain at least 24 months of written history of account transactions by calling [telephone number], or by writing us at [address]. You will not be charged a fee for this information unless you request it more than once per month.

(b) Disclosure of error-resolution procedures for financial institutions that do not provide periodic statements (§ 1005.18(d)(1)(ii) and (d)(2)).

In Case of Errors or Questions About Your Prepaid Account Telephone us at [telephone number] or Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your prepaid account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [prepaid account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, [and your account is registered with us,] we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. [Keep reading to learn more about how to register your card.]

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [Internet address]].

*(c) Warning regarding unregistered prepaid accounts (§ 1005.18(e)(3)).*

It is important to register your prepaid account as soon as possible. Unless you register your account, we may not credit your account in the amount you think is in error until we complete our investigation. To register your account, go to [Internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your

full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity.

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A-10(A)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR GOVERNMENT BENEFIT ACCOUNTS

(§§ 1005.15(C) AND 1005.18(B)(2), (3), (6), AND (7))

You have several options to receive your payments: direct deposit to your bank account; direct deposit to your own prepaid account; or this benefits card. Tell the benefits office which option you choose.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
<b>\$0</b>	<b>\$0</b>	<b>\$0</b> in-network <b>\$1.95*</b> out-of-network	<b>N/A</b>
ATM balance inquiry (in-network or out-of-network)		\$0 or \$1.95*	
Customer service (automated or live agent)		\$0 or \$1.95 per call	
Inactivity		\$0	
<b>We charge 4 other types of fees.</b> Here are some of them:			
[Additional fee type]		\$0.50 or \$1.00	
[Additional fee type]		\$3.00	
* This fee can be lower depending on how and where this card is used. [See [location] for free ways to access your funds and balance information.]			
<b>No overdraft/credit feature.</b>			
Your funds are eligible for FDIC insurance.			
For general information about prepaid accounts, visit <a href="http://cfpb.gov/prepaid">cfpb.gov/prepaid</a> .			
Find details and conditions for all fees and services in the cardholder agreement.			

A-10(B)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PAYROLL CARD ACCOUNTS

(§ 1005.18(B)(2), (3), (6), AND (7))

You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.			
Monthly fee	Per purchase	ATM withdrawal	Cash reload
<b>\$0</b>	<b>\$0</b>	<b>\$0</b> in-network <b>\$1.95*</b> out-of-network	<b>N/A</b>
ATM balance inquiry (in-network or out-of-network)			\$0 or \$1.95*
Customer service (automated or live agent)			\$0 or \$1.95 per call
Inactivity			\$0
<b>We charge 4 other types of fees.</b> Here are some of them:			
[Additional fee type]			\$1.00*
[Additional fee type]			\$3.00
* This fee can be lower depending on how and where this card is used. [See [location] for free ways to access your funds and balance information.]			
<b>No overdraft/credit feature.</b> Your funds are eligible for FDIC insurance.			
For general information about prepaid accounts, visit <a href="http://cfpb.gov/prepaid">cfpb.gov/prepaid</a> . Find details and conditions for all fees and services in the cardholder agreement.			

A-10(C)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS, EXAMPLE 1

(§ 1005.18(B)(2), (3), (6), AND (7))

Monthly fee	Per purchase	ATM withdrawal	Cash reload
<b>\$5.99<sup>†</sup></b>	<b>\$0</b>	<b>\$0</b> in-network <b>\$1.99</b> out-of-network	<b>\$3.99*</b>
ATM balance inquiry (in-network or out-of-network)			\$0 or \$0.50
Customer service (automated or live agent)			\$0 or \$0.50* per call
Inactivity (after 12 months with no transactions)			\$1.00 per month
<b>We charge 4 other types of fees.</b> Here are some of them:			
[Additional fee type]			\$0.50 or \$1.00
[Additional fee type]			\$3.00
<sup>†</sup> No monthly fee with direct deposit or 30 transactions per month. <sup>*</sup> This fee can be lower depending on how and where this card is used.			
<b>You may be offered overdraft/credit after 30 days. Fees would apply.</b> Register your card for FDIC insurance eligibility and other protections. For general information about prepaid accounts, visit <a href="http://cfpb.gov/prepaid">cfpb.gov/prepaid</a> . Find details and conditions for all fees and services inside the package, or call <b>800-234-5678</b> or visit <a href="http://xyz.com/prepaid">xyz.com/prepaid</a> .			

A-10(D)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS, EXAMPLE 2  
 (§ 1005.18(B)(2), (3), (6), AND (7))

Monthly fee	Per purchase	ATM withdrawal	Cash reload
<b>\$5.99*</b>	<b>\$0</b>	<b>\$0</b> in-network <b>\$1.99</b> out-of-network	<b>\$3.99*</b>
ATM balance inquiry (in-network or out-of-network)			\$0 or \$0.50
Customer service (automated or live agent)			\$0 or \$0.50* per call
Inactivity (after 12 months with no transactions)			\$1.00 per month
<b>We charge 4 other types of fees.</b> Here are some of them:			
[Additional fee type]			\$1.00*
[Additional fee type]			\$3.00
* This fee can be lower depending on how and where this card is used.			
<b>No overdraft/credit feature.</b>			
Not FDIC insured. Register your card for other protections.			
For general information about prepaid accounts, visit <a href="http://cfpb.gov/prepaid">cfpb.gov/prepaid</a> . Find details and conditions for all fees and services inside the package, or call <b>800-234-5678</b> or visit <a href="http://xyz.com/prepaid">xyz.com/prepaid</a> .			

A-10(E)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS WITH  
 MULTIPLE SERVICE PLANS (§ 1005.18(B)(2), (3), (6), AND (7))

	Pay-as-you-go plan	Monthly plan	Annual plan
<b>Plan fee</b>	\$0	\$5.99 <sup>†</sup> per mo.	\$39.99 per yr.
<b>Per purchase</b>	\$0.25	\$0	\$0
<b>ATM withdrawal</b> (in-net.)	\$0	\$0	\$0
<b>ATM withdrawal</b> (out-net.)	\$2.50	\$1.99	\$1.99
<b>Cash reload</b>	\$4.99*	\$4.99*	\$4.99*
ATM balance inquiry (in-net.)	\$0.50	\$0.50	\$0.50
ATM balance inquiry (out-net.)	\$1.00	\$1.00	\$1.00
Live customer service (per call)	\$1.50	\$0.50	\$0.50
Inactivity (after 12 mo. w/ no trans.)	\$2.50 per mo.	\$2.50 per mo.	\$2.50 per mo.
<b>We charge 4 other types of fees.</b> Here are some of them:			
[Additional fee type]	\$1.00*	\$1.00*	\$1.00*
[Additional fee type]	\$3.00	\$3.00	\$3.00
<sup>†</sup> \$1.00 monthly fee with direct deposit. * This fee can be lower depending on how and where this card is used. <b>No overdraft/credit feature.</b> Not FDIC insured. Register your card for other protections. For general information about prepaid accounts, visit <a href="http://cfpb.gov/prepaid">cfpb.gov/prepaid</a> . Find details and conditions for all fees and services inside the package, or call 800-234-5678 or visit <a href="http://xyz.com/prepaid">xyz.com/prepaid</a> .			

A-10(F)—SAMPLE FORM FOR LONG FORM DISCLOSURES FOR PREPAID ACCOUNTS

(§ 1005.18(B)(4), (6), AND (7))

List of all fees for XYZ Prepaid Card

All fees	Amount	Details
Get started		
Card purchase	\$3.95	
Monthly usage		
Monthly fee	\$5.99	Monthly fee is waived in any month in which you receive a direct deposit or conduct at least 30 transactions.
Add money		
Direct deposit	\$0.50	
Cash reload	\$3.99	Fees of up to \$3.99 may apply when reloading your card at XYZ reload agents. Locations may be found at <a href="http://xyzbank.com/prepaid/reloads">xyzbank.com/prepaid/reloads</a> .
Spend money		
Bill payment (regular delivery)	\$0.50	Bill pay available when you log in to your account at <a href="http://xyzbank.com/prepaid">xyzbank.com/prepaid</a> or using the XYZ Bank mobile app. Regular bill pay transactions will be completed within 3 business days for electronic payments and within approximately 7 days if we have to mail a paper check to pay your bill.
Bill payment (expedited delivery)	\$1.00	Bill pay available when you log in to your account at <a href="http://xyzbank.com/prepaid">xyzbank.com/prepaid</a> or using the XYZ Bank mobile app. Expedited bill pay transactions will be completed within 1 business day. Electronic payments only.
Get cash		
ATM withdrawal (in-network)	\$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at <a href="http://xyzbank.com/ATMs">xyzbank.com/ATMs</a> .
ATM withdrawal (out-of-network)	\$1.99	This is our fee. We will not charge you this fee for your first 3 out-of-network ATM withdrawals each month. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
Information		
Customer service (automated)	\$0	No fee for calling our automated customer service line, including for balance inquiries.
Customer service (live agent)	\$0.50	Per call. First 3 calls per month are free.
ATM balance inquiry (in-network)	\$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at <a href="http://xyzbank.com/ATMs">xyzbank.com/ATMs</a> .
ATM balance inquiry (out-of-network)	\$0.50	This is our fee. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator.
Using your card outside the U.S.		
International transaction	3%	Of the U.S. dollar amount of each transaction.
International ATM withdrawal	\$3.00	This is our fee. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
International ATM balance inquiry	\$2.00	This is our fee. You may also be charged a fee by the ATM operator.
Other		
Inactivity	\$1.00	You will be charged \$1.00 each month after you have not completed a transaction using your card for 12 months.

Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ Bank, an FDIC-insured institution. Once there, your funds are insured up to \$250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See [fdic.gov/deposit/deposits/prepaid.html](http://fdic.gov/deposit/deposits/prepaid.html) for details.

No overdraft/credit feature.

Contact XYZ Bank by calling 1-800-555-5555, by mail at 555 Street Name, Anytown, NY, or visit [xyzbank.com/prepaid](http://xyzbank.com/prepaid).

For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid).

If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit [cfpb.gov/complaint](http://cfpb.gov/complaint).

A-11 through A-29 [Reserved]

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12. In Supplement I to part 1005:

a. Under *Section 1005.2—Definitions*:

i. In subsection *2(b) Account*, paragraph 2 is removed and paragraph 3 is redesignated as paragraph 2.

ii. Subsection *Paragraph 2(b)(3)* is added.

b. Under *Section 1005.4—General Disclosure Requirements; Jointly Offered Services*:

i. In subsection *4(a) Form of Disclosures*, paragraph 1 is revised.

c. Under *Section 1005.10—Preauthorized Transfers*:

i. Subsection *10(e)(1) Credit* is revised.

ii. In subsection *10(e)(2) Employment or Government Benefit*, paragraph 2 is added.

d. Under *Section 1005.12—Relation to Other Laws*:

i. Subsection *12(a) Relation to Truth in Lending* is revised.

ii. In subsection *12(b) Preemption of Inconsistent State Laws*, paragraph 2 is revised and paragraphs 3 and 4 are added.

e. *Section 1005.15—Electronic Fund Transfer of Government Benefits* is added.

f. *Section 1005.18—Requirements for Financial Institutions Offering Payroll Card Accounts* is removed.

g. *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts* is added.

h. *Section 1005.19—Internet Posting of Prepaid Account Agreements* is added.

i. Under *Section 1005.30—Remittance Transfer Definitions*:

- i. In subsection 30(c) *Designated Recipient*, paragraph 2.ii is revised.
- ii. In subsection 30(g) *Sender*, paragraphs 1 and 3 are revised.
- j. Under *Appendix A—Model Disclosure Clauses and Forms*:
  - i. Paragraphs 2 and 3 are revised.

The revisions, additions, and removals read as follows:

**Supplement I to Part 1005—Official Interpretations**

*Section 1005.2—Definitions*

\* \* \* \* \*

*2(b) Account*

\* \* \* \* \*

*Paragraph 2(b)(3)*

*Paragraph 2(b)(3)(i)*

1. *Debit card includes prepaid card.* For purposes of subpart A of Regulation E, unless otherwise specified, the term debit card also includes a prepaid card.

2. *Certain employment-related cards not covered as payroll card accounts.* The term “payroll card account” does not include an account used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer’s primary source of salary or other compensation. The term also does not include an account used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include an account that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are

unavailable. While such accounts would not be payroll card accounts, such accounts could constitute prepaid accounts generally, provided the other conditions of the definition of that term in § 1005.2(b)(3) are satisfied. In addition, all transactions involving the transfer of funds to or from a payroll card account or prepaid account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

3. *Marketed or labeled as “prepaid.”* The term “marketed or labeled as ‘prepaid’” means promoting or advertising an account using the term “prepaid.” For example, an account is marketed or labeled as prepaid if the term “prepaid” appears on the access device associated with the account or the access device’s packaging materials, or on a display, advertisement, or other publication to promote purchase or use of the account. An account may be marketed or labeled as prepaid if the financial institution, its service provider, including a program manager, or the payment network on which an access device for the account is used, promotes or advertises, or contracts with another party to promote or advertise, the account using the label “prepaid.” A product or service that is marketed or labeled as prepaid is not a “prepaid account” pursuant to § 1005.2(b)(3)(i)(C) if it does not otherwise meet the definition of account under § 1005.2(b)(1).

4. *Issued on a prepaid basis.* To be issued on a prepaid basis, a prepaid account must be loaded with funds when it is first provided to the consumer for use. For example, if a consumer purchases a prepaid account and provides funds that are loaded onto a card at the time of purchase, the prepaid account is issued on a prepaid basis.

5. *Capable of being loaded with funds.* A prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a

consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance.

6. *Prepaid account acting as a pass-through vehicle for funds.* To satisfy § 1005.2(b)(3)(i)(D), a prepaid account must be issued on a prepaid basis or be capable of being loaded with funds. This means that the prepaid account must be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product, such as a digital wallet, is only capable of storing a consumer's payment credentials for other accounts but is incapable of having funds stored on it, such a product is not a prepaid account. However, if a product allows a consumer to transfer funds, which can be stored before the consumer designates a destination for the funds, the product satisfies § 1005.2(b)(3)(i)(D).

7. *Not required to be reloadable.* Prepaid accounts need not be reloadable by the consumer or a third party.

8. *Primary function.* To satisfy § 1005.2(b)(3)(i)(D), an account's primary function must be to provide consumers with general transaction capability, which includes the general ability to use loaded funds to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers. This definition excludes accounts that provide such capability only incidentally. For example, the primary function of a brokerage account is to hold funds so that the consumer can conduct transactions through a licensed broker or firm, not to conduct transactions with multiple, unaffiliated merchants for good or services, or at automated teller machines, or to conduct person-to-person transfers. Similarly, the primary function of a savings account is to accrue interest on funds held in the account; such accounts restrict the extent to which the consumer can conduct general transactions and withdrawals. Accordingly, brokerage accounts and savings

accounts do not satisfy § 1005.2(b)(3)(i)(D), and thus are not prepaid accounts as defined by § 1005.2(b)(3). The following examples provide additional guidance:

i. An account's primary function is to enable a consumer to conduct transactions with multiple, unaffiliated merchants for goods or services, at automated teller machines, or to conduct person-to-person transfers, even if the account also enables a third party to disburse funds to a consumer. For example, a prepaid account that conveys tax refunds or insurance proceeds to a consumer meets the primary function test if the account can be used, *e.g.*, to purchase goods or services at multiple, unaffiliated merchants.

ii. Whether an account satisfies § 1005.2(b)(3)(i)(D) is determined by reference to the account, not the access device associated with the account. An account satisfies § 1005.2(b)(3)(i)(D) even if the account's access device can be used for other purposes, for example, as a form of identification. Such accounts may include, for example, a prepaid account used to disburse student loan proceeds via a card device that can be used at unaffiliated merchants or to withdraw cash from an automated teller machine, even if that access device also acts as a student identification card.

iii. Where multiple accounts are associated with the same access device, the primary function of each account is determined separately. One or more accounts can satisfy § 1005.2(b)(3)(i)(D) even if other accounts associated with the same access device do not. For example, a student identification card may act as an access device associated with two separate accounts: an account used to conduct transactions with multiple, unaffiliated merchants for goods or services, and an account used to conduct closed-loop transactions on campus. The account used to conduct transactions with multiple, unaffiliated merchants for goods or services

satisfies § 1005.2(b)(3)(i)(D), even though the account used to conduct closed-loop transactions does not (and as such the latter is not a prepaid account as defined by § 1005.2(b)(3)).

iv. An account satisfies § 1005.2(b)(3)(i)(D) if its primary function is to provide general transaction capability, even if an individual consumer does not in fact use it to conduct multiple transactions. For example, the fact that a consumer may choose to withdraw the entire account balance at an automated teller machine or transfer it to another account held by the consumer does not change the fact that the account's primary function is to provide general transaction capability.

v. An account whose primary function is other than to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, does not satisfy § 1005.2(b)(3)(i)(D). Such accounts may include, for example, a product whose only function is to make a one-time transfer of funds into a separate prepaid account.

9. *Redeemable upon presentation at multiple, unaffiliated merchants.* For guidance, see comments 20(a)(3)-1 and -2.

10. *Person-to-person transfers.* A prepaid account whose primary function is to conduct person-to-person transfers is an account that allows a consumer to send funds by electronic fund transfer to another consumer or business. An account may qualify as a prepaid account if its primary function is person-to-person transfers even if it is neither redeemable upon presentation at multiple, unaffiliated merchants for goods or services, nor usable at automated teller machines. A transaction involving a store gift card would not be a person-to-person transfer if it could only be used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

*Paragraph 2(b)(3)(ii)*

1. *Excluded health care and employee benefit related prepaid products.* For purposes of § 1005.2(b)(3)(ii)(A), “health savings account” means a health savings account as defined in 26 U.S.C. 223(d); “flexible spending arrangement” means a health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; “medical savings account” means an Archer MSA as defined in 26 U.S.C. 220(d); “health reimbursement arrangement” means a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106; “dependent care assistance program” means a dependent care assistance program pursuant to 26 U.S.C. 129; and “transit or parking reimbursement arrangement” means a qualified transportation fringe benefit provided by an employer pursuant to 26 U.S.C. 132.

2. *Excluded disaster relief funds.* For purposes of § 1005.2(b)(3)(ii)(B), “qualified disaster relief funds” means funds made available through a qualified disaster relief program as defined in 26 U.S.C. 139(b).

3. *Marketed and labeled as a gift card or gift certificate.* Section 1005.2(b)(3)(ii)(D) excludes, among other things, reloadable general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates, whereas § 1005.20(b)(2) excludes such products that are marketed or labeled as gift cards or gift certificates. Comment 20(b)(2)-2 describes, in part, a network-branded GPR card that is principally advertised as a less-costly alternative to a bank account but is promoted in a television, radio, newspaper, or Internet advertisement, or on signage as “the perfect gift” during the holiday season. For purposes of § 1005.20, such a product would be considered marketed as a gift card or gift certificate because of this occasional holiday marketing activity. For purposes of § 1005.2(b)(3)(ii)(D), however, such a product

would not be considered to be both marketed and labeled as a gift card or gift certificate and thus would be covered by the definition of prepaid account.

\* \* \* \* \*

*Section 1005.4—General Disclosure Requirements; Jointly Offered Services*

*4(a) Form of Disclosures*

1. *General.* The disclosures required by this part must be in a clear and readily understandable written form that the consumer may retain. Additionally, except as otherwise set forth in §§ 1005.18(b)(7) and 1005.31(c), no particular rules govern type size, number of pages, or the relative conspicuousness of various terms. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

\* \* \* \* \*

*Section 1005.10—Preauthorized Transfers*

\* \* \* \* \*

*10(e) Compulsory Use*

*10(e)(1) Credit*

1. *General rule for loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis.

2. *Overdraft credit plans not accessible by hybrid prepaid-credit cards.* i. Section 1005.10(e)(1) provides an exception from the general rule for an overdraft credit plan other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. A financial institution may therefore require the automatic repayment of an overdraft credit plan, other than a covered separate credit feature accessible by a

hybrid prepaid-credit card, even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

ii. Credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z, 12 CFR 1026.61(a)(4), is considered credit extended pursuant to an overdraft credit plan for purposes of § 1005.10(e)(1). Thus, the exception for overdraft credit plans in § 1005.10(e)(1) applies to this credit.

*3. Applicability to covered separate credit features accessible by hybrid prepaid-credit*

*cards.* i. Under § 1005.10(e)(1), creditors may not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. The prohibition in § 1005.10(e)(1) applies to any credit extended under such a credit feature, including preauthorized checks. *See* Regulation Z, 12 CFR 1026.61, and comment 61(a)(1)-3.

ii. Under Regulation Z, 12 CFR 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under Regulation Z, 12 CFR 1026.12(d)(3), with respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, a card issuer generally is not prohibited from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer is prohibited under Regulation Z, 12 CFR 1026.12(d), from automatically deducting all or part of the cardholder's credit card debt under a covered separate credit feature

from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. Section 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

4. *Incentives.* A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

*10(e)(2) Employment or Government Benefit*

\* \* \* \* \*

2. *Government benefit.* A government agency may not require consumers to receive government benefits by direct deposit to any particular institution. A government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit. Alternatively, a government agency may give recipients the choice of having their benefits deposited at a particular institution (designated by the government agency) or receiving their benefits by another means.

\* \* \* \* \*

*Section 1005.12—Relation to Other Laws*

*12(a) Relation to Truth in Lending*

1. *Issuance rules for access devices other than access devices for prepaid accounts.* For access devices that also constitute credit cards (other than access devices for prepaid accounts), the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in § 1005.17(a). Regulation Z (12 CFR part 1026) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

2. *Overdraft services.* The addition of an overdraft service, as that term is defined in § 1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§ 1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (§ 1005.17).

3. *Issuance of prepaid access devices that can access a covered separate credit feature subject to Regulation Z.* An access device for a prepaid account cannot access a covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in 12 CFR 1026.61(c). Regulation Z, 12 CFR 1026.61(c), provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature

accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer to become a covered separate credit feature accessible by the hybrid prepaid-credit card. An access device for a prepaid account that is not a hybrid prepaid-credit card as that term is defined in Regulation Z, 12 CFR 1026.61, is subject to the issuance rules in Regulation E.

4. *Addition of a covered separate credit feature to an existing access device for a prepaid account.* Regulation Z governs the addition of a covered separate credit feature as that term is defined in Regulation Z, 12 CFR 1026.61, to an existing access device for a prepaid account. In this case, the access device would become a hybrid prepaid-credit card under Regulation Z (12 CFR part 1026). A covered separate credit feature may be added to a previously issued access device for a prepaid account only upon the consumer's application or specific request as described in Regulation Z, 12 CFR 1026.12(a)(1), and only in compliance with 12 CFR 1026.61(c).

5. *Determining applicable regulation related to liability and error resolution.* i. Under § 1005.12(a)(1)(iv)(B), with respect to a transaction that involves a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, where credit is extended under a covered separate credit feature accessible by a hybrid prepaid-credit card that is incident to an electronic fund transfer when the hybrid prepaid-credit card accesses both funds in the asset feature of a prepaid account and credit extensions from the credit feature with respect to a particular transaction, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the covered separate credit feature). Section

1005.12(a)(1)(iv)(C) provides that with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4), these transactions are governed solely by the liability limitations and error resolution procedures in Regulation E, and Regulation Z does not apply. Section 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

ii. Under § 1005.12(a)(1)(iv)(A), with respect to an account (other than a prepaid account) where credit is extended incident to an electronic fund transfer under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account).

iii. For transactions involving access devices that also function as credit cards under Regulation Z (12 CFR part 1026), whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not access funds in a consumer asset account, such as a checking account or prepaid account, the liability limitations and error resolution requirements of Regulation Z apply. If the transaction accesses funds in an asset account only (with no credit extended), the provisions of

Regulation E apply. If the transaction access funds in an asset account but also involves an extension of credit under the overdraft credit feature subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from an asset account, but also is used to obtain unauthorized cash advances directly from a credit feature that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

iv. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or an access device that draws on the consumer's checking account. When used as a credit card, the card does not first access any funds in the checking account but draws only on a separate credit feature subject to Regulation Z. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as an access device to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as an access device for the checking account and as a credit card; for example, the thief makes some purchases using the card to access funds in the checking account and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as an access device for the checking

account, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft credit feature subject to Regulation Z attached to the checking account. The overdraft credit feature associated with the card is accessed only when the consumer uses the card to make a purchase (or other transaction) for which there are insufficient or unavailable funds in the checking account. In this situation, if the card is stolen and used to make purchases funded entirely by available funds in the checking account, the liability limits and the error resolution provisions of Regulation E apply. If the use of the card results in an extension of credit that is incident to an electronic fund transfer where the transaction is funded partially by funds in the consumer's asset account and partially by credit extended under the overdraft credit feature, the error resolution provisions of Regulation Z, 12 CFR 1026.13(d) and (g), apply in addition to the Regulation E provisions, but the other liability limit and error resolution provisions of Regulation Z do not. Relatedly, if the use of the card is funded entirely by credit extended under the overdraft credit feature, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z. *See* Regulation Z, 12 CFR 1026.13(i).

E. The same principles in comment 12(a)-5.iv.A, B, C, and D apply to an access device for a prepaid account that also is a hybrid prepaid-credit card with respect to a covered separate credit feature under Regulation Z, 12 CFR 1026.61. *See also* Regulation Z, 12 CFR 1026.13(i)(2) and comment 13(i)-4.

*12(b) Preemption of Inconsistent State Laws*

\* \* \* \* \*

2. *Preemption determinations generally.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination.

