This document is scheduled to be published in the
Federal Register on 02/13/2018 and available online at
https://federalregister.gov/d/2018-01305, and on FDsys.gov

BILLING CODE: 4810-AM-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

[Docket No. CFPB-2017-0015]

RIN 3170-AA72

Rules Concerning 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 interpretation; delay of effective date.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulation E, which implements the Electronic Fund Transfer Act, and Regulation Z, which implements the Truth in Lending Act, and the official interpretations to those regulations. This rulemaking relates to a final rule published in the *Federal Register* on November 22, 2016, as amended on April 25, 2017, regarding prepaid accounts under Regulations E and Z. The Bureau is finalizing modifications to several aspects of that rule, including with respect to error resolution and limitations on liability for prepaid accounts where the financial institution has not successfully completed its consumer identification and verification process; application of the rule's credit-related provisions to digital wallets that are capable of storing funds; certain other clarifications and minor adjustments; technical corrections; and an extension of the overall effective date to April 1, 2019.

DATES: The amendments in this final rule are effective on April 1, 2019. The effective date of the final rule published on November 22, 2016 (81 FR 83934), as delayed on April 25, 2017 (82 FR 18975), is further delayed from April 1, 2018 to April 1, 2019. The effective date of the

final rule published on April 25, 2017 (82 FR 18975), is delayed from April 1, 2018 to April 1, 2019. The effective date for the addition of § 1005.19(b), published on November 22, 2016 (81 FR 83934), as confirmed on April 25, 2017 (82 FR 18975), is delayed from October 1, 2018 to April 1, 2019.

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SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The Bureau is finalizing amendments to its 2016 rule that created comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA),[1] and Regulation Z, which implements the Truth in Lending Act (TILA)[2] (2016 Final Rule).[3] Through its efforts to support industry implementation of the 2016 Final Rule, the Bureau learned that some industry participants believed that they would have difficulty complying with certain provisions of the 2016 Final Rule that would have gone into effect on October 1, 2017. To facilitate compliance, after notice and comment, the Bureau extended the general effective date of the 2016 Final Rule to April 1, 2018 (2017 Effective Date Proposal and 2017 Effective Date Final Rule, respectively).[4] The 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, is referred to herein as the Prepaid Accounts Rule.

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[1] 15 U.S.C. 1693 *et seq*.

[2] 15 U.S.C. 1601 *et seq*.

[3] The 2016 Final Rule was released by the Bureau on October 5, 2016 and subsequently published in the *Federal Register*. 81 FR 83934 (Nov. 22, 2016).

[4] 82 FR 13782 (Mar. 15, 2017); 82 FR 18975 (Apr. 25, 2017).

Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation of the 2016 Final Rule as well as in comments received on the 2017 Effective Date Proposal, the Bureau proposed to amend several provisions of the 2016 Final Rule (June 2017 Proposal).[5] After reviewing comments received on the proposal, the Bureau is finalizing the June 2017 Proposal generally as proposed, with certain modifications, as discussed below. These revisions to the Prepaid Accounts Rule are intended to address, in part, certain issues that were unanticipated by commenters on the notice of proposed rulemaking that led to the 2016 Final Rule (2014 Proposal),[6] and are intended to facilitate compliance and relieve burden on those issues. In particular, the Bureau is:

- Revising the error resolution and limited liability provisions of the Prepaid Accounts Rule in Regulation E to provide that financial institutions are not required to resolve errors or limit consumers' liability on unverified prepaid accounts. For accounts where the consumer's identity is later verified, financial institutions are not required to limit liability and resolve errors with regard to disputed transactions that occurred prior to verification.
- Creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts

[5] 82 FR 29630 (June 29, 2017).

[6] The Bureau released its proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014. 79 FR 77102 (Dec. 23, 2014). The Bureau had previously issued an advance notice of proposed rulemaking that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable cards and other prepaid products. 77 FR 30923 (May 24, 2012).

Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers. This final rule also expands the situations in which prepaid account issuers are permitted to run negative balances on prepaid accounts, provided certain conditions are met.

- Extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019.
- Making clarifications or minor adjustments to provisions of the Prepaid Accounts Rule in Regulation E related to an exclusion from the definition of prepaid account, unsolicited issuance of access devices, several aspects of the rule's pre-acquisition disclosure requirements, and submission of prepaid account agreements to the Bureau.
- Making technical corrections to certain provisions of the Prepaid Accounts Rule in both Regulations E and Z.

Due to recent changes in requirements by the Office of the Federal Register, when amending commentary the Bureau is now required to reprint certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The length of the commentary in this final rule thus appears much longer than what was included in the June 2017 Proposal. The Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that this final rule is making to the Prepaid Accounts Rule.[7]

[7] This redline can be found on the Bureau's regulatory implementation page for the Prepaid Accounts Rule, at https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/. If any conflicts exist between the redline and the text of the 2016 Final Rule, the 2017 Effective Date Final Rule, or this final rule, the rules themselves, as published in the *Federal Register*, are the controlling documents.

II. Background

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts, and generally expanded Regulation Z's coverage to overdraft features that may be offered in conjunction with prepaid accounts. Upon issuing the 2016 Final Rule, the Bureau initiated robust efforts to support industry implementation.[8] Information regarding the Bureau's Prepaid Accounts Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation website at https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.

In the course of the Bureau's work to help industry implement the 2016 Final Rule, some industry participants raised concerns about what they described as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices, including those newly adopted, that industry participants did not fully address in their comment letters on the 2014 Proposal. They indicated that these issues could complicate implementation and affect consumers.

In light of these concerns, on March 9, 2017, the Bureau released the 2017 Effective Date Proposal with a request for comment.[9] In that proposal, the Bureau proposed to delay the general

[8] These ongoing efforts include: (1) the publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Rule, including an executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, a summary of the rule's effective date provisions, and a guide to preparing the short form disclosure; (3) the release of native design files for print and source code for web-based disclosures for all of the model and sample disclosure forms included in the Prepaid Accounts Rule; (4) meetings with industry, including trade associations and individual industry participants, to discuss and support their implementation efforts; and (5) participation in conferences and forums. The Bureau is releasing new and updated implementation materials in connection with this final rule.

[9] 82 FR 13782 (Mar. 15, 2017).

effective date of the 2016 Final Rule by six months, to April 1, 2018. While the Bureau did not propose in the 2017 Effective Date Proposal to amend any other substantive provisions of the 2016 Final Rule, many commenters nonetheless advocated for retaining, modifying, or eliminating various provisions of the 2016 Final Rule. These comments are discussed in the section-by-section analyses in part V, where relevant.

On April 20, 2017, the Bureau released the 2017 Effective Date Final Rule, which delayed the general effective date of the 2016 Final Rule until April 1, 2018.[10] The Bureau indicated in that notice that it intended to seek comment on targeted substantive issues raised both through the Bureau's outreach efforts to industry regarding implementation and in comments received on the 2017 Effective Date Proposal.

The Bureau subsequently proposed to amend several provisions of the 2016 Final Rule via the June 2017 Proposal. After reviewing public comments received on the proposal, the Bureau is finalizing the June 2017 Proposal generally as proposed, with certain modifications, as discussed below.

III. Summary of the Rulemaking Process

A. The June 2017 Proposal

In the June 2017 Proposal, the Bureau proposed to amend several provisions of the 2016 Final Rule, largely based on feedback received by the Bureau through its outreach efforts to industry regarding implementation of the 2016 Final Rule as well as in comments received on the 2017 Effective Date Proposal. In particular, the proposed rule would have: revised the error resolution and limited liability provisions of the Prepaid Accounts Rule with respect to

[10] 82 FR 18975 (Apr. 25, 2017). The 2017 Effective Date Final Rule did not delay the October 1, 2018 effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2).

unverified accounts; created a limited exception to the credit-related provisions of the 2016 Final Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products; and made clarifications or minor adjustments to several provisions of the 2016 Final Rule. The contents of the June 2017 Proposal are discussed in detail in the section-by-section analysis in part V below.

The Bureau also solicited comment on whether a further delay of the rule's effective date would be necessary and appropriate in light of the proposed amendments, and whether a specific provision addressing early compliance would be necessary and appropriate.

B. Feedback Provided to the Bureau

The comment period for the June 2017 Proposal closed on August 14, 2017. The Bureau received 32 comment letters from consumer advocacy groups; national and regional trade associations; members of the prepaid industry, including issuing banks and credit unions, program managers, and a digital wallet provider; a think tank; and several anonymous commenters. The Bureau also considered comments received after the comment period closed, via several ex parte meetings and other communications.[11] Materials on the record, including summaries of ex parte communications, 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 this final rule as described in parts V and VI below.

[11] The Bureau's *Policy on Ex Parte Presentations in Rulemaking Proceedings* is available at 82 FR 18687 (Apr. 21, 2017).

In addition to the comments summarized in the section-by-section analysis in part V below, many commenters raised other issues that were beyond the scope of what the Bureau proposed. These comments argued for the Bureau to take a number of actions, including: refining or limiting the scope of the definition of "prepaid account" (for example, to clarify the treatment of so-called "checkless checking" accounts or to exempt digital wallets from coverage under the rule); making changes to, or exempting certain prepaid accounts from, the requirement to provide certain disclosures (such as the long form, short form, and/or oral disclosures, in various circumstances); either expanding or reducing the scope of Regulation E's compulsory use prohibition; eliminating the requirement that issuers submit their prepaid account agreements to the Bureau or modifying the general timeframe for agreement submissions; exempting credit unions from coverage under the rule; generally not imposing additional requirements or price caps on prepaid accounts; and rescinding the rule entirely. Other commenters provided more general feedback to the Bureau, offering suggestions about how the Bureau could improve both its rulemaking and regulatory implementation processes, both in general and in particular with respect to the Prepaid Accounts Rule. The Bureau will continue its outreach to industry and other stakeholders to understand their experiences in implementing the Prepaid Accounts Rule and welcomes feedback regarding its rulemaking and regulatory implementation processes more generally.

IV. Legal Authority

The Bureau is exercising its rulemaking authority pursuant to EFTA section 904(a) and (c), sections 1022(b) and 1032(a) of the Dodd-Frank Wall Street Reform and Consumer

Protection Act (Dodd-Frank Act),[12] and TILA section 105(a) to amend provisions of Regulations E and Z affected by the Prepaid Accounts Rule, as discussed in this part IV and throughout the section-by-section analysis in part V below.

The legal authority for the 2016 Final Rule is described in detail in that rule's **SUPPLEMENTARY INFORMATION**.[13] As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)[14] authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provides that such regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions, for any class of electronic fund transfers (EFTs) or remittance transfers as in the judgment of the Bureau are necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[15] As amended by the Dodd-Frank Act, TILA section 105(a)[16] directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[17] [18]

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[12] Public Law 111-203, section 1084, 124 Stat. 2081 (2010) (codified at 15 U.S.C. 1693a *et seq*.).

[13] *See, e.g.*, 81 FR 83934, 83958-60 (Nov. 22, 2016). The legal authority for the 2017 Effective Date Final Rule is described in that rule's **SUPPLEMENTARY INFORMATION**. 82 FR 18975, 18978 (Apr. 25, 2017).

[14] 15 U.S.C. 1693b(a) and (c).

[15] 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 electronic fund and remittance transfer systems but that its primary objective is the provision of individual consumer rights. 15 U.S.C. 1693.

[16] 15 U.S.C. 1604(a).

[17] 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." 15 U.S.C. 1601(a). Moreover, this stated purpose is tied to Congress' finding that

Section 1032(a) of the Dodd-Frank Act[19] 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. Additionally, under section 1022(b)(1) of the Dodd-Frank Act,[20] the Bureau has general authority 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. EFTA, TILA, and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, in finalizing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)[21] to prescribe rules under EFTA, TILA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act[22] prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

"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[.]" *Id.*

[18] 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 by at least six months the date of promulgation." Section 105(d) further provides that the Bureau "may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements." As it did in the 2017 Effective Date Final Rule, the Bureau is exercising its discretion under TILA section 105(d) to lengthen the period to April 1, 2019. The Bureau believes that the changes the Prepaid Accounts Rule will require to disclosures pursuant to Regulation Z warrant a delayed effective date that conforms to the rest of the rule.

[19] 12 U.S.C. 5532(a).

[20] 12 U.S.C. 5512(b)(1).

[21] 12 U.S.C. 5512(b).

[22] 12 U.S.C. 5512(b)(2).

V. Section-by-Section Analysis

A. Overview of the Amendments to Regulations E and Z

As discussed above, the Prepaid Accounts Rule amended Regulation E, which implements EFTA, and Regulation Z, which implements TILA, along with the official interpretations thereto. Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation as well as in comments received on the 2017 Effective Date Proposal, and following notice and comment on the June 2017 Proposal, the Bureau is amending several provisions of the Prepaid Accounts Rule. This overview provides a summary of the amendments; each amendment, along with its rationale, is discussed in detail in the section-by-section analyses that follow.

Error resolution and limited liability. The Bureau is amending Regulation E §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), comments 18(e)-4 through 6, and appendix A-7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.*, accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). For accounts where the consumer's identity is later verified, financial institutions are not required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification. The Bureau is also making related changes to model disclosure language. In addition, the Bureau is requiring that, for accounts in programs where there is no verification process, financial institutions either explain in their initial disclosures their error resolution process and limitations on consumers'

liability for unauthorized transfers, or explain that there are no such protections, and that such institutions comply with the process (if any) that they disclose.

Credit card accounts linked to prepaid accounts. The Bureau is creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers.

Specifically, the Bureau is amending the definition of "business partner" in § 1026.61(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards if certain conditions are satisfied. The exclusion applies only to traditional credit card accounts that are linked to a prepaid account. In order to qualify for the exclusion, certain conditions must be satisfied, including that the parties cannot allow the prepaid card to access credit from the credit card account in the course of a transaction with the prepaid card unless the consumer has submitted a written request to authorize linking the two accounts that is separately signed or initialized, cannot condition the acquisition or retention of either account on whether the consumer authorizes such a linkage, and do not vary certain terms and conditions based on whether the two accounts are linked. Under this exception, the linked credit card account will still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not

home-secured) consumer credit plan, but the tailored provisions in the Prepaid Accounts Rule for hybrid prepaid-credit cards will not apply.