3. *Preemption determination—Michigan.* The Board of Governors of the Federal Reserve System determined that certain provisions in the state law of Michigan are preempted by the Federal law, effective March 30, 1981:

i. *Definition of unauthorized use.* Section 488.5(4) of the state law of Michigan, governing electronic fund transfers, is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

ii. *Consumer liability for unauthorized use of an account.* Section 488.14 of the state law of Michigan, governing electronic fund transfers, is preempted because it is inconsistent with § 1005.6 and is less protective of the consumer than the Federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the Federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

iii. *Error resolution.* Section 488.15 of the state law of Michigan, governing electronic fund transfers, is preempted because it is inconsistent with § 1005.11 and is less protective of the consumer than the Federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the Federal law generally requires errors to be resolved within 45 days.

iv. *Receipts and periodic statements.* Sections 488.17 and 488.18 of the state law of Michigan, governing electronic fund transfers, are preempted because they are inconsistent with § 1005.9, other than for transfers of \$15 or less pursuant to § 1005.9(e). The state provisions

require a different disclosure of information than does the Federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

4. *Preemption determination—Tennessee.* The Bureau determined that the following provision in the state law of Tennessee is preempted by the Federal law, effective April 25, 2013:

i. *Gift certificates, store gift cards, and general-use prepaid cards.* Section 66-29-116 of Tennessee’s Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and general-use prepaid cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or general-use prepaid cards and their underlying funds are permitted to expire under § 1005.20(e).

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*Section 1005.15—Electronic Fund Transfer of Government Benefits*

*15(c) Pre-Acquisition Disclosure Requirements*

1. *Disclosing the short and long form before acquisition.* Section 1005.15(c)(1) requires that, before a consumer acquires an account governed by § 1005.15, a government agency must comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b). Section 1005.18(b)(1)(i) generally requires delivery of both the short form disclosure required by § 1005.18(b)(2), accompanied by the information in § 1005.18(b)(5), and the long form disclosure required by § 1005.18(b)(4) before a consumer acquires a prepaid account. For purposes of § 1005.15(c), a consumer is deemed to have received the disclosures required by § 1005.18(b) prior to acquisition when the consumer receives the disclosures before choosing to receive benefits via the government benefit account. The following example

illustrates when a consumer receives disclosures before acquisition of an account for purposes of § 1005.15(c):

i. A government agency informs a consumer that she can receive distribution of benefits via a government benefit account in the form of a prepaid card. The consumer receives the prepaid card and the disclosures required by § 1005.18(b) to review at the time the consumer receives benefits eligibility information from the agency. After receiving the disclosures, the consumer chooses to receive benefits via the government benefit account. These disclosures were provided to the consumer pre-acquisition, and the agency has complied with § 1005.15(c). By contrast, if the consumer does not receive the disclosures required by § 1005.18(b) to review until the time at which the consumer received the first benefit payment deposited into the government benefit account, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with § 1005.15(c).

2. *Acquisition and disclosures given during the same appointment.* The disclosures and notice required by § 1005.15(c) may be given in the same process or appointment during which the consumer receives a government benefit card. When a consumer receives benefits eligibility information and enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by § 1005.15(c) before the consumer chooses to receive the first benefit payment on the card complies with the timing requirements of § 1005.15(c).

3. *Form and formatting requirements for government benefit account disclosures.* The form and formatting requirements for government benefit accounts in § 1005.15(c) correspond to those for payroll card accounts set forth in § 1005.18(b). See comments 18(b)(2)(xiv)(A)-1 and

18(b)(2)(xiv)(B)-1 for additional guidance regarding the requirements set forth in § 1005.15(c)(2)(i) and (ii), respectively.

4. *Disclosure requirements outside the short form disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution be disclosed outside the short form disclosure. For government benefit accounts, the financial institution that must be disclosed pursuant to § 1005.18(b)(5) is the financial institution that directly holds the account or issues the account's access device. The disclosure provided outside the short form disclosure may, but is not required to, also include the name of the government agency that established the government benefit account.

*15(d) Access to Account Information*

1. *Access to account information.* For guidance, see comments 18(c)-1 through -3 and 18(c)-5 through -9.

*15(e) Modified Disclosure, Limitations on Liability, and Error Resolution Requirements*

1. *Modified limitations on liability and error resolution requirements.* For guidance, see comments 18(e)-1 through -3.

*15(f) Disclosure of fees and other information*

1. *Disclosures on prepaid account access devices.* Pursuant to § 1005.18(f)(3), the name of the financial institution and the Web site URL and a telephone number a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. For government benefit accounts, the financial institution whose name and contact information must be disclosed pursuant to § 1005.18(f)(3) is the financial institution that directly holds the account or issues the account's access device.

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*Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts*

*18(a) Coverage*

1. *Issuance of access device.* Consistent with § 1005.5(a) and except as provided, as applicable, in § 1005.5(b), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online.

2. *Application to employers and service providers.* Typically, employers and third-party service providers do not meet the definition of a “financial institution” subject to the regulation because they neither hold prepaid accounts (including payroll card accounts) nor issue prepaid cards and agree with consumers to provide EFT services in connection with prepaid accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

*18(b) Pre-Acquisition Disclosure Requirements*

1. *Written and electronic pre-acquisition disclosures.* Section 1005.4(a)(1) generally requires that disclosures be made in writing; written disclosures may be provided in electronic form in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because § 1005.18(b)(6)(i)(B) provides that electronic disclosures required by § 1005.18(b) need not meet the consumer consent or other applicable provisions of the E-Sign Act, § 1005.18(b) addresses certain requirements for written and

electronic pre-acquisition disclosures separately. Section 1005.18(b) also addresses specific requirements for pre-acquisition disclosures provided orally.

2. *Currency.* Fee amounts required to be disclosed by § 1005.18(b) may be disclosed in a foreign currency for a prepaid account denominated in that foreign currency, other than the fee for the purchase price required by § 1005.18(b)(5). For example, a prepaid account sold in a U.S. airport intended for use in England may disclose in pound sterling (£) the fees required to be disclosed in the short form and long form disclosures and outside the short form disclosure, except for the purchase price.

*18(b)(1) Timing of Disclosures*

*18(b)(1)(i) General*

1. *Disclosing the short form and long form before acquisition.* Section 1005.18(b)(1)(i) generally requires delivery of a short form disclosure as described in § 1005.18(b)(2), accompanied by the information required to be disclosed by § 1005.18(b)(5), and a long form disclosure as described in § 1005.18(b)(4) before a consumer acquires a prepaid account. For purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening or choosing to be paid via a prepaid account, as illustrated by the following examples:

i. A consumer inquires about obtaining a prepaid account at a branch location of a bank. A consumer then receives the disclosures required by § 1005.18(b). After receiving the disclosures, a consumer then opens a prepaid account with the bank. This consumer received the short form and long form pre-acquisition in accordance with § 1005.18(b)(1)(i).

ii. A consumer learns that he or she can receive wages via a payroll card account, at which time the consumer is provided with a payroll card and the disclosures required by § 1005.18(b) to review. The consumer then chooses to receive wages via a payroll card account.

These disclosures were provided pre-acquisition in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the disclosures required by § 1005.18(b) to review at the end of the first pay period, after the consumer received the first payroll payment on the payroll card, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with § 1005.18(b)(1)(i).

2. *Disclosures provided electronically.* Disclosures required by § 1005.18(b) may be provided before or after a consumer has initiated the process of acquiring a prepaid account electronically. When the disclosures required by § 1005.18(b) are presented after a consumer has initiated the process for acquiring a prepaid account online or via a mobile device, but before a consumer chooses to accept the prepaid account, such disclosures are also made pre-acquisition in accordance with § 1005.18(b)(1)(i). The disclosures required by § 1005.18(b) that are provided electronically when a consumer acquires a prepaid account electronically are not considered to be given pre-acquisition unless a consumer must view the Web page containing the disclosures before choosing to accept the prepaid account. The following examples illustrate several methods by which a financial institution may present § 1005.18(b) disclosures before a consumer acquires a prepaid account electronically in compliance with § 1005.18(b)(1)(i):

i. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), and the long form disclosure required by § 1005.18(b)(4) on the same Web page. A consumer must view the Web page before choosing to accept the prepaid account.

ii. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), on a Web page. The financial institution includes, after the short form disclosure or as part of the statement required by

§ 1005.18(b)(2)(xiii), a link that directs the consumer to a separate Web page containing the long form disclosure required by § 1005.18(b)(4). The consumer must view the Web page containing the long form disclosure before choosing to accept the prepaid account.

iii. A financial institution presents on a Web page the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), followed by the initial disclosures required by § 1005.7(b), which contains the long form disclosure required by § 1005.18(b)(4), in accordance with § 1005.18(f)(1). The financial institution includes, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), a link that directs the consumer to the section of the initial disclosures containing the long form disclosure pursuant to § 1005.18(b)(4). A consumer must view this Web page before choosing to accept the prepaid account.

*18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations*

1. *Retail locations.* Section 1005.18(b)(1)(ii) sets forth an alternative timing regime for pre-acquisition disclosures for prepaid accounts acquired in person at retail locations. For purposes of § 1005.18(b)(1)(ii), a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account. A branch of a financial institution that offers its own prepaid accounts is not a retail location with respect to those accounts and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to the timing requirement set forth in § 1005.18(b)(1)(i).

*2. Disclosures provided inside prepaid account access device packaging material.*

Except when providing the long form disclosure post-acquisition in accordance with the retail location exception set forth in § 1005.18(b)(1)(ii), the disclosures required by § 1005.18(b)(2),

(4), and (5) must be provided to a consumer pre-acquisition in compliance with § 1005.18(b)(1)(i). A short form disclosures is not considered to have been provided pre-acquisition if, for example, it is inside the packaging material accompanying a prepaid account access device such that the consumer cannot see or access the disclosures before acquiring the prepaid account.

3. *Consumers working in retail locations.* A payroll card account offered to consumers working in retail locations is not eligible for the retail location exception in § 1005.18(b)(1)(ii); thus, a consumer employee must receive both the short form and long form disclosures for the payroll card account pre-acquisition pursuant to the timing requirement set forth in § 1005.18(b)(1)(i).

4. *Providing the long form disclosure by telephone and Web site pursuant to the retail location exception.* Pursuant to § 1005.18(b)(1)(ii), a financial institution may provide the long form disclosure described in § 1005.18(b)(4) after a consumer acquires a prepaid account in a retail location, if the conditions set forth in § 1005.18(b)(1)(ii)(A) through (D) are met. Pursuant to § 1005.18(b)(1)(ii)(C), a financial institution must make the long form disclosure accessible to consumers by telephone and via a Web site when not providing a written version of the long form disclosure pre-acquisition. A financial institution may, for example, provide the long form disclosure by telephone using an interactive voice response or similar system or by using a customer service agent.

*18(b)(1)(iii) Disclosures for Prepaid Accounts Acquired Orally by Telephone*

1. *Prepaid accounts acquired by telephone.* Section 1005.18(b)(1)(iii) sets forth requirements for prepaid accounts acquired orally by telephone. For purposes of § 1005.18(b)(1)(iii), a prepaid account is considered to have been acquired orally by telephone

when a consumer speaks to a customer service agent or communicates with an automated system, such as an interactive voice response system, to provide personally identifiable information to acquire a prepaid account. Prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system are not considered to have been acquired orally by telephone.

*2. Disclosures for prepaid accounts acquired by telephone.* Pursuant to § 1005.18(b)(1)(iii), a financial institution must disclose the information required by § 1005.18(b)(2) and (5) orally before a consumer acquires a prepaid account orally by telephone. A financial institution may, for example, provide these disclosures by using an interactive voice response or similar system or by using a customer service agent, after the consumer has initiated the purchase of a prepaid account by telephone, but before the consumer acquires the prepaid account. In addition, a financial institution must provide the initial disclosures required by § 1005.7, as modified by § 1005.18(f)(1), before the first electronic fund transfer is made involving the prepaid account.

*18(b)(2) Short Form Disclosure Content*

*1. Disclosures that are not applicable or are free.* The short form disclosures required by § 1005.18(b)(2) must always be provided prior to prepaid account acquisition, even when a particular feature is free or is not applicable to a specific prepaid account product. For example, if a financial institution does not charge a fee to a consumer for withdrawing money at an automated teller machine in the financial institution's network or an affiliated network, which is required to be disclosed pursuant to § 1005.18(b)(2)(iii), the financial institution would list "ATM withdrawal in-network" on the short form disclosure and list "\$0" as the fee. If, however, the financial institution does not have its own network or an affiliated network from which a

consumer can withdraw money via automated teller machine, the financial institution would list “ATM withdrawal in-network” on the short form disclosure but instead of disclosing a fee amount, state “N/A.” (The financial institution must still disclose any fee it charges for out-of-network ATM withdrawals.)

2. *Prohibition on disclosure of finance charges.* Pursuant to § 1005.18(b)(3)(vi), a financial institution may not include in the short form disclosure finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. *See also* comment 18(b)(3)(vi)-1.

*18(b)(2)(i) Periodic Fee*

1. *Periodic fee variation.* If the amount of a fee disclosed on the short form could vary, the financial institution must disclose in the short form the information required by § 1005.18(b)(3)(i). If the amount of the periodic fee could vary, the financial institution may opt instead to use an alternative disclosure pursuant to § 1005.18(b)(3)(ii). *See* comments 18(b)(3)(i)-1 and 18(b)(3)(ii)-1.

*18(b)(2)(iii) ATM Withdrawal Fees*

1. *International ATM withdrawal fees.* Pursuant to § 1005.18(b)(2)(iii), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to initiate a withdrawal of cash in the United States from the prepaid account, both within and outside of the financial institution’s network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to initiate a withdrawal of cash in a foreign country in the disclosure required by

§ 1005.18(b)(2)(iii), although it may be required to disclose that fee as an additional fee type pursuant to § 1005.18(b)(2)(ix).

*18(b)(2)(iv) Cash Reload Fee*

1. *Total of all charges.* Pursuant to § 1005.18(b)(2)(iv), a financial institution must disclose the total of all charges imposed when a consumer reloads cash into a prepaid account, including charges imposed by the financial institution as well as any charges that may be imposed by third parties for the cash reload. The cash reload fee includes the cost of adding cash to the prepaid account at a point-of-sale terminal, the cost of purchasing an additional card or other device on which cash is loaded and then transferred into the prepaid account, or any other method a consumer may use to reload cash into the prepaid account. For example, a financial institution does not have its own proprietary cash reload network and instead contracts with a third-party reload network for this service. The financial institution itself does not charge any fee related to cash reloads but the third-party reload network charges a fee of \$3.95 per cash reload. The financial institution must disclose the cash reload fee as \$3.95. If the financial institution offers more than one method to reload cash into the prepaid account, § 1005.18(b)(3)(i) requires disclosure of the highest cash reload fee. For example, a financial institution contracts with two third-party cash reload networks; one third party charges \$3.95 for a point-of-sale reload and the other third party charges \$2.95 for purchase of a reload pack. In addition to the third-party cash reload charge, the financial institution charges a \$1 fee for every cash reload. The financial institution must disclose the cash reload fee on the short form as \$4.95, that is, the highest third-party fee plus the financial institution's \$1 fee. See comments 18(b)(3)(v)-1 for additional guidance regarding third-party fees for cash reloads.

2. *Cash deposit fee.* If a financial institution does not permit cash reloads via a third-party reload network but instead permits cash deposits, for example, in a bank branch, the term “cash deposit” may be substituted for “cash reload.”

*18(b)(2)(v) ATM Balance Inquiry Fees*

1. *International ATM balance inquiry fees.* Pursuant to § 1005.18(b)(2)(v), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to check the balance of the prepaid account in the United States, both within and outside of the financial institution’s network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to check the balance of the prepaid account in a foreign country in the disclosure required by § 1005.18(b)(2)(v), although it may be required to disclose that fee as an additional fee type pursuant to § 1005.18(b)(2)(ix).

*18(b)(2)(vii) Inactivity Fee*

1. *Inactivity fee conditions.* Section 1005.18(b)(2)(vii) requires disclosure of any fee for non-use, dormancy, or inactivity of the prepaid account as well as the conditions that trigger the financial institution to impose that fee. For example, a financial institution that imposes an inactivity fee of \$1 per month after 12 months without any transactions on the prepaid account would disclose on the short form “Inactivity (after 12 months with no transactions)” and “\$1.00 per month.”

*18(b)(2)(viii) Statements Regarding Additional Fee Types*

*18(b)(2)(viii)(A) Statement Regarding Number of Additional Fee Types Charged*

1. *Fee types counted in total number of additional fee types.* Section 1005.18(b)(2)(viii)(A) requires a statement disclosing the number of additional fee types the

financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: “We charge [x] other types of fees.” The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding fees required to be disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (b)(5) and any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. The following clarify which fee types to include in the total number of additional fee types:

i. *Fee types excluded from the number of additional fee types.* The number of additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(viii)(A) does not include the fees otherwise required to be disclosed in the short form pursuant to § 1005.18(b)(2)(i) through (vii), nor any purchase fee or activation fee required to be disclosed outside the short form pursuant to § 1005.18(b)(5). It also does not include any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a credit feature defined in 12 CFR 1026.61. The number of additional fee types includes only fee types under which the financial institution may charge fees; accordingly, third-party fees are not included unless they are imposed for services performed on behalf of the financial institution. In addition, the number of additional fee types includes only fee types the financial institution may charge consumers with respect to the prepaid account; accordingly, additional fee types does not include other revenue sources such as interchange fees or fees paid by employers for payroll card programs, government agencies for government benefit programs, or other entities sponsoring prepaid account programs for financial disbursements.

ii. *Fee types counted in the number of additional fee types.* Fee types that bear a relationship to, but are separate from, the static fee types disclosed in the short form must be counted as additional fees for purposes of § 1005.18(b)(2)(viii). For example, the ATM withdrawal and ATM balance inquiry fee types required to be disclosed respectively by § 1005.18(b)(2)(iii) and (v) that are excluded from the number of additional fee types pursuant to § 1005.18(b)(2)(viii) do not include such services outside of the United States. Thus, any international ATM fees charged by the financial institution for ATM withdrawal or balance inquiries must each be counted in the total number of additional fee types. Similarly, any fees for reloading funds into a prepaid account in a form other than cash (such as electronic reload and check reload, as described in comment 18(b)(2)(viii)(A)-2) must be counted in the total number of additional fee types because § 1005.18(b)(2)(iv) is limited to cash reloads. Also, additional fee types disclosed in the short form pursuant to § 1005.18(b)(2)(ix) must be counted in the total number of additional fee types.

2. *Examples of fee types and fee variations.* The term fee type, as used in § 1005.18(b)(2)(viii) and (ix), is a general category under which a financial institution charges fees to consumers. A financial institution may charge only one fee within a particular fee type, or may charge two or more variations of fees within the same fee type. The following is a list of examples of fee types a financial institution may use when determining both the number of additional fee types charged pursuant to § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to § 1005.18(b)(2)(ix). A financial institution may create an appropriate name for other additional fee types.

i. *Fee types related to reloads of funds.* Fees for reloading funds into a prepaid account. Fees for cash reloads are required to be disclosed in the short form pursuant to

§ 1005.18(b)(2)(iv) and that such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix). Fee types for other methods to reload funds, such as Electronic reload or Check reload, would be counted in the total number of additional fee types and may be required to be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix).

A. *Electronic reload.* Fees for reloading a prepaid account through electronic methods. Fee variations within this fee type may include fees for transferring funds from a consumer's bank account via ACH, reloads conducted using a debit card or credit card, and for incoming wire transfers.

B. *Check reload.* Fees for reloading a prepaid account using checks. Fee variations within this fee type may include fees for depositing checks at an ATM, depositing checks with a teller at the financial institution's branch location, mailing checks to the financial institution for deposit, and depositing checks using remote deposit capture.

ii. *Fee types related to withdrawals of funds.* Fees for withdrawing funds from a prepaid account. Per purchase fees and ATM withdrawal fees within the United States are fee types required to be disclosed in the short form respectively pursuant to § 1005.18(b)(2)(ii) and (iii) and thus such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix). Fee types for other methods to withdraw funds, such as Electronic withdrawal, Teller withdrawal, Cash back at point of sale (POS), and Account closure would be counted in the total of additional fee types and may be required to be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix).

A. *Electronic withdrawal.* Fees for withdrawing funds from a prepaid account through electronic methods other than an ATM. Fee variations within this fee type may include fees for transferring funds from the prepaid account to a consumer's bank account or other destination.

B. *Teller withdrawal.* Fees for withdrawing funds from a prepaid account in person with a teller at a bank or credit union. Fee variations within this fee type may include fees for withdrawing funds, whether at the financial institution's own branch locations or at another bank or credit union.

C. *Cash back at POS.* Fees for withdrawing cash from a prepaid account via cash back at a merchant's point-of-sale terminal.

D. *Account closure.* Fees for closing out a prepaid account, such as for a check refund. Fee variations within this fee type may include fees for regular and expedited delivery of close-out funds.

iii. *Fee types related to international transactions.* Fee types for international transactions and ATM activity.

A. *International ATM withdrawal.* Fees for withdrawing funds at an ATM outside the United States. This fee type does not include fees for ATM withdrawals in the United States, as such fees are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(iii).

B. *International ATM balance inquiry.* Fees for balance inquiries at an ATM outside the United States. This fee type does not include fees for ATM balance inquiries in the United States, as such fees are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(v).

C. *International transaction (excluding ATM withdrawal and balance inquiry).* Fees for transactions outside the United States. Fee variations within this fee type may include fees for

currency conversion, foreign exchange processing, and other charges for transactions outside of the United States.

iv. *Bill payment.* Fees for bill payment services. Fee variations within this fee type may include fees for ACH bill payment, paper check bill payment, check cancellation, and expedited delivery of paper check.

v. *Person-to-person or card-to-card transfer of funds.* Fees for transferring funds from one prepaid account to another prepaid account. Fee variations within this fee type may include fees for transferring funds to another prepaid account within or outside of a specified prepaid account program, transferring funds to another cardholder within United States or outside the United States, and expedited transfer of funds.

vi. *Paper checks.* Fees for providing paper checks that draw on the prepaid account. Fee variations within this fee type may include fees for providing checks and associated shipping costs. This does not include checks issued as part of a bill pay service, which are addressed in comment 18(b)(2)(viii)(A)-2.iv above.

vii. *Stop payment.* Fees for stopping payment of a preauthorized transfer of funds.

viii. *Fee types related to card services.* Fee types for card services.

A. *Card replacement.* Fees for replacing or reissuing a prepaid card that has been lost, stolen, damaged, or that has expired. Fee variations within this fee types may include fees for replacing the card, regular or expedited delivery of the replacement card, and international card replacement.

B. *Secondary card.* Fees for issuing an additional access device assigned to a particular prepaid account.

C. *Personalized card.* Fees for customizing or personalizing a prepaid card.

ix. *Legal*. Fees for legal process. Fee variations within this fee type may include fees for garnishments, attachments, levies, and other court or administrative orders against a prepaid account.

3. *Multiple service plans*. Pursuant to § 1005.18(b)(2)(vi), a financial institution using the multiple service plan short form disclosure pursuant to § 1005.18(b)(6)(iii)(B)(2) must disclose only the fee for calling customer service via a live agent. Thus, pursuant to § 1005.18(b)(2)(viii), any charge for calling customer service via an interactive voice response system must be counted in the total number of additional fee types.

4. *Consistency in additional fee type categorization*. A financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to § 1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to § 1005.18(b)(2)(ix).

*18(b)(2)(viii)(B) Statement Directing Consumers to Disclosure of Additional Fee Types*

1. *Statement clauses*. Section 1005.18(b)(2)(viii)(B) requires, if a financial institution makes a disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix), it must include in the short form a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by § 1005.18(b)(2)(viii)(A), using the following clause or a substantially similar clause: “Here are some of them:”. A financial institution that makes no disclosure pursuant to § 1005.18(b)(2)(ix) may not include a disclosure pursuant to § 1005.18(b)(2)(viii)(B). The following examples provide guidance regarding substantially similar clauses a financial institution may use in certain circumstances to make its disclosures under § 1005.18(b)(2)(viii)(A) and (B):

i. A financial institution that has one additional fee type and discloses that additional fee type pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: “We charge 1 other type of fee. It is:”.

ii. A financial institution that has five additional fee types and discloses one of those additional fee types pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: “We charge 5 other types of fees. Here is 1 of them.”.

iii. A financial institution that has two additional fee types and discloses both of those fee types pursuant to § 1005.18(b)(2)(ix) might provide the statement required by § 1005.18(b)(2)(viii)(A) and (B) together as: “We charge 2 other types of fees. They are:”.

*18(b)(2)(ix) Disclosure of Additional Fee Types*

*18(b)(2)(ix)(A) Determination of Which Additional Fee Types to Disclose*

1. *Number of fee types to disclose.* Section 1005.18(b)(2)(ix)(A) requires disclosure of the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in § 1005.18(b)(2)(ix)(D) and (E), excluding the categories set forth in § 1005.18(b)(2)(ix)(A)(1) through (3). See comment 18(b)(2)(viii)(A)-2 for guidance on and examples of fee types. If a prepaid account program has two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A), it must disclose both fees. If a prepaid account program has three or more fee types that potentially satisfy the criteria in § 1005.18(b)(2)(ix)(A), the financial institution must disclose only the two fee types that generate the highest revenue from consumers. See comment 18(b)(2)(ix)(B)-1 for guidance regarding the disclosure of additional

fee types for a prepaid account with fewer than two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A).

2. *Abbreviations.* Commonly accepted or readily understandable abbreviations may be used as needed for additional fee types and fee variations disclosed pursuant to § 1005.18(b)(2)(ix). For example, to accommodate on one line in the short form disclosure the additional fee types “international ATM balance inquiry” or “person-to-person transfer of funds,” with or without fee variations, a financial institution may choose to abbreviate the fee type name as “Int’l ATM inquiry” or “P2P transfer.”

3. *Revenue from consumers.* The revenue calculation for the disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix)(A) is based on fee types that the financial institution may charge consumers with respect to the prepaid account. The calculation excludes other revenue sources such as revenue generated from interchange fees and fees paid by employers for payroll card programs, government agencies for government benefit programs, and other entities sponsoring prepaid account programs for financial disbursements. It also excludes third-party fees, unless they are imposed for services performed on behalf of the financial institution.

4. *Assessing revenue within and across prepaid account programs to determine disclosure of additional fee types.* Pursuant to § 1005.18(b)(2)(ix)(A), the disclosure of the two fee types that generate the highest revenue from consumers must be determined for each prepaid account program or across prepaid account programs that share the same fee schedule. Thus, if a financial institution offers more than one prepaid account program, unless the programs share the same fee schedule, the financial institution must consider the fee revenue data separately for each prepaid account program and not consolidate the fee revenue data across prepaid account programs. Prepaid account programs are deemed to have the same fee schedules if they charge

the same fee amounts, including offering the same fee waivers and fee reductions for the same features. The following examples illustrate how to assess revenue within and across prepaid account programs to determine the disclosure of additional fee types:

i. *Prepaid account programs with different fee schedules.* A financial institution offers multiple prepaid account programs and each program has a different fee schedule. The financial institution must consider the revenue from consumers for each program separately; it may not consider the revenue from all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

ii. *Prepaid account programs with identical fee schedules.* A financial institution offers multiple prepaid account programs and they all share the same fee schedule. The financial institution may consider the revenue across all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

iii. *Prepaid account programs with both different fee schedules and identical fee schedules.* A financial institution offers multiple prepaid account programs, some of which share the same fee schedule. The financial institution may consider the revenue across all prepaid account programs with identical fee schedules in determining the disclosure of additional fee types for those programs. The financial institution must separately consider the revenue from each of the prepaid account programs with unique fee schedules.

iv. *Multiple service plan prepaid account programs.* A financial institution that discloses multiple service plans on a short form disclosure as permitted by § 1005.18(b)(6)(iii)(B)(2) must consider revenue across all of those plans in determining the disclosure of additional fee types for that program. If, however, the financial institution instead is disclosing the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(1), the financial institution must consider the revenue

generated from consumers for the default service plan only. See § 1005.18(b)(6)(iii)(B)(2) and comment 18(b)(6)(iii)(B)(2)-1 for guidance on what constitutes multiple service plans.

5. *Exclusions.* Once the financial institution has calculated the fee revenue data for the prepaid account program or across prepaid account programs that share the same fee schedule during the appropriate time period, it must remove from consideration the categories excluded pursuant to § 1005.18(b)(2)(ix)(A)(I) through (3) before determining the fee types, if any, that generated the highest revenue.

i. *Exclusion for fee types required to be disclosed elsewhere.* Fee types otherwise required to be disclosed in or outside the short form are excluded from the additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(ix)(A)(I). Thus, the following fee types are excluded: periodic fee, per purchase fee, ATM withdrawal fees (for ATM withdrawals in the United States), cash reload fee, ATM balance inquiry fees (for ATM balance inquiries in the United States), customer service fees, and inactivity fee. However, while the cash reload fee type is excluded, other reload fee types, such as electronic reload and check reload, are not excluded under § 1005.18(b)(2)(ix)(A)(I) and thus may be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix). Similarly, while the fee types ATM withdrawal and ATM balance inquiry in the United States are excluded, international ATM withdrawal and international ATM balance inquiry fees are not excluded under § 1005.18(b)(2)(ix)(A)(I) and thus may be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix). Also pursuant to § 1005.18(b)(2)(ix)(A)(I), the purchase price and activation fee, if any, required to be disclosed outside the short form disclosure pursuant to § 1005.18(b)(5), are excluded from the additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(ix).

ii. *De minimis exclusion.* Any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in § 1005.18(b)(2)(ix)(D) and (E) are excluded from the additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(ix)(A)(2). For example, for a particular prepaid account program over the appropriate time period, bill payment, check reload, and card replacement are the only fee types that generated 5 percent or more of the total revenue from consumers at, respectively, 15 percent, 10 percent, and 7 percent. Two other fee types, legal fee and personalized card, generated revenue below 1 percent of the total revenue from consumers. The financial institution must disclose bill payment and check reload as the additional fee types for that particular prepaid account program because those two fee types generated the highest revenue from consumers from among the categories not excluded from disclosure as additional fee types. For a different prepaid account program over the appropriate time period, bill payment is the only fee type that generated 5 percent or more of the total revenue from consumers. Two other fee types, check reload and card replacement, each generated revenue below 5 percent of the total revenue from consumers. The financial institution must disclose bill payment as an additional fee type for that particular prepaid account program because it is the only fee type that satisfies the criteria of § 1005.18(b)(2)(ix)(A). The financial institution may, but is not required to, disclose either check reload or card replacement on the short form as well, pursuant to § 1005.18(b)(2)(ix)(B). *See comment 18(b)(2)(ix)(B)-1.*

iii. *Exclusion for credit-related fees.* Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, are excluded from the additional

fee types required to be disclosed pursuant to § 1005.18(b)(2)(ix)(A)(3). Pursuant to § 1005.18(b)(2)(viii)(A)(2), such finance charges are also excluded from the number of additional fee types disclosed.

*18(b)(2)(ix)(B) Disclosure of Fewer than Two Additional Fee Types*

1. *Disclosure of one or no additional fee types.* The following examples provide guidance on the additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(B) for a prepaid account with fewer than two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A):

i. A financial institution has a prepaid account program with only one fee type that satisfies the criteria in § 1005.18(b)(2)(ix)(A) and thus, pursuant to § 1005.18(b)(2)(ix)(A), the financial institution must disclose that one fee type. The prepaid account program has three other fee types that generate revenue from consumers, but they do not exceed the de minimis threshold or otherwise satisfy the criteria in § 1005.18(b)(2)(ix)(B). Pursuant to § 1005.18(b)(2)(ix)(B), the financial institution is not required to make any additional disclosure, but it may choose to disclose one of the three fee types that do not meet the criteria in § 1005.18(b)(2)(ix)(A).

ii. A financial institution has a prepaid account program with four fee types that generate revenue from consumers, but none exceeds the de minimis threshold or otherwise satisfy the criteria in § 1005.18(b)(2)(ix)(A). Pursuant to § 1005.18(b)(2)(ix)(B), the financial institution is not required to make any disclosure, but it may choose to disclose one or two of the fee types that do not meet the criteria in § 1005.18(b)(2)(ix)(A).

2. *No disclosure of finance charges as an additional fee type.* Pursuant to § 1005.18(b)(3)(vi), a financial institution may not disclose any finance charges as a voluntary additional fee disclosure under § 1005.18(b)(2)(ix)(B).

*18(b)(2)(ix)(C) Fee Variations in Additional Fee Types*

1. *Two or more fee variations.* Section 1005.18(b)(2)(ix)(C) specifies how to disclose additional fee types with two fee variations, more than two fee variations, and for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(2). See comment 18(b)(2)(viii)(A)-2 for guidance on and examples of fee types and fee variations within those fee types. The following examples illustrate how to disclose two-tier fees and other fee variations in additional fee types:

i. *Two fee variations with different fee amounts.* A financial institution charges a fee of \$1 for providing a card replacement using standard mail service and charges a fee of \$5 for providing a card replacement using expedited delivery. The financial institution must calculate the total revenue generated from consumers for all card replacements, both via standard mail service and expedited delivery, during the required time period to determine whether it is required to disclose card replacement as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are only two fee variations for the fee type “card replacement,” if card replacement is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution must disclose both fee variations pursuant to § 1005.18(b)(2)(ix)(C). Thus, the financial institution would disclose on the short form the fee type and two variations as “Card replacement (regular or expedited delivery)” and the fee amount as “\$1.00 or \$5.00”.

ii. *More than two fee variations.* A financial institution offers two methods of bill payment—via ACH and paper check—and offers two modes of delivery for bill payments made by paper check—regular standard mail service and expedited delivery. The financial institution charges \$0.25 for bill pay via ACH, \$0.50 for bill pay via paper check sent by regular standard mail service, and \$3 for bill pay via paper check sent via expedited delivery. The financial

institution must calculate the total revenue generated from consumers for all methods of bill pay and all modes of delivery during the required time period to determine whether it must disclose bill payment as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are more than two fee variations for the fee type “bill payment,” if bill payment is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution must disclose the highest fee, \$3, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, pursuant to § 1005.18(b)(3)(i). Thus, the financial institution would disclose on the short form the fee type as “Bill payment” and the fee amount as “\$3.00\*”.

iii. *Two fee variations with like fee amounts.* A financial institution offers two methods of check reload for which it charges a fee—depositing checks at an ATM and depositing checks with a teller at the financial institution’s branch locations. There is a fee of \$0.50 for both methods of check deposit. The financial institution must calculate the total revenue generated from both of these check reload methods during the required time period to determine whether it must disclose this fee type as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because the fee amounts are the same for the two methods of check deposit, if the fee type is required to be disclosed as an additional fee type, the financial institution’s options for disclosing this fee type in accordance with § 1005.18(b)(2)(ix)(C) and (b)(3)(iii) include: “Check reload (ATM or teller check dep)” and the fee amount as “\$0.50” or “Check reload” and the fee amount as “\$0.50”.

iv. *Multiple service plans.* A financial institution provides a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(2). Notwithstanding that an additional fee type has only two fee variations, a financial institution must disclose the highest fee in accordance with § 1005.18(b)(3)(i).

2. *One fee variation under a particular fee type.* Section 1005.18(b)(2)(ix)(C) provides in part that, if a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation, if any, for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) and (vi), except that the financial institution must disclose only the one fee variation name and fee amount instead of two. For example, a financial institution offers one method of electronic reload for which it charges a fee—electronic reload conducted using a debit card. The financial institution must calculate the total revenue generated from consumers for the fee type electronic reload (*i.e.*, in this case, electronic reloads conducted using a debit card) during the required time period to determine whether it must disclose electronic reload as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because the financial institution only charges one fee variation under the fee type electronic reload, if this fee type is required to be disclosed as an additional fee type, the financial institution has two options for disclosing this fee type in accordance with § 1005.18(b)(2)(ix)(C): “Electronic reload (debit card)” and the fee amount as “\$1.00” or “Electronic reload” and the fee amount as “\$1.00”.

*18(b)(2)(ix)(D) Timing of Initial Assessment of Additional Fee Types Disclosure*

*18(b)(2)(ix)(D)(1) Existing Prepaid Account Programs as of October 1, 2017*

1. *24 month period with available data.* Section 1005.18(b)(2)(ix)(D)(1) requires for a prepaid account program in effect as of October 1, 2017 the financial institution must disclose additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014. Thus, a prepaid account program that was in existence as of October 1, 2017 must assess its additional fee types disclosure from data collected during a consecutive 24-month

period that took place between October 1, 2014 and October 1, 2017. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on October 1, 2017. The earliest 24-month period from which that financial institution could calculate its first additional fee types disclosure would be from October 1, 2014 to September 30, 2016.

*18(b)(2)(ix)(D)(2) Existing Prepaid Account Programs as of October 1, 2017 with Unavailable Data*

1. *24 month period without available data.* Section 1005.18(b)(2)(ix)(D)(2) requires that if a financial institution does not have 24 months of fee revenue data for a particular prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. For example, a financial institution begins offering to consumers a prepaid account program six months before October 1, 2017. Because the prepaid account program will not have 24 months of fee revenue data prior to October 1, 2017, pursuant to § 1005.18(b)(2)(ix)(D)(2) the financial institution must disclose the additional fee types it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. The financial institution would take into account the data it had accumulated at the time of its calculation to arrive at the reasonably anticipated additional fee types for the prepaid account program.

*18(b)(2)(ix)(E) Timing of Periodic Reassessment and Update of Additional Fee Types*

*Disclosure*

*18(b)(2)(ix)(E)(2) Periodic Reassessment*

*1. Periodic reassessment and, if applicable, update of additional fee types disclosure.*

Pursuant to § 1005.18(b)(2)(ix)(E)(2), a financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of § 1005.18(b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in § 1005.18(b)(2)(ix)(E)(4). The following examples provide guidance on the periodic assessment and, if applicable, update of the disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix)(E)(2):

*i. Reassessment with no change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and the two additional fee types previously disclosed continue to qualify as additional fee types pursuant to § 1005.18(b)(2)(ix). The financial institution is not required to take any action with regard to the disclosure of additional fee types for that prepaid account program.

*ii. Reassessment with a change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill

payment continued to qualify as an additional fee type pursuant to § 1005.18(b)(2)(ix) but check reload qualified as the second additional fee type instead of card replacement. The financial institution must update the additional fee types disclosure in its short form disclosures provided electronically, orally, and in writing (other than for printed materials that qualify for the update printing exception in § 1005.18(b)(2)(ix)(E)(4)) no later than January 1, 2020, which is three months after the end of the 24-month period.

iii. *Reassessment with the addition of an additional fee type already voluntarily disclosed.*

A financial institution disclosed one additional fee type (bill payment) and voluntarily disclosed one other additional fee type (card replacement, both for regular and expedited delivery) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill payment continued to qualify as an additional fee type pursuant to § 1005.18(b)(2)(ix) and card replacement now qualified as the second additional fee type. Because the financial institution already had disclosed its card replacement fees in the format required for an additional fee type disclosure, the financial institution is not required to take any action with regard to the additional fee types disclosure in the short form for that prepaid account program.

2. *Reassessment more frequently than every 24 months.* Pursuant to § 1005.18(b)(2)(ix)(E)(2), a financial institution may, but is not required to, carry out the reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences. A financial institution may choose to do this, for example, to sync its reassessment process for additional fee types with its financial reporting schedule or other financial analysis it performs regarding the particular prepaid account program. If a financial institution chooses to reassess its additional fee types disclosure more frequently than

every 24 months, it is still required to use 24 months of fee revenue data to conduct the reassessment. For example, a financial institution first offered a particular prepaid account program on October 1, 2016 and thus was required to estimate its initial additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(D)(2). If the financial institution chooses to begin its reassessment of its fee revenue data on October 1, 2018, it would use the data it collected over the previous 24 months (October 1, 2016 to September 30, 2018) and complete its reassessment and its update, if applicable, by January 1, 2019.

*18(b)(2)(ix)(E)(3) Fee Schedule Change*

1. *Revised prepaid account programs.* Section 1005.18(b)(2)(ix)(E)(3) requires that if a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change. A fee schedule change resets the 24-month period for assessment; a financial institution must comply with the requirements of § 1005.18(b)(2)(ix)(E)(2) at the end of the 24-month period following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of § 1005.18(b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in § 1005.18(b)(2)(ix)(E)(4). For example, if a financial institution lowers its card replacement fee from \$4 to \$3 on December 1, 2018 after having first assessed its additional fee types disclosure as of October 1, 2017, the financial institution would assess whether it reasonably anticipates that the existing additional fee types disclosure will continue to reflect the

additional fee types that generate the highest revenue from consumers for that prepaid account program for the next 24 months (until December 1, 2020). If the financial institution reasonably anticipates that its additional fee types will remain unchanged over the next 24 months, the financial institution is not required to take any action with regard to the additional fee types disclosure for that prepaid account program. In the same example, if the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change, the financial institution must update the listing of additional fee types at the time the fee schedule change goes into effect, except as provided in the update printing exception pursuant to § 1005.18(b)(2)(ix)(E)(4).

*18(b)(2)(ix)(E)(4) Update Printing Exception*

1. *Application of the update printing exception to prepaid accounts sold in retail locations.* Pursuant to § 1005.18(b)(2)(ix)(E)(4), notwithstanding the requirements to update additional fee types disclosures in § 1005.18(b)(2)(ix)(E), a financial institution is not required to update the listing of additional fee types that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to § 1005.18(b)(2)(ix)(E)(2) or prior to a fee schedule change pursuant to § 1005.18(b)(2)(ix)(E)(3). For prepaid accounts sold in retail locations, for example, § 1005.18(b)(2)(ix)(E)(4) permits a financial institution to implement any necessary updates to the listing of the additional fee types disclosures on the short form disclosure that appear on its physical prepaid account packaging materials at the time the financial institution prints new materials. Section 1005.18(b)(2)(ix)(E)(4) does not require financial institutions to destroy existing inventory in retail locations or elsewhere in the distribution channel, to the extent the

disclosures on such packaging materials are otherwise accurate, to comply with this requirement. For example, a financial institution determines that an additional fee type listed on a short form disclosure in a retail location no longer qualifies as an additional fee type pursuant to § 1005.18(b)(2)(ix). The financial institution must update any electronic and oral short form disclosures pursuant to the timing requirements set forth in § 1005.18(b)(2)(ix)(E). Pursuant to § 1005.18(b)(2)(ix)(E)(4), the financial institution may continue selling any previously printed prepaid account packages that contain the prior listing of additional fee types; prepaid account packages printed after that time must contain the updated listing of additional fee types.

*18(b)(2)(x) Statement Regarding Overdraft Credit Features*

1. *Short form disclosure when overdraft credit feature may be offered.* Section 1005.18(b)(2)(x) requires disclosure of a statement if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered at any point to a consumer in connection with the prepaid account. This statement must be provided on the short form disclosures for all prepaid accounts that may offer such a feature, regardless of whether some consumers may never be solicited or qualify to enroll in such a feature.

*18(b)(2)(xi) Statement Regarding Registration and FDIC or NCUA Insurance*

1. *Disclosure of FDIC or NCUA insurance.* Section 1005.18(b)(2)(xi) requires a statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable. If the consumer's prepaid account funds are held at a credit union, the disclosure must indicate NCUA insurance eligibility.

If the consumer's prepaid account funds are held at a financial institution other than a credit union, the disclosure must indicate FDIC insurance eligibility.

2. *Customer identification and verification processes.* For additional guidance on the timing of customer identification and verification processes, and on prepaid account programs for which there is no customer identification and verification process for any prepaid accounts within the prepaid account program, see § 1005.18(e)(3) and comments 18(e)-4 and -5.

*18(b)(2)(xiii) Statement Regarding Information on All Fees and Services*

1. *Financial institution's telephone number.* For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), the statement required by § 1005.18(b)(2)(xiii) must also include a telephone number (and the Web site URL) that a consumer may use to directly access an oral version of the long form disclosure. To provide the long form disclosure by telephone, a financial institution could use a live customer service agent or an interactive voice response system. The financial institution could use a telephone number specifically dedicated to providing the long form disclosure or a more general customer service telephone number for the prepaid account program. For example, a financial institution would be deemed to provide direct access pursuant to § 1005.18(b)(2)(xiii) if a consumer navigates one or two prompts to reach the oral long form disclosure via a live customer service agent or an interactive voice response system using either a specifically dedicated telephone number or a more general customer service telephone number.

2. *Financial institution's Web site.* For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), the statement required by § 1005.18(b)(2)(xiii) must also include a Web site URL (and a telephone number) that a consumer may use to directly access an electronic version of the long form disclosure. For

example, a financial institution that requires a consumer to navigate various other Web pages before viewing the long form disclosure would not be deemed to provide direct access pursuant to § 1005.18(b)(2)(xiii). Trademark and product names and their commonly accepted or readily understandable abbreviations comply with the requirement in § 1005.18(b)(2)(xiii) that the URL be meaningfully named. For example, ABC or ABCard would be readily understandable abbreviations for a prepaid account program named the Alpha Beta Card.

*18(b)(2)(xiv) Additional Content for Payroll Card Accounts*

*18(b)(2)(xiv)(A) Statement Regarding Wage or Salary Payment Options*

1. *Statement options for payroll card accounts.* Section 1005.18(b)(2)(xiv)(A) requires a financial institution to include at the top of the short form disclosure for payroll card accounts, above the information required by § 1005.18(b)(2)(i) through (iv), one of two statements regarding wage payment options. Financial institutions offering payroll card accounts may choose which of the two statements required by § 1005.18(b)(2)(xiv)(A) to use in the short form disclosure. The list of other options required in the second statement might include the following, as applicable: direct deposit to the consumer's bank account, direct deposit to the consumer's own prepaid account, paper check, or cash. A financial institution may, but is not required to, provide more specificity as to whom consumers must ask or inform of their choice of wage payment method, such as specifying the employer's Human Resources Department.

2. *Statement options for government benefit accounts.* See § 1005.15(c)(2)(i) for statement options for government benefit accounts.

3. *Statement permitted for other prepaid accounts.* A financial institution offering a prepaid account other than a payroll card account or government benefit account may, but is not required to, include a statement in the short form disclosure regarding payment options that is

similar to either of the statements required for payroll card accounts pursuant to § 1005.18(b)(2)(xiv)(A) or government benefit accounts pursuant to § 1005.15(c)(2)(i). For example, a financial institution issuing a prepaid account to disburse student financial aid proceeds may disclose a statement such as the following: “You have several options to receive your financial aid payments: direct deposit to your bank account, direct deposit to your own prepaid card, paper check, or this prepaid card. Tell your school which option you choose.”

*18(b)(2)(xiv)(B) Statement Regarding State-Required Information or Other Fee*

*Discounts and Waivers*

*1. Statement options for state-required information or other fee discounts or waivers.*

Section 1005.18(b)(2)(xiv)(B) permits, but does not require, a financial institution to include in the short form disclosure for payroll card accounts one additional line of text directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. For example, a financial institution might include the following line of text in the short form disclosure: “See below for free ways to access your funds and balance information” and then list below, but on the same page as, the short form disclosure several ways consumers can access their prepaid account funds and balance information for free. Alternatively, the financial institution might direct the consumer to another location for that information, such as by stating “See the cardholder agreement for free ways to access your funds and balance information.” A similar statement is permitted for government benefit accounts pursuant to § 1005.15(c)(2)(ii).

*18(b)(3) Short Form Disclosure of Variable Fees and Third-Party Fees and Prohibition on Disclosure of Finance Charges*

*18(b)(3)(i) General Disclosure of Variable Fees*

1. *Short form disclosure of variable fees.* Section 1005.18(b)(3)(i) requires disclosure in the short form of the highest fee when a fee can vary, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used. For example, a financial institution provides interactive voice response (IVR) customer service for free and provides the first three live agent customer service calls per month for free, after which it charges \$0.50 for each additional live agent customer service call during that month. Pursuant to § 1005.18(b)(2)(vi), the financial institution must disclose both its IVR and live agent customer service fees on the short form disclosure. The financial institution would disclose the IVR fee as \$0 and the live agent customer service fee as \$0.50, followed by an asterisk (or other symbol) linked to a statement explaining that the fee can be lower depending on how and where the prepaid account is used. Except as described in § 1005.18(b)(3)(ii), § 1005.18(b)(3)(i) does not permit a financial institution to describe in the short form disclosure the specific conditions under which a fee may be reduced or waived, but the financial institution could use, for example, any other part of the prepaid account's packaging or other printed materials to disclose that information. The conditions under which a fee may be lower are required to be disclosed in the long form disclosure pursuant to § 1005.18(b)(4)(ii).

*18(b)(3)(ii) Disclosure of Variable Periodic Fee*

1. *Periodic fee variation alternative.* If the amount of the periodic fee disclosed in the short form pursuant to § 1005.18(b)(2)(i) could vary, a financial institution has two alternatives for disclosing the variation, as set forth in § 1005.18(b)(3)(i) and (ii). For example, a financial

institution charges a monthly fee of \$4.95, but waives this fee if a consumer receives direct deposit into the prepaid account or conducts 30 or more transactions during that month. Pursuant to § 1005.18(b)(3)(ii), the financial institution could list its monthly fee of \$4.95 on the short form disclosure followed by a dagger symbol that links to a statement that states, for example, “No monthly fee with direct deposit or 30 transactions per month.” This statement may take up no more than one line of text in the short form disclosure and must be located directly above or in place of the linked statement required by § 1005.18(b)(3)(i). Alternatively, pursuant to § 1005.18(b)(3)(i), the financial institution could list its monthly fee of \$4.95 on the short form disclosure followed by an asterisk that links to a statement that states, “This fee can be lower depending on how and where this card is used.”

*18(b)(3)(iii) Single Disclosure for Like Fees*

1. *Alternative for two-tier fees in the short form disclosure.* Pursuant to § 1005.18(b)(3)(iii), a financial institution may opt to disclose one fee instead of the two fees required by § 1005.18(b)(2)(iii), (v), and (vi) and any two-tier fee required by § 1005.18(b)(2)(ix), when the amount is the same for both fees. The following examples illustrate how to provide a single disclosure for like fees on both the short form disclosure and the multiple service plan short form disclosure:

i. A financial institution charges \$1 for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may list the \$1 fee once under the general heading “ATM withdrawal” required by § 1005.18(b)(2)(iii); in that case, it need not disclose the terms “in-network” or “out-of-network.”

ii. A financial institution using the multiple service plan short form disclosure pursuant to § 1005.18(b)(6)(iii)(B)(2) charges \$1 under each of its service plans for both in-network and out-

of-network automated teller machine withdrawals in the United States. The financial institution may disclose the ATM withdrawal fee on one line, instead of two, using the general heading “ATM withdrawal” required by § 1005.18(b)(2)(iii); in that case, it need not disclose the terms “in-network” or “out-of-network.”