Negative balances on prepaid accounts. The Bureau is making changes to Regulation Z to address certain complications related to prohibiting negative balances on digital wallets that are prepaid accounts when a covered separate credit feature offered by a business partner is attached to the digital wallet. Specifically, the Bureau is expanding the exception in § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. Prior to this final rule, the exception only applied where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees. The Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to take advantage of the exception in § 1026.61(a)(4) with respect to the negative balance even if a covered separate credit feature offered by a business partner is attached to the prepaid account so long as the other prerequisites contained in § 1026.61(a)(4) are satisfied. The Bureau is also making modifications to § 1026.61(a)(1)(iii) and (a)(3)(ii) and the commentary accompanying § 1026.61(a)(3) and (4) related to this change, as well as modifications to certain commentary elsewhere in Regulation Z for consistency with this change to § 1026.61(a)(4).

Effective date. The Bureau is extending by an additional 12 months the general effective date of the Prepaid Accounts Rule, to April 1, 2019. The Bureau is also extending the effective date for the agreement submission requirement in § 1005.19(b) to April 1, 2019. The Bureau is

making conforming changes to §§ 1005.18(b)(2)(ix)(D), (h), and 1005.19(f) and the commentary accompanying § 1005.18(b)(2)(ix)(D) and (E), and (h), and removing the commentary that accompanied § 1005.19(f), to reflect the effective date change and the alignment of the general effective date with the effective date of the agreement submission requirement.

Exclusion from coverage for certain loyalty, award, or promotional gift cards. The revisions to Regulation E § 1005.2(b)(3)(ii)(D)(*3*) and new comment 2(b)(3)(ii)-4 clarify that the exclusion from the Prepaid Accounts Rule for loyalty, award, or promotional gift cards applies both to such products as defined in § 1005.20(a)(4) as well as those that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public.

Unsolicited issuance of access devices and pre-acquisition disclosures for prepaid accounts without consumer choice. The revisions to comment 18(a)-1 and to § 1005.18(b)(1)(i) and comment 18(b)(1)(i)-1 clarify how the provisions regarding unsolicited issuance of access devices and the timing of pre-acquisition disclosures apply to prepaid products where a financial institution or third party making a disbursement via a prepaid account does not offer any alternative means for a consumer to receive the funds.

Pre-acquisition disclosures. Several provisions in this final rule provide additional clarity and flexibility with respect to the Prepaid Accounts Rule's pre-acquisition disclosure requirements. The revisions to § 1005.18(b)(1)(ii)(D) and comment 18(b)(1)(ii)-4 allow financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide the long form disclosure after acquisition by allowing the long form disclosure to be delivered electronically without receiving consumer consent under the Electronic Signatures in Global and National Commerce Act (E-

Sign Act),[23] if it is not provided inside the prepaid account packaging material and the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information. Revisions to § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)-1 and new comment 18(b)(6)(i)-1 (formerly comment 18(b)(1)(iii)-2) clarify that if a financial institution provides pre-acquisition disclosures in writing and a consumer subsequently completes the acquisition process online or by telephone, the financial institution need not provide the disclosures again electronically or orally. The revisions to § 1005.18(b)(2)(ix)(C) and comment 18(b)(2)(ix)(C)-1.ii provide prepaid account issuers additional flexibility in disclosing additional fee types on the short form. Specifically, they permit financial institutions disclosing additional fee types with three or more fee variations to consolidate those variations into two categories and allow those two categories to be disclosed on the short form.

Section 1005.18(b)(9)(i)(C) requires a financial institution to provide pre-acquisition disclosures in a foreign language if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in that foreign language. The Bureau is amending § 1005.18(b)(9)(i)(C), adding new comment 18(b)(9)-1.ii.D, and making conforming changes in comments 18(b)(9)-1.i.E and ii.B to provide that foreign language disclosures are not required for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party, or directly by an employer or government agency on an

[23] 15 U.S.C. 7001 *et seq*.

informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account recipients.

Submission of prepaid account agreements. The Bureau is making several changes to the rules governing submission of prepaid account agreements to the Bureau in § 1005.19. The revisions to § 1005.19(b)(2) and comment 19(a)(2)-1.vii, and new comment 19(b)(2)-2, allow prepaid account issuers to delay submitting a change in the list of names of other relevant parties to a particular prepaid account agreement (such as employers for a payroll card agreement) until the earlier of such time as the issuer is submitting other changes to the Bureau or May 1 of each year (for any updates through April 1 that have not previously been submitted). The revisions to § 1005.19(b)(6)(ii) and (iii) and comment 19(b)(6)-3 permit short form and long form disclosures to be provided to the Bureau as separate addenda to the agreement, rather than integrated into the agreement or as a single addendum. The Bureau is also making changes in conformance with these revisions elsewhere in § 1005.19 and related commentary.

Technical corrections. The Bureau is making technical corrections in Regulations E and Z, such as correcting typographical errors, editing text for consistency, and making similar minor changes to various provisions of the Prepaid Accounts Rule, which are not intended to change the meaning of the Prepaid Accounts Rule.

Regulation E

Subpart A—General

Section 1005.2 Definitions

2(b) Account

2(b)(3) Prepaid Account

2(b)(3)(ii)

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

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts by creating a new defined term—"prepaid account"—in § 1005.2(b)(3) as a subcategory of the definition of "account" in § 1005.2(b)(1). The definition of prepaid account in § 1005.2(b)(3) covers a range of products including general purpose reloadable (GPR) cards, as well as other products such as certain non-reloadable accounts and digital wallets. It also contains several exclusions from the definition of prepaid account, including for gift certificates; store gift cards; loyalty, award, or promotional gift cards; and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates, all of which are subject to a separate set of requirements under 2009 legislation and implementing regulations.[24] The exclusion for loyalty, award, or promotional gift cards refers to such products as defined in § 1005.20(a)(4) and (b).[25]

[24] § 1005.2(b)(3)(ii)(D). The exclusions in § 1005.2(b)(3)(ii)(D) each reference specific provisions in § 1005.20, which houses the Board's 2010 rule implementing certain sections of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Public Law 111-24, 123 Stat. 1734 (2009) (Credit CARD Act)) applicable to gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards (Gift Card Rule). For products marketed and sold as gift cards (and that satisfy certain other conditions), 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 error resolution and limited liability protections or periodic statements.

[25] § 1005.2(b)(3)(ii)(D)(*3*).

Section 1005.20(a)(4) defines the term "loyalty, award, or promotional gift card" as a card, code, or other device that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and sets forth certain disclosures, as applicable, indicating that it is issued for loyalty, award, or promotional purposes and setting forth its expiration date as well as the amount of any fees and the conditions under which they may be imposed. Section 1005.20(b) lists the exclusions from coverage under the Gift Card Rule, one of which is for loyalty, award, or promotional gift cards.[26]

The Bureau explained in the 2016 Final Rule its reasoning for excluding gift certificates, store gift cards, and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates from the definition of prepaid account. Specifically, the Bureau stated that, after considering the comments on the 2014 Proposal, it remained convinced that subjecting this general category of products to both the Gift Card Rule and the requirements of the 2016 Final Rule would place a significant burden on industry without a corresponding consumer benefit. In discussing its rationale for having proposed these exclusions in the 2014 Proposal, the Bureau also stated that, among other things, it was concerned about the possibility of consumer confusion regarding products covered by both regimes, though it did not believe the exclusion should extend to products that consumers may use as or confuse with transaction accounts even if such products were also covered by the Gift Card Rule.[27] The Bureau also expressed concern

[26] § 1005.20(b)(3).

[27] With respect to general-use prepaid products, the Bureau excluded only such 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 as prepaid accounts may be inadvertently excluded due to occasional or incidental marketing

that, were it to impose requirements 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 because, unlike other types of prepaid products, many gift cards do not typically offer these protections.[28]

The Bureau's Proposal

As explained in the June 2017 Proposal, the Bureau became aware through its outreach efforts to industry regarding implementation that there may be some confusion as to whether the exception in § 1005.2(b)(3)(ii)(D)(*3*) extends to loyalty, award, or promotional gift cards that do not contain disclosures pursuant to § 1005.20(a)(4)(iii) but that are nonetheless excluded from coverage under the Gift Card Rule pursuant to § 1005.20(b)(4) because they are not marketed to the general public. Industry stakeholders requested that the Bureau make clear that these cards are excluded from coverage under the Prepaid Accounts Rule. In the alternative, they requested that, if loyalty, award, or promotional gift cards that do not provide the § 1005.20(a)(4)(iii) disclosures are in fact covered by the Prepaid Accounts Rule, the Bureau clarify the timing to add such disclosures in order to qualify for the exclusion under § 1005.2(b)(3)(ii)(D)(*3*), particularly for cards that have already been distributed to consumers for whom the financial institution does not have contact information.

The Bureau proposed to clarify the scope of this exclusion by revising § 1005.2(b)(3)(ii)(D)(*3*) to exclude a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4), or that satisfies the criteria in § 1005.20(a)(4)(i) and (ii) and is excluded from

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activities, and that consumers would unwittingly think they carry the same protections as other prepaid accounts under the Prepaid Accounts Rule. 81 FR 83934, 83977 (Nov. 22, 2016).

[28] *Id*. at 83976-77.

§ 1005.20 pursuant to § 1005.20(b)(4). The Bureau also proposed to add comment 2(b)(3)(ii)-4 to explain that proposed § 1005.2(b)(3)(ii)(D)(*3*) would exclude loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). New comment 2(b)(3)(ii)-4 would have further explained that proposed § 1005.2(b)(3)(ii)(D)(*3*) would also exclude cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public; such products would not be required to set forth the disclosures enumerated in § 1005.20(a)(4)(iii) in order to be excluded pursuant to proposed § 1005.2(b)(3)(ii)(D)(*3*).

Comments Received

Commenters, including industry trade associations, a think tank, and an anonymous commenter, supported the proposed revision to § 1005.2(b)(3)(ii)(D)(*3*). These commenters agreed that, given the limited nature and use of these types of loyalty, award, and promotional gift cards, it would be appropriate for the Bureau to exclude them from coverage under the Prepaid Accounts Rule. The anonymous commenter stated that because these cards tend to be non-reloadable, small dollar products that are not marketed to the general public, subjecting them to more robust Regulation E requirements would be overly burdensome to industry while providing little consumer benefit. One of the trade associations cautioned that, while it appreciated the proposed exception, it expects that few, if any, products would benefit from the exception because it believes that virtually all loyalty, award, and promotional gift cards already provide the § 1005.20(a)(4)(iii) disclosures and thus qualify for the § 1005.20(b)(3) exclusion under the Gift Card Rule. The Bureau received no comments opposing this aspect of the proposal.

In response to the Bureau's request for comment regarding whether, in the alternative, loyalty, award, or promotional gift cards that do not provide the disclosures enumerated by § 1005.20(a)(4)(iii) should be covered by the Prepaid Accounts Rule but provided with certain transitional exclusions and accommodations, a trade association stated that all loyalty, award, or promotional gift cards should be excluded from the definition of prepaid account, regardless of the method by which the product qualifies as a loyalty, award, or promotional gift card, and therefore the Bureau should not adopt this alternative proposal.

Many commenters did not respond regarding the Bureau's proposed revision to § 1005.2(b)(3)(ii)(D)(*3*) and related commentary specifically but instead commented on the definition of "prepaid account" more broadly, urging the Bureau to adopt additional exclusions for other types of products considered prepaid accounts under the 2016 Final Rule. For example, several of these commenters, including trade associations, a program manager, an issuing bank, and an anonymous commenter, urged the Bureau to exclude products that are not marketed to the general public, such as utility company refund cards, jury duty cards, prison release cards, and cards attached to qualified tuition savings plans (*e.g.*, 529 plans).[29] Some of these commenters also urged the Bureau to exclude certain limited-use disbursement cards, such as those used for customer service purposes, arguing that they are akin to loyalty, award, or promotional gift cards.[30] In addition, a program manager and a trade association expressed concern about the

[29] A 529 plan is operated by a State or educational institution, with tax advantages and potentially other incentives to make it easier to save for college and other post-secondary training for a designated beneficiary, such as a child or grandchild. Internal Revenue Service, *529 Plans: Questions and Answers*, *available at* https://www.irs.gov/newsroom/529-plans-questions-and-answers (last visited Jan. 8, 2018); *see* 26 U.S.C. 529 *et seq*.

[30] An anonymous commenter similarly requested that the Bureau exclude from coverage products that are issued to independent contracts for payments in connection with commercial activity, asserting that, among other things, these products are not established primarily for personal, family, or household purposes. Pursuant to existing § 1005.2(b)(1), Regulation E applies only to accounts that are established primarily for personal, family, or

limited examples of healthcare and employee benefit products that are excluded from the Prepaid Accounts Rule.[31] These commenters stated that it is unclear whether other types of healthcare products—such as ABLE Act savings plans[32]—qualify for the 2016 Final Rule's exclusions for accounts loaded only with funds from a health savings account or dependent care assistance program.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.2(b)(3)(ii)(D)(*3*) and adopting new comment 2(b)(3)(ii)-4 as proposed. The Bureau believes it is appropriate to exclude loyalty, award, or promotional gift cards from coverage under the Prepaid Accounts Rule regardless of whether they provide disclosures pursuant to § 1005.20(a)(4)(iii), given the limited nature and use of such products. Some such cards do not meet the definition of prepaid account, as they cannot be used with multiple, unaffiliated merchants, and are thus outside the scope of the Prepaid Accounts Rule's coverage regardless. With regard to any such cards that do meet the definition of prepaid account, the Bureau believes it is necessary and proper to exclude those cards 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.

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household purposes; accounts that are not established primarily for personal, family, or household purposes are not subject to the Regulation.

[31] An account "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" is excluded from the definition of a prepaid account. § 1005.2(b)(3)(ii)(A).

[32] The ABLE Act permits a State to establish and maintain a tax-advantaged savings program under section 529A of the Internal Revenue Code. Contributions may be made to a 529A account established for a designated beneficiary to pay for qualified disability expenses. Internal Revenue Service, *Tax Benefit for Individuals With Disabilities: IRC Section 529A*, *available at* https://www.irs.gov/government-entities/federal-state-local-governments/tax-benefit-for-disability-irc-section-529a (last visited Jan. 8, 2018).