*18(b)(3)(iv) Third-Party Fees in General*

1. *General prohibition on disclosure of third-party fees in the short form.* Section 1005.18(b)(3)(iv) states that a financial institution may not include any third-party fees in a disclosure made pursuant to § 1005.18(b)(2), except for, as provided by § 1005.18(b)(3)(v), the cash reload fee required to be disclosed by § 1005.18(b)(2)(iv). Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed pursuant to § 1005.18(b)(3)(iv). For example, if a program manager performs customer service functions for a financial institution’s prepaid account program, and charges a fee for live agent customer service, that fee must be disclosed pursuant to § 1005.18(b)(2)(iv).

*18(b)(3)(v) Third-Party Cash Reload Fees*

1. *Updating third-party fees.* Section 1005.18(b)(3)(v) provides that a financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure. For example, at the time a financial institution first prints packaging material for its prepaid account program, it discloses on the short form the \$3.99 fee charged by the third-party reload network with which it contracts to provide cash reloads. Ten months later, the third-party reload network raises its cash reload fee to \$4.25. The financial institution is not required to

update its on-package disclosures to reflect the change in the cash reload fee until the financial institution next prints packaging materials for that prepaid account program. With respect to that financial institution's electronic and oral disclosures for that prepaid account program, the financial institution may, but is not required to, update its short form disclosure immediately upon learning of the third-party reload network's change to its cash reload fee. Alternatively, the financial institution may wait to update its electronic and oral short form disclosures to reflect the change in the cash reload fee until it otherwise updates those disclosures.

*18(b)(3)(vi) Prohibition on Disclosure of Finance Charges*

1. *No disclosure of finance charges in the short form.* Section 1005.18(b)(3)(vi) provides that a financial institution may not include in a disclosure made pursuant to § 1005.18(b)(2)(i) through (ix) any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. If a financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature, it must disclose on the short form for purposes of § 1005.18(b)(2)(i) through (vii) and (ix) the amount of the comparable fee rather than the higher fee. *See, e.g.,* § 1005.18(g)(2) and related commentary.

*18(b)(4) Long Form Disclosure Content*

*18(b)(4)(ii) Fees*

1. *Disclosure of all fees.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose in the long form all fees that may be imposed in connection with a prepaid account, not just fees for electronic fund transfers or the right to make transfers. The requirement to disclose

all fees in the long form includes any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 but does not include finance charges imposed on the covered separate credit feature as described in 12 CFR 1026.4(b)(11)(i). See comment 18(b)(7)(i)(B)-2 for guidance on disclosure of finance charges as part of the § 1005.18(b)(4)(ii) fee disclosure in the long form. A financial institution may also be required to include finance charges in the Regulation Z disclosures required pursuant to § 1005.18(b)(4)(vii).

2. *Disclosure of conditions.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose the amount of each fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. For example, if a financial institution charges a cash reload fee, the financial institution must list the amount of the cash reload fee and also specify any circumstances under which a consumer can qualify for a lower fee. Similarly, if a financial institution discloses both a periodic fee and an inactivity fee, it must indicate whether the inactivity fee will be charged in addition to, or instead of, the periodic fee. A financial institution may, but is not required to, also include on the long form disclosure additional information or limitations related to the service or feature for which a fee is charged, such as, for cash reloads, any limit on the amount of cash a consumer may load into the prepaid account in a single transaction or during a particular time period. The general requirement in § 1005.18(b)(4)(ii) does not apply to individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis.

3. *Disclosure of a service or feature without a charge.* Pursuant to § 1005.18(b)(4)(ii), a financial institution may, but is not required to, list in the long form disclosure any service or

feature it provides or offers at no charge to the consumer. For example, a financial institution may list “online bill pay” in its long form disclosure and indicate a fee amount of “\$0” when the financial institution does not charge consumers a fee for that feature. By contrast, where a fee is waived or reduced under certain circumstances or where a service or feature is available for an introductory period without a fee, the financial institution may not list the fee amount as “\$0”. Rather, the financial institution must list the highest fee, accompanied by an explanation of the waived or reduced fee amount and any conditions for the waiver or discount. For example, if a financial institution waives its monthly fee for any consumer who receives direct deposit payments into the prepaid account or conducts 30 or more transactions in a given month, the long form disclosure must list the regular monthly fee amount along with an explanation that the monthly fee is waived if the consumer receives direct deposit or conducts 30 or more transactions each month. Similarly, for an introductory fee, the financial institution would list the highest fee, and explain the introductory fee amount, the duration of the introductory period, and any conditions that apply during the introductory period.

4. *Third-party fees.* Section 1005.18(b)(4)(ii) requires disclosure in the long form of any third-party fee amounts known to the financial institution that may apply. Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed on the long form pursuant to § 1005.18(b)(4)(ii). Also pursuant to § 1005.18(b)(4)(ii), for any third-party fee disclosed, a financial institution may, but is not required to, include either or both a statement that the fee is accurate as of or through a specific date or that the third-party fee is subject to change. For example, a financial institution that contracts with a third-party remote deposit capture service must include in the long form disclosure the amount of the fee known to the financial institution

that is charged by the third party for remote deposit capture services. The financial institution may, but is not required to, also state that the third-party remote deposit capture fee is accurate as of or through a specific date, such as the date the financial institution prints the long form disclosure. The financial institution may also state that the fee is subject to change. Section 1005.18(b)(4)(ii) also provides that, if a third-party fee may apply but the amount of the fee is not known by the financial institution, it must include a statement indicating that a third-party fee may apply without specifying the fee amount. For example, a financial institution that permits out-of-network ATM withdrawals would disclose that, for ATM withdrawals that occur outside the financial institution's network, the ATM operator may charge the consumer a fee for the withdrawal, but the financial institution is not required to disclose the out-of-network ATM operator's fee amount if it does not know the amount of the fee.

*18(b)(4)(iii) Statement Regarding Registration and FDIC or NCUA Insurance*

1. *Statement regarding registration and FDIC or NCUA insurance, including implications thereof.* Section 1005.18(b)(4)(iii) requires that the long form disclosure include the same statement regarding prepaid account registration and FDIC or NCUA insurance eligibility required by § 1005.18(b)(2)(xi) in the short form disclosure, together with an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

i. *Bank disclosure of FDIC insurance.* For example, XYZ Bank offers a prepaid account program for sale at retail locations that is set up to be eligible for FDIC deposit insurance, but does not conduct customer identification and verification before consumers purchase the prepaid account. XYZ Bank may disclose the required statements as “Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ

Bank, an FDIC-insured institution. Once there, your funds are insured up to \$250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See [fdic.gov/deposit/deposits/prepaid.html](https://www.fdic.gov/deposit/deposits/prepaid.html) for details.” Conversely, if XYZ Bank offers another prepaid account program for sale at retail locations for which it conducts customer identification and verification after purchase of the prepaid account, but the program is not set up to be eligible for FDIC insurance, XYZ Bank may disclose the required statements as “Not FDIC insured. Your funds will be held at or transferred to XYZ Bank. If XYZ Bank fails, you are not protected by FDIC deposit insurance and could lose some or all of your money. Register your card for other protections.”

ii. *Credit union disclosure of NCUA insurance.* For example, ABC Credit Union offers a prepaid account program for sale at its own branches that is set up to be eligible for NCUA share insurance, but does not conduct customer identification and verification before consumers purchase the prepaid account. ABC Credit Union may disclose the requirement statements as “Register your card for NCUA insurance, if eligible, and other protections. Your funds will be held at or transferred to ABC Credit Union, an NCUA-insured institution. Once there, if specific share insurance requirements are met and your card is registered, your funds are insured up to \$250,000 by the NCUA in the event ABC Credit Union fails.” See comment 18(b)(2)(xi)-1 for guidance as to when NCUA insurance coverage should be disclosed instead of FDIC insurance coverage.

*18(b)(4)(vii) Regulation Z Disclosures for Overdraft Credit Features*

1. *Long form Regulation Z disclosure of overdraft credit features.* Section 1005.18(b)(4)(vii) requires that the long form include the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), in accordance with the requirements for such disclosures in 12 CFR

1026.60, if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered to a consumer in connection with the prepaid account. If the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), pursuant to § 1005.18(b)(7)(i)(B), such disclosures must appear below the disclosures required by § 1005.18(b)(4)(vi). If the disclosures provided pursuant to Regulation Z, 12 CFR 1026.60(e)(1), are provided in writing, these disclosures must be provided in the form required by 12 CFR 1026.60(a)(2), and to the extent possible, on the same page as the other disclosures required by § 1005.18(b)(4).

*2. Updates to the long form for changes to the Regulation Z disclosures.* Pursuant to § 1005.18(b)(4)(vii), a financial institution is not required to revise the disclosure required by that paragraph to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed on the long form pursuant to § 1005.18(b)(4)(ii). *See comment 18(b)(4)(ii)-1.*

*18(b)(5) Disclosure Requirements Outside the Short Form Disclosure*

*1. Content of disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution, the name of the prepaid account program, and any purchase price or activation fee for the prepaid account be disclosed outside the short form disclosure. A financial institution may, but is not required to, also disclose the name of the program manager or other service provider involved in the prepaid account program.

2. *Location of disclosure.* In addition to setting forth the required content for disclosures outside the short form disclosure, § 1005.18(b)(5) requires that, in a setting other than a retail location, the information required by § 1005.18(b)(5) must be disclosed in close proximity to the short form. For example, if the financial institution provides the short form disclosure online, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form if it appears on the same Web page as the short form disclosure. If the financial institution offers the prepaid account in its own branch locations and provides the short form disclosure on the exterior of its preprinted packaging materials, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it appears on the exterior of the packaging. If the financial institution provides written short form disclosures in a manner other than on preprinted packaging materials, such as on paper, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity if it appears on the same piece of paper as the short form disclosure. If the financial institution provides the short form disclosure orally, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it is provided immediately before or after disclosing the fees and information required pursuant to § 1005.18(b)(2). For prepaid accounts sold in a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), § 1005.18(b)(5) requires the information other than purchase price be disclosed on the exterior of the access device's packaging material. If the purchase price, if any, is not also disclosed on the exterior of the packaging, disclosure of the purchase price on or near the sales rack or display for the packaging material is deemed in close proximity to the short form disclosure.

*18(b)(6) Form of Pre-Acquisition Disclosures*

*18(b)(6)(i) General*

*18(b)(6)(i)(B) Electronic Disclosures*

1. *Providing pre-acquisition disclosures electronically.* Section 1005.18(b)(6)(i)(B) requires electronic delivery of the disclosures required by § 1005.18(b) when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and, among other things, in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. For example, if a consumer is acquiring a prepaid account via a Web site or mobile application, it would be reasonable to expect that a consumer would be able to access the disclosures required by § 1005.18(b) on the first page or via a direct link from the first page of the Web site or mobile application or on the first page that discloses the details about the specific prepaid account program. See comment 18(b)(1)(i)-2 for additional guidance on placement of the short form and long form disclosures on a Web page.

2. *Disclosures responsive to smaller screens.* In accordance with the requirement in § 1005.18(b)(6)(i)(B) that electronic disclosures be provided in a responsive form, electronic disclosures provided pursuant to § 1005.18(b) must be provided in a way that responds to different screen sizes, for example, by stacking elements of the disclosures in a manner that accommodates consumer viewing on smaller screens, while still meeting the other formatting requirements set forth in § 1005.18(b)(7). For example, the disclosures permitted by § 1005.18(b)(2)(xiv)(B) or (b)(3)(ii) must take up no more than one additional line of text in the short form disclosure. If a consumer is acquiring a prepaid account using a mobile device with a screen too small to accommodate these disclosures on one line of text in accordance with the size

requirements set forth in § 1005.18(b)(7)(ii)(B), a financial institution is permitted to display the disclosures permitted by § 1005.18(b)(2)(xiv)(B) and (b)(3)(ii), for example, by stacking those disclosures in a way that responds to smaller screen sizes, while still meeting the other formatting requirements in § 1005.18(b)(7).

3. *Machine-readable text.* Section 1005.18(b)(6)(i)(B) requires that electronic disclosures must be provided using machine-readable text that is accessible via both Web browsers (or mobile applications, as applicable) and screen readers. A disclosure would not be deemed to comply with this requirement if it was not provided in a form that can be read automatically by Internet search engines or other computer systems.

*18(b)(6)(ii) Retainable Form*

1. *Retainable disclosures.* Section 1005.18(b)(6)(ii) requires that, except for disclosures provided orally pursuant to § 1005.18(b)(1)(ii) or (iii), long form disclosures provided via SMS as permitted by § 1005.18(b)(2)(xiii) for a prepaid account sold at retail locations pursuant to the retail location exception in § 1005.18(b)(1)(ii), and the disclosure of a purchase price pursuant to § 1005.18(b)(5) that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), disclosures provided pursuant to § 1005.18(b) must be made in a form that a consumer may keep. For example, a short form disclosure with a tear strip running through it would not be deemed retainable because use of the tear strip to gain access to the prepaid account access device inside the packaging would destroy part of the short form disclosure. Electronic disclosures are deemed retainable if the consumer is able to print, save, and email the disclosures from the Web site or mobile application on which they are displayed.

*18(b)(6)(iii) Tabular Format*

*18(b)(6)(iii)(B) Multiple Service Plans*

*18(b)(6)(iii)(B)(1) Short Form Disclosure for Default Service Plan*

*1. Disclosure of default service plan excludes short-term or promotional service plans.*

Section 1005.18(b)(6)(iii)(B)(1) provides that when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by final § 1005.18(b)(2)(i) through (ix) may be provided in the tabular format described in final § 1005.18(b)(6)(iii)(A) for the service plan in which a consumer is initially enrolled by default upon acquiring a prepaid account. Pursuant to the requirement in § 1005.18(b)(3)(i) to disclose the highest amount a financial institution may impose for a fee disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (ix), a financial institution would not be permitted to disclose any short-term or promotional service plans as a default service plan.

*18(b)(6)(iii)(B)(2) Short Form Disclosure for Multiple Service Plans*

*1. Disclosure of multiple service plans.* The multiple service plan disclosure requirements in § 1005.18(b)(6)(iii)(B)(2) apply when a financial institution offers more than one service plan within a particular prepaid account program, each plan has a different fee schedule, and the financial institution opts not to disclose the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(1). *See* Model Form A-10(e). For example, a financial institution that offers a prepaid account program with one service plan for which a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee may use the short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(2). Similarly, a financial institution that offers a prepaid account program with preferred rates or fees for the prepaid accounts of consumers who also use another

non-prepaid service (e.g., a mobile phone service), often referred to as “loyalty plans,” may also use the short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(2). Pricing variations based on whether a consumer elects to use a specific feature of a prepaid account, such as waiver of the monthly fee for consumers electing to receive direct deposit, does not constitute multiple service plans or a loyalty plan. See comment 18(b)(3)(iii)-1.ii for guidance on providing a single disclosure for like fees for multiple service plan short form disclosures.

*18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures*

*18(b)(7)(i) Grouping*

*18(b)(7)(i)(B) Long Form Disclosure*

1. *Conditions must be in close proximity to fee amount.* Pursuant to § 1005.18(b)(4)(ii), the long form disclosure generally must disclose all fees that may be imposed in connection with a prepaid account, including the amount of the fee and any conditions under which the fee may be imposed, waived, or reduced. Pursuant to § 1005.18(b)(7)(i)(B), text describing the conditions under which a fee may be imposed must appear in the table in the long form disclosure in close proximity to the fee amount disclosed pursuant to § 1005.18(b)(4)(ii). For example, a financial institution is deemed to comply with this requirement if the text describing the conditions is located directly to the right of the fee amount in the long form disclosure, as illustrated in Sample Form A-10(f). See comment 18(b)(6)(i)(B)-2 regarding stacking of electronic disclosures for display on smaller screen sizes.

2. *Category of function for finance charges.* Section 1005.18(b)(7)(i)(B) requires that the information required by § 1005.18(b)(4)(ii) must be generally grouped together and organized under subheadings by the categories of function for which a financial institution may impose the

fee. If any finance charges may be imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, the financial institution may, but is not required to, group all finance charges together under a single subheading. This includes situations where the financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. For example, if a financial institution charges on the prepaid account a \$0.50 per transaction fee for each transaction that accesses funds in the asset feature of a prepaid account and a \$1.25 per transaction fee for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is permitted to disclose the \$0.50 per transaction fee under a general transactional subheading and disclose the additional \$0.75 per transaction fee under a separate subheading together with any other finance charges that may be imposed on the prepaid account.

*18(b)(7)(ii) Prominence and Size*

1. *Minimum type size.* Section 1005.18(b)(7)(ii) sets forth minimum type/pixel size requirements for each element of the disclosures required by § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4). A financial institution may provide disclosures in a type size larger than the required minimum to enhance consumer comprehension in any acquisition scenario, as long as the financial institution complies with the type/pixel size hierarchy set forth in § 1005.18(b)(7)(ii).

2. *“Point” refers to printed disclosures and “pixel” refers to electronic disclosures.*

References in § 1005.18(b)(7)(ii) to “point” size correspond to printed disclosures and references to “pixel” size correspond to disclosures provided via electronic means.

*18(b)(7)(ii)(A) General*

1. *Contrast required between type color and background of disclosures.* Section § 1005.18(b)(7)(ii)(A) requires that all text used to disclose information in the short form or in the long form disclosure pursuant to § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast. A financial institution complies with the color requirements if, for example, it provides the disclosures required by § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) printed in black type on a white background or white type on a black background. Also, pursuant to § 1005.18(b)(7)(ii)(A), the type and color may differ between the short form disclosure and the long form disclosure provided for a particular prepaid account program. For example, a financial institution may use one font/type style for the short form disclosure for a particular prepaid account program and use a different font/type style for the long form disclosure for that same prepaid account program. Similarly, a financial institution may use black type for the short form disclosure for a particular prepaid account program and use blue type for the long form disclosure for that same prepaid account program.

*18(b)(7)(iii) Segregation*

1. *Permitted information outside the short form and long form disclosures.* Section 1005.18(b)(7)(iii) requires that the short form and long form disclosures required by § 1005.18(b)(2) and (4) be segregated from other information and contain only information that is required or permitted for those disclosures by § 1005.18(b). This segregation requirement

does not prohibit the financial institution from providing information elsewhere on the same page as the short form disclosure, such as the information required by § 1005.18(b)(5), additional disclosures required by state law for payroll card accounts, or any other information the financial institution wishes to provide about the prepaid account. Similarly, the segregation requirement does not prohibit a financial institution from providing the long form disclosure on the same page as other disclosures or information, or as part of a larger document, such as the prepaid account agreement. *See also* § 1005.18(b)(1) and (f)(1).

#### *18(b)(8) Terminology of Pre-Acquisition Disclosures*

1. *Consistent terminology.* Section 1005.18(b)(8) requires that fee names and other terms be used consistently within and across the disclosures required by § 1005.18(b). For example, a financial institution may not name the fee required to be disclosed by § 1005.18(b)(2)(vii) an “inactivity fee” in the short form disclosure and a “dormancy fee” in the long form disclosure. However, a financial institution may substitute the term prepaid “account” for the term prepaid “card,” as appropriate, wherever it is used in § 1005.18(b).

#### *18(b)(9) Prepaid Accounts Acquired in Foreign Languages*

1. *Prepaid accounts acquired in foreign languages.* Section 1005.18(b)(9)(i) requires a financial institution to provide the pre-acquisition disclosures required by § 1005.18(b)(2) of this section in a foreign language in certain circumstances.

i. *Examples of situations in which foreign language disclosures are required.* The following examples illustrate situations in which a financial institution must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of that prepaid account:

A. The financial institution principally uses a foreign language on the packaging material of a prepaid account sold in a retail location or distributed at a bank or credit union branch, even though a few words appear in English on the packaging.

B. The financial institution principally uses a foreign language in a television advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account, whether by speaking to a customer service representative or interacting with an interactive voice response (IVR) system.

C. The financial institution principally uses a foreign language in an online advertisement for a prepaid account. That advertisement includes a Web site URL through which a consumer can acquire the prepaid account.

D. The financial institution principally uses a foreign language on a printed advertisement for a prepaid account. That advertisement includes a telephone number or a Web site URL a consumer can call or visit to acquire the prepaid account. The pre-acquisition disclosures must be provided to the consumer in that same foreign language prior to the consumer acquiring the prepaid account.

E. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution and has the option to proceed with the prepaid account acquisition process in a foreign language, whether by speaking to a customer service representative or interacting with an IVR system.

F. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer visits the financial institution's Web site. On that Web site, the

consumer has the option to proceed with the prepaid account acquisition process in a foreign language.

ii. *Examples of situations in which foreign language disclosures are not required.* The following examples illustrate situations in which a financial institution is not required to provide the pre-acquisition disclosures in a foreign language:

A. A consumer visits the financial institution's branch location in person and speaks to an employee in a foreign language about acquiring a prepaid account. The consumer proceeds with the acquisition process in that foreign language.

B. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution's customer service line and speaks to a customer service representative in a foreign language. However, if the customer service representative proceeds with the prepaid account acquisition process over the telephone, the financial institution would be required to provide the pre-acquisition disclosures in that foreign language.

C. The financial institution principally uses a foreign language in an advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account. The consumer calls the telephone number provided on the advertisement and has the option to proceed with the prepaid account acquisition process in English or in a foreign language. The consumer chooses to proceed with the acquisition process in English.

2. *Principally used.* All relevant facts and circumstances determine whether a foreign language is principally used by the financial institution to advertise, solicit, or market under § 1005.18(b)(9). Whether a foreign language is principally used is determined at the packaging

material, advertisement, solicitation, or marketing communication level, not at the prepaid account program level or across the financial institution's activities as a whole. A financial institution that advertises a prepaid account program in multiple languages would evaluate its use of foreign language in each advertisement to determine whether it has principally used a foreign language therein.

3. *Advertise, solicit, or market a prepaid account.* Any commercial message, appearing in any medium, that promotes directly or indirectly the availability of prepaid accounts constitutes advertising, soliciting, or marketing for purposes of § 1005.18(b)(9). Examples illustrating advertising, soliciting, or marketing include, but are not limited to:

- i. Messages in a leaflet, promotional flyer, newspaper, or magazine.
- ii. Electronic messages, such as on a Web site or mobile application.
- iii. Telephone solicitations.
- iv. Solicitations sent to the consumer by mail or email.
- v. Television or radio commercials.

4. *Information in the long form disclosure in English.* Section 1005.18(b)(9)(ii) states that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language. A financial institution may, but is not required to, provide the English version of the information required by § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in § 1005.18(b) for the long form disclosure.

*18(c) Access to Prepaid Account Information*

1. *Posted transactions.* The electronic and written history of the consumer's account transactions provided under § 1005.18(c)(1)(ii) and (iii), respectively, shall reflect transfers once they have been posted to the account. Thus, a financial institution does not need to include transactions that have been authorized but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under § 1005.18(c)(1)(ii) must be made available in a form that the consumer may keep, as required under § 1005.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, a financial institution satisfies the requirement if it provides electronic history on a Web site in a format that is capable of being printed or stored electronically using a web browser.

3. *Written history.* Requests that exceed the requirements of § 1005.18(c)(1)(iii) for providing written account transaction history, and which therefore a financial institution may charge a fee, include the following:

i. A financial institution may assess a fee or charge to a consumer for responding to subsequent requests for written account transaction history made in a single calendar month. For example, if a consumer requests written account transaction history on June 1 and makes another request on August 5, the financial institution may not assess a fee or charge to the consumer for responding to either request. However, if the consumer requests written account transaction history on June 1 and then makes another request on June 15, the financial institution may assess a fee or charge to the consumer for responding to the request made on June 15, as this is the second response in the same month.

ii. If a financial institution maintains more than 24 months of written account transaction history, it may assess a fee or charge to the consumer for providing a written history for transactions occurring more than 24 months preceding the date the financial institution receives the consumer's request, provided the consumer specifically requests the written account transaction history for that time period.

iii. If a financial institution offers a consumer the ability to request automatic mailings of written account transaction history on a monthly or other periodic basis, it may assess a fee or charge for such automatic mailings but not for the written account transaction history requested pursuant to § 1005.18(c)(1)(iii). *See* comment 18(c)-6.

4. *12 months of electronic account transaction history.* Section 1005.18(c)(1)(ii) requires a financial institution to make available at least 12 months of account transaction history electronically. If a prepaid account has been opened for fewer than 12 months, the financial institution need only provide electronic account transaction history pursuant to § 1005.18(c)(1)(ii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution need not make available electronic account transaction history. *See* comment 9(b)-3. If an inactive account becomes active, the financial institution must again make available 12 months of electronic account transaction history.

5. *24 months of written account transaction history.* Section 1005.18(c)(1)(iii) requires a financial institution to provide at least 24 months of account transaction history in writing upon the consumer's request. A financial institution may provide fewer than 24 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been opened for fewer than 24 months, the financial institution need only provide

written account transaction history pursuant to § 1005.18(c)(1)(iii) since the time of account opening. Even if a prepaid account is closed or becomes inactive, the financial institution must continue to provide upon request at least 24 months of written account transaction history preceding the date the request is received. When a prepaid account has been closed or inactive for 24 months or longer, the financial institution is no longer required to make available any written account transaction history pursuant to § 1005.18(c)(1)(iii).

6. *Periodic statement alternative for unverified prepaid accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written history of the consumer's account transactions for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in § 1005.18(e)(3)(i)(A) through (C). If a prepaid account is verified, a financial institution must provide written account transaction history upon the consumer's request that includes the period during which the account was not verified, provided that the period is within the 24-month time frame specified in § 1005.18(c)(1)(iii).

7. *Inclusion of all fees charged.* A financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a

financial institution that follows the periodic statement alternative in § 1005.18(c)(1) must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the electronic history of the consumer's account transactions made available pursuant to § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to § 1005.18(c)(1)(iii).

8. *Summary totals of fees.* Section 1005.18(c)(5) requires a financial institution to disclose a summary total of the amount of all fees assessed by the financial institution against a prepaid account for the prior calendar month and for the calendar year to date.

i. *Generally.* A financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must display the monthly and annual fee totals on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must display the monthly and annual fee totals on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a financial institution that follows the periodic statement alternative in § 1005.18(c)(1) must display the monthly and annual fee totals on the electronic history of the consumer's account transactions made available pursuant to § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to § 1005.18(c)(1)(iii). If a financial institution provides periodic statements pursuant to § 1005.9(b), fee totals may be disclosed for each statement period rather than each calendar month, if different. The summary totals of fees should be net of any fee reversals.

ii. *Third-party fees.* A financial institution may, but is not required to, include third-party fees in its summary totals of fees provided pursuant to § 1005.18(c)(5). For example, a financial institution must include in the summary totals of fees the fee it charges a consumer for using an out-of-network ATM, but it need not include any fee charged by an ATM operator, with whom the financial institution has no relationship, for the consumer's use of that operator's ATM. Similarly, a financial institution need not include in the summary totals of fees the fee charged by a third-party reload network for the service of adding cash to a prepaid account at a point-of-sale terminal. A financial institution may, but is not required to, inform consumers of third-party fees such as by providing a disclaimer to indicate that the summary totals do not include certain third-party fees or to explain when third-party fees may occur or through some other method.

9. *Display of summary totals of fees.* A financial institution may, but is not required to, also include sub-totals of the types of fees that make up the summary totals of fees as required by § 1005.18(c)(5). For example, if a financial institution distinguishes optional fees (*e.g.*, custom card design fees) from fees to use the account, in displaying the summary totals of fees, the financial institution may include sub-totals of those fees, provided the financial institution also presents the combined totals of all fees.

#### *18(e) Modified Limitations on Liability and Error Resolution Requirements*

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the model clause in paragraph (b) of appendix A-7 of this part). Specifically, an institution may disclose to prepaid account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a

written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under § 1005.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a prepaid account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity and to provide access to a Web site or mobile application through which account information can be viewed. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 1005.6 and 1005.11. A consumer is not deemed to have accessed a prepaid account electronically when the consumer receives an automated text message or other automated account alert, or checks the account balance by telephone.

3. *Untimely notice of error.* An institution that provides a transaction history under § 1005.18(c)(1) is not required to comply with the requirements of § 1005.11 for any notice of error from the consumer received more than 60 days after the earlier of the date the consumer electronically accesses the account transaction history or the date the financial institution sends a written account transaction history upon the consumer's request. (Alternatively, as provided in § 1005.18(e)(2)(ii), an institution need not comply with the requirements of § 1005.11 with

respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 1005.6 (including the extension of time limits in § 1005.6(b)(4)) before it may impose any liability on the consumer.

4. *Verification of accounts.* Section 1005.18(e)(3) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution need not extend provisional credit for any prepaid account for which it has not completed its collection of consumer identification and verification process. Consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number.

5. *Financial institution has not completed verification.* Section 1005.18(e)(3)(ii)(A) states that, provided it discloses to the consumer the risks of not registering a prepaid account, a financial institution has not completed its consumer identification and verification process where it has not concluded the process with respect to a particular consumer. For example, a financial institution initiates the identification and verification process by collecting identifying information about a consumer and informing the consumer of the nature of the outstanding information, but despite efforts to obtain additional information from the consumer, the financial institution is unable to conclude the process because of conflicting information about the consumer's current address. As long as the information needed to complete the verification process remains outstanding, the financial institution has not concluded its consumer identification and verification process with respect to that consumer. A financial institution may not delay completing its customer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

6. *Account verification prior to acquisition.* A financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have completed its consumer identification and verification process with respect to that account. For example, a university contracts with a financial institution to disburse financial aid to students via the financial institution's prepaid accounts. To facilitate the accurate disbursement of aid awards, the university provides the financial institution with identifying information about the university's students, whose identities the university had previously verified. The financial institution is deemed to have completed its consumer identification and verification process with respect to those accounts.

*18(f) Disclosure of Fees and Other Information*

1. *Initial disclosure of fees and other information.* Section 1005.18(f)(1) requires a financial institution to include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4). Section 1005.18(b)(4)(ii) requires a financial institution to disclose in its pre-acquisition long form disclosure all fees imposed in connection with a prepaid account. Section 1005.18(b)(4) also contains several specific statements that must be provided as part of the long form disclosure. A financial institution may, but is not required to, disclose the information required by § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in § 1005.18(b) for the long form disclosure as part of its initial disclosures provided pursuant to § 1005.7; a financial institution may choose to do so, however, in order to satisfy other requirements in § 1005.18. See, *e.g.*, § 1005.18(b)(1)(ii) regarding the retail location exception.

2. *Changes to the Regulation Z disclosures for overdraft credit features.* Pursuant to § 1005.18(f)(2), if a financial institution provides pursuant § 1005.18(f)(1) the Regulation Z disclosures required by § 1005.18(b)(4)(vii) for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed pursuant to § 1005.18(b)(4)(ii). See comment 18(b)(4)(ii)-1.

3. *Web site and telephone number on a prepaid account access device.* Section 1005.18(f)(3) requires that the name of a financial institution and the Web site URL and a telephone number that a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. A disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device does not constitute a disclosure on the access device. The financial institution must provide this information to allow consumers to, for example, contact the financial institution to learn about the terms and conditions of the prepaid account, obtain prepaid account balance information, request a copy of transaction history pursuant to § 1005.18(c)(1)(iii) if the financial institution does not provide periodic statements pursuant to § 1005.9(b), or to notify the financial institution when the consumer believes that an unauthorized electronic fund transfer has occurred as required by §§ 1005.7(b)(2) and 1005.18(d)(1)(ii).

*18(g) Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards*

*1. Covered separate credit feature accessible by a hybrid prepaid-credit card.*

Regulation Z, 12 CFR 1026.61, defines the term covered separate credit feature accessible by a hybrid prepaid-credit card.

*2. Asset feature.* i. Regulation Z, 12 CFR 1026.61(a)(5)(ii), defines the term asset feature.

ii. Section 1005.18(g) applies to account terms, conditions, and features that apply to the asset feature of the prepaid account. Section 1005.18(g) does not apply to the account terms, conditions, or features that apply to the covered separate credit feature, regardless of whether it is structured as a separate credit account or as a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account.

*3. Scope of § 1005.18(g).* Under § 1005.18(g), a financial institution may offer different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

*4. Variation in account terms, conditions, or features.* i. Account terms, conditions, and features subject to § 1005.18(g) include, but are not limited to:

A. Interest paid on funds deposited into the asset feature of the prepaid account, if any;

B. Fees or charges imposed on the asset feature of the prepaid account. See comment 18(g)-5 for additional guidance on how § 1005.18(g) applies to fees or charges imposed on the asset feature of the prepaid account.

C. The type of access device provided to the consumer. For instance, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit feature that is accessible by a hybrid prepaid-credit card, while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature;

D. Minimum balance requirements on the asset feature of the prepaid account; or

E. Account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

5. *Fees.* i. With respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, § 1005.18(g) only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program that do not have a such a credit feature. Section 1005.18(g) prohibits a financial institution from imposing a lower fee or charge on prepaid accounts with a covered separate credit feature than the amount of a comparable fee or charge it charges on prepaid accounts in the same prepaid account program without such a credit feature. With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, a fee or charge imposed on the asset feature of the prepaid account generally is a finance charge under

Regulation Z (12 CFR part 1026) to the extent that the amount of the fee or charge exceeds the amount of a comparable fee or charge imposed on prepaid accounts in the same prepaid account program that do not have such a credit feature. *See* Regulation Z, 12 CFR 1026.4(b)(11)(ii).

With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, this comment below provides illustrations of how § 1005.18(g) applies to fees or charges imposed on the asset feature of a prepaid account. The term “non-covered separate credit feature” refers to a separate credit feature that is not accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

ii. The following examples illustrate how § 1005.18(g) applies to per transaction fees for each transaction to access funds available in the asset feature of the prepaid account.

A. Assume that a consumer has selected a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered. For prepaid accounts without such a credit feature, the financial institution charges \$0.50 for each transaction conducted that accesses funds available in the prepaid account. For prepaid accounts with a credit feature, the financial institution also charges \$0.50 on the asset feature for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction that accesses funds in the asset feature of the prepaid account, regardless of whether the prepaid account has a covered separate credit feature accessible by a hybrid prepaid-credit card. Also, with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, the \$0.50 per transaction fee imposed on the asset feature for

each transaction that accesses funds available in the asset feature of the prepaid account is not a finance charge under 12 CFR 1026.4(b)(11)(ii). See Regulation Z, 12 CFR 1026.4(b)(11)(ii) and comment 4(b)(11)(ii)-1, for a discussion of the definition of finance charge with respect to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

B. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a \$1.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g)(2) on prepaid accounts with a covered separate credit feature than it charges on prepaid accounts without such a credit feature. The \$0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a \$0.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than it imposes on prepaid accounts in the same program without such a credit feature.

iii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, with such a credit feature are comparable only to per transaction fees for each transaction to

access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from a source other than the funds in the asset feature are not comparable for purposes of § 1005.18(g). To illustrate:

A. Assume a financial institution charges \$0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Also, assume that the financial institution charges \$0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction it pays, regardless of whether the transaction accesses funds available in the asset feature of the prepaid accounts without a covered separate credit feature, or is paid from credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Also, for purposes of Regulation Z, 12 CFR 1026.4(b)(11)(ii), the \$0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the financial institution charges \$1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. The financial institution is permitted to charge the higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses

funds available in the asset feature of the prepaid accounts without such a credit feature. The \$0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that the financial institution imposes \$0.25 on the asset feature of the prepaid account for each transaction conducted where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than the amount of the comparable fee it imposes on prepaid accounts in the same program without such a credit feature.

D. Assume a financial institution charges \$0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Assume also that the financial institution charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of \$1.75 per transaction) must be compared to the \$0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. The financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The \$1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

E. Assume same facts as in paragraph D above, except that assume the financial institution also charges a load fee of \$1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a \$0.50 per transaction fee. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of \$1.75 per transaction) must be compared to the per transaction fee (*i.e.*, the fee of \$0.50) to access funds available in the asset feature of the prepaid accounts on a prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted by drawing funds into a prepaid account from some other source (*i.e.*, the fee of \$1.25) are not comparable for purposes of § 1005.18(g). The financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction to access funds available in the asset feature of the prepaid accounts without such a credit feature. The \$1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

iv. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the financial institution's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* Regulation Z, 12 CFR 1026.61(a)(2)(i)(B) and comment 61(a)(2)-4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the

course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of § 1005.18(g). To illustrate:

A. Assume a financial institution charges a \$1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.*, the fee of \$1.25) is compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.*, the fee of \$0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.*, the fee of \$1.25) is not comparable for purposes of § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The \$1.25 fee imposed on the asset feature of the prepaid

account with a separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

B. Assume that a financial institution charges a \$1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.*, the fee of \$1.25) is compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.*, the fee of \$0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.*, the fee of \$1.25) is not comparable for purposes of § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The \$1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

*18(h) Effective Date and Special Transition Rules for Disclosure Provisions*

1. *Disclosures not on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(1) provides that, except as provided in § 1005.18(h)(2) and (3),

the disclosure requirements of subpart A, as modified by § 1005.18, apply to prepaid accounts as defined in § 1005.2(b)(3), including government benefit accounts subject to § 1005.15, beginning October 1, 2017. This effective date applies to disclosures made available or provided to consumers electronically, orally by telephone, or in a form other than on pre-printed materials, such as disclosures printed on paper by a financial institution upon a consumer's request.

*2. Disclosures on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(2)(i) provides that the disclosure requirements of subpart A, as modified by § 1005.18, do not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. This includes, for example, disclosures contained on or in packages for prepaid accounts sold at retail, or disclosures for payroll card accounts or government benefit accounts that are distributed to employees or benefits recipients in packages or envelopes. Disclosures and access devices that are manufactured, printed, or otherwise produced on or after October 1, 2017 must comply with all the requirements of subpart A.

*3. Form of notice to consumers.* A financial institution that is required to notify consumers of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii), or that otherwise provides updated initial disclosures as a result of § 1005.18(h)(1) taking effect, may provide the notice or disclosures either as a separate document or included in another notice or mailing that the consumer receives regarding the prepaid account to the extent permitted by other laws and regulations.

4. *Ability to contact the consumer.* A financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(h)(2)(ii) or (iii). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

5. *Closed and inactive prepaid accounts.* The requirements of § 1005.18(h)(2)(iii) do not apply to prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive account becomes active, the financial institution must comply with the applicable portions of those provisions within 30 days of the account becoming active again in order to avail itself of the timing requirements and accommodations set forth in § 1005.18(h)(2)(iii) and (iv).

6. *Account information not available on October 1, 2017.* i. *Electronic and written account transaction history.* A financial institution following the periodic statement alternative in § 1005.18(c) must make available 12 months of electronic account transaction history pursuant to § 1005.18(c)(1)(ii) and must provide 24 months of written account transaction history upon request pursuant to § 1005.18(c)(1)(iii) beginning October 1, 2017. If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to make available or provide the account histories for the required time periods, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in § 1005.18(c)(1)(ii) and (iii). For example, a financial institution that had been retaining only 60 days of account history before October 1, 2017 would provide 60 days of written account transaction history upon a consumer's request on October 1, 2017. If, on November 1, 2017, the consumer made another request for written account transaction history,

the financial institution would be required to provide three months of account history. The financial institution must continue to provide as much account history as it has accumulated at the time of a consumer's request until it has accumulated 24 months of account history. Thus, all financial institutions must fully comply with the electronic account transaction history requirement set forth in § 1005.18(c)(1)(ii) no later than October 1, 2018 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later than October 1, 2019.

ii. *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to § 1005.18(c)(5) beginning October 1, 2017. If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on November 1, 2017 for the month of October, and the year-to-date fee total beginning on October 1, 2017, provided the financial institution discloses that it is displaying the year-to-date total beginning on October 1, 2017 rather than for the entire calendar year 2017. On January 1, 2018, financial institutions must begin displaying year-to-date fee totals for calendar year 2018.

*Section 1005.19—Internet Posting of Prepaid Account Agreements*

*19(a) Definitions*

*19(a)(1) Agreement*

1. *Provisions contained in separate documents included.* Section 1005.19(a)(1) defines a prepaid account agreement, for purposes of § 1005.19, as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement may consist of several documents that, taken together, define the legal obligation between the issuer and consumer.

*19(a)(2) Amends*

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 1005.19(a)(2) provides that any change in the fee information, as defined in § 1005.19(a)(3), is deemed to be substantive. Examples of other changes that generally would be considered substantive include:

i. Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement.

ii. Addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee.

iii. Changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated.

iv. Changes that may affect how the terms of the agreement are construed or applied, such as changes to a choice of law provision.

v. Changes that may affect the parties to whom the agreement may apply, such as changes to provisions regarding authorized users or assignment of the agreement.

vi. Changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number.

vii. Changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program.

viii. Changes to the name of the prepaid account program to which the agreement applies.

2. *Non-substantive changes.* Changes that generally would not be considered substantive include, for example:

i. Correction of typographical errors that do not affect the meaning of any terms of the agreement.

ii. Changes to the issuer's corporate logo or tagline.

iii. Changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins.

iv. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

v. Adding, removing, or modifying a table of contents or index.

vi. Changes to titles, headings, section numbers, or captions.

*19(a)(4) Issuer*

1. *Issuer.* Section 1005.19(a)(4) provides that, for purposes of § 1005.19, issuer or prepaid account issuer means the entity to which a consumer is legally obligated, or would be

legally obligated, under the terms of a prepaid account agreement. For example, Bank X and Bank Y work together to issue prepaid accounts. A consumer that obtains a prepaid account issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states “This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Prepaid Account.” The prepaid account issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the prepaid account through a link on Bank Y’s Web site and the cards prominently feature the Bank Y logo on the front of the card.

2. *Use of third-party service providers.* An issuer has a legal obligation to comply with the requirements of § 1005.19. However, an issuer generally may use a third-party service provider to satisfy its obligations under § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of § 1005.19 on the issuer’s behalf. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition of issuer, Bank is the issuer of these prepaid accounts for purposes of § 1005.19. However, Program Manager services the prepaid accounts, including mailing to consumers account opening materials and making available to consumers their electronic account transaction history, pursuant to § 1005.18(c)(1)(ii). While Bank is responsible for ensuring compliance with § 1005.19, Bank may arrange for Program Manager (or another appropriate third-party service provider) to submit prepaid account agreements to the Bureau under § 1005.19 on Bank’s behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

3. *Third-party Web sites.* As explained in comment 19(c)-2, if an issuer provides consumers with access to specific information about their individual accounts, such as making available to consumers their electronic account transaction history, pursuant to § 1005.18(c)(1)(ii), through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of § 1005.19. Such a Web site is deemed to be maintained by the issuer for purposes of § 1005.19 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of § 1005.19. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition of issuer, Bank is the issuer of these prepaid accounts for purposes of § 1005.19. Bank does not maintain a Web site specifically related to prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic account transaction history, through a Web site maintained by Program Manager. Program Manager designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of § 1005.19. Bank therefore may comply with § 1005.19(c) or (d)(1) by ensuring that agreements offered by Bank are posted on Program Manager's Web site in accordance with § 1005.19(c) or (d)(1), respectively. Bank need not create and maintain a Web site branded and

held out to the public as belonging to Bank in order to comply with § 1005.19(c) and (d) as long as Bank ensures that Program Manager's Web site complies with these sections.

*19(a)(6) Offers to the General Public*

1. *Prepaid accounts offered to limited groups.* An issuer is deemed to offer a prepaid account agreement to the general public even if the issuer markets, solicits applications for, or otherwise makes available prepaid accounts only to a limited group of persons. For example, an issuer may solicit only residents of a specific geographic location for a particular prepaid account; in this case, the agreement would be considered to be offered to the general public. Similarly, agreements for prepaid accounts issued by a credit union are considered to be offered to the general public even though such prepaid accounts are available only to credit union members.

2. *Prepaid account agreements not offered to the general public.* A prepaid account agreement is not offered to the general public when a consumer is offered the agreement only by virtue of the consumer's relationship with a third party. Examples of agreements not offered to the general public include agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs.

*19(a)(7) Open Account*

1. *Open account.* A prepaid account is an open account if (i) there is an outstanding balance in the account; (ii) the consumer can load more funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR

1026.61, in connection with a prepaid account. Under this definition, an account that meets any of these criteria is considered to be open even if the account is deemed inactive by the issuer.

*19(a)(8) Prepaid Account*

1. *Prepaid account.* Section 1005.19(a)(7) provides that, for purposes of § 1005.19, the term prepaid account means a prepaid account as defined in § 1005.2(b)(3). Therefore, for purposes of § 1005.19, a prepaid account includes, among other things, a payroll card account as defined in § 1005.2(b)(3)(iii) and a government benefit account as defined in §§ 1005.2(b)(3)(iii) and 1005.15(a)(2).

*19(b) Submission of Agreements to the Bureau*

*19(b)(1) Submissions on a Rolling Basis*

1. *Rolling submission requirement.* Section 1005.19(b)(1) requires issuers to send submissions to the Bureau no later than 30 days after offering, amending, or ceasing to offer any prepaid account agreement, as described in § 1005.19(b)(1)(ii) through (iv). For example, if on July 1 an issuer offers a prepaid account agreement that has not been previously submitted to the Bureau, it must submit that agreement to the Bureau by July 31 of the same year. Similarly, if on August 1 an issuer amends a prepaid account agreement previously submitted to the Bureau, and the change becomes effective on September 15, the issuer must submit the entire amended agreement as required by § 1005.19(b)(2) by October 15 of the same year. Furthermore, if on December 31 an issuer ceases to offer a prepaid account agreement that was previously submitted to the Bureau, it must submit notification to the Bureau that it is withdrawing that agreement as required by § 1005.19(b)(3) by January 30 of the following year.

2. *Prepaid accounts offered in conjunction with multiple issuers.* If a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit

its own agreement to the Bureau. Alternatively, each issuer may use the program manager to submit the agreement on its behalf, in accordance with comment 19(a)(4)-2.

*19(b)(2) Amended Agreements*

1. *Change-in-terms notices not permissible.* Section 1005.19(b)(2) requires that if an agreement previously submitted to the Bureau is amended, the issuer must submit the entire revised agreement to the Bureau. An issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. Amendments must be integrated into the text of the agreement (or the optional addendum described in § 1005.19(b)(6)), not provided as separate riders.

*19(b)(3) Withdrawal of Agreements No Longer Offered*

1. *No longer offers agreement.* Section 1005.19(b)(3) provides that, if an issuer no longer offers an agreement that was previously submitted to the Bureau, the issuer must notify the Bureau no later than 30 days after the issuer ceases to offer the agreement that it is withdrawing the agreement. An issuer no longer offers an agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement.

*19(b)(4) De Minimis Exception*

1. *Relationship to other exceptions.* The de minimis exception in § 1005.19(b)(4) is distinct from the product testing exception under § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid

account programs with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

2. *De minimis exception.* Under § 1005.19(b)(4), an issuer is not required to submit any prepaid account agreements to the Bureau under § 1005.19(b)(1) if the issuer has fewer than 3,000 open prepaid accounts. For example, an issuer has 2,000 open prepaid accounts. The issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception.

3. *Date for determining whether issuer qualifies.* Whether an issuer qualifies for the de minimis exception is determined as of the last day of each calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of December 31, the last day of the calendar quarter. As of January 30, the issuer has 3,100 open prepaid accounts. As of March 31, the last day of the following calendar quarter, the issuer has 2,700 open prepaid accounts. Even though the issuer had 3,100 open prepaid accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open prepaid accounts was less than 3,000 as of March 31. The issuer therefore is not required to submit any agreements to the Bureau under § 1005.19(b)(1).

4. *Date for determining whether issuer ceases to qualify.* Whether an issuer ceases to qualify for the de minimis exception under § 1005.19(b)(4) is determined as of the last day of the calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of June 30, the last day of the calendar quarter. The issuer is not required to submit any agreements to the Bureau under § 1005.19(b) by July 30 (the 30th day after June 30) because the issuer qualifies for the de minimis exception. As of July 15, the issuer has 3,100 open prepaid accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis

exception under § 1005.19(b)(4) is determined as of the last day of the calendar quarter. The issuer still has 3,100 open prepaid accounts as of September 30. Because the issuer had 3,100 open prepaid accounts as of September 30, the issuer ceases to qualify for the de minimis exception and must submit its agreements to the Bureau by October 30, the 30th day after the last day of the calendar quarter.

5. *Option to withdraw agreements.* Section 1005.19(b)(4) provides that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make rolling submissions to the Bureau as required by § 1005.19(b)(1) until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. For example, an issuer offers three agreements and has 3,001 open accounts as of December 31. The issuer submitted each of the three agreements to the Bureau by January 30 as required under § 1005.19(b). As of March 31, the issuer has only 2,999 open accounts. The issuer has two options. First, the issuer may notify the Bureau that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Bureau, the issuer is no longer required to make rolling submissions to the Bureau under § 1005.19(b) unless it later ceases to qualify for the de minimis exception. Alternatively, the issuer may choose not to notify the Bureau that it is withdrawing its agreements. In this case, the issuer must continue making rolling submissions to the Bureau as required by § 1005.19(b). The issuer might choose not to withdraw its agreements if, for example, the issuer believes it will likely cease to qualify for the de minimis exception again in the near future.

*19(b)(6) Form and Content of Agreements Submitted to the Bureau*

1. *Agreements currently in effect.* Agreements submitted to the Bureau must contain the provisions of the agreement and fee information currently in effect. For example, on June 1, an

issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers. The change in that fee will become effective on August 1. The issuer must submit and post the amended agreement with the decreased out-of-network ATM withdrawal fee to the Bureau by August 31 as required by § 1005.19(b)(2) and (c).

*2. Fee information variations do not constitute separate agreements.* Fee information that may vary from one consumer to another depending on the consumer's state of residence or other factors must be disclosed by setting forth all the possible variations. For example, an issuer offers a prepaid account with a monthly fee of \$4.95 or \$0 if the consumer regularly receives direct deposit to the prepaid account. The issuer must submit to the Bureau one agreement with fee information listing the possible monthly fees of \$4.95 or \$0 and including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

*3. Integrated agreement requirement.* Issuers may not submit provisions of the agreement or fee information in the form of change-in-terms notices or riders. The only addendum that may be submitted as part of an agreement is the optional fee information addendum described in § 1005.19(b)(6)(ii). Changes in provisions or fee information must be integrated into the body of the agreement or the optional fee information addendum described in § 1005.19(b)(6)(ii). For example, it would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document on January 1 and subsequently submit a change-in-terms notice or an addendum to indicate amendments to the previously submitted agreement. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and a single optional addendum displaying variations in fee information.

*19(c) Posting of Agreements Offered to the General Public*

1. *Requirement applies only to agreements offered to the general public.* An issuer is only required to post and maintain on its publicly available Web site the prepaid account agreements that the issuer offers to the general public as defined by § 1005.19(a)(6) and must submit to the Bureau under § 1005.19(b). For agreements not offered to the general public, the issuer is not required to post and maintain the agreements on its publicly available Web site, but is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d). This posting requirement is distinct from that of § 1005.7, as modified by § 1005.18(f)(1), which requires an issuer to provide certain disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account, and the change-in-terms notice required under § 1005.8(a), as modified by § 1005.18(f)(2). This requirement is also distinct from that of § 1005.18(b)(4), which requires issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, may require posting of the long form disclosure on the issuer's Web site. Additionally, if an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under § 1005.19(b)(4) or the agreement qualifies for the product testing exception under § 1005.19(b)(5), the issuer is not required to post and maintain any agreements on its Web site under § 1005.19(c). The issuer is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d) by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the consumer's request.