The Bureau appreciates the trade association's comment that few if any products need this exclusion because, it said, virtually all loyalty, award, and promotional gift cards provide the disclosures enumerated by § 1005.20(a)(4)(iii). However, since the Bureau received questions from industry on the status of such products without the disclosure, the Bureau believes it is appropriate to make this clarification.

The exclusions for other types of products requested by commenters were beyond the scope of the Bureau's proposal, and thus the Bureau is not making any such changes at this time.

Section 1005.11 Procedures for Resolving Errors

11(c) Time Limits and Extent of Investigation

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is making certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. This change has rendered unnecessary § 1005.11(c)(2)(i)(C), which had been added by the 2016 Final Rule to reflect the exception to the requirement to provide provisional credit for errors asserted on unverified accounts. The Bureau did not receive any comments regarding this portion of the proposal in particular.

Specifically, § 1005.11(c)(2)(i)(C) provided that a financial institution is not required 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 successfully completed its consumer identification and verification process, as set forth in prior § 1005.18(e)(3)(ii). As discussed in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is not requiring a financial institution to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account, other than a

payroll card account or government benefit account, for which it has not successfully completed its consumer identification and verification process. Because this final rule provides that such accounts are not subject to § 1005.11, § 1005.11(c)(2)(i)(C) is no longer necessary, and thus the Bureau is removing it as proposed. This final rule reverts the text of § 1005.11(c)(2)(i) to its state prior to its amendment by the 2016 Final Rule.

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

Section 1005.18(a) states that a financial institution shall comply with all applicable requirements of EFTA and Regulation E with respect to prepaid accounts except as modified by § 1005.18. One of those generally applicable requirements concerns the issuance of access devices in § 1005.5, which implements EFTA section 911.[33] Prior to the 2016 Final Rule, comment 18(a)-1 explained when a consumer was deemed to request an access device for a payroll card account;[34] a corresponding provision for government benefit accounts appeared in § 1005.15(b).[35] In the 2016 Final Rule, the Bureau did not modify either of those provisions

[33] 15 U.S.C. 1693i.

[34] Comment 18(a)-1 stated that, 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. The 2016 Final Rule did not change this portion of the comment.

[35] Section 1005.15(b) stated that a consumer is deemed to request an access device for a government benefit account when the consumer applies for government benefits that the agency disburses or will disburse by means of an EFT. In addition, it provided that the agency shall also verify the identity of the consumer by reasonable means before the device is activated. This provision was not changed by the 2016 Final Rule.

except to add to comment 18(a)-1 two examples of when a consumer is deemed to request an access device for a prepaid account.[36]

As discussed in the June 2017 Proposal, the Bureau received some questions about application of § 1005.5 to prepaid accounts and believed that additional clarification may be warranted. In particular, industry stakeholders had asked about how § 1005.5—which (along with EFTA section 911) appears to have been drafted with a focus on providing access devices for existing accounts where the consumer has means of accessing funds in the account other than by using the access device—applies to certain prepaid accounts where there is no means of access to the underlying funds other than via the prepaid card.[37]

Specifically, Regulation E provides that a financial institution may issue an access device for an account to a consumer only when solicited to do so by the consumer pursuant to § 1005.5(a) (that is, in response to an oral or written request for the device, or as a renewal of, or in substitution for, an accepted access device) or on an unsolicited basis in accordance with the requirements set forth in § 1005.5(b). Section 1005.5(b) provides that a financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is (1) not validated, meaning that the financial institution has not yet performed all the procedures that would enable a consumer to initiate an EFT using the access device; (2) accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired; (3) accompanied by the disclosures required by § 1005.7 of the consumer's rights and liabilities that will apply if the access device is validated; and (4) validated

[36] Specifically, the 2016 Final Rule added to comment 18(a)-1 an explanation that 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.

[37] 82 FR 29630, 29635 (June 29, 2017).

only in response to the consumer's oral or written request for validation, after the financial institution has verified the consumer's identity by a reasonable means.

The Bureau's Proposal

As noted above, the Bureau received questions from industry about how the unsolicited issuance rules set forth in § 1005.5(b) apply to prepaid accounts used for making disbursements where the consumer is given no other option but to receive the disbursement via a prepaid account, such as prison release cards, jury duty cards, and certain types of refund cards. Specifically, the concern stemmed from § 1005.5(b)(2), which requires the financial institution to provide a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired. Industry stakeholders expressed concern that this requirement could be interpreted to mean, in the prepaid context, that they must provide another option by which consumers can receive their funds, despite the Bureau's decision at the time of the 2016 Final Rule not to extend the compulsory use prohibition in § 1005.10(e)(2) to other types of prepaid accounts beyond payroll card accounts and government benefit accounts.[38] Industry stakeholders explained that costs related to providing an additional payment option, such as a paper check, would threaten the financial viability of these generally temporary, limited-use products and potentially cause unbanked consumers to incur check cashing fees to access their funds if these products were eliminated in favor of paper checks. One issuing bank stated that it issues prepaid accounts for use by prisons in work release programs, where the account holds funds for use by an incarcerated individual to pay for transportation, food, or incidentals related to participation in the work release program. The bank explained that, if these

[38] 81 FR 83934, 83985 (Nov. 22, 2016).

funds were disbursed in any other manner (such as in cash), the prison would not be able to ensure that they were used only for approved purposes.

As it stated in the June 2017 Proposal, the Bureau did not intend application of the unsolicited issuance requirements to mandate that consumers be offered other options to receive payments in circumstances beyond those already addressed by the compulsory use prohibition.[39]

The Bureau proposed to clarify application of the unsolicited issuance rules to prepaid accounts where the consumer is not offered any other options by which to receive a disbursement of funds. Specifically, in order to make clear that § 1005.5(b)(2) does not require a financial institution or other party to offer consumers other options to receive such disbursements, the Bureau proposed to add to comment 18(a)-1 a statement that, if an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that he or she has no other means by which to receive any funds in the prepaid account if the consumer disposes of the access device.

[39] 82 FR 29630, 29636 (June 29, 2017). EFTA section 913(2), as implemented in § 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 predate the addition of the payroll card provisions in current § 1005.18 to Regulation E. In the 2016 Final Rule, the Bureau added a parallel comment (comment 10(e)(2)-2) for clarity regarding the application of the compulsory use prohibition to government benefit accounts. *See* 81 FR 83934, 93983-85 (Nov. 22, 2016).

Comments Received

Several industry commenters, including a trade association, an issuing bank, and a think tank, supported the proposed modification to comment 18(a)-1. The issuing bank confirmed that clarification was necessary because some entities had interpreted § 1005.5(b) to mean that, for prepaid accounts where the device itself is the only means by which consumers can access their funds, financial institutions would be required to provide another method of access. The issuing bank also stated that the proposed modification would be especially helpful in connection with prison work release programs and post-incarceration programs that use prepaid cards to help address issues related to security, access to funds for both prisoners and parolees, and proper monitoring of card usage. The issuing bank requested that the Bureau specify what information financial institutions should include with the access device to alert consumers that there are no other means by which to access their funds.

A consumer advocacy group stated that the proposed language did not account for refund provisions that are commonly found in prison release card agreements and could lead to consumer confusion. This commenter explained that most prison release card agreements allow the consumer to obtain a replacement card if the card is lost or stolen and to access funds in the account in a variety of ways, including by making an ATM withdrawal or requesting the issuance of a check. The commenter expressed concern that consumers might interpret the proposed disclosure to mean they have no ability to obtain the funds in their accounts other than by using the access device at the point of sale. This commenter also stated that, if a consumer loses his or her card and wishes to withdraw the remaining balance of the account via an alternative method, the financial institution should allow that, subject to reasonable identity verification procedures. The commenter asserted that, as written, the proposed revision could be

read as prohibiting such a transaction. The commenter therefore suggested revisions to the proposed language that it believed would both alert consumers to the importance of retaining the physical card and clearly convey information about alternate methods consumers can use to access their funds.

Consumer advocates and industry commenters also requested that the Bureau make modifications to Regulation E's compulsory use prohibition governing payroll card accounts and government benefit accounts. Specifically, the consumer advocates suggested extending the compulsory use prohibition to other types of prepaid accounts, such as prison release cards, jury duty cards, and certain other types of refund cards or, in the alternative, limiting the fees on cards that are provided on an unsolicited basis. Regarding prison release cards in particular, they urged the Bureau to consider a rulemaking or exercise of its authority under title X of the Dodd-Frank Act to prohibit unfair, deceptive, or abusive acts or practices (UDAAP) to specifically address concerns related to these accounts. On the other hand, a trade association cautioned that an expanded compulsory use prohibition would threaten the viability of these types of prepaid accounts. Another trade association urged the Bureau to refrain from exercising its UDAAP authority without first obtaining more information about the types of programs that do not allow for consumer choice and without providing additional guidance to the public about what could be construed as a UDAAP. An issuing bank requested an exception from the existing compulsory use prohibition for government benefit accounts that mirrors what currently exists for payroll card accounts in emergency situations.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to comment 18(a)-1 generally as proposed, with one modification discussed below. The Bureau continues to believe

that, for prepaid accounts where an alternative means for a consumer to receive the funds in the account is not offered, it is reasonable for the disclosure required by § 1005.5(b)(2) to include a statement explaining that there is no other way for the consumer to receive his or her funds if the consumer disposes of the access device. However, based on the comments received, the Bureau understands that the proposed wording of the revision could have caused confusion as to whether the access device is the only means to access funds being disbursed via the prepaid account initially or whether using the access device is the only way to access the funds until the account balance is exhausted. Therefore, the Bureau is adopting the comment with a revision to make clear that the financial institution must inform the consumer that the consumer has no other means by which to initially receive the funds in the prepaid account other than by accepting the access device, as well as the consequences of disposing of the access device. The Bureau believes this clarification will resolve any potential confusion related to the disclosure required by § 1005.5(b)(2) for prepaid accounts lacking consumer choice.

The Bureau does not believe it is necessary to require, as part of the § 1005.5(b) disclosure, that financial institutions provide a list of other means of access to funds that are deposited in a prepaid account or to disclose procedures for replacing a lost or stolen access device. The Bureau understands that financial institutions often encourage consumers to review the terms and conditions of their prepaid accounts to learn about other methods, if any, by which they can access their funds, and expects industry will continue doing so. The Bureau also notes that any methods of accessing funds for a fee must be included in the long form disclosure pursuant § 1005.18(b)(4), and that financial institutions are permitted to include information about free services and features in the long form disclosure as well. Regarding the comment requesting that the Bureau provide specific language that financial institutions must include with

the prepaid account device to alert consumers that there are no other means by which to access their funds, the Bureau does not believe it would be appropriate to further prescribe specific language as it expects that nature of the disclosure will vary from institution to institution based on their particular circumstances.

Commenters' requests related to Regulation E's compulsory use prohibition more generally are outside the scope of this rulemaking, and thus the Bureau is not making any such changes at this time. The Bureau notes that to the extent prepaid accounts are used to disburse consumers' wages or covered government benefits, as defined under applicable law, such accounts are already covered by § 1005.10(e)(2) and will continue to be so under the Prepaid Accounts Rule. The Bureau notes further that it is continuing to monitor financial institutions' and other persons' practices relating to consumers' choice of how to receive funds due to them in various circumstances (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 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.

18(b) Pre-Acquisition Disclosure Requirements

The Prepaid Accounts Rule generally requires a financial institution to provide a consumer with both a "short form" and a "long form" disclosure before the consumer acquires a prepaid account. The Bureau adopted those pre-acquisition disclosure requirements pursuant to EFTA sections 904(a), (b), and (c), 905(a), and 913(2),[40] and section 1032 of the Dodd-Frank

[40] 15 U.S.C. 1693b(a), (b), and (c), 1693c(a), and 1693k(2).

Act,[41] and adjusted the timing and fee disclosure requirements as well as required disclosure language pursuant to EFTA section 904(c). As discussed in the section-by-section analyses that follow, the Bureau is modifying several discrete aspects of the pre-acquisition disclosure requirements to facilitate compliance and reduce burden.

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

Section 1005.18(b)(1)(i) requires a financial institution to provide the short form and long form disclosures required by § 1005.18(b) before a consumer acquires a prepaid account; an alternative timing regime exists for prepaid accounts acquired in retail locations or acquired orally by telephone, as described in § 1005.18(b)(1)(ii) and (iii), respectively.

As discussed in the 2016 Final Rule, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. The Bureau believed that the pre-acquisition disclosures would limit the ability of financial institutions to obscure key fees as well as allow consumers to better comparison shop among products. Even in situations where the consumer might not easily be able to comparison shop, such as when students are offered a card by their university, the Bureau believed that receiving the short form and long form disclosures pre-acquisition would allow consumers to better understand the product's terms before deciding whether to accept it and also could inform the way in which consumers decide to use the product once acquired. Relatedly, the Bureau believed that because consumers often use

[41] 12 U.S.C. 5532.

their prepaid accounts for an extended period, whatever disclosure information a consumer used when selecting the prepaid account could have a significant and potentially long-term impact.[42]

The Bureau's Proposal

Through its outreach efforts to industry regarding implementation, the Bureau received some questions about what it means to provide disclosures "pre" acquisition for products where the party making the disbursement to the consumer (or the financial institution) does not offer any alternative means for the consumer to receive those funds. (For further discussion of such products, see the section-by-section analysis of § 1005.18(a) above.) For example, if a refund card is sent by mail, industry stakeholders asked whether the financial institution would have to first mail the pre-acquisition disclosures to the consumer and then later send the card. The Bureau also heard concerns regarding certain in-person acquisition scenarios, such as with prison release or jury duty cards, although pre-acquisition disclosures could be provided more easily in advance of the consumer receiving the prepaid account in such cases.

The Bureau continues to believe that the disclosures required by § 1005.18(b) are important for consumers to receive for all prepaid products, and does not believe exclusions for certain types of products would be appropriate. However, as explained in the June 2017 Proposal, the Bureau did not intend to require that an additional separate formal step for disclosure delivery be added to the acquisition process for products where consumers are not making a choice as to whether to acquire the prepaid account. The Bureau did not believe that sending or otherwise providing the disclosures separately for prepaid accounts in this situation would be beneficial to consumers and acknowledged that, particularly if separate mailings were

[42] 81 FR 83934, 84017, 84022 (Nov. 22, 2016).

made, financial institutions could incur additional costs in delivering the pre-acquisition disclosures separately from the prepaid account itself.