*2. Issuers that do not otherwise maintain Web sites.* If an issuer offers an agreement to the general public as defined by § 1005.19(a)(6), that issuer must post that agreement on a publicly available Web site it maintains. If an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of § 1005.19. Such a third-party Web site is deemed to be maintained by the issuer for purposes of § 1005.19(c) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party Web site can comply with § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with § 1005.19(c).

*19(d) Agreements for All Open Accounts*

*1. Requirement applies to all open accounts.* The requirement to provide access to prepaid account agreements under § 1005.19(d) applies to all open prepaid accounts. For example, an issuer that is not required to post agreements on its Web site because it qualifies for the de minimis exception under § 1005.19(b)(4) would still be required to provide consumers with access to their specific agreements under § 1005.19(d). Similarly, an agreement that is no longer offered would not be required to be posted on the issuer's Web site, but would still need to be provided to the consumer to whom it applies under § 1005.19(d). Additionally, an issuer is not required to post on its Web site agreements not offered to the general public, such as

agreements for payroll card accounts and government benefit accounts, as explained in comment 19(c)-1, but the issuer must still provide consumers with access to their specific agreements under § 1005.19(d).

2. *Agreements sent to consumers.* Section 1005.19(d)(1)(ii) provides, in part, that if an issuer makes an agreement available upon request, the issuer must send the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request. If the issuer mails the agreement, the agreement must be posted in the mail five business days after the issuer receives the consumer's request. If the issuer hand delivers or provides the agreement electronically, the agreement must be hand delivered or provided electronically five business days after the issuer receives the consumer's request. For example, if the issuer emails the agreement, the email with the attached agreement must be sent no later than five business days after the issuer receives the consumer's request.

*19(f) Effective Date*

1. *Delayed effective date for the agreement submission requirement.* Section 1005.19(f)(2) provides that the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to § 1005.19(b) is delayed until October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. After October 1, 2018, issuers must submit on a rolling basis prepaid account agreements or notifications of withdrawn agreements to the Bureau within 30 days after offering, amending, or ceasing to offer the agreements.

2. *Continuing obligation to post and provide consumer agreements.* Pursuant to § 1005.19(f)(3), during the delayed agreement submission period set forth in § 1005.19(f)(2), an issuer must post agreements on its Web site as required by § 1005.19(c) and (d)(1)(i) using the

agreements it would have otherwise submitted to the Bureau under § 1005.19(b) and must provide a copy of the consumer's agreement to the consumer upon request pursuant to § 1005.19(d)(1)(ii). For purposes of § 1005.19(c)(2) and (d)(2), agreements posted by an issuer on its Web site must conform to the form and content requirements set forth in § 1005.19(b)(6). For purposes of § 1005.19(c)(3) and (d)(2)(v), amended agreements must be posted to the issuer's Web site no later than 30 days after the change becomes effective as required by § 1005.19(b)(2).

\* \* \* \* \*

*Section 1005.30—Remittance Transfer Definitions*

\* \* \* \* \*

*30(c) Designated Recipient*

\* \* \* \* \*

2. \* \* \*

ii. For transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in a location physically outside of any State depends on whether the provider at the time the transfer is requested has information indicating that funds are to be received in a foreign country. See comments 30(c)-2.iii and 30(e)-3.i.C for illustrations of when a remittance transfer provider would have such information and when the provider would not. For transfers to all other accounts, whether funds are to be received at a location physically outside of any State depends on where the account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Further, for these accounts, if they are located on a U.S.

military installation that is physically located in a foreign country, then these accounts are located in a State.

\* \* \* \* \*

*30(g) Sender*

1. *Determining whether a consumer is located in a State.* Under § 1005.30(g), the definition of “sender” means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. A sender located on a U.S. military installation that is physically located in a foreign country is located in a State. For transfers sent from a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), whether the consumer is located in a State depends on the location of the consumer. If the provider does not know where the consumer is at the time the consumer requests the transfer from the consumer’s prepaid account (other than a prepaid account that is a payroll card account or a government benefit account) the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer. For transfers from all other accounts belonging to a consumer, whether a consumer is located in a State depends on where the consumer’s account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of “sender” in § 1005.30(g), notwithstanding comment 3(a)-3. For these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then these accounts are located in a State. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State

based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

\* \* \* \* \*

3. *Non-consumer accounts.* A transfer that is requested to be sent from an account that was not established primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account held by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g). Additionally, a transfer that is requested to be sent from an account held by a financial institution under a *bona fide* trust agreement pursuant to § 1005.2(b)(2) is not requested primarily for personal, family, or household purposes, and a consumer requesting a transfer from such an account is therefore not a sender under § 1005.30(g).

\* \* \* \* \*

*Appendix A—Model Disclosure Clauses and Forms*

\* \* \* \* \*

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of §§ 1005.5(b)(2) and (3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(c), 1005.15(e)(1) and (2), 1005.18(b)(2), (3), (6) and (7), 1005.18(d)(1) and (2), 1005.31, 1005.32 and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability

under sections 916 and 917 of the act provided the clauses accurately reflect the institution’s EFT services and the provider’s remittance transfer services, respectively.

3. *Altering the clauses.* Unless otherwise expressly addressed in the rule, the following applies. Financial institutions may use clauses of their own design in conjunction with the Bureau’s model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word “card,” deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

\* \* \* \* \*

## **PART 1026—TRUTH IN LENDING (REGULATION Z)**

13. The authority citation for part 1026 continues to read as follows:

**Authority:** 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

### **Subpart A—General**

14. Section 1026.2 is amended by revising paragraphs (a)(15)(i), (a)(15)(ii)(A), and (a)(15)(ii)(B), and by adding paragraphs (a)(15)(ii)(C) and (a)(15)(iv) to read as follows:

#### **§ 1026.2 Definitions and rules of construction.**

(a) \* \* \*

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit. The term credit card includes a hybrid prepaid-credit card as defined in § 1026.61.

(ii) \* \* \*

(A) A home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card;

(B) An overdraft line of credit that is accessed by a debit card; or

(C) An overdraft line of credit that is accessed by an account number, except if the account number is a hybrid prepaid-credit card that can access a covered separate credit feature as defined in § 1026.61.

\* \* \* \* \*

(iv) *Debit card* means any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account as defined in § 1026.61. The term *debit card* does not include a prepaid card as defined in § 1026.61.

\* \* \* \* \*

15. Section 1026.4 is amended by revising paragraphs (b)(2), (c)(3), and (c)(4), and by adding paragraph (b)(11) to read as follows:

**§ 1026.4 Finance charge.**

\* \* \* \* \*

(b) \* \* \*

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account (except a prepaid account as defined in § 1026.61) to the extent that the charge exceeds the charge for a similar account without a credit feature.

\* \* \* \* \*

(11) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61:

(i) Any fee or charge described in paragraphs (b)(1) through (10) of this section imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account.

(ii) Any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(c) \* \* \*

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. This paragraph does not apply to credit offered in connection with a prepaid account as defined in § 1026.61.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. This paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

\* \* \* \* \*

**Subpart B—Open-End Credit**

\* \* \* \* \*

16. Section 1026.6 is amended by adding paragraphs (b)(3)(iii)(D) and (E) to read as follows:

**§ 1026.6 Account-opening disclosures.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(D) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(E) With regard to a non-covered separate credit feature accessible by a prepaid card as defined in § 1026.61, any fee or charge imposed on the asset feature of the prepaid account.

\* \* \* \* \*

17. Section 1026.7 is amended by revising paragraph (b)(11)(ii)(A) to read as follows:

**§ 1026.7 Periodic statement.**

\* \* \* \* \*

(b) \* \* \*

(11) \* \* \*

(ii) \* \* \*

(A) Periodic statements provided solely for charge card accounts, other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in § 1026.61; and

\* \* \* \* \*

18. Section 1026.12 is amended by revising paragraph (d) to read as follows:

**§ 1026.12 Special credit card provisions.**

\* \* \* \* \*

(d) *Offsets by card issuer prohibited*—(1) *General rule.* A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder’s indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) *Rights of the card issuer.* This paragraph (d) does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) *Periodic deductions.* (i) This paragraph (d) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder’s credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

(ii) With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, for purposes of this paragraph (d)(3), “periodically” means no more

frequently than once per calendar month, such as on a monthly due date disclosed on the applicable periodic statement in accordance with the requirements of § 1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer.

\* \* \* \* \*

19. Section 1026.13 is amended by revising paragraph (i) to read as follows:

**§ 1026.13 Billing error resolution.**

\* \* \* \* \*

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* A creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section if:

(1) Except with respect to a prepaid account as defined in § 1026.61, an extension of credit that is incident to an electronic fund transfer occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; or

(2) With regard to a covered separate credit feature and an asset feature of a prepaid account where both are accessible by a hybrid prepaid-credit card as defined in § 1026.61, an extension of credit that is incident to an electronic fund transfer occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction.

\* \* \* \* \*

**Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students**

\* \* \* \* \*

20. Section 1026.52 is amended by revising the heading for paragraph (a) to read as follows:

**§ 1026.52 Limitations on fees.**

(a) Limitations during first year after account opening—\* \* \*

\* \* \* \* \*

21. Section 1026.60 is amended by revising paragraph (a)(5)(iv) and paragraph (b) introductory text to read as follows:

**§ 1026.60 Credit and charge card applications and solicitations.**

(a) \* \* \*

(5) \* \* \*

(iv) Lines of credit accessed solely by account numbers except for a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card as defined in § 1026.61;

\* \* \* \* \*

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1), or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section. With respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-

credit card as defined in § 1026.61, a charge card issuer also shall disclose the applicable items in paragraphs (b)(3), (13), and (14) of this section.

\* \* \* \* \*

22. Section 1026.61 is added to read as follows:

**§ 1026.61 Hybrid prepaid-credit cards.**

(a) *Hybrid prepaid-credit card—(1) In general.* (i) Credit offered in connection with a prepaid account is subject to this section and this regulation as specified below.

(ii) For purposes of this regulation, except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in paragraph (a)(2)(i) of this section when it can access credit from that credit feature, or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in paragraph (a)(3) of this section when it can access credit from that credit feature. A hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to those credit features.

(iii) A prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of this regulation if the only credit offered in connection with the prepaid account meets the conditions set forth in paragraph (a)(4) of this section.

(2) *Prepaid card can access credit from a covered separate credit feature—(i) Covered separate credit feature.* (A) A separate credit feature that can be accessed by a hybrid prepaid-credit card as described in this paragraph (a)(2)(i) is defined as a covered separate credit feature. A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied:

(1) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and

(2) The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

(B) A separate credit feature that meets the conditions set forth in paragraph (a)(2)(i)(A) of this section is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(ii) *Non-covered separate credit feature.* A separate credit feature that does not meet the two conditions set forth in paragraph (a)(2)(i) of this section is defined as a non-covered separate credit feature. A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in paragraph (a)(2)(i) of this section. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it may be subject to this regulation depending on its own terms and conditions, independent of the connection to the prepaid account.

(3) *Prepaid card can access credit extended through a negative balance on the asset feature of the prepaid account—(i) In general.* Except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card when it is a single device that can be used

from time to time to access credit extended through a negative balance on the asset feature of the prepaid account.

(ii) *Negative asset balances.* Notwithstanding paragraph (a)(3)(i) of this section with regard to coverage under this regulation, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates paragraph (b) of this section. A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card as described in paragraph (a)(4) of this section.

(4) *Exception.* A prepaid card is not a hybrid prepaid-credit card and is not a credit card for purposes of this regulation where:

(i) The prepaid card cannot access credit from a covered separate credit feature as described in paragraph (a)(2)(i) of this section; and

(ii) The prepaid card only can access credit extended through a negative balance on the asset feature of the prepaid account where both paragraphs (a)(4)(ii)(A) and (B) of this section are satisfied.

(A) The prepaid account issuer has an established policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction, or declining to authorize any such transactions except in one or more of the following circumstances:

(1) The amount of the transaction will not cause the asset feature balance to become negative by more than \$10 at the time of the authorization; or

(2) In cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the amount of the transaction will not cause the asset feature balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

(B) The following fees or charges are not imposed on the asset feature of the prepaid account:

(1) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This paragraph does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available;

(2) Any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or

(3) Any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

(C) A prepaid account issuer may still satisfy the exception in paragraph (a)(4) of this section even if it debits fees or charges from the asset feature when there are insufficient or

unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in paragraph (a)(4)(ii)(B) of this section.

(5) *Definitions.* For purposes of this section and other provisions in the regulation that relate to hybrid prepaid-credit cards:

(i) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(ii) *Asset feature* means an asset account that is a prepaid account, or an asset subaccount of a prepaid account.

(iii) *Business partner* means a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate.

(iv) *Credit feature* means a separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card.

(v) *Prepaid account* means a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3).

(vi) *Prepaid account issuer* means a financial institution as defined in Regulation E, 12 CFR 1005.2(i), with respect to a prepaid account.

(vii) *Prepaid card* means any card, code, or other device that can be used to access a prepaid account.

(viii) *Separate credit feature* means a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account.

(b) *Structure of credit features accessible by hybrid prepaid-credit cards.* With respect to a credit feature that is accessible by a hybrid prepaid-credit card, a card issuer shall not structure the credit feature as a negative balance on the asset feature of a prepaid account. A card issuer shall structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i).

(c) *Timing requirement for credit card solicitation or application with respect to hybrid prepaid-credit cards.* (1) With respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered:

(i) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card;

(ii) Make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or

(iii) Allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

(2) For purposes of paragraph (c) of this section, the term *solicitation* has the meaning set forth in § 1026.60(a)(1).

\* \* \* \* \*

23. In Supplement I to part 1026—Official Interpretations:

a. Under *Section 1026.2—Definitions and Rules of Construction*:

i. In subsection *2(a)(7) Card Issuer*, paragraph 1 is revised and paragraph 2 is added.

ii. In *subsection 2(a)(14) Credit*, paragraph 3 is added.

iii. In *subsection Paragraph 2(a)(15)*:

A. Paragraph 2.i.B is revised.

B. Paragraph 2.i.F is added.

C. Paragraph 2.ii.C is revised.

D. Paragraph 2.ii.D is added.

E. Paragraphs 3 and 4 are revised.

iv. In subsection *Paragraph 2(a)(17)(i)*, paragraph 8 is added.

v. In subsection *Paragraph 2(a)(17)(iii)*, paragraph 2 is added.

vi. In subsection *2(a)(20) Open-End Credit*, paragraphs 2 and 4 are revised.

b. Under *Section 1026.4—Finance Charge*:

i. In subsection *4(a) Definition*, paragraph 4 introductory text is revised.

ii. In subsection *Paragraph 4(b)(2)*, paragraph 1 is revised and paragraph 2 is added.

iii. Subsection *Paragraph 4(b)(11)* is added.

iv. In subsection *Paragraph 4(c)(3)*, paragraph 1 is revised and paragraph 2 is added.

iv. In subsection *Paragraph 4(c)(4)*, paragraph 1 is revised and paragraph 3 is added.

c. Under *Section 1026.5—General Disclosure Requirements*:

- i. In subsection 5(b)(2)(ii) *Timing Requirements*, paragraph 4.i is revised.
- d. Under *Section 1026.6—Account-Opening Disclosures*:
  - i. In subsection 6(b)(2) *Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans*, paragraphs 1 and 2 are added.
  - ii. Subheading *Paragraph 6(b)(3)(iii)* and subsections *Paragraph 6(b)(3)(iii)(D)* and *Paragraph 6(b)(3)(iii)(E)* are added.
- e. Under *Section 1026.7—Periodic Statement*:
  - i. In subsection 7(b)(13) *Format Requirements*, paragraph 1 is revised.
- f. Under *Section 1026.8—Identifying Transactions on Periodic Statements*:
  - i. In subsection 8(a) *Sale Credit*, paragraph 1 introductory text is revised and paragraph 9 is added.
  - ii. In subsection 8(b) *Nonsale credit*, the subheading is revised, paragraph 1.ii is revised, paragraphs 1.v and 1.vi are added, and 2 introductory text is revised.
- g. Under *Section 1026.10—Payments*:
  - i. In subsection 10(a) *General Rule.*, the subheading is revised, and paragraph 2.ii is revised.
  - ii. In subsection 10(b) *Specific Requirements for Payments*, paragraph 1 is revised.
- h. Under *Section 1026.12—Special Credit Card Provisions*:
  - i. In subsection *Paragraph 12(a)(1)*, paragraphs 2 and 7 are revised.
  - ii. In subsection *Paragraph 12(a)(2)*, paragraph 6.i is revised, paragraph 6.ii is redesignated as 6.iii, and new paragraph 6.ii is added.
  - iii. In subsection 12(c) *Right of Cardholder to Assert Claims or Defenses Against Card Issuer*, paragraph 5 is added.

iv. In subsection *12(c)(1) General Rule*, paragraphs 1 introductory text and 1.ii are revised.

v. In subsection *12(d) Offsets by Card Issuer Prohibited*, paragraph 1 is added.

vi. In subsection *Paragraph 12(d)(1)*, paragraph 2 is revised.

vii. In subsection *Paragraph 12(d)(2)*, paragraph 1.i is revised, paragraph 1.ii is redesignated as 1.iv, and new paragraph 1.ii and paragraph 1.iii are added.

viii. In subsection *Paragraph 12(d)(3)*, paragraph 1.iii is revised and paragraphs 2.iii and 3 are added.

i. Under *Section 1026.13—Billing Error Resolution*:

i. In subsection *13(i) Relation to Electronic Fund Transfer Act and Regulation E*, paragraphs 2, 3 introductory text, 3.i, and 3.iv are revised and paragraphs 4 and 5 is added.

j. Under *Section 1026.52—Limitations on Fees*:

i. In subsection *52(a)(1) General rule*, paragraph 1 introductory text is revised and paragraphs 1.iii and 1.iv are added.

ii. In subsection *52(a)(2) Fees Not Subject to Limitations*, paragraph 1 introductory text is revised, paragraphs 2 and 3 are redesignated as paragraphs 4 and 5, and new paragraphs 2 and 3 are added.

iii. In subsection *52(b) Limitations on Penalty Fees*, paragraphs 3 and 4 are added.

iv. In subsection *52(b)(2)(i) Fees That Exceed Dollar Amount Associated with Violation*, paragraph 7 is added.

k. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges*:

i. In subsection *55(a) General Rule*, paragraphs 3 and 4 are added.

1. Under *Section 1026.57—Reporting and Marketing Rules for College Student Open-End*

*Credit:*

- i. In subsection *57(a)(1) College student credit card*, paragraph 1 is revised.
- ii. In subsection *57(a)(5) College credit card agreement*, paragraph 1 is revised.
- iii. In subsection *57(b) Public disclosure of agreements*, paragraph 3 is added.
- iv. In subsection *57(c) Prohibited inducements*, paragraph 7 is added.
- m. Under *Section 1026.60—Credit and Charge Card Applications and Solicitations:*
  - i. Paragraph 1 is revised.
  - ii. In subsection *60(b) Required Disclosures*, paragraphs 3 and 4 are added.
  - iii. In subsection *60(b)(4) Transaction Charges*, paragraph 3 is added.
  - iv. In subsection *60(b)(8) Cash Advance Fee*, paragraph 4 is added.
- n. *Section 1026.61—Hybrid Prepaid-Credit Cards* is added.

The revisions, additions, and removals read as follows:

**Supplement I to Part 1026—Official Interpretations**

\* \* \* \* \*

*Subpart A—General*

\* \* \* \* \*

*Section 1026.2—Definitions and Rules of Construction*

\* \* \* \* \*

*2(a)(7) Card Issuer*

1. *Agent.* i. An agent of a card issuer is considered a card issuer. Except as provided in comment 2(a)(7)-1.ii, because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services

relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

ii. Under § 1026.2(a)(7), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer as those terms are defined in § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

2. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)-5.iii and 61(a)(4)-1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

\* \* \* \* \*

*2(a)(14) Credit*

\* \* \* \* \*

3. *Transactions on the asset features of prepaid accounts when there are insufficient or unavailable funds.* Credit includes authorization of a transaction on the asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This

includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. See § 1026.61 and related commentary on the applicability of this regulation to credit that is extended in connection with a prepaid account.

*Paragraph 2(a)(15)*

\* \* \* \* \*

2. \* \* \*

i. \* \* \*

B. A debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). See comment 2(a)(15)-2.ii.C for guidance on whether a debit card that is solely an account number is a credit card.

\* \* \* \* \*

F. A prepaid card that is a hybrid prepaid-credit card as defined in § 1026.61.

ii. \* \* \*

C. An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services or as provided in § 1026.61 with respect to a hybrid prepaid-credit card. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to

purchase goods or services on the Internet), the account number is a credit card for purposes of § 1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 1026.2(a)(15)(i).

D. A prepaid card that is not a hybrid prepaid-credit card as defined in § 1026.61.

3. *Charge card.* i. Charge cards are credit cards where no periodic rate is used to compute the finance charge. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term *charge card* is, however, distinguished from credit card or credit card account under an open-end (not home-secured) consumer credit plan in §§ 1026.6(b)(2)(xiv), 1026.7(b)(11) (except as described in comment 2(a)(15)-3.ii below), 1026.7(b)(12), 1026.9(e), 1026.9(f), 1026.28(d), 1026.52(b)(1)(ii)(C), 1026.60, and appendices G-10 through G-13.

ii. A hybrid prepaid-credit card as defined in § 1026.61 is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. Unlike other charge card accounts, the requirements in § 1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under § 1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to

compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

4. *Credit card account under an open-end (not home-secured) consumer credit plan.* i.

An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 1026.2(a)(15)(ii) if:

A. The account is accessed by a credit card, as defined in § 1026.2(a)(15)(i); and

B. The account is not excluded under § 1026.2(a)(15)(ii)(A) through (C).

ii. As noted in § 1026.2(a)(15)(ii)(C), the exclusion from credit card account under an open-end (not home-secured) consumer credit plan provided by that paragraph for an overdraft line of credit that is accessed by an account number does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card (including a hybrid prepaid-credit card that is solely an account number) as defined in § 1026.61.

\* \* \* \* \*

*2(a)(17) Creditor*

\* \* \* \* \*

*Paragraph 2(a)(17)(i)*

\* \* \* \* \*

8. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)-5.iii and 61(a)(4)-1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

\* \* \* \* \*

*Paragraph 2(a)(17)(iii)*

\* \* \* \* \*

2. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)-5.iii and 61(a)(4)-1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

\* \* \* \* \*

*2(a)(20) Open-End Credit*

\* \* \* \* \*

2. *Existence of a plan.* i. The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer.

ii. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely extends credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, and the consumer is obligated contractually to repay those credit

transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. See § 1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

iii. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

\* \* \* \* \*

4. *Finance charge on an outstanding balance.* i. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer

actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

ii. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, any service, transaction, activity, or carrying charges imposed on the covered separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card, generally is a finance charge. *See* § 1026.4(a) and (b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature accessible by a hybrid prepaid-credit card, any service, transaction, activity, or carrying charges that are finance charges under § 1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance as described in § 1026.2(a)(20) if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated.

\* \* \* \* \*

*Section 1026.4—Finance Charge*

*4(a) Definition*

\* \* \* \* \*

4. *Treatment of transaction fees on credit card plans.* Except with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a

hybrid prepaid-credit card as defined in § 1026.61, which are addressed in more detail in §§ 1026.4(b)(11) and 1026.61, any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

\* \* \* \* \*

*4(b) Examples of Finance Charges*

\* \* \* \* \*

*Paragraph 4(b)(2)*

1. *Checking or transaction account charges.* A charge imposed in connection with a credit feature on a checking or transaction account (other than a prepaid account as defined in § 1026.61) is a finance charge under § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 1026.4(b)(2). To illustrate:

i. A \$5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a \$3 service charge is imposed on an account without a credit feature; the \$2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 1026.4(c)(4).)

ii. A \$5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a \$25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the \$5 charge is not a finance charge.

2. *Prepaid accounts.* Fee or charges related to credit offered in connection with prepaid accounts as defined in § 1026.61 are discussed in §§ 1026.4(b)(11) and 1026.61 and related commentary.

\* \* \* \* \*

*Paragraph 4(b)(11)*

1. *Credit in connection with a prepaid card.* Section 1026.61 governs credit offered in connection with a prepaid card.

i. A separate credit feature that meets the conditions of § 1026.61(a)(2)(i) is defined as a covered separate credit feature accessible by a hybrid prepaid-credit card. *See* § 1026.61(a)(2)(i) and comment 61(a)(2)-4. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. The rules for classification of fees or charges as finance charges in connection with this account structure are specified in § 1026.4(b)(11) and related commentary.

ii. If a prepaid card can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii), the card is not a hybrid prepaid-credit card with respect to that credit feature. In that case:

A. Section 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in § 1026.4 determine whether these fees or charges are finance charges; and

B. Fees or charges on the asset feature of the prepaid account are not finance charges under § 1026.4 with respect to the non-covered separate credit feature. *See* comment 61(a)(2)-5.iii for guidance on the applicability of this regulation in connection with non-covered credit features accessible by prepaid cards.

iii. If the prepaid card is not a hybrid prepaid-credit card because the only credit extended through a negative balance on the asset feature of the prepaid account is pursuant to § 1026.61(a)(4), fees charged on the asset feature of the prepaid account in accordance with § 1026.61(a)(4)(ii)(B) are not finance charges.