The Bureau therefore proposed revisions to § 1005.18(b)(1)(i) and related commentary to clarify the timing requirements for delivery of pre-acquisition disclosures in this situation. Specifically, the Bureau proposed to add to the regulatory text of § 1005.18(b)(1)(i) a statement that, when a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, the disclosures required by § 1005.18(b) may be provided at the time the consumer receives the prepaid account. The Bureau also proposed to add an example, as comment 18(b)(1)(i)-1.ii, to illustrate such a scenario involving a utility company that refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. In addition, the Bureau proposed to renumber the paragraphs within comment 18(b)(1)(i)-1 for clarity.

Comments Received

Several industry trade associations and a think tank commented in support of the proposed revisions to § 1005.18(b)(1)(i). One of the trade associations stated that, in situations where the only method to disburse funds is via a prepaid account, requiring the financial institution (or third party) to send the pre-acquisition disclosures separately from the access device offers consumers no benefit or protection and could instead harm consumers by delaying access to their funds. The Bureau received no comments opposing this aspect of the proposal.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(1)(i) and comment 18(b)(1)(i)-1 as proposed, with a grammatical correction in the

first sentence. As discussed above and in the 2016 Final Rule, the Bureau continues to believe that consumers will benefit from receiving both the short form and long form disclosures in writing prior to prepaid account acquisition because the disclosures serve different but complementary goals.[43] However, as discussed above, the Bureau did not intend to require that an additional separate formal step for disclosure delivery be added to the acquisition process for products where consumers are not making a choice as to whether to acquire the prepaid account and remains concerned about the potential additional costs for financial institutions balanced against limited benefits to consumers.

The Bureau is therefore finalizing § 1005.18(b)(1)(i) to make clear that, when a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, the disclosures required by § 1005.18(b) may be provided at the time the consumer receives the prepaid account. Pursuant to this change, the financial institution or third party is not required to first mail or otherwise deliver the disclosures and then later provide the card.

The Bureau notes that the accommodation in final § 1005.18(b)(1)(i) does not apply to payroll card accounts and government benefit accounts because they are subject to the compulsory use prohibition in § 1005.10(e)(2). Comments 15(c)-1 and 2 and final comment 18(b)(1)(i)-1.i.B address the timing of pre-acquisition disclosures for such accounts.

[43] *Id.*

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations

Section 1005.18(b)(1)(ii) states that 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 in person at a retail location provided certain conditions are met. Specifically, these conditions are: (A) the prepaid account access device must be contained inside the packaging material; (B) the short form disclosure required by § 1005.18(b)(2) must be provided on or visible through an outward-facing, external surface of the access device's packaging material; (C) the short form disclosure must include the information set forth in § 1005.18(b)(2)(xiii) that allows a consumer to access the information required to be disclosed in the long form by telephone and via a website; and (D) the long form disclosure must be provided after the consumer acquires the prepaid account.

As discussed in the 2016 Final Rule and as noted above, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. However, the Bureau was cognizant of the potentially significant cost to industry related to providing the long form disclosure prior to acquisition at retail and making packaging adjustments necessary to accommodate such a disclosure given the space constraints for products sold at retail. The Bureau thus finalized the retail location exception in § 1005.18(b)(1)(ii), which it believed struck the appropriate balance between providing consumers with—or access to—important disclosures before acquiring a prepaid account while recognizing the packaging, space, and other constraints faced by financial institutions when selling prepaid accounts at retail.[44]

[44] *Id*. at 84022.

Specifically, in the 2016 Final Rule, the Bureau explained that it was adopting § 1005.18(b)(1)(ii)(D) to make clear that, to qualify for the retail location exception, a financial institution must provide the long form disclosure after the consumer acquires the prepaid account. The Bureau noted that this provision does not set forth a specific time by which the long form disclosure must be provided after acquisition, but explained that, in practice, it expected that compliance with this requirement would typically be accomplished in conjunction with § 1005.18(f)(1), which requires a financial institution to provide, as part of its initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed pursuant to § 1005.18(b)(4).[45] The financial institution must make the initial disclosures required by § 1005.7 at the time a consumer contracts for an EFT service or before the first EFT is made involving the account. That is, standing alone, § 1005.18(f)(1) does not require inclusion in the initial disclosures of the long form in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7); rather, it only requires that the § 1005.18(b)(4) information be included in the initial disclosures.

The Bureau's Proposal

During the Bureau's outreach efforts to industry regarding implementation, a trade association told the Bureau that providing the long form disclosure—in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7)—as part of the initial disclosures for the prepaid account contained inside the packaging material for prepaid accounts sold at retail may pose problems for financial institutions. The trade association explained that, for at least some institutions, this requirement might necessitate a substantial increase in the size

[45] *Id*. In the 2014 Proposal, proposed § 1005.18(f) would have required, in part, that a financial institution include all of the information required to be disclosed in the long form and be provided in a form substantially similar to the sample form in proposed appendix A-10(e). *See id*. at 84114.

of the packages in order to accommodate the long form disclosure, thus requiring retooling of their "J-hook" packaging. Because the 2016 Final Rule did not specify the method by which the long form disclosure must be provided pursuant to § 1005.18(b)(1)(ii)(D), the trade association said that financial institutions might resort to sending the long form disclosure to the consumer by mail to avoid increasing the size of retail packaging to accommodate the disclosure. The trade association also asked whether the long form disclosure could be provided electronically without E-Sign consent, similar to the transitional accommodation in § 1005.18(h)(2)(iv) for providing certain notices to consumers.

In light of these concerns, the Bureau proposed to revise § 1005.18(b)(1)(ii)(D) to state that, if a financial institution does not provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. That is, this accommodation would only be available to financial institutions that are not otherwise mailing or delivering written account-related communications to the consumer post-acquisition. The Bureau also proposed to add language to comment 18(b)(1)(ii)-4 that would explain that a financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in proposed § 1005.18(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

Comments Received

Several industry commenters, including trade associations, an issuing bank, and a think tank, supported the proposed revisions to § 1005.18(b)(1)(ii)(D). Two trade associations and the issuing bank stated that the proposed revisions would also afford financial institutions some flexibility without increasing costs or harming consumers. These commenters argued that increasing the size of packaging material for prepaid accounts sold at retail, or alternatively separately mailing the long form disclosure to the consumer, would impose significant costs on industry and offer little if any consumer benefit, given that consumers will already have access to the information on the long form disclosure by telephone and via a website and that such information will also be included in the initial disclosures. Another trade association stated that providing the long form disclosure inside the prepaid card packaging might not always be feasible because space constraints would require financial institutions to increase the size of the packaging, which could in turn necessitate retail locations to adjust their displays to accommodate the larger packaging.

A group of consumer advocates opposed the proposed revisions to § 1005.18(b)(1)(ii)(D) because, they argued, the result would be that consumers who may not be able to receive electronic communications may never receive the long form disclosure. They also asserted that the retail packaging constraints are not a significant issue, stating that many prepaid cards sold via "J-hook" displays already contain printed material that can accommodate the long form disclosure. In response to the Bureau's request for comment on whether a similar modification to § 1005.18(b)(1)(iii)(C) is necessary for prepaid accounts acquired orally by telephone, these commenters agreed with the Bureau's initial assessment that E-Sign consent should not be

waived for accounts acquired by telephone because consumers can easily receive the long form disclosure by mail (with their access device) or can consent to electronic communications.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(1)(ii)(D) and comment 18(b)(1)(ii)-4 as proposed. As noted above and in the 2016 Final Rule, the Bureau was aware of the potential significant costs to industry related to the requirement to provide the long form disclosure prior to acquisition at retail and thus finalized the retail location exception in § 1005.18(b)(1)(ii).[46] Based on information received through the Bureau's implementation outreach to industry and in comments on the June 2017 Proposal, the Bureau believes that adding this additional accommodation to the exception is warranted to avoid increased costs and is therefore finalizing § 1005.18(b)(1)(ii)(D) to allow a financial institution to provide the long form disclosure electronically without E-Sign consent, if it does not already provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering written account-related communications.

The Bureau requested comment on a number of specific questions about financial institutions' processes and plans for providing the long form disclosure to consumers and whether the Bureau could make other accommodations regarding the retail location exception to facilitate the inclusion of the long form disclosure inside the packaging.[47] The Bureau did not receive any information in response that suggested alternative methods of managing the cost concerns discussed in the proposal. The Bureau recognizes the concerns raised by the group of consumer advocates, but believes it is nonetheless appropriate to make this modification as

[46] *Id*. at 84022.

[47] *See* 82 FR 29630, 29638 (June 29, 2017).

proposed in light of the concerns raised by industry, described above, that led the Bureau to include this modification in the June 2017 Proposal and echoed in industry's general comments on this aspect of that proposal.

Under this final rule, even consumers who do not have access to electronic communications will nonetheless continue to receive the important information about their prepaid accounts, even though it may not be in the format the Bureau believed would be most beneficial to consumers. For example, consumers will still receive the information required to be disclosed in the long form via the initial disclosures required by §§ 1005.7 and 1005.18(f)(1), which are typically provided inside the packaging of prepaid accounts sold at retail. In addition, financial institutions cannot avail themselves of this new accommodation if they are mailing or delivering any account-related communications (such as sending to the consumer an access device embossed with the consumer's name) within 30 days of obtaining the consumer's contact information. In that instance, the financial institution must include the long form disclosure, in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7),[48] in that mailing (or in a separate mailing); they are not permitted to provide it electronically without E-Sign consent.[49] Financial institutions that sell GPR cards at retail typically mail to consumers a card embossed with their names following successful completion of the identification and verification process. The Bureau thus believes that most consumers who successfully verify their GPR card accounts will receive the long form disclosure as part of that mailing.

[48] The form and formatting requirements in § 1005.18(b)(6) and (7) require, among other things, that the long form disclosure be presented in the form of a table, appear in a minimum type size of eight points, be segregated from other information, and contain only information that is required or permitted for that disclosure.

[49] If the financial institution includes the long form disclosure inside the prepaid account packaging material, it does not need this E-Sign waiver. Likewise, if a consumer gives E-Sign consent, the financial institution may provide the disclosure electronically even if it is mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

The Bureau did not receive any requests to adopt a similar modification to § 1005.18(b)(1)(iii)(C) for prepaid accounts acquired orally by telephone, and thus is not making any changes to that provision. As explained in the June 2017 Proposal, the Bureau does not believe that such a modification is necessary because, in this situation, financial institutions would already be mailing an access device and initial disclosures to consumers and, unlike "J-hook" packaging, the Bureau does not believe, nor did commenters assert, that mailing would face the same space constraints.[50]

The Bureau is renumbering comment 18(b)(1)(iii)-2, regarding disclosures for prepaid accounts acquired by telephone, as comment 18(b)(6)(i)(C)-1 and making certain revisions thereto. See the section-by-section analysis of § 1005.18(b)(6)(i) below for further details.

In addition, the Bureau is also making certain technical corrections in § 1005.18(b)(1)(ii) and related commentary. Specifically, the Bureau is correcting grammar and typographical errors in § 1005.18(b)(1)(ii) (changing "disclosures" to "disclosure", "are" to "is", and "include" to "includes")[51] and in the last sentence of comment 18(b)(1)(ii)-2 (changing "disclosures" to "disclosure").

18(b)(2) Short Form Disclosure Content

18(b)(2)(ix) Disclosure of Additional Fee Types

The Prepaid Accounts Rule's provisions governing the short form require disclosure of certain "static" fees that are relatively common across the industry as well as disclosure of certain additional types of fees that the financial institution may charge with respect to a

[50] 82 FR 29630, 29638 (June 29, 2017).

[51] The proposed text of § 1005.18(b)(1)(ii)(D) also included similar corrections in the first sentence (changing "disclosures" to "disclosure" and "are" to "is"), which the Bureau is finalizing.

particular prepaid account program. Specifically, § 1005.18(b)(2)(ix) requires a financial institution 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 § 1005.18(b)(2)(ix)(D) and (E), subject to certain exclusions, including a de minimis threshold. If an additional fee type required to be disclosed has two fee variations, the 2016 Final Rule's version of § 1005.18(b)(2)(ix)(C) requires the financial institution to disclose the name of the additional fee type along with the names of the two fee variations and the fee amounts; if an additional fee type has more than two fee variations, 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).[52] Comment 18(b)(2)(ix)(C)-1 provides examples illustrating how to disclose two-tier fees and other fee variations in additional fee types.

As discussed in the 2016 Final Rule, the Bureau believed that it was important for financial institutions to disclose to consumers certain fee types not included in the static fees list. The Bureau believed that disclosing additional fee types would create a dynamic disclosure while reducing incentives for manipulating fee structures by, for example, lowering the amount of the static fees in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. The Bureau also believed that putting consumers on notice of such additional fee types would alert them to account features for which they may end up incurring a significant expense. In addition, the Bureau believed that eschewing full standardization in a static short form disclosure in favor of the dynamic disclosure of additional fee types would enable the disclosure to capture market changes and innovations. Furthermore, the Bureau believed that the

[52] Section 1005.18(b)(2)(ix)(C) contains modified requirements for disclosing additional fee types on a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*).

requirement to disclose additional fee types would allow the short form to reflect the advent of new fee types that consumers may come to incur frequently and for significant cost that otherwise would be prohibited from disclosure in the short form and thus could render it outdated and of diminished value to consumers over time.[53]

The Bureau's Proposal

Through its outreach efforts to industry regarding implementation, the Bureau heard concerns about the requirement to disclose the highest fee (accompanied by an asterisk indicating the fee may be lower depending on how and where the card is used) for additional fee types with more than two fee variations, where one of those fee variations is significantly higher than the others; this may occur, for example, with expedited delivery of a replacement card or a bill payment. Because the 2016 Final Rule's version of § 1005.18(b)(2)(ix)(C) did not allow financial institutions to disclose fee variations within additional fee types when the additional fee type has more than two variations, some industry stakeholders suggested that, rather than disclosing the highest fee in these situations, financial institutions were considering eliminating the service for which that highest fee is charged so as to avoid having to disclose it without additional explanation on the short form.

In response to these concerns, the Bureau proposed to modify § 1005.18(b)(2)(ix)(C) by providing that, for disclosures other than for multiple service plans, a financial institution may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) (ATM balance inquiry fees) and

[53] 81 FR 83934, 84041 (Nov. 22, 2016).

(vi) (customer service fees) and in accordance with § 1005.18(b)(3)(i) and (b)(7)(ii)(B)(*1*). The Bureau also proposed to revise comment 18(b)(2)(ix)(C)-1.ii to illustrate the two options that a financial institution would have to disclose an additional fee type with more than two fee variations. Specifically, proposed comment 18(b)(2)(ix)(C)-1.ii would provide the following example: 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 has two options for the disclosure. The financial institution may 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*". Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery. In this case, the financial institution would make this disclosure on the short form as: "Bill payment (regular or expedited delivery)" and the fee amount as "$0.50* or $3.00".

Comments Received

Several industry commenters, including a trade association and an issuing bank, supported the proposed revisions to § 1005.18(b)(2)(ix)(C), stating that the changes would provide needed flexibility to this aspect of the Prepaid Accounts Rule's disclosure requirements. In addition, the issuing bank stated that the proposed revisions would allow financial institutions to provide clearer information about additional fee types, as well as better information about lower fee options that consumers would find useful. No commenters opposed this aspect of the proposal.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(2)(ix)(C) and comment 18(b)(2)(ix)(C)-1.ii as proposed. The Bureau believes it is appropriate to give financial institutions additional flexibility to provide more detail about additional fee types with multiple fee variations, even though it could add some additional complexity to the short form. Although the Bureau believes that consumers generally will benefit from simplified fee structures, allowing for some flexibility with respect to additional fee types will provide consumers more information about a prepaid account prior to acquisition and will hopefully incentivize financial institutions to keep services that are useful for consumers and that they may have otherwise eliminated if this requirement had remained unchanged. The Bureau acknowledged in the June 2017 Proposal that allowing financial institutions to avail themselves of this alternative could reduce the amount of "white space" on the short form disclosure, which the Bureau has stated is paramount to clarity and consumer comprehension.[54]

[54] 82 FR 29630, 29639 (June 29, 2017); *see also* 81 FR 83934, 84024-25 (Nov. 22, 2016).

However, the Bureau believes that the reduction here would be minimal, particularly when contrasted with the potential diminished benefit to consumers of financial institutions eliminating certain relatively expensive but beneficial features, such as expedited card replacement or bill pay.

The Bureau notes that it expects that, if the three or more fee variations cannot be consolidated into two categories in a logical manner, or if doing so would cause consumer confusion, the financial institution must disclose the name of the additional fee type and the highest fee amount in the manner that was required under the 2016 Final Rule, rather than avail itself of the new alternative.

In addition, the Bureau is revising dates in the regulatory text and headings in § 1005.18(b)(2)(ix) to reflect the new overall effective date of the Prepaid Accounts Rule adopted in this final rule, as discussed in detail in part VI below. Section 1005.18(b)(2)(ix)(D) describes the timing requirements for the initial assessment of an additional fee types disclosure, and § 1005.18(b)(2)(ix)(E) describes the timing for the periodic reassessment and update of additional fee types disclosures. The Bureau is revising dates in § 1005.18(b)(2)(ix)(D) and in commentary accompanying § 1005.18(b)(2)(ix)(D)(*1*) and (*2*) and (b)(2)(ix)(E)(*2*) and (*3*), including the headings, to reflect the new April 1, 2019 effective date. The Bureau is not, however, changing the October 1, 2014 date in § 1005.18(b)(2)(ix)(D)(*1*) and related commentary, which is the beginning of the time frame for which financial institutions may calculate additional fee types to disclose, so as not to impose additional burden on financial institutions that have already prepared their additional fee types calculations in reliance on that date.

The Bureau is also making certain technical corrections in § 1005.18(b)(2)(ix) and related commentary. Specifically, the Bureau is adjusting terminology for consistency with other portions of the regulatory text and commentary in the heading for § 1005.18(b)(2)(ix)(D) (changing "additional fee type" to "additional fee types") and in comment 18(b)(2)(ix)(E)(*4*)-1 (changing "update additional fee types disclosures" to "update the additional fee types disclosure" and "listing of the additional fee types disclosures" to "listing of the additional fee types"). The Bureau is also correcting grammar and typographical errors in § 1005.18(b)(2)(ix)(E)(*2*) through (*4*) (changing "disclosures" to "disclosure" and "additional fee types disclosures" to "an additional fee types disclosure") and in comments 18(b)(2)(ix)(A)-5.i (changing "disclose" to "disclosed") and 18(b)(2)(ix)(E)(*2*)-1 (changing "disclosures" to "disclosure").

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

Section 1005.18(b)(6)(i) states that the pre-acquisition disclosures required by § 1005.18(b) must be provided in writing, except in certain circumstances where they must be provided electronically or orally by telephone pursuant to § 1005.18(b)(6)(i)(B) and (C), respectively. Specifically, the 2016 Final Rule's version of § 1005.18(b)(6)(i)(B) provides, in part, that these disclosures 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 2016 Final Rule's version of § 1005.18(b)(6)(i)(C) provides, in part, that the disclosures required by § 1005.18(b)(2) and (5) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in § 1005.18(b)(1)(iii).

As explained in the 2016 Final Rule, 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, the Bureau recognized that in certain situations, it is not practicable to provide written disclosures. With respect to electronic disclosures, the Bureau believed it was important for consumers who decide to go online to acquire prepaid accounts to see the relevant disclosures for that prepaid account in electronic form. Furthermore, regarding oral disclosures, the Bureau believed that when, for example, a consumer acquires a prepaid account orally by telephone, it would not be practicable for a financial institution to provide these disclosures in written form; however, the Bureau believed that consumers should nonetheless have the benefit of these pre-acquisition disclosures.[55]

The Bureau's Proposal

Through its outreach efforts to industry regarding implementation, the Bureau heard concerns from an issuing bank that it would actually be more practicable and convenient to provide the short form and long form disclosures required by § 1005.18(b) in writing rather than electronically or orally for certain payroll card accounts and government benefit accounts. The issuing bank explained that, in these situations under existing practice today, consumers first receive disclosures in writing from the employer or agency; in order to actually acquire the account, consumers either go online or call a customer service line. The issuing bank also expressed concern about the cost to some employers and agencies to train their customer service representatives to provide disclosures orally by telephone or to update their websites to accommodate the requirements set forth in the 2016 Final Rule for electronic disclosures,

[55] 81 FR 83934, 84075-77 (Nov. 22, 2016).

particularly when written disclosures are already being provided under existing practice to the consumer in advance of acquisition.

In light of these concerns, the Bureau proposed to revise § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)-1 to make clear that financial institutions are permitted to provide written disclosures prior to acquisition rather than having to give the disclosures electronically or orally by telephone. The Bureau also proposed to add new comment 18(b)(6)(i)-1 to illustrate this proposed revision in the payroll card account context. Specifically, the proposed comment would have given an example stating that, if an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account, the financial institution is not required to provide the § 1005.18(b) disclosures electronically via the website because the consumer has already received the disclosures pre-acquisition in written form. The Bureau believed that the proposed clarification would alleviate the concern described above without harm to consumers, because the requirement to provide consumers with the disclosures before they agree to acquire a prepaid account would remain.

Comments Received

Several industry commenters, including trade associations and an issuing bank, supported the proposed changes to § 1005.18(b)(6)(i)(B) and (C) and related commentary. The issuing bank stated that the proposed revisions would illustrate the value of printed materials and allow financial institutions and third parties to leverage the existing practice of providing consumers with a printed copy of the initial disclosures before asking whether they want to acquire the prepaid account. One of the trade associations stated that printed disclosures are likely more

effective and accurate than oral disclosures (especially if they are lengthy) because consumers would have more time to review them. Another trade association stated that providing disclosures electronically or orally when they have already been provided in printed form would be inconvenient, redundant, and costly and would provide little consumer benefit. This commenter further stated that redundancies would burden the enrollment process and could negatively impact employees' perception of the payroll card option.

These commenters also offered a few suggested changes. Specifically, one of the trade associations stated that the final rule should not use the term "written" to distinguish printed disclosures from electronic disclosures because electronic disclosures are written disclosures, as recognized by numerous regulations, including Regulation E. This commenter suggested that the Bureau instead refer to the written disclosures as "printed" or "paper" disclosures, which it believed would avoid any potential confusion. In addition, the issuing bank and another trade association recommended modifying comments 18(b)(1)(iii)-1 and 2 to conform to the proposed changes in § 1005.18(b)(6)(i)(B) and (C).[56] The issuing bank also suggested renumbering comment 18(b)(1)(iii)-2 as new comment 18(b)(6)(i)(C)-1 and inserting a clause at the beginning of that new comment that mirrors the clause at the beginning of the first sentence of proposed new comment 18(b)(6)(i)(B)-1.

The Bureau did not receive any comments opposing this aspect of the proposal.

[56] Specifically, the issuing bank suggested revising comment 18(b)(1)(iii)-1 to clarify that § 1005.18(b)(1)(iii) applies only when a financial institution does not provide the long form disclosure before acquisition. The trade association suggested revising comment 18(b)(1)(iii)-2 by either referencing § 1005.18(b)(6)(i)(C) or specifically stating that the disclosures need not be provided orally if provided in written form prior to acquisition.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)-1 and adopting new comment 18(b)(6)(i)-1 as proposed. Final § 1005.18(b)(6)(i)(B) and (C) make clear that financial institutions are permitted to provide written disclosures prior to acquisition rather than having to give the disclosures electronically or orally by telephone. The Bureau continues to believe it is important for consumers to receive pre-acquisition disclosures via the method by which they acquire a prepaid account. As noted above, however, the Bureau also believes that consumers can best review the terms of a prepaid account before acquiring it when seeing the terms in written form. The Bureau appreciates the concerns raised by commenters regarding providing electronic or oral disclosures in this context, and believes that if written pre-acquisition disclosures are provided, it is not necessary to also require electronic and oral disclosures.

In addition, as suggested by one of the commenters, the Bureau is modifying comment 18(b)(1)(iii)-2, renumbered as new comment 18(b)(6)(i)(C)-1, for consistency with final § 1005.18(b)(6)(i)(C). The Bureau does not believe a similar modification to comment 18(b)(1)(iii)-1 is necessary as the purpose of that comment is to illustrate when a prepaid account is acquired orally by telephone; it does not discuss the disclosures required for accounts acquired in that manner. Regarding the suggestion from one of the trade associations to refer to the written disclosures as “printed” or “paper” disclosures, the Bureau notes that comment 18(b)-1 explains that because electronic disclosures 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 disclosures separately. This usage of the terms “written” and “electronic” is also consistent with, for example, the periodic statement alternative that is currently in effect for

payroll cards under existing § 1005.18 as well as the modified version for prepaid accounts in the 2016 Final Rule. Therefore, the Bureau does not believe it is necessary to change the term "written" disclosure to "printed" or "paper" disclosure and is concerned that doing so might result in additional complexities in the rule and create confusion regarding other uses of the term "written" in the Prepaid Accounts Rule.

The Bureau is also making technical corrections in the last sentence of § 1005.18(b)(6)(i)(C) to correct grammar and a cross-reference (changing "disclosures" to "the disclosure" and "(b)(1)(ii)(B)" to "(b)(1)(ii)(C)").

18(b)(9) 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) 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. Specifically, the financial institution must provide the disclosures in a foreign language if it principally uses a foreign language on the prepaid account packaging material; 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 it provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. Section 1005.18(b)(9)(ii) requires financial institutions providing the disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) to also provide the information required to be disclosed in the long form 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.

As discussed in the 2016 Final Rule, the Bureau believed that, if a financial institution affirmatively targets consumers by advertising, soliciting, or marketing to them in a foreign language, principally uses a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, or 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 using a foreign language and therefore should be required to provide the pre-acquisition disclosures in that foreign language. The Bureau believed that requiring financial institutions to provide pre-acquisition disclosures in a foreign language is appropriate in the circumstances described above to ensure that non- and limited-English speaking consumers are able to understand the terms of a prepaid account prior to acquisition.[57]

The Bureau's Proposal

During its outreach efforts to industry regarding implementation, the Bureau discussed with an issuing bank its experiences with employers and government agencies that contract with third parties to provide real-time oral language interpretation services in order to facilitate general processes administered by the employer (such as new employee on-boarding) or agency (enrollment in a benefits program), which may include acquisition of a prepaid account. The issuing bank expressed concern that use of these language interpretation services, although generally beneficial to affected consumers, may potentially present difficulties in providing interpretations of the required disclosures to consumers in foreign languages, while also increasing costs for the employer or agency due to longer call times.[58]

[57] 81 FR 83934, 84091-92 (Nov. 22, 2016).

[58] 82 FR 29630, 29640 (June 29, 2017).

The issuing bank explained that these language interpretation services allow consumers to choose from more than one hundred languages, though the employer or agency may not know it will need interpretation services in a particular language until a consumer requests it. The issuing bank emphasized that it is not involved in selecting the third parties providing language interpretation services that employers and government agencies might use as part of their general enrollment processes, and that the interpreters, who are hired to provide language interpretation services only, may not have any particular experience with financial disclosures. The issuing bank also stated that it would not be able to ensure that the long form disclosures, translated into every possible foreign language that could be selected by a consumer, could be provided either electronically (pursuant to § 1005.18(b)(1)(iii)(B)) or in writing (pursuant to § 1005.18(b)(1)(iii)(C)) to the consumer.

The Bureau thus proposed revisions to § 1005.18(b)(9)(i)(C) to provide an exception that would cover the situation described above regarding language interpretation services. Specifically, proposed § 1005.18(b)(9)(i)(C) would have stated that financial institutions must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of a prepaid account if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language, except for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

Comments Received

Several industry commenters, including trade associations, an issuing bank, and a program manager, supported the proposed revisions to § 1005.18(b)(9)(i)(C), stating that without an exception for payroll card accounts and government benefit accounts acquired using a real-

time language interpretation service provided by a third party, the costs and compliance risk associated with the Prepaid Accounts Rule's foreign language requirement would cause entities to stop offering certain foreign language services to the detriment of non- and limited-English speaking consumers. The issuing bank and one of the trade associations asserted that the rule's original requirement would make compliance virtually impossible because government agencies would have to anticipate all the languages that might be requested by consumers in order to provide properly translated disclosures in accordance with the Prepaid Accounts Rule's timing requirements. A group of consumer advocates stated that they did not object to the narrow exclusion proposed by the Bureau. The program manager urged the Bureau to extend the proposed exception to all prepaid products.