*Paragraph 4(b)(11)(i)*

1. *Transaction fees imposed on the covered separate credit feature.* Consistent with comment 4(a)-4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. Transaction charges that are imposed on the asset feature of a prepaid account are subject to § 1026.4(b)(11)(ii) and related commentary, instead of § 1026.4(b)(11)(i).

*Paragraph 4(b)(11)(ii)*

1. *Fees or charges imposed on the asset feature of a prepaid account.* i. Under § 1026.4(b)(11)(ii), with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined § 1026.61, any fee or charge imposed on the asset feature of the prepaid account is a finance charge to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This comment provides guidance with respect to comparable fees under § 1026.4(b)(11)(ii) for the two types of credit extensions on a covered separate credit feature. *See* § 1026.61(a)(2)(i)(B) and comment 61(a)(2)-4.ii. Comment 4(b)(11)(ii)-1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain

cash, or conduct person-to-person transfers. Comment 4(b)(11)(ii)-1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

ii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, for such credit from the credit feature are comparable only to per transaction fees for each transaction to access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of § 1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges \$0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Also, assume that the prepaid account issuer charges \$0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the \$0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account for each transaction where the

hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the additional \$0.75 is a finance charge.

C. Assume a prepaid account issuer charges \$0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Assume also that the prepaid account issuer charges both a \$0.50 per transaction fee and a \$1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of \$1.75 per transaction) must be compared to the \$0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the \$1.25 excess is a finance charge.

D. Assume same facts as in paragraph C above, except that assume the prepaid account issuer also charges a load fee of \$1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a \$0.50 per transaction fee. The \$1.25 excess in paragraph C is still a finance charge because load or transfer fees that are charged on the asset feature of prepaid account for credit from the covered separate credit feature are compared only to per transaction fees imposed for accessing funds in the asset feature of the prepaid account for prepaid accounts without such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of § 1026.4(b)(11)(ii).

iii. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to

obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* § 1026.61(a)(2)(i)(B) and comment 61(a)(2)-4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of § 1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges a \$1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the \$1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid

accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature are not comparable for purposes of § 1026.4(b)(11)(ii).

B. Assume that a prepaid account issuer charges a \$1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges \$1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the \$1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account are not comparable for purposes of § 1026.4(b)(11)(ii).

2. *Relation to Regulation E.* See Regulation E, 12 CFR 1005.18(g), which only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature in the same prepaid account program.

*4(c) Charges Excluded From the Finance Charge*

\* \* \* \* \*

*Paragraph 4(c)(3)*

1. *Assessing interest on an overdraft balance.* Except with respect to credit offered in connection with a prepaid account as defined in § 1026.61, a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

2. *Credit accessed in connection with a prepaid account.* See comment 4(b)(11)-1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

*Paragraph 4(c)(4)*

1. *Participation fees—periodic basis.* The participation fees described in § 1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. Except as provided in § 1026.4(c)(4) for covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61, the provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

\* \* \* \* \*

3. *Credit accessed in connection with by a prepaid account.* See comment 4(b)(11)-1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

\* \* \* \* \*

*Subpart B—Open-End Credit*

*Section 1026.5—General Disclosure Requirements*

\* \* \* \* \*

*5(b) Time of Disclosures*

\* \* \* \* \*

*5(b)(2) Periodic Statements*

\* \* \* \* \*

*5(b)(2)(ii) Timing Requirements*

\* \* \* \* \*

4. \* \* \*

i. *Charge card accounts.* For purposes of § 1026.5(b)(2)(ii)(A)(1), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to § 1026.7(b)(11)(i)(A). Because § 1026.7(b)(11)(ii) provides that § 1026.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in § 1026.61, § 1026.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 1026.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not

treated as late for any purpose during the 21-day period following mailing or delivery of the statement. A card issuer that complies with § 1026.5(b)(2)(ii)(A) as discussed above with respect to a charge card account has also complied with § 1026.5(b)(2)(ii)(B)(2). Section 1026.5(b)(2)(ii)(B)(1) does not apply to charge card accounts because, for purposes of § 1026.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 1026.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

\* \* \* \* \*

*Section 1026.6—Account-Opening Disclosures*

\* \* \* \* \*

*6(b) Rules Affecting Open-End (Not Home-Secured) Plans*

\* \* \* \* \*

*6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans*

1. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a creditor is required to disclose under § 1026.6(b)(2) any fees or charges imposed on the asset feature that are charges imposed as part of the plan under § 1026.6(b)(3) to the extent those fees fall within the categories of fees or charges required to be disclosed under § 1026.6(b)(2). For example, assume that a creditor imposes a \$1.25 per transaction fee on an asset feature of the prepaid account for purchases when

a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and a \$0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the \$0.75 excess is a charge imposed as part of the plan under § 1026.6(b)(3) and must be disclosed under § 1026.6(b)(2)(iv).

*2. Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* A creditor is not required to disclose under § 1026.6(b)(2) any fee or charge imposed on the asset feature of a prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3).

\* \* \* \* \*

*6(b)(3) Disclosure of Charges Imposed as Part of Open-End (Not Home-Secured) Plans*

\* \* \* \* \*

*Paragraph 6(b)(3)(iii)*

\* \* \* \* \*

*Paragraph 6(b)(3)(iii)(D)*

*1. Fees imposed on the asset feature of the prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* Under § 1026.6(b)(3)(iii)(D), with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a charge imposed as part of the plan under § 1026.6(b)(3) with respect to a covered separate credit feature to the extent that the amount of

the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature assessed by a hybrid prepaid-credit card. To illustrate:

i. Assume a prepaid account issuer charges a \$0.50 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a \$0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. The \$0.50 fees are comparable fees and the \$0.50 fee for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card is not a charge imposed as part of the plan. However, if in this example, the prepaid account issuer imposes a \$1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, the \$0.75 excess is a charge imposed as part of the plan. This \$0.75 excess also is a finance charge under § 1026.4(b)(11)(ii).

ii. See comment 4(b)(11)(ii)-1 for additional illustrations of when a prepaid account issuer is charging comparable per transaction fees or load or transfer fees on the prepaid account.

*Paragraph 6(b)(3)(iii)(E)*

1. *Fees imposed on the asset feature of a prepaid account in connection with a non-covered separate credit feature.* With regard to a non-covered separate credit feature accessible by a prepaid card as defined in § 1026.61, under § 1026.6(b)(3)(iii)(E), none of the fees or charges imposed on the asset balance of the prepaid account are charges imposed as part of the

plan under § 1026.6(b)(3) with respect to the non-covered separate credit feature. In addition, none of these fees or charges imposed on the asset feature of the prepaid account are finance charges with respect to the non-covered separate credit feature as discussed in comment 4(b)(11)-1.ii.B.

\* \* \* \* \*

*Section 1026.7—Periodic Statement*

\* \* \* \* \*

*7(b) Rules Affecting Open-End (Not Home-Secured) Plans*

\* \* \* \* \*

*7(b)(13) Format Requirements*

1. *Combined asset account and credit account statements.* Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear. This guidance also applies to financial institutions that provide information about prepaid accounts and account activity in connection with covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61 on one periodic statement.

*Section 1026.8—Identifying Transactions on Periodic Statements*

*8(a) Sale Credit*

1. *Sale credit.* The term “sale credit” refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8(b)-1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the

merchant is the card issuer or creditor. See comment 8(a)-9 for guidance on when credit accessed by a hybrid prepaid-credit card from a covered separate credit feature is “sale credit” or “nonsale credit.” “Sale credit” includes:

\* \* \* \* \*

9. *Covered separate credit feature accessible by hybrid prepaid-credit card.* i. A transaction will be treated as a “sale credit” under § 1026.8(a) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant with credit from a covered separate credit feature and the credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature, and \$15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. The \$15 credit transaction will be treated as “sale credit” under § 1026.8(a).

ii. On the other hand, a transaction will be treated as “nonsale credit” for purposes of § 1026.8(b) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the \$15 will be transferred from the credit feature to the asset feature, and a

transaction of \$25 is debited from the asset feature of the prepaid account. In this case, the \$15 credit transaction is treated as “nonsale credit” under § 1026.8(b). See comment 8(b)-1.vi below.

iii. If a transaction is “sale credit” as described above in comment 8(a)-9.i, the following applies:

A. If a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds in the asset feature of the prepaid account, and partially paid with credit from a covered separate credit feature, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction.

B. For a transaction at point of sale where credit from a covered separate credit feature is accessed by a hybrid prepaid-credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit such as cash back given to the cardholder, the creditor must disclose the entire amount of the credit transaction as sale credit, including the part of the transaction that does not relate to the purchase of goods or services.

*8(b) Nonsale Credit*

1. \* \* \*

ii. An advance on a credit plan that is accessed by overdrafts on an asset account other than a prepaid account as defined in § 1026.61.

\* \* \* \* \*

v. An advance at an ATM on a covered separate credit feature accessed by a hybrid prepaid-credit card as defined in § 1026.61. If a hybrid prepaid-credit card is used to obtain an advance at an ATM and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with a credit extension from the covered separate credit

feature, the amount to be disclosed under § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

vi. A transaction where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase, as described in comment 8(a)-9.ii. In this scenario, the amount to be disclosed under § 1026.8(b) is the amount of the credit extension, not the total amount of the purchase transaction.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to an asset account other than a prepaid account as defined in § 1026.61 or by means of a debit card tied to an overdraft credit plan:

\* \* \* \* \*

*Section 1026.10—Payments*

*10(a) General Rule*

\* \* \* \* \*

2. \* \* \*

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. Section 1026.12(d)(3)(ii) defines “periodically” to mean no more frequently than once per calendar month for payments made periodically from a deposit account, including a prepaid account, held by a card issuer to pay credit card debt in a

covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 held by the card issuer. In a payroll deduction plan in which funds are deposited to a prepaid account held by the card issuer, and from which payments are made on a monthly basis to a covered separate credit feature accessible by a hybrid prepaid-credit card that is held by the card issuer, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

\* \* \* \* \*

*10(b) Specific Requirements for Payments*

1. *Payment by electronic fund transfer.* A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. See section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e).

\* \* \* \* \*

*Section 1026.12—Special Credit Card Provisions*

\* \* \* \* \*

*12(a) Issuance of Credit Cards*

*Paragraph 12(a)(1)*

\* \* \* \* \*

2. *Addition of credit features.* If the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. For example, the following constitute issuance of a credit card:

i. Granting overdraft privileges on a checking account when the consumer already has a check guarantee card; or

ii. Allowing a prepaid card to access a covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in § 1026.61 with respect to the covered separate credit feature.

\* \* \* \* \*

*7. Issuance of non-credit cards. i. Issuance of non-credit cards other than prepaid cards.*

A. Under § 1026.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)-2 for examples of cards or devices that are and are not credit cards.) A non-credit card other than a prepaid card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card other than a prepaid card only upon the consumer's specific request.

B. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

ii. *Issuance of a prepaid card.* Section 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any covered separate credit feature that

would make the prepaid card into a hybrid prepaid-credit card as defined in § 1026.61 at the time the card is issued and only opens a covered separate credit feature, or provides an application or solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 in compliance with § 1026.61(c). A covered separate credit feature may be added to a previously issued prepaid card only upon the consumer’s application or specific request and only in compliance with § 1026.61(c). An issuer does not connect a prepaid card to a covered separate credit feature that would make the card into a credit card simply by providing the disclosures required by Regulation E, 12 CFR 1005.18(b)(2)(x), (b)(4)(iv), and (vii), with the prepaid card. See § 1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in § 1026.61 may be issued as a replacement or substitution for another hybrid prepaid-credit card. See also Regulation E, 12 CFR 1005.5 and 1005.18(a), and related commentary, governing issuance of access devices under Regulation E.

\* \* \* \* \*

*Paragraph 12(a)(2)*

\* \* \* \* \*

6. \* \* \*

i. Replacing a single card that is both a debit card and a credit card with a credit card and a separate debit card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing a single card that is both a prepaid card and a credit card with a credit card and a separate prepaid card where the latter card is not a hybrid prepaid-credit card as defined in § 1026.61.

\* \* \* \* \*

*12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer*

\* \* \* \* \*

5. *Prepaid cards.* i. Section 1026.12(c) applies to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature as defined in § 1026.61. The following examples illustrate when a hybrid prepaid-credit card is used to purchase property or services:

A. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature and \$15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services where credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card to cover the amount of the purchase.

B. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as

above, except that the \$15 will be transferred from a covered separate credit feature to the asset feature, and a transaction of \$25 is debited from the asset feature of the prepaid account. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services because credit is transferred to the asset feature of the prepaid account to cover the amount of a purchase made with the card. This is true even though the \$15 credit transaction is treated as “nonsale credit” under § 1026.8(b). *See* comments 8(a)-9.ii and 8(b)-1.vi.

ii. For a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with credit from the covered separate credit feature, the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of § 1026.12(c). The amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

*12(c)(1) General Rule*

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are “purchased with the credit card.” This would include when the goods or services are purchased by a consumer using a hybrid prepaid-credit card to access a covered separate credit feature as defined in § 1026.61. This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

\* \* \* \* \*

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right

to assert claims or defenses would apply to credit extended via the credit card, although not to credit extended by the overdraft line other than a covered separate credit feature accessible by a hybrid prepaid-credit card.)

\* \* \* \* \*

*12(d) Offsets by Card Issuer Prohibited*

1. *Meaning of funds on deposit.* For purposes of § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer’s prepaid account as defined in § 1026.61. In addition, for purposes of § 1026.12(d), deposit account includes a prepaid account.

*Paragraph 12(d)(1)*

\* \* \* \* \*

2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example) or if the card issuer receives funds designated for the consumer’s prepaid account as defined in § 1026.61 with the issuer, such as by means of an ACH deposit or an electronic transmittal of funds the consumer submits as cash at a non-bank location, the card issuer may not apply the funds to repay indebtedness on the consumer’s credit card account.

\* \* \* \* \*

*Paragraph 12(d)(2)*

1. \* \* \*

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account.

ii. With respect to a credit card account other than a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, indicia of the consumer’s

awareness and intent to grant a security interest in a deposit account include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

iii. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, in order for a consumer to show awareness and intent to grant a security interest in a deposit account, including a prepaid account, all of the following conditions must be met:

A. In addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the deposit account agreement and the credit card account agreement;

B. The separate document setting forth the security agreement must be signed by the consumer;

C. The separate document setting forth the security agreement must refer to the deposit account number and to a specific amount of funds in the deposit account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer;

D. The separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest and each of those conditions must be separately signed or initialed by the consumer.

\* \* \* \* \*

*Paragraph 12(d)(3)*

1. \* \* \*

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e)), the fact that the option exists should be clearly indicated.

2. \* \* \*

iii. Automatically deducting from the consumer's deposit account any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

3. *Prepaid accounts.* With respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61, a card issuer is not prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (including the prepaid account) held with the card issuer (subject to the limitations of § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the

deposit account more frequently than once per calendar month, pursuant to such a plan. To illustrate, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25<sup>th</sup> day of each month. In this case:

i. The card issuer is not prohibited under § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25<sup>th</sup> of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in comment 12(d)(3)-1) and comply with the limitations in § 1026.13(d)(1).

ii. The card issuer is prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (including the prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made or expected to be made to the deposit account.

\* \* \* \* \*

*Section 1026.13—Billing Error Resolution*

\* \* \* \* \*

*13(i) Relation to Electronic Fund Transfer Act and Regulation E*

\* \* \* \* \*

2. *Incidental credit under an agreement with respect to an account other than a prepaid account.* Except with respect to a prepaid account as defined in § 1026.61, for credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution, § 1026.13(i)(1) provides that certain error resolution procedures in both this

part and Regulation E apply. Except with respect to a prepaid account, incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund transfer using a debit card, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions—examples.* If a consumer uses a debit card to withdraw money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

\* \* \* \* \*

iv. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

4. *Credit under a covered separate credit feature accessible by a hybrid prepaid-credit card.* For transactions involving a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, whether Regulation E (12 CFR part 1005) or Regulation Z applies depends on the nature of the transaction. For example:

i. If the transaction solely involves an extension of credit under a covered separate credit feature and does not access funds from the asset feature of the prepaid account, the error resolution requirements of Regulation Z apply. To illustrate, assume that there is \$0 in the asset

feature of the prepaid account, and the consumer makes a \$25 transaction with the card. The error resolution requirements of Regulation Z apply to the transaction. This is true regardless of whether the \$25 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether the \$25 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the transaction.

ii. If the transaction accesses funds from the asset feature of a prepaid account only (with no credit extended under the credit feature), the provisions of Regulation E apply.

iii. If the transaction accesses funds from the asset feature of a prepaid account but also involves an extension of credit under the covered separate credit feature, a creditor must comply with the requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). To illustrate, assume that there is \$10 in the asset feature of the prepaid account, and the consumer makes a \$25 transaction with the card. The error resolution requirements of Regulations E and Z apply as described above to the transaction. This is true regardless of whether \$10 is debited from the asset feature and \$15 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether \$15 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account and a \$25 transaction is debited from the asset feature to cover the amount of the transaction. When this paragraph applies:

A. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

B. The creditor need not provisionally credit the consumer's account, under Regulation E, 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

C. The creditor must credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error.

D. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

5. *Prepaid cards that are not hybrid prepaid-credit cards.* Regulation E, 12 CFR 1005.12(a)(1)(iv)(C) and (D), and (a)(2)(iii) provide guidance on whether error resolution procedures in Regulations E or Z apply to transactions involving credit features that are accessed by prepaid cards that are not hybrid prepaid-credit cards as defined in § 1026.61. Regulation E 12 CFR 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in § 1026.61(a)(4), these transactions are governed solely by error resolution procedures in Regulation E, and Regulation Z does not apply. Regulation E 12 CFR 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in § 1026.61, a financial institution must comply with Regulation E's error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

\* \* \* \* \*

*Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students*

\* \* \* \* \*

*Section 1026.52—Limitations on Fees*

*52(a) Limitations during first year after account opening*

*52(a)(1) General rule*

1. *Application.* The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer’s asset account, including a prepaid account as defined in § 1026.61, to the card issuer or from another credit account provided by the card issuer). For example:

\* \* \* \* \*

iii. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay \$50 in fees for the issuance or availability of credit at account opening. At credit account opening on March 1 of year one, the credit limit for the account is \$200. Section 1026.52(a)(1) permits the card issuer to charge the \$50 in fees to the credit account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the credit account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the

consumer to open an additional credit feature with the card issuer to fund the payment of additional non-exempt fees during the first year after the covered separate credit feature is opened.

iv. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay \$120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to 5 percent of any cash advance and a late payment fee of \$15 if the required minimum periodic payment is not received by the payment due date (which is the 25th of the month). At credit account opening on March 1 of year one, the credit limit for the account is \$500. Section 1026.52(a)(1) permits the card issuer to charge to the account the \$120 in fees for the issuance or availability of credit at account opening. On April 1 of year one, the consumer uses the account for a \$100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a \$5 cash advance fee to the account. On April 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a \$15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a \$50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a \$2.50 cash advance fee to the account, because the total amount of non-exempt fees reached the 25 percent limit with the \$5 cash advance fee on April 1 (the \$15 late fee on April 26 is exempt pursuant to

§ 1026.52(a)(2)(i)). Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the \$2.50 cash advance fee from the consumer by other means.

\* \* \* \* \*

*52(a)(2) Fees Not Subject to Limitations*

1. *Covered fees.* Except as provided in § 1026.52(a)(2) and except as provided in comments 52(a)(2)-2 and-3, § 1026.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening, other than charges attributable to periodic interest rates. For example, § 1026.52(a) applies to:

\* \* \* \* \*

2. *Fees in connection with a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(a) applies to the following fees:

i. Except as provided in § 1026.52(a)(2), any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature, and

ii. Except as provided in § 1026.52(a)(2), any fee or charge imposed on the asset feature of the prepaid account, other than a charge attributable to a periodic interest rate, during the first

year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is a charge imposed as part of the plan under § 1026.6(b)(3).

*3. Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

\* \* \* \* \*

*52(b) Limitations on Penalty Fees*

\* \* \* \* \*

*3. Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the covered separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the separate credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

\* \* \* \* \*

*52(b)(2) Prohibited fees*

\* \* \* \* \*

*52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation*

\* \* \* \* \*

7. *Declined transaction fees.* Section 1026.52(b)(2)(i)(B)(I) states that card issuers must not impose a fee when there is no dollar amount associated with the violation, such as for transactions that the card issuer declines to authorize. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b)(2)(i)(B)(I) prohibits a card issuer from imposing declined transaction fees in connection with the credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account. For example, if the prepaid card attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is

declined, § 1026.52(a)(2)(i)(B)(I) prohibits the card issuer from imposing a declined transaction fee, regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account. Fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit are not covered by § 1026.52(b)(2)(i)(B)(I).

\* \* \* \* \*

*Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges*

*55(a) General Rule*

\* \* \* \* \*

3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in § 1026.55(b). This is true regardless of whether these fees or annual percentage rates are imposed on the asset feature of the prepaid account or on the credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the

plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

\* \* \* \* \*

*Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit*

*57(a) Definitions*

*57(a)(1) College student credit card*

1. *Definition.* The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards. A college student credit card includes a college affinity card within the meaning of TILA section 127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card. The definition of college student credit card includes a hybrid prepaid-credit card as defined by § 1026.61 that is issued to any college student where the card can access a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan. The definition of college student credit card also includes a prepaid account as defined in § 1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a

hybrid prepaid-credit card as defined by § 1026.61 may be added in the future to the prepaid account.

*57(a)(5) College credit card agreement*

1. *Definition.* Section 1026.57(a)(5) defines “college credit card agreement” to include any business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the issuance of credit cards to full-time or part-time students. Business, marketing or promotional agreements may include a broad range of arrangements between a card issuer and an institution of higher education or affiliated organization, including arrangements that do not meet the criteria to be considered college affinity card agreements as discussed in TILA section 127(r)(1)(A). For example, TILA section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled (either full-time or part-time) at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition

of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 to prepaid accounts previously issued to full-time or part-time students. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the agreement provides for the issuance of prepaid accounts as defined in § 1026.61 to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 may be added in the future to the prepaid account.

*57(b) Public disclosure of agreements*

\* \* \* \* \*

3. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 to prepaid accounts previously issued to full-time or part-time students; or (2) new prepaid accounts as defined in § 1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

*57(c) Prohibited inducements*

\* \* \* \* \*

7. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(c) applies to (1) the application for or opening of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is being added to a prepaid account previously issued to a full-time or part-time student as well as (2) the application for or opening of a prepaid account as defined in § 1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account.

\* \* \* \* \*

*Section 1026.60—Credit and Charge Card Applications and Solicitations*

1. *General.* Section 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See § 1026.60(a)(5) and (e)(2) for exceptions; see § 1026.60(a)(1) and accompanying commentary for the definition of solicitation; see also § 1026.2(a)(15) and accompanying commentary for the definition of charge card and § 1026.61(c) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.)

\* \* \* \* \*

*60(b) Required Disclosures*

\* \* \* \* \*

3. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a card issuer is required to disclose under

§ 1026.60(b) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under § 1026.60(b). For example, assume that a card issuer imposes a \$1.25 per transaction fee on the asset feature of a prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and the card issuer charges \$0.50 per transaction for purchases that access funds in the asset feature of the prepaid account in the same program without such a credit feature. In this case, the \$0.75 excess is a charge imposed as part of the plan under § 1026.6(b)(3) and must be disclosed under § 1026.60(b)(4).

*4. Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* A card issuer is not required under § 1026.60(b) to disclose any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

\* \* \* \* \*

*60(b)(4) Transaction Charges*

\* \* \* \* \*

*3. Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61, if a card issuer assesses a fee (other than a

periodic rate that may be used to compute the finance charge on an outstanding balance) to make a purchase where this fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a transaction charge described in § 1026.60(b)(4). *See* comments 60(b)-3 and -4. This is so whether the fee is a per transaction fee to make a purchase, or a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions.

ii. A fee for a transaction will be treated as a fee to make a purchase under § 1026.60(b)(4) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature and \$15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. A per transaction fee imposed for the \$15 credit transaction must be disclosed under § 1026.60(b)(4).

iii. On the other hand, a fee for a transaction will be treated as a cash advance fee under § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the \$15 will be transferred from the covered separate

credit feature to the asset feature, and a transaction of \$25 is debited from the asset feature of the prepaid account. In this case, a per transaction fee for the \$15 credit transaction must be disclosed under § 1026.60(b)(8).

\* \* \* \* \*

*60(b)(8) Cash Advance Fee*

\* \* \* \* \*

4. *Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance, such as a cash withdrawal at an ATM, where the fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a cash advance fee. *See* comments 60(b)-3 and -4. In addition, a fee for a transaction will be treated as a cash advance fee under § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. *See* comment 60(b)(4)-3.iii.

ii. If the cash advance fee is the same dollar amount as the transaction charge for purchases described in § 1026.60(b)(4), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Examples of how fees for purchase transactions described in § 1026.60(b)(4) and fees for cash advances described in § 1026.60(b)(8) must be disclosed are as follows. Assume that all the fees in the examples below are charged on the covered separate credit feature.

A. A card issuer assesses a \$15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as described in comment 60(b)(4)-3.ii. The card issuer assesses a \$25 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer must disclose separately a purchase transaction charge of \$15 and a cash advance fee of \$25.

B. A card issuer assesses a \$15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as discussed in comment 60(b)(4)-3.ii. The card issuer assesses a \$15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer may disclose the \$15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, the card issuer may disclose the \$15 fee on two separate rows, one row indicating that a \$15 fee applies to purchase transactions, and a second row indicating that a \$15 fee applies to ATM cash advances.