In response to the Bureau's request for comment regarding whether it should completely exclude payroll card accounts or government benefit accounts from the § 1005.18(b)(9)(i)(C) requirement, a trade association representing community banks argued that a complete exclusion would be the only meaningful way to eliminate obstacles associated with having to provide foreign language disclosures to payroll card and government benefit account holders. This commenter asserted that community banks are not suited to finance, implement, manage, and guarantee a third party's ability to accurately interpret and provide real-time financial disclosures pertaining to prepaid accounts, and that these issues exist regardless of who delivers the disclosures. In contrast, the group of consumer advocates argued that payroll card accounts and government benefit accounts should not have a categorical exclusion because employees and government benefit recipients that are being solicited to open a payroll card account or government benefit account in a foreign language should receive the pre-acquisition disclosures in that language.

In response to the Bureau's request for comment about whether there are other ways the Bureau might address the issues related to language interpretation services explained above, several of these commenters stated that the proposed exception in § 1005.18(b)(9)(i)(C) should be expanded to include foreign language assistance offered by internal resources, not just third parties. One of the trade associations also urged the Bureau to clarify that the § 1005.18(b)(9)(i)(C) requirement would not be triggered if the financial institution does not formally offer language interpretation services in connection with telephone acquisition of prepaid accounts but an employee provides informal foreign language assistance during the acquisition process, because in this case, the financial institution is not affirmatively targeting the consumer in a foreign language. It explained that language interpretation for onboarding employees and enrolling consumers in payroll card or government benefit programs is not always performed by a third party, and that employees occasionally use their language skills to provide translation and interpretation services for consumers without explicit instruction from their employer to do so. It also stated that, unless the exception is modified, employers and government agencies would likely discourage or even prohibit their employees from offering informal assistance and instead use a third-party language interpretation service in order to qualify for the exception, which would be detrimental to consumers who benefit from immediate foreign language assistance and would create unnecessary impediments to the employers and agencies.[59]

[59] A trade association also commented that, without some flexibility, the foreign language requirement would be particularly burdensome for financial institutions that originate prepaid products exclusively through a branch network and that have already made significant efforts to service areas with a high number of non- and limited-English speaking consumers (such as by hiring staff with foreign language speaking abilities and opening offices in those areas). The Bureau notes that, as discussed in the 2016 Final Rule, even principally using a foreign language in person does not require financial institutions to provide pre-acquisition disclosures in a foreign language pursuant to § 1005.18(b)(9). 81 FR 83934, 84091 (Nov. 22, 2016).

In addition, one of the trade associations and the issuing bank requested that the Bureau consider clarifying that a third party's (*e.g.*, they said, an employer's or retail partner's) telephone or electronic acquisition activities that are unrelated to the financial services offered by the financial institution are not imputed to the financial institution.

Relatedly, the issuing bank requested that the Bureau consider clarifying that certain State-required pre-acquisition disclosures for payroll card accounts would not implicate the advertising, soliciting, and marketing trigger under § 1005.18(b)(9)(i)(B). This commenter expressed concern that employee onboarding materials translated pursuant to State law could be deemed a solicitation under § 1005.18(b)(9)(i)(B) if such material includes information about how to acquire the payroll card account by telephone or electronically, thus requiring financial institutions to provide pre-acquisition disclosures in a foreign language. This commenter explained that financial institutions might not be made aware of such scenarios and, even if they are, may not have enough lead time to respond appropriately. This commenter further stated that because accurate translations take time to develop, it believes that card acquisition delays could result and engender claims of disparate treatment by non-English speaking employees.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revision to § 1005.18(b)(9)(i)(C) with an additional clarification regarding informal or ad hoc telephone conversations, as described below. Specifically, final § 1005.18(b)(9)(i)(C) provides that foreign language pre-acquisition disclosures are required when a financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. However, foreign language pre-acquisition disclosures are not required for payroll card accounts and government benefit accounts where the foreign language is offered by

telephone via a real-time language interpretation service provided by a third party or by an employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account holders. Relatedly, the Bureau is adding a cross-reference to final § 1005.18(b)(9)(i)(C) in comments 18(b)(9)-1.i.E and ii.B, which set forth examples regarding acquisition of prepaid accounts by telephone. The Bureau is also making a technical correction in comment 18(b)(9)-1 introductory text to correct a cross-reference (changing "§ 1005.18(b)(2) of this section" to "§ 1005.18(b)").

In addition, the Bureau is adopting new comment 18(b)(9)-1.ii.D to provide an example of an informal telephone conversation that would not trigger the requirement in final § 1005.18(b)(9)(i)(C). New comment 18(b)(9)-1.ii.D provides the following example of a situation in which the financial institution would not be required to provide the pre-acquisition disclosures in a foreign language: A consumer calls a government agency to enroll in a government benefits program. The government agency does not offer through its telephone system an option for consumers to proceed in a foreign language. An employee of the government agency assists the consumer with the enrollment process, including helping the consumer acquire a government benefits account. The employee also happens to speak the foreign language in which the consumer is most comfortable communicating, and chooses to communicate with the consumer in that language to facilitate the enrollment process. In this case, the employee offered language interpretation assistance on an informal or ad hoc basis to accommodate the prospective government benefits account holder.

The Bureau intended the foreign language requirements to cover situations where a financial institution affirmatively targets consumers in a foreign language, including providing the means to acquire a prepaid account by telephone in that foreign language. However, the

Bureau believes that the situations described by industry stakeholders regarding real-time language interpretation services offered over the telephone by a third party for payroll card accounts and government benefit accounts—as well as informal interpretation assistance provided by employees of an employer or government agency—are distinct, particularly to the extent they involve providing such services in the course of facilitating more general processes by an employer or government agency, such as the onboarding of a new employee or enrollment of a consumer in a benefits program. With respect to informal and ad hoc telephone assistance, the Bureau understands, based on comments received from industry, that such conversations may occur over the telephone in a foreign language, where the employer or government agency itself (rather than a third party) is communicating in a foreign language as an accommodation to prospective payroll card account or government benefit account holders. The Bureau is thus adopting language in final § 1005.18(b)(9)(i)(C) providing that such activities do not trigger the § 1005.18(b)(9)(i) requirement to provide pre-acquisition disclosures in a foreign language. The Bureau remains concerned that applying the foreign language disclosure requirements of § 1005.18(b)(9)(i) in such circumstances might discourage employers and agencies from making language interpretation services available at all.

Nonetheless, the Bureau does not believe it would be appropriate to completely exclude payroll card accounts and government benefit accounts from the foreign language disclosure requirements of § 1005.18(b)(9) as requested by one commenter. When prospective payroll card account or government benefit account holders are affirmatively targeted in a foreign language,

the Bureau continues to believe it is appropriate to require the financial institution to provide foreign language pre-acquisition disclosures in accordance with § 1005.18(b)(9)(i).[60]

The Bureau believes the modifications made in final § 1005.18(b)(9)(i)(C) sufficiently address the specific concerns raised by industry. The exception regarding real-time language interpretation services offered over the telephone by a third party addresses industry concerns about the costs and operational challenges associated with providing the pre-acquisition disclosures for payroll card accounts and government benefit accounts in any language a consumer could select through a third-party language interpretation service, including concerns that financial institutions would be unable to ensure the disclosures are interpreted accurately or provided to the consumer in accordance with § 1005.18(b)(1)(iii)(B) and (C). In addition, the exception regarding assistance offered on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account holders addresses the concerns raised by industry about employers and government agencies that would likely discourage or even prohibit their employees from offering such interpretation assistance to the detriment of consumers who benefit from the immediate assistance.

Furthermore, the Bureau is not excluding any other type of prepaid account from the § 1005.18(b)(9)(i)(C) requirement at this time, as requested by one commenter, because the

[60] Financial institutions, including government agencies pursuant to § 1005.15(a)(1), must provide the pre-acquisition disclosures required by § 1005.18(b) in a foreign language in connection with the acquisition of a prepaid account, if they principally use that foreign language in certain circumstances. The provision discussed in this section, § 1005.18(b)(9)(i)(C), requires a financial institution to provide foreign language disclosures if it provides a means for a consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. Foreign language disclosures are also required when the financial institution principally uses the foreign language on the prepaid account packaging material, or it principally uses that foreign language to advertise, solicit, or market a prepaid account and provide a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically. § 1005.18(b)(9)(i)(A) and (B).

Bureau is not persuaded that financial institutions are likely to face the same challenges related to language interpretation services outside the payroll and government benefit context.

The Bureau declines to clarify, as one commenter suggested, that providing certain State-required pre-acquisition disclosures for payroll card accounts would not implicate the advertising, soliciting, and marketing trigger for providing foreign language disclosures. The Bureau does not believe that such a blanket clarification would be appropriate; if State-required disclosures rise to the level of principal usage of a foreign language in advertising, soliciting, or marketing a payroll card account (or any other type of prepaid account), the Bureau believes that consumers deserve to have the full pre-acquisition disclosures for that account provided in that foreign language.

Regarding a related issue raised by two commenters, the Bureau agrees that the foreign language activity of a third party that is wholly unrelated to a financial institution's prepaid accounts should not implicate the financial institution's obligations under the Prepaid Accounts Rule. However, the Bureau does not believe that a modification to the regulatory text or commentary of the rule is necessary on this point as the rule is targeted to address situations involving use of foreign languages on the prepaid account packaging material, in advertising, solicitation, or marketing, and in electronic or telephonic acquisition processes.

18(d) Modified Disclosure Requirements

18(d)(1) Initial Disclosures

18(d)(1)(ii) Error Resolution

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is making certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified prepaid accounts. Relatedly, the Bureau is

amending § 1005.18(d)(1)(ii), which requires certain disclosures regarding error resolution. One prepaid issuer commented in support of this aspect of the proposal; no other commenters addressed this provision specifically. The Bureau is thus finalizing these amendments as proposed.

EFTA section 905(a)(7) requires financial institutions to provide a summary of the error resolution provisions in EFTA section 908 and the consumer's rights thereunder as part of the initial disclosures and on an annual basis thereafter.[61] These requirements are implemented for accounts generally in §§ 1005.7(b)(10) and 1005.8(b). In the 2016 Final Rule, the Bureau in § 1005.18(d)(1)(ii) required financial institutions following the periodic statement alternative in § 1005.18(c)(1) to modify their § 1005.7(b) initial disclosures by disclosing a notice concerning error resolution that is substantially similar to the notice contained in appendix A-7(b), in place of the notice required by § 1005.7(b)(10). The notice in appendix A-7(b) explains to consumers the error resolution timeframes that apply when financial institutions follow the periodic statement alternative. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau is exercising 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 § 1005.18(d)(1)(ii), in order to facilitate compliance with error resolution requirements.

Specifically, the Bureau is amending § 1005.18(d)(1)(ii) to clarify that, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and

[61] 15 U.S.C. 1693c(a)(7) and 1693f.

limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections. The revisions to § 1005.18(e)(3), discussed below, will not require a financial institution to offer limited liability and error resolution protections on prepaid accounts in a program for which the financial institution does not have a consumer identification and verification process. The clarification in § 1005.18(d)(1)(ii) is intended to ensure that financial institutions accurately disclose to consumers the limited liability and error resolution protections (if any) that would apply to any such prepaid account in their initial disclosures.[62]

18(e) Modified Limitations on Liability and Error Resolution Requirements

18(e)(3) Limitations on Liability and Error Resolution for Unverified Accounts

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit.[63] EFTA section 909 governs consumer liability for unauthorized EFTs.[64] These requirements are implemented for accounts generally in §§ 1005.11 and 1005.6, respectively. In the 2014 Proposal, the Bureau proposed to use its exceptions authority under EFTA section 904(c) to add new § 1005.18(e)(3) to except unverified prepaid accounts from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remained unverified. That paragraph would have provided that for prepaid accounts that are not payroll card accounts or government

[62] As discussed in the section-by-section analysis of § 1005.18(e)(3) below, that provision as amended by this final rule provides that financial institutions must comply with any error resolution and limited liability protections they disclose for prepaid accounts in programs for which the financial institution does not have a consumer identification and verification process.

[63] 15 U.S.C. 1693f.

[64] 15 U.S.C. 1693g.

benefit accounts,[65] if a financial institution disclosed to the consumer the risks of not registering and verifying the prepaid account using language substantially similar to the model clause proposed by the Bureau, 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.[66] The 2014 Proposal would have required financial institutions to comply with Regulation E requirements regarding limited liability and error resolution, including provisional credit, for accounts that were verified; this would have included applying those protections even to unauthorized transfers or other errors that occurred prior to verification.[67] The Bureau solicited comment on this aspect of the 2014 Proposal, including regarding whether the limited liability and error resolution provisions of Regulation E should apply to unverified, as well as verified, accounts.[68]

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[65] As explained in the 2016 Final Rule, the Bureau excluded payroll card accounts and government benefit accounts from this provision to ensure that, among other things, they maintain the same level of error resolution and limited liability protections that they have under existing Regulation E. 81 FR 83934, 84112 n.502 (Nov. 22, 2016). Furthermore, employers and government agencies are generally required to verify the identity of a prospective payroll card account or government benefit account holder to determine employment status or eligibility for benefits.

[66] As the Bureau explained in the 2014 Proposal, this provision primarily affects GPR cards that are purchased at retail, where the financial institution may—but does not always—obtain consumer identifying information and perform verification at the time the consumer calls or goes online to activate the card. Because of restrictions imposed by the Financial Crimes Enforcement Network's (FinCEN) Prepaid Access Rule (31 CFR 1022.210(d)(1)(v)) and the payment card networks' operating rules, among other things, the Bureau understands that consumer identification and verification is 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. However, the Bureau stated it was aware at the time of the 2014 Proposal that some providers allow consumers to use GPR cards purchased at retail to make purchases immediately. 79 FR 77102, 77185 (Dec. 23, 2014).

[67] Regulation E sets certain timelines for investigation of alleged errors. A financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, to complete an investigation if it extends provisional credit to the consumer for the amount of the alleged error, so that consumers may continue to access the funds while the financial institution conducts its investigation.

[68] 79 FR 77101, 77185 (Dec. 23, 2014).

The Bureau altered its approach in the 2016 Final Rule in several respects, drawing on two primary sources of information. The first was its analysis of 325 prepaid account agreements, in which the Bureau found that a large majority of the agreements reviewed purported to offer Regulation E error resolution and limited liability protections.[69] The second was comments received from both industry and consumer advocacy groups reflecting a wide spectrum of views on this aspect of the 2014 Proposal, with some consumer groups stating they believed it struck a good balance and others advocating for increased protections, while industry commenters focused mainly on provisional credit rather than error resolution and limited liability protections in general. In response to these considerations, the Bureau finalized § 1005.18(e)(3) and related commentary with several substantive revisions. Specifically, under the 2016 Final Rule's version of § 1005.18(e)(3), financial institutions were required to provide error resolution and limited liability protections for all prepaid accounts, including accounts for which the financial institution has not successfully completed its consumer identification and verification process (*i.e.*, accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). However, for unverified accounts, financial institutions were not

[69] Bureau of Consumer Financial Protection, *Study of Prepaid Account Agreements*, at 13 tbl. 3 and 16 tbl. 4 (Nov. 2014) (Study of Prepaid Account Agreements), *available at* http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf. Specifically, the Bureau found that 77.85 percent of all agreements reviewed appeared to provide full error resolution protections, with provisional credit available for all consumers where the error could not be resolved within a defined period of time, and 88.92 percent of all agreements reviewed appeared to provide liability limitations consistent with Regulation E (or better). *Id.* In conducting this study, the Bureau observed that very few agreements expressly differentiated between the protections applicable to verified and unverified accounts. In fact, many of the account agreements reviewed by the Bureau suggested that error resolution and limited liability protections were provided in accordance with Regulation E. 82 FR 29630, 29643 n. 57 (June 29, 2017). The Bureau further understood from comments on the 2014 Proposal that many financial institutions provided some limited liability and error resolution protections—though no provisional credit—for prepaid accounts that had not or could not be verified. Thus, the Bureau believed that the 2016 Final Rule's version of § 1005.18(e)(3) generally reflected industry practice at the time. 81 FR 83934, 84112 (Nov. 22, 2016).

required to provide provisional credit while investigations are pending. The Bureau also added additional clarifying language to emphasize that financial institutions were not required to adopt a consumer identification and verification process for all prepaid accounts and to clarify when a financial institution would be deemed to have completed its consumer identification and verification process for a particular prepaid account.

The Bureau's Proposal

Based on concerns raised by industry during the Bureau's outreach efforts regarding implementation and in connection with the 2017 Effective Date Proposal,[70] the Bureau proposed to revise § 1005.18(e)(3) and related commentary to provide that, for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. For purposes of this provision, the Bureau proposed that a financial institution would be deemed to have not successfully completed its consumer identification and verification process where: (A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not verifying the account using a notice that is substantially similar to the model notice contained in proposed appendix A-7(c); (B) the financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account, but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying the

[70] These concerns are discussed in detail in the June 2017 Proposal. *See* 82 FR 29630, 29642-43 (June 29, 2017).

account using a notice that is substantially similar to the model notice contained in proposed appendix A-7(c); or (C) the financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has made the alternative disclosure described in proposed § 1005.18(d)(1)(ii), discussed above, and complies with the process it has disclosed.[71] The proposal would have thus returned § 1005.18(e)(3) to approximately what the Bureau had proposed in the 2014 Proposal, with additional modifications to clarify treatment of prepaid account programs for which there is no consumer identification and verification process.

Proposed § 1005.18(e)(3)(iii) would have provided that, once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of § 1005.6 or § 1005.11, or the modified timing requirements in § 1005.18(e), as applicable.

The Bureau also proposed changes to the commentary accompanying § 1005.18(e). The proposed revisions to comment 18(e)-4 would have aligned it with the proposed text of § 1005.18(e)(3) as well as added commentary from the 2014 Proposal to explain that, for an unauthorized transfer or other error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or other error would be based on the date the consumer contacts the financial institution to report the unauthorized transfer or other error, not the date the financial institution successfully completes its consumer identification and

[71] Comment 18(e)-5 (to which the Bureau proposed some modifications for clarity and consistency, as discussed below) makes clear that a financial institution may not delay completing its consumer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

verification process. For an error asserted on a previously unverified prepaid account, the time limits for the financial institution's investigation pursuant to § 1005.11(c) would begin on the day following the date the financial institution successfully completed its consumer identification and verification process.

The Bureau also proposed to revise comments 18(e)-5 and 6 to more closely align with the proposed text of § 1005.18(e)(3) and to clarify the example provided in comment 18(e)-5 illustrating a situation where a financial institution has not successfully completed its consumer identification and verification process. Proposed comment 18(e)-5 would have continued to make clear that financial institutions may not delay completing their consumer identification and verification processes or refuse to verify a consumer's identity in order to avoid investigating an error asserted by a consumer.

Comments Received

The Bureau received a number of comments on its proposed revisions to the error resolution and limited liability regime for prepaid accounts. Industry commenters (including trade associations, issuing banks, program managers, and others) as well as a think tank supported the Bureau's proposal to except prepaid accounts that have not successfully completed the consumer identification and verification process from error resolution and limited liability requirements to the extent such accounts remain unverified.[72] Industry commenters generally cited the difficulty of determining whether an asserted error was actually erroneous without having access to information about the consumer provided during the registration process. These commenters suggested that this would lead to increased fraud losses for the industry, primarily

[72] The think tank also suggested that the Bureau monitor issues relating to pre-verification errors and consider whether adjustments are necessary in the future.

arising from instances where a transaction that was in fact authorized by the accountholder is fraudulently asserted as an error (often referred to as friendly fraud or first-party fraud). They asserted that, because of the increased risk of friendly fraud, financial institutions would limit pre-verification functionality on their prepaid accounts.

Several commenters stated that financial institutions' error resolution procedures often require comparison of information provided by the consumer when asserting an error with information previously provided by the consumer to the financial institution (for example, by matching the purchaser's name and shipping address for an online purchase with the consumer's information on file with the financial institution); such information would not be available if the identification and verification process has not been completed.

Commenters also asserted that the provision in the 2016 Final Rule excepting unverified accounts from the provisional credit requirement does not provide meaningful relief because financial institutions often are ultimately unable to establish whether a given transaction on an unverified account was in fact unauthorized. 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. These commenters concluded that the rule would therefore increase financial institutions' fraud protection and mitigation costs.

A trade association predicted that, if required to resolve errors on unverified prepaid accounts that allow immediate access to funds, financial institutions would likely issue refunds on disputed transactions via paper check rather than by refunding directly to the prepaid account in order to avoid fraud and having to recredit accounts for alleged unauthorized transactions that the financial institution does not have sufficient information to investigate. However, issuing

refunds by paper check would increase financial institutions' costs and delay consumers' receipt of refunds.

In response to the Bureau's proposal to require financial institutions to limit consumers' liability for unauthorized transfers and their obligation to resolve errors that occurred prior to verification for accounts that are subsequently verified (subject to the timing requirements of § 1005.6 or § 1005.11, or the modified timing requirements in § 1005.18(e), as applicable), several industry commenters urged the Bureau to further limit the scope of pre-verification transactions subject to Regulation E error resolution and limited liability protections.

A number of industry commenters requested that the Bureau only require error resolution and limited liability protections for transactions that take place within a specified time period (generally 30 days) prior to either the consumer's initial submission of registration information or successful completion of the consumer identification and verification process. Several of these commenters stated that requiring error resolution and limited liability protections over a longer time period increases the potential for fraud losses because investigation becomes increasingly difficult as time goes on; a trade association suggested that financial institutions may not have access to information necessary to investigate errors that occur on unverified accounts more than 30 days prior to assertion of the error. A prepaid issuer and a trade association suggested in their comment letters that, because the vast majority of consumers who ever register a prepaid account do so within 30 days after acquiring the account, a 30-day cap would cover most consumers who ultimately successfully complete the identification and verification process. The same issuer and two trade associations also suggested that a prepaid account may be used by multiple individuals prior to verification, which could further complicate subsequent investigations.

Other industry commenters suggested that the Bureau exclude from the rule's error resolution and limited liability protections all transactions that occur prior to either the consumer's initial submission of information or successful completion of the consumer identification and verification process, rather than upon the consumer's acquisition of the account. Several of these commenters stated that because financial institutions rely on verified consumer information to identify fraudulent transactions when they are attempted, it would be inherently more difficult for financial institutions to limit their fraud exposure on pre-verification transactions, even for accounts that are ultimately verified. Specifically, a program manager commented that fraudsters may use stolen identities to complete the registration process, which may go undetected for an extended period; this would allow those fraudsters to collect provisional credits on pre-verification transactions that are fraudulently asserted as erroneous. A business advocacy group and a trade association both suggested that financial institutions would not be able to meet the Regulation E timing requirements for errors that occur before registration is completed, thus requiring financial institutions to provide refunds even on some errors that could have been fraudulently asserted, either because investigations would take too long or because financial institutions would lack access to necessary information regardless of the amount of time available for an investigation, respectively. Several industry commenters argued that, rather than requiring Regulation E error resolution and limited liability protections on pre-verification errors, the Bureau should highlight to consumers the importance of promptly registering their prepaid accounts in order to receive full protections under Regulation E, or help consumers better understand the differences between consumer protections associated with prepaid accounts and gift cards. One industry commenter opposed providing any error resolution

and limited liability protections to pre-verification transactions based on the argument that it would reward consumers for their failure to register prepaid accounts.

Consumer advocates did not oppose the Bureau's proposal, but did urge the Bureau to expressly deem certain types of prepaid accounts registered and verified upon issuance in order to make clear such accounts were not eligible for the proposed exception. For example, a group of consumer advocates suggested that where the person to whom a prepaid account is issued is known to the furnisher of the account (including, they urged, prepaid accounts used to pay individuals for jury service, prison release cards, and utility refunds), the prepaid account should be deemed to have successfully completed the consumer identification and verification process because the furnisher already has significant information about the consumer. Another consumer advocate urged the Bureau to deem prison release cards to have successfully completed the consumer identification and verification process upon issuance, both because the correctional facility or law enforcement agency already has significant information about that person and because, this commenter contended, people who have recently been released from prison or jail are particularly likely to lack regular and reliable access to a telephone or the internet, making prompt registration of this type of prepaid account prohibitively difficult.

A program manager and a trade association both urged the Bureau not to adopt the alternative approach described in the proposal, in which the Bureau considered whether it might be appropriate to apply a different standard to prepaid accounts for which a consumer has attempted but failed to complete the consumer identification and verification process. These commenters noted the difficulty, identified in the proposal, in determining whether a consumer has definitively "failed to complete" the process, as opposed there being a delay in the consumer's providing information requested by the financial institution that is needed to

complete the process. They also suggested that "failed to complete" accounts may in fact be particularly susceptible to fraudulent activity because, in many cases, they represent instances where the financial institution's fraud prevention protocols have detected a higher likelihood of an attempted fraudulent registration (such as, for example, the provided name and address not matching public records).

Commenters also raised issues related to error resolution and limited liability issues addressed by the 2016 Final Rule but outside the scope of the June 2017 Proposal. Specifically, a trade association requested that the Bureau make several modifications to the error resolution and limited liability protections applied to prepaid accounts after they have successfully completed the financial institution's consumer identification and verification process (rather than before, which was the subject of the proposal). Separately, an anonymous commenter stated that financial institutions should incur full liability for any error that is not resolved within 30 days.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.18(e)(3)(iii) and comment 18(e)-4 with substantial modification; § 1005.18(e)(3)(i), (e)(3)(ii), and (e)(3)(ii)(C) and comment 18(e)-5 are finalized as proposed; and comment 18(e)-6 is finalized as proposed with one minor revision for consistency. The final rule provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. Unlike the proposal, the final rule does not require financial institutions to limit liability or resolve errors that occurred prior to verification on accounts that are later successfully verified.

The changes to § 1005.18(e)(3)(iii) revise the paragraph heading and text to provide that once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with § 1005.6 or § 1005.11, or the modified timing requirements in this paragraph (e), as applicable. The revisions to comment 18(e)-4 parallel the revisions in § 1005.18(e)(3)(iii), and explain that a financial institution is not required to limit a consumer's liability for unauthorized transfers or resolve errors that occur prior to the financial institution's successful completion of its consumer identification and verification process with respect to a prepaid account. The Bureau is not finalizing the proposed text that would have clarified the timelines associated with Regulation E's error resolution and limited liability provisions on pre-verification transactions, as it is no longer necessary in light of the other changes to § 1005.18(e)(3).

To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers 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 revise § 1005.18(e)(3) to except accounts that have not successfully completed the consumer identification and verification process from the error resolution and limited liability requirements of EFTA sections 908 and 909. The Bureau continues to believe that providing error resolution and limited liability rights to consumers even on unverified accounts would be beneficial to consumers, and remains concerned, as it expressed in the June 2017 Proposal, that consumers with prepaid accounts that have not been or cannot be verified will not have a right to Regulation E error resolution and limited liability protections. However, absent the change made

in this final rule, the Bureau is also concerned that financial institutions' fear of fraud losses in connection with the 2016 Final Rule would prompt them to stop offering prepaid accounts at retail that allow for immediate access to funds, to begin providing refunds for accounts that fail verification via paper check (thus delaying consumers' ability to access their funds), or to make other changes to their programs that would decrease the availability or utility of prepaid accounts to consumers.[73] The Bureau thus believes that, on balance, it is appropriate to adopt this change with respect to unauthorized transactions or other errors that occur on prepaid accounts that have not been or cannot be verified.[74]

Specifically, the Bureau believes that consumers can obtain substantial benefits from those prepaid products that provide immediate functionality upon purchase at retail. However, such benefits would be lost if such products are no longer offered because of fraud concerns. Similarly, consumers who purchase prepaid products but are not able to complete the consumer identification and verification process successfully could be subject to a period of financial disruption if they are required to wait for a return of their funds by check. For example, consider a consumer who loads funds into a new prepaid account and is subsequently unable to successfully complete the financial institution's consumer identification and verification process. Under current industry practice, many financial institutions allow those consumers to spend down the funds that have been loaded into the account in this situation. But if the financial

[73] The Bureau acknowledges that there is some risk that changing the approach of the 2016 Final Rule may increase the incentive for financial institutions to offer prepaid accounts for which there is no consumer identification and verification process and are therefore excepted from error resolution and limited liability protections. However, the Bureau believes that any such incentives are likely to be outweighed by the potential benefits to the financial institution of encouraging consumers to register their prepaid accounts to increase the functionality and thus the longevity of the consumer's use of the account.