C. A card issuer assesses a \$15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of \$1.50 for out-of-network ATM cash withdrawals and \$1.00 for in-network ATM cash withdrawals. The card issuer must disclose the cash advance fee as \$16.50 for out-of-network

ATM cash withdrawals, indicating that \$1.50 is for the out-of-network ATM withdrawal fee, such as “\$16.50 (including a \$1.50 out-of-network ATM withdrawal fee).” The card issuer also must disclose the cash advance fee as \$16.00 for in-network ATM cash withdrawals, indicating that \$1.00 is for the in-network ATM withdrawal fee, such as “\$16 (including a \$1.00 in-network ATM cash withdrawal fee).”

\* \* \* \* \*

### *Section 1026.61—Hybrid Prepaid-Credit Cards*

#### *61(a) Hybrid Prepaid-Credit Card*

1. *Scope of § 1026.61.* Section 1026.61 sets forth the definition of hybrid prepaid-credit card, and several requirements that only apply to covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61(a)(2)(i). Hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards are also subject to other rules in this regulation, and some of those rules and related commentary contain specific guidance related to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. For example, as discussed in §§ 1026.2(a)(15)(i) and 1026.61(a), a hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to a covered separate credit feature. A covered separate credit feature accessible by a hybrid prepaid-credit card also will be a credit card account under an open-end (not home-secured) consumer credit plan as defined in § 1026.2(a)(15)(ii) if the covered separate credit feature is an open-end credit plan. Thus, the provisions in this regulation that apply to credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan generally will apply to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards as applicable (*see generally* subparts B and G). Some of those rules and related

commentary contain specific guidance with respect to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. *See, e.g.*, §§ 1026.2(a)(15)(i) and (ii), 1026.4(b)(11), (c)(3) and (4), 1026.6(b)(3)(iii)(D) and (E), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), 1026.13(i)(2), 1026.60(a)(5)(iv) and (b), and related commentary to these and other rules in the regulation.

*61(a)(1) In General*

1. *Credit.* Under § 1026.61(a)(1), except as provided in § 1026.61(a)(4), a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature as described in § 1026.61(a)(2)(i) or if it can access credit extended through a negative balance on the asset feature of the prepaid account as described in § 1026.61(a)(3). When § 1026.61 references credit that can be accessed from a separate credit feature or credit that can be extended through a negative balance on the asset feature, it means credit that can be accessed or can be extended even if, for example:

- i. The person that can extend the credit does not agree in writing to extend the credit;
- ii. The person retains discretion not to extend the credit, or
- iii. The person does not extend the credit once the consumer has exceeded a certain amount of credit.

2. *Prepaid card that is solely an account number.* A prepaid card that is solely an account number is a hybrid prepaid-credit card if it meets the conditions set forth in § 1026.61(a).

3. *Usable from time to time.* In order for a prepaid card to be a hybrid prepaid-credit card under § 1026.61(a), the prepaid card must be capable of being used from time to time to access credit as described in § 1026.61(a). Since this involves the possibility of repeated use of a single

device, checks and similar instruments that can be used only once to obtain a single credit extension are not hybrid prepaid-credit cards. With respect to a preauthorized check that is issued on a prepaid account for which credit is extended through a negative balance on the asset feature of the prepaid account, or credit is drawn, transferred or authorized to be drawn or transferred from a separate credit feature, the credit is obtained using the prepaid account number and not the check at the time of preauthorization using the prepaid account number. The prepaid account number is a hybrid prepaid-credit card if the account number meets the conditions set forth in § 1026.61(a). *See* comment 61(a)(1)-2.

4. *Prepaid account that is a digital wallet.* i. A digital wallet that is capable of being loaded with funds is a prepaid account under Regulation E, 12 CFR 1005.2(b)(3). *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)-6. A prepaid account number that can access such a digital wallet would be a hybrid prepaid-credit card if it meets the conditions set forth in § 1026.61(a). To illustrate:

A. A prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card where it can be used from time to time to access a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in § 1026.61(a)(2)(i).

B. A prepaid account number that can access such a digital wallet also is a hybrid prepaid-credit card where it can be used from time to time to access the stored credentials for a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted

with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in § 1026.61(a)(2)(i).

C. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii) that is not offered by the prepaid account issuer, its affiliate, or its business partner, even if the prepaid account number can access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers.

D. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii) where the prepaid account number cannot access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if such credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

ii. A digital wallet is not a prepaid account under Regulation E, 12 CFR 1005.2(b)(3), if the digital wallet can never be loaded with funds, such as a digital wallet that only stores payment credentials for other accounts. *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)-6. An account number that can access such a digital wallet would not be a hybrid prepaid-credit card under § 1026.61(a), even if it stores a credential for a separate credit feature that is offered by the digital wallet provider, its affiliate, or its business partner and can be used in the course of a transaction involving the digital wallet.

5. *Prepaid account that can be used for bill payment services.* Where a prepaid account can be used for online bill payment services offered by the prepaid account issuer, the prepaid card (including a prepaid account number) that can access that prepaid account is a hybrid prepaid-credit card if it meets the requirements set forth in § 1026.61(a). For example, if a prepaid account number can be used from time to time to initiate a transaction using the online bill payment service offered by the prepaid account issuer to pay a bill, and credit can be drawn, transferred, or authorized to be drawn or transferred, to the prepaid account from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing that transaction as described in § 1026.61(a)(2)(i), the prepaid account number would be a hybrid prepaid-credit card under § 1026.61(a). In this case, the prepaid account number can be used to draw or transfer credit, or authorize the draw or transfer of credit, from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of completing a transaction to pay for goods or services through the online bill payment service.

*61(a)(2) Prepaid Card Can Access Credit From a Covered Separate Credit Feature*

1. *Draws or transfers of credit.* i. For a prepaid card to be a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to a separate credit feature, the prepaid account must be structured such that the draw or transfer of credit, or authorizations of either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner is capable of occurring in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct person-to-person transfers. See comment 61(a)(2)-2 for guidance on when draws or transfers of credit can occur in the course of authorizing, settling, or otherwise completing a transaction described in

§ 1026.61(a)(2)(i). In this case, the separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i).

ii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether:

A. The credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; or

B. The credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

iii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways.

2. *Credit that can be accessed from a separate credit feature in the course of authorizing, settling, or otherwise completing a transaction.* i. Under § 1026.61(a)(2)(i), a prepaid card is a hybrid prepaid-credit card when the card can be used from time to time to access a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner and can be used to access credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. A draw, transfer, or authorization of a draw or transfer from a separate credit

feature is deemed to be in the “course of authorizing, settling, or otherwise completing” a transaction if it occurs during the authorization phase of the transaction as discussed in comment 61(a)(2)-2.ii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(2)-2.iii.

ii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred from a separate credit feature in the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction.

B. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account.

iii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred, in the course of settling a transaction.

A. A transaction initiated using a prepaid card when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

B. A transaction that was not authorized in advance where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

3. *Accessing credit when the asset feature has sufficient funds.* Section 1026.61(a)(2)(i) applies where the prepaid card can be used from time to time to draw funds from a covered separate credit feature that is offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if there are sufficient or available funds in the asset feature of the prepaid account to complete the transaction. For example, the following separate credit feature would meet the conditions of § 1026.61(a)(2)(i).

i. The prepaid card can be used from time to time both to access the asset feature of a prepaid account and to draw on the covered separate credit feature in the course of a transaction independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has \$50 available funds in her prepaid account. The consumer initiates a \$25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the credit feature, the card will draw on credit from the credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds the prepaid account to complete the transaction.

4. *Covered separate credit features.* i. Under § 1026.61(a)(2)(i), a separate credit feature that meets the conditions of § 1026.61(a)(2)(i) is defined as a covered separate credit feature. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. Section 1026.61 and other provisions in the regulation and commentary related to hybrid prepaid-credit cards refer to this credit feature either as a covered separate credit feature or a covered separate credit feature accessible by a hybrid prepaid-credit card. *See, e.g.*, §§ 1026.4(c)(4), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), and 1026.60(a)(5)(iv) and (b). In addition, several provisions in the regulation and commentary also describe this arrangement as one where a covered separate credit feature and an asset feature on a prepaid account are both accessible by a hybrid prepaid-credit card as defined in § 1026.61. *See, e.g.*, §§ 1026.4(b)(11), 1026.6(b)(3)(iii)(D), and 1026.13(i)(2).

ii. If a prepaid card is capable of drawing or transferring credit, or authorizing either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a person-to-person transfer, the credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card, even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, with respect to a covered separate credit feature, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This credit transaction is considered a credit transaction on a

covered separate credit feature accessible by a hybrid prepaid-credit card, even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

5. *Non-covered separate credit features.* A separate credit feature that does not meet the conditions set forth in § 1026.61(a)(2)(i) is defined as a non-covered separate credit feature as described in § 1026.61(a)(2)(ii). A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature. To illustrate:

i. A prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to a separate credit feature if the credit feature is not offered by the prepaid account issuer, its affiliate, or its business partner. This is true even if the draw or transfer of credit, or authorization of either, occurs during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume a consumer links her prepaid account to a credit card issued by a card issuer that is not the prepaid account issuer, its affiliate, or its business partner so that credit is drawn automatically into the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the asset feature. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third-party card issuer.

ii. Even if a separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, a prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to that separate credit feature if the separate credit feature cannot be accessed within

the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct person-to-person transfers. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to this non-covered separate credit feature.

iii. The person offering the non-covered separate credit feature does not become a card issuer under § 1026.2(a)(7) and thus does not become a creditor under § 1026.2(a)(17)(iii) or (iv) because the prepaid card can be used to access credit from the non-covered separate credit feature. The person offering the non-covered separate credit feature, however, may already have obligations under this regulation with respect to that separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer under § 1026.2(a)(7) and a creditor under § 1026.2(a)(17)(iii). Nonetheless, in that case, the person does not need to comply with the provisions in the regulation applicable to hybrid prepaid-credit cards even though the prepaid card can access credit from the non-covered separate credit feature. The obligations under this regulation that apply to a non-covered separate credit feature are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature. *See*

§ 1026.6(b)(3)(iii)(E) and comments 4(b)(11)-1.ii, 6(b)(2)-2, 6(b)(3)(iii)(E)-1, 12(d)(3)-2.iii, 52(a)(2)-3, 52(b)-4, 55(a)-4, and 60(b)-4.

6. *Prepaid card that can access multiple separate credit features.* i. Even if a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, it is not a hybrid prepaid-credit card with respect to any non-covered separate credit features.

ii. For example, assume that a prepaid card can access “Separate Credit Feature A” where the card can be used from time to time to access credit from a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. In addition, assume that the prepaid card can also access “Separate Credit Feature B” but that credit feature is being offered by an unrelated third-party creditor that is not the prepaid account issuer, its affiliate, or its business partner. The prepaid card is a hybrid prepaid-credit card with respect to Separate Credit Feature A because it is a covered separate credit feature. The prepaid card, however, is not a hybrid prepaid-credit card with respect to Separate Credit Feature B because it is a non-covered separate credit feature.

*61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance on the Asset Feature*

*61(a)(3)(i) In General*

1. *Credit accessed on an asset feature of a prepaid account.* i. See comment 2(a)(14)-3 for examples of when transactions authorized or paid on the asset feature of a prepaid account meet the definition of credit under § 1026.2(a)(14).

ii. Except as provided in § 1026.61(a)(4), a prepaid card would trigger coverage as a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit that can be extended through a negative balance on the asset feature of the prepaid account. (However, unless the only credit offered meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b).) A credit extension through a negative balance on the asset feature of a prepaid account can occur during the authorization phase of the transaction as discussed in comment 61(a)(3)(i)-1.iii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(2)(i)-1.iv.

iii. The following example illustrates transactions where a credit extension occurs during the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is extended through a negative balance on the asset feature of the prepaid account when the transaction is authorized.

iv. The following examples illustrate transactions where a credit extension occurs at settlement.

A. Transactions that occur when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

B. Transactions that settle even though they were not authorized in advance where credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

*61(a)(3)(ii) Negative Asset Balances*

1. *Credit extended on the asset feature of the prepaid account.* Section 1026.61(a)(3)(i) determines whether a prepaid card triggers coverage as a hybrid prepaid-credit card under § 1026.61(a), and thus, whether a prepaid account issuer is a card issuer under § 1026.2(a)(7) subject to this regulation, including § 1026.61(b). However, § 1026.61(b) requires that any credit feature accessible by a hybrid prepaid-credit card must be structured as a separate credit feature using either a credit subaccount of the prepaid account or a separate credit account. In that case, a card issuer would violate § 1026.61(b) if it structures the credit feature as a negative balance on the asset feature of the prepaid account, unless the only credit offered in connection with the prepaid account satisfies § 1026.61(a)(4). A prepaid account issuer can use a negative asset balance structure to extend credit on a prepaid account if the prepaid card is not a hybrid prepaid-credit card as described in § 1026.61(a)(4).

*61(a)(4) Exception*

1. *Prepaid card that is not a hybrid prepaid-credit card.* i. A prepaid card that is not a hybrid prepaid-credit card as described in § 1026.61(a) is not a credit card under this regulation. A prepaid card is not a hybrid prepaid-credit card if:

A. The card cannot access credit from a covered separate credit feature under § 1026.61(a)(2)(i), though it is permissible for it to access credit from a non-covered separate credit feature as described under § 1026.61(a)(2)(ii); and

B. The card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in § 1026.61(a)(4)(ii)(A) and (B).

ii. Below is an example of when a prepaid card is not a hybrid prepaid-credit card because the conditions set forth in § 1026.61(a)(4) have been met.

A. The prepaid card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in § 1026.61(a)(4)(ii)(A) and (B). The card can access credit from a non-covered separate credit feature as defined in § 1026.61(a)(2)(ii), but cannot access credit for a covered separate credit feature as defined in § 1026.61(a)(2)(i).

iii. Below is an example of when a prepaid card is a hybrid prepaid-credit card because the conditions set forth in § 1026.61(a)(4) have not been met.

A. When there is insufficient or unavailable funds in the asset feature of the prepaid account at the time a transaction is initiated, the card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account. The card is a hybrid prepaid-credit card because it can be used to draw, transfer, or authorize the draw or transfer of credit from a separate credit feature in the circumstances set forth in § 1026.61(a)(2)(i).

iv. In the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in § 1026.61(a)(4):

A. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(iii) or (iv) because it is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges. *See* comment 4(b)(11)-1.iii.

*Paragraph 61(a)(4)(ii)(A)*

1. *Authorization not required for every transaction.* The prepaid account issuer is not required to receive an authorization request for each transaction to comply with § 1026.61(a)(4)(ii)(A). Nonetheless, the prepaid account issuer generally must establish an authorization policy as described in § 1026.61(a)(4)(ii)(A) and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. In that case, a prepaid account issuer is deemed to satisfy § 1026.61(a)(4)(ii)(A) even if a negative balance results on the prepaid account when a transaction is settled.

2. *Provisional credit.* A prepaid account issuer may still satisfy the requirements set forth in § 1026.61(a)(4)(ii)(A) even if a negative balance results on the asset feature of the prepaid account because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account as specified in Regulation E, 12 CFR 1005.11, so long as the prepaid account issuer otherwise complies with the conditions set forth in § 1026.61(a)(4). For example, under § 1026.61(a)(4), a prepaid account issuer may not impose a fee or charge enumerated under § 1026.61(a)(4)(ii)(B) with respect to this negative balance.

3. *Delayed load cushion.* i. *Incoming fund transfers.* For purposes of § 1026.61(a)(4)(ii)(A)(2), cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to

load funds to the prepaid account include a direct deposit of salary from an employer and a direct deposit of government benefits.

ii. *Consumer requests.* For purposes of § 1026.61(a)(4)(ii)(A)(2), cases where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account include where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the asset feature of the prepaid account to pay for the transaction.

4. *Permitted authorization circumstances are not mutually exclusive.* The two circumstances set forth in § 1026.61(a)(4)(ii)(A)(1) and (2) are not mutually exclusive. For example, assume a prepaid account issuer has adopted the \$10 cushion described in § 1026.61(a)(4)(ii)(A)(1), and the delayed load cushion described in § 1026.61(a)(4)(ii)(A)(2). Also, assume the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account but the prepaid account issuer has not received the funds from the separate asset account. In this case, a prepaid account issuer satisfies § 1026.61(a)(4)(iii)(A) if the amount of a transaction at authorization will not cause the prepaid account balance to become negative at the time of the authorization by more than the requested load amount plus the \$10 cushion.

*Paragraph 61(a)(4)(ii)(B)*

1. *Different terms on different prepaid account programs.* Section 1026.61(a)(4)(ii)(B) does not prohibit a prepaid account issuer from charging different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account

program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

*Paragraph 61(a)(4)(ii)(B)(1)*

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(1)*. To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. Section 1026.61(a)(4)(ii)(B)(1) does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

i. The types of fees or charges prohibited by § 1026.61(a)(4)(ii)(B)(1) include:

A. A daily, weekly, monthly, or other periodic fee assessed each period a prepaid account has a negative balance or is in “overdraft” status; and

B. A daily, weekly, monthly or other periodic fee to hold the prepaid account where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(1) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(2) during that period. For example, assume that a consumer will pay a fee to hold the prepaid account of \$10 if the consumer is not enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(1) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(2) during that month, and will pay a fee to hold the prepaid account of \$15 if the consumer is enrolled in a purchase cushion or delayed load cushion that period. The \$15 charge is a charge described in § 1026.61(a)(4)(ii)(B)(1) because the amount of the fee to

hold the prepaid account is higher based on whether the consumer is participating in the payment cushion or delayed load cushion during that period.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. A daily, weekly, monthly, or other periodic fee to hold the prepaid account where the amount of the fee is not higher based on whether the consumer is enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(1) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(2) during that period, whether or how much credit has been extended during that period, or the amount of credit that is available during that period.

*Paragraph 61(a)(4)(ii)(B)(2)*

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(2).* To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature.

i. These types of fees or charges include:

A. A fee imposed because the balance on the prepaid account becomes negative;

B. Interest charges attributable to a periodic rate that applies to the negative balance;

C. Any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in “overdraft” status, except that the actual costs to collect the credit may be imposed if otherwise permitted by law; and

D. Late payment fees.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. Fees for actual collection costs, including attorney's fees, to collect any credit extended on the prepaid account if otherwise permitted by law. Late payment fees are not considered fees imposed for actual collection costs. *See* comment 61(a)(4)(ii)(B)(2)-1.i.D.

*Paragraph 61(a)(4)(ii)(B)(3)*

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(3)*. i. To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. These types of fees or charges include:

A. Transaction fees where the amount of the fee is higher based on whether the transaction accesses only asset funds in the asset feature or accesses credit. For example, a \$15 transaction charge is imposed on the asset feature each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset feature at the time of the authorization or settlement. A \$1.50 fee is imposed each time a transaction only accesses funds in the asset feature. The \$15 charge is a charge described in § 1026.61(a)(4)(ii)(B)(3) because the amount of the transaction fee is higher when the transaction accesses credit than the amount of the fee that applies when the transaction accesses only asset funds in the asset feature; and

B. A fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges a higher fee for an ATM balance inquiry requested on the prepaid account if the balance inquiry is requested when there is a negative balance on the asset feature than the amount of fee imposed when there is a positive balance on the asset feature, the balance inquiry fee is a fee described in § 1026.61(a)(4)(ii)(B)(3) because the amount of the fee is higher based on whether it is imposed when there is a negative balance on the asset feature.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. Transaction fees on the prepaid account where the amount of the fee imposed when the transaction accesses credit does not exceed the amount of the fee imposed when the transaction only accesses asset funds in the prepaid account. For example, assume a \$1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. The \$1.50 transaction charge imposed on the prepaid account is not a fee described in § 1026.61(a)(4)(ii)(B); and

B. A fee for a service on the prepaid account where the amount of the fee is not higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges the same amount of fee for an ATM balance inquiry regardless of whether there is a positive or negative balance on the asset feature, the balance inquiry fee is not a fee described in § 1026.61(a)(4)(ii)(B).

*Paragraph 61(a)(4)(ii)(C)*

1. *Fees or charges not covered by § 1026.61(a)(4)(ii)(B).* Under § 1026.61(a)(4)(ii)(C), a prepaid account issuer may still satisfy the exception in § 1026.61(a)(4) even if it debits fees or charges from the prepaid account when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in § 1026.61(a)(4)(ii)(B). A fee or charge not otherwise covered by § 1026.61(a)(4)(ii)(B) does not become covered by that provision simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. For example, assume

that a prepaid account issuer imposes a fee for an ATM balance inquiry and the amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. Also assume that when the fee is imposed, there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee does not become a fee covered by § 1026.61(a)(4)(ii)(B) because the fee is debited from the prepaid account balance when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the fee at the time it is imposed.

*61(a)(5) Definitions*

*Paragraph 61(a)(5)(iii)*

1. *Arrangement.* A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature is a business partner of a prepaid account issuer where the person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate. A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature or the person's affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of § 1026.61(a)(5)(iii) if the circumstances in either paragraph i or ii are met:

i. A person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate has an agreement with the person that can extend credit or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-

to-person transfers. However, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

ii. A person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate:

A. Has a business, marketing, or promotional agreement or other arrangement with the person that can extend credit or its affiliate where the agreement or arrangement provides that:

1. Prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or

2. The credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and

B. At the time of the marketing agreement or arrangement described in comment 61(a)(5)(iii)-1.ii.A, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement, as described in comment 61(a)(5)(iii)-1.i, between the parties that the card can access the credit feature. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the credit feature is effectuated through a card network or payment network.

2. *Relationship to prepaid account issuer.* A person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service

provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider such as a program manager, or the issuer's affiliate. In that case, the person that can extend credit will be a business partner of the prepaid account issuer. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the business partner of the prepaid account issuer.

*Paragraph 61(a)(5)(iv)*

1. *Applicability of credit feature definition.* The definition of credit feature set forth in § 1026.61(a)(5)(iv) only defines that term for purposes of this regulation in relation to credit in connection with a prepaid account or prepaid card. This definition does not impact when an account, subaccount or negative balance is a credit feature under the regulation with respect to credit in relation to a checking account or other transaction account that is not a prepaid account, or a debit card. *See, e.g.,* comments 2(a)(15)-2.ii.A and 4(b)(2)-1 for where the term credit feature is used in relation to a debit card or asset account other than a prepaid account.

2. *Asset account other than a prepaid account.* A credit feature for purposes of § 1026.61(a)(5)(iv) does not include an asset account other than a prepaid account that has an attached overdraft feature. For example, assume that funds are loaded or transferred to a prepaid account from an asset account (other than a prepaid account) on which an overdraft feature is attached. The asset account is not a credit feature under § 1026.61(a)(5)(iv) even if the load or transfer of funds to the prepaid account triggers the overdraft feature that is attached to the asset account.

*Paragraph 61(a)(5)(vii)*

1. *Definition of prepaid card.* The term “prepaid card” in § 1026.61(a)(5)(vii) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code.

*61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards*

1. *Credit subaccount on a prepaid account.* If a credit feature that is accessible by a hybrid prepaid-credit card is structured as a subaccount of the prepaid account, the credit feature must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance.

2. *Credit extended on a credit subaccount or a separate credit account.* Under § 1026.61(b), with respect to a credit feature that is assessed by a hybrid prepaid-credit card, a card issuer at its option may structure the credit feature as a separate credit feature, either as a subaccount on the prepaid account that is separate from the asset feature or as a separate credit account. The separate credit feature would be a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i). Regardless of whether the card issuer is structuring its covered separate credit feature as a subaccount of the prepaid account or as a separate credit account:

i. If at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred or authorized to be drawn or transferred, from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply

with the applicable provisions of this regulation with respect to the credit extension from the time the prepaid card transaction is authorized.

ii. For transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover that transaction at the time it settles and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of this regulation from the time the transaction is settled.

iii. If a negative balance would result on the asset feature in circumstances other than those described in comment 61(b)-2.i and ii, credit must be drawn from the covered separate credit feature to avoid the negative balance. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions in this regulation from the time credit is drawn from the covered separate credit feature. For example, assume that a fee for an ATM balance inquiry is imposed on the prepaid account when there are insufficient or unavailable funds to cover the amount of the fee when it is imposed. Credit must be drawn from the covered separate credit feature to avoid a negative balance.

*61(c) Timing Requirement for Solicitation or Application With Respect to Hybrid Prepaid-Credit Cards*

1. *Meaning of registration of a prepaid card or prepaid account.* A prepaid card or prepaid account is registered, such that the 30-day timing requirement required by § 1026.61(c)

begins, when the prepaid account issuer successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and state law. The beginning of the required 30-day timing requirement is triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card. With respect to a prepaid account for which customer identification and verification are completed before the account is opened, the 30-day timing requirement begins on the day the prepaid account is opened.

*2. Unsolicited issuance of credit cards and disclosures related to applications or solicitations for credit or charge card accounts.* See § 1026.12(a)(1) and comment 12(a)(1)-7.ii for additional rules that apply to the addition of a credit card or charge card account to a previously-issued prepaid account. See also § 1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

*3. Replacement or substitute cards.* A card issuer is not required to comply with § 1026.61(c) when a hybrid prepaid-credit card is permitted to be replaced, or substituted, for another hybrid prepaid-credit card without a request or application under § 1026.12(a)(2) and related commentary. For example, § 1026.61(c) does not apply to situations where a prepaid account or credit feature that is accessible by a hybrid prepaid-credit card is replaced because of security concerns and a new hybrid prepaid-credit card is issued to access the new prepaid account or covered separate credit feature without a request or application under § 1026.12(a)(2).

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Dated: October 3, 2016.

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**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2016-24503 Filed: 11/21/2016 8:45 am; Publication Date: 11/22/2016]