[74] As noted in the June 2017 Proposal, prepaid accounts that require verification prior to issuance will not be affected by this provision.

institution were to deactivate the prepaid card and provide a refund in this situation via paper check, the consumer would be unable to access those funds until receiving the check, which is likely to take at least several business days. Furthermore, the consumer may encounter difficulties in receiving the refund check if the consumer lacks a fixed address, and may incur fees to cash the refund check.

The Bureau is also aware that consumers use prepaid accounts for a variety of reasons, and that consumers who do not wish to submit their personal information for verification or who may not be able to have their identities verified would have few other options if financial institutions stop allowing any functionality prior to successful verification. Such consumers could choose instead to use open loop gift cards,[75] for which there is generally not an identification and verification process, but in that case would not receive any of the other benefits of the Prepaid Accounts Rule.

Accordingly, to avoid such outcomes, the Bureau concludes that it is appropriate to not require compliance with Regulation E error resolution and limited liability provisions with regard to transactions on prepaid accounts that have not been or cannot be verified. Although the Bureau proposed to require financial institutions to comply with these requirements once an account has been successfully verified with regard to transactions that occurred prior to the completion of the verification process, the Bureau has concluded based on information presented

[75] An "open loop" gift card can be used to make purchases at locations where cards that run on one of the major card networks are accepted. However, such cards are generally excluded from coverage under the 2016 Final Rule, and instead are generally covered by the Gift Card Rule, which requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. As discussed in the 2016 Final Rule, the Gift Card Rule was adopted by the Federal Reserve Board in 2010 to implement certain sections of the Credit CARD Act. *See* 81 FR 83934, 83946-47 (Nov. 22, 2016). The Bureau believes that consumers who use cards that are not labeled and marketed as gift cards should be provided the same protections as other prepaid accounts under the 2016 Final Rule, rather than the more limited protections of the Gift Card Rule. *Id.* at 83977.

in the comments and further analysis that a requirement to do so in all circumstances could present complications and fraud risks that may not be justified by the potential benefits. The Bureau is aware that some financial institutions provide limited liability and error resolution protections (though perhaps without provisional credit) on unverified accounts, for pre-verification transactions, or both, as matter of contract or customer service.[76] The Bureau encourages financial institutions to continue and expand offering such services to consumers in appropriate circumstances.

In particular, the Bureau believes, based on comments received and its understanding of the market, that the impact on consumers of this change from the June 2017 Proposal should be extremely limited for several reasons. First, the only accounts at issue here are those that consumers acquire before the financial institution conducts its consumer identification and verification process (generally, prepaid accounts sold at retail). Second, in most prepaid programs where accounts are acquired prior to verification, consumers must attempt the identification and verification process before they can use the account; verification generally occurs in the course of the initial activation phone call or website visit, so consumers whose identities are successfully verified will thus complete the process prior to using the prepaid account and therefore should be unaffected by this change.[77] Likewise, consumers who fail the verification process would not have been entitled to error resolution and limited liability rights

[76] In conducting its Study of Prepaid Account Agreements, the Bureau observed that very few agreements expressly differentiated between the protections applicable to verified and unverified accounts. In fact, as noted above, many of the account agreements reviewed by the Bureau suggested that error resolution and limited liability protections were provided in accordance with Regulation E.

[77] The Bureau understands that in nearly all cases, consumers who attempt the identification and verification process will either immediately be successfully verified or fail verification; only in a small number of cases will the verification process take longer than a few minutes. Thus, consumers with prepaid accounts that require attempted verification before use will largely not conduct pre-verification transactions at all.

under the June 2017 Proposal in any event. Third, the Bureau understands that for programs that allow usage prior to attempted or completed verification, most consumers who successfully verify their accounts do so shortly after acquisition. Finally, the Bureau understands that any consumers who do conduct pre-verification transactions infrequently assert errors.

Other factors also limit potential losses to consumers. For example, as noted above, the Bureau understands that, for a variety of reasons—including FinCEN's Prepaid Access Rule and the payment card networks' operating rules—the consumer identification and verification process is 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. Thus, even for consumers with prepaid accounts that can be used prior to attempting or completing verification, disputes are generally limited to purchase transactions because other functions (such as reloads and ATM withdrawals) are not typically permitted prior to verification. Additionally, consumers' potential losses from pre-verification errors will be, at most, the amount of the initial load, which the Bureau understands to generally be limited to a maximum of $500, and in practice often may be significantly less. Thus, the Bureau believes that, in the current market, both the frequency and magnitude of pre-verification errors are low for these accounts. More broadly, the Bureau intends to engage in market monitoring to assess the impact on both financial institutions and consumers of not requiring limited liability and error resolution protections on unverified prepaid accounts.

At the same time, commenters on the June 2017 Proposal expressed concern that a rigid requirement to provide Regulation E limited liability and error resolution rights in connection with all transactions that occur prior to a successful registration could attract more first-party fraud attempts and create complexity and uncertainty for issuers. As noted above, several of

these commenters stated that because financial institutions rely on information about consumers obtained during the identification and verification process to identify fraudulent transactions when they are attempted, it would be inherently more difficult for financial institutions to limit their fraud exposure on pre-verification transactions, even for accounts that are ultimately verified.

The Bureau considered requiring financial institutions to provide error resolution and limited liability protections on transactions occurring up to 30 days prior to verification, as suggested by some commenters. While the Bureau appreciates that a 30-day "lookback" period may allow some consumers on the margins to resolve pre-verification errors, the small number of accounts that would be implicated would limit the value of this protection, while adding additional complexity to the regulation with a new time period and exposing financial institutions to some potential losses from first-party fraud. On balance, the Bureau believes that a bright-line test based on successful verification of the prepaid account will simplify compliance without significantly increasing costs to consumers. In addition, requiring error resolution and limited liability protections only for post-verification errors aligns the treatment of prepaid accounts with the treatment of traditional checking accounts under Federal anti-money laundering requirements, where identifying information must be collected from the consumer before the account is opened and verification must be complete at the same time or shortly thereafter.[78]

With respect to industry commenters' suggestions that the Bureau encourage consumers to register prepaid accounts more quickly rather than require error resolution and limited liability

[78] *See* 31 CFR 1022.210.

protections on pre-verification transactions, or that the Bureau's proposal would have led to consumers being rewarded for failing to register their accounts, the Bureau agrees that prompt registration of prepaid accounts provides important benefits to consumers (even beyond this aspect of the rule). The Bureau expects that the pre-acquisition disclosures regarding registration and deposit insurance, pursuant to § 1005.18(b)(2)(xi) and (b)(4)(iii), will help encourage consumers to register their prepaid accounts promptly. This final rule makes prompt registration even more important for consumers, and the Bureau encourages financial institutions to continue to promote to consumers the benefits of registering their accounts promptly (including the availability of error resolution and limited liability protections).

The Bureau also considered imposing a requirement that financial institutions additionally disclose any process they do have for investigating and resolving pre-verification errors, similar to the requirement in final § 1005.18(d)(1)(ii) that financial institutions disclose, for prepaid account programs with no consumer identification and verification process, their error resolution process and limitations on consumers' liability for unauthorized transfers, if any. However, the Bureau is concerned that imposing such an additional disclosure requirement for prepaid accounts more generally might have the unintended effect of discouraging financial institutions from offering any assistance to consumers regarding concerns with pre-verification issues, to the extent that institutions had previously provided such assistance on a discretionary basis.[79]

The Bureau agrees with industry commenters that urged the Bureau not to adopt the alternative approach described in the proposal, which would have created a third category of

[79] In contrast, the Bureau concluded that it was appropriate to impose such a disclosure requirement on prepaid accounts in programs without consumer identification and verification processes because the model language in appendix A-7(b) is inapplicable to accounts in those programs.

error resolution and limited liability protections for accounts that have begun, but failed to successfully complete, the financial institution's consumer identification and verification process. As the Bureau noted in the proposal, adding a third category of accounts would increase the complexity of the rule, and it may be difficult for financial institutions to distinguish between a consumer's failure to complete the verification process and a consumer who is merely delayed in providing additional requested information. The Bureau also appreciates the concerns raised by commenters that "failed to complete" accounts may in fact be disproportionately likely to be involved in fraudulent activity, because many accounts that fail to complete verification do so based on the financial institution's fraud prevention protocols. Accordingly, the Bureau is not adopting this alternative approach.

With respect to the comments raised by consumer advocates regarding whether certain types of prepaid accounts should be deemed verified at issuance, the Bureau notes that final comment 18(e)-6 provides 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 successfully completed its consumer identification and verification process with respect to that account. While the comment provides one example of a situation where that condition is met, that example is not intended to be exclusive. Thus, while the Bureau is not further modifying the text of § 1005.18(e)(3) or comment 18(e)-6, the Bureau emphasizes that, where the conditions described in that comment are met, a financial institution is deemed to have successfully completed its consumer identification and verification process with respect to that account upon issuance of the account. The Bureau believes that, in at least some cases, the types of prepaid

accounts mentioned by consumer advocates (including prison release cards) will in fact meet the conditions described in comment 18(e)-6.

18(h) Effective Date and Special Transition Rules for Disclosure Provisions

As discussed in detail in part VI below, the Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019. Section 1005.18(h) includes several transitional exceptions and accommodations related to the effective date. The Bureau is revising dates in the regulatory text and headings throughout § 1005.18(h) and in comments 18(h)-1, 2, and 6 to reflect the new April 1, 2019 effective date.

The Bureau is also making several technical corrections in § 1005.18(h) and related commentary. First, the Bureau is revising comment 18(h)-2 for clarity and to conform with usage of terms elsewhere in that comment and in the regulatory text (changing "disclosures and access devices" to "disclosures on, in, or with access devices or packaging materials" in the last sentence). Finally, the Bureau is revising comment 18(h)-5 to clarify the provision to which that comment is referring (changing "applicable portions of those provisions" to "requirements of § 1005.18(h)(2)(ii)"), and adding a missing space between words.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(b) Submission of Agreements to the Bureau

Section 1005.19 requires prepaid account issuers to post and submit agreements to the Bureau, pursuant to the Bureau's authority under EFTA sections 904(c) and 905(a) and sections 1022(c)(4) and 1032(a) of the Dodd-Frank Act.[80] As discussed in the section-by-section

[80] 15 U.S.C. 1693b(c) and 1693c(a); 12 U.S.C. 5512(c)(4) and 5532(a).

analyses that follow, the Bureau is narrowing the scope of several aspects of § 1005.19(b) to facilitate compliance and reduce burden.

19(b)(2) Amended Agreements

Section 1005.19(b)(1) requires issuers to make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. 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 and must contain certain information, including other relevant parties to the agreement (such as the employer for a payroll card program).[81] As explained in the 2016 Final Rule, the Bureau believes that providing this information about each agreement will help the Bureau, consumers, and other parties locate agreements on the Bureau's website quickly and effectively.[82] The 2016 Final Rule's version of § 1005.19(b)(2) stated 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 becomes effective. Comment 19(a)(2)-1 provides examples of changes to an agreement that generally would be considered substantive, and therefore would be deemed amendments to the agreement.

The Bureau's Proposal

As explained in the June 2017 Proposal, the Bureau learned through its outreach efforts to industry regarding implementation that some industry stakeholders were concerned about

[81] Specifically, § 1005.19(b)(1)(i), as finalized in the 2016 Final Rule, requires issuers to submit 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).

[82] 81 FR 83934, 84136 (Nov. 22, 2016).

needing to notify the Bureau every time relevant parties to a prepaid account agreement are added or removed; this concern was particularly acute for payroll card accounts. The Bureau understands that while payroll card issuers may customize some payroll card programs for specific employers, payroll card issuers often use a standard account agreement with multiple employers, so that they may add or remove employers without changing the agreement itself. Some stakeholders explained that changes to the list of these employers as relevant parties to the agreement might occur on a somewhat frequent basis, and they expressed concern about continually needing to notify the Bureau of these changes.[83]

Although the Bureau continues to believe that information about other relevant parties to agreements will be useful to the Bureau, consumers, and others, the Bureau acknowledged in the June 2017 Proposal that reporting frequent changes of relevant parties to an agreement for an otherwise unchanging agreement could be time consuming for some issuers.

The Bureau proposed to revise § 1005.19(b)(2) to provide that an issuer may delay submitting a change in the names of other relevant parties to an agreement until such time as the issuer is submitting an amended agreement pursuant to § 1005.19(b)(2) or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i), in lieu of submitting such a change no later than 30 days after the change becomes effective. The Bureau also proposed to revise comment 19(a)(2)-1.vii to add a reference to § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau. The Bureau also requested, but did not receive, comment on whether there are any alternative approaches the Bureau might adopt to reduce burden on issuers while still ensuring that

[83] 82 FR 29630, 29645 (June 29, 2017).

information about other relevant parties is submitted in a timely manner, such as by requiring submission of updated information on other relevant parties at least once per quarter.

Comments Received

A number of industry commenters, including trade associations, a program manager, an issuing bank, and a think tank, supported the proposed revisions to § 1005.19(b)(2). Specifically, several of these commenters stated that the proposed revisions would facilitate compliance and help reduce the cost and burden of having to make a submission every time they made changes to the other relevant parties to an agreement where the agreement itself is not amended. In addition, the issuing bank commenter confirmed that, because issuers frequently offer a single payroll card program to multiple employers (or similar third parties), the requirement in the 2016 Final Rule, if left unchanged, would trigger constant filings with the Bureau because in some cases issuers add employers to these types of programs on a weekly basis.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(2) with modifications as described below. First, the Bureau is bifurcating the requirements of § 1005.19(b)(2) into final § 1005.19(b)(2)(i), which sets forth the requirements for the submission of amended agreements generally, and final § 1005.19(b)(2)(ii), which sets forth the requirements for the submission of updated lists of names of other relevant parties,[84] and is adding new headings to each for organizational purposes. Final § 1005.19(b)(2)(ii) provides that, notwithstanding § 1005.19(b)(2)(i), an issuer may delay submitting a change to the list of

[84] The Bureau is finalizing these revisions using the term "lists of names of other relevant parties," rather than "names of other relevant parties," for clarity.

names of other relevant parties to a particular agreement until the earlier of: (A) Such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i); or (B) May 1 of each year, for any updates to the list of names of other relevant parties for that agreement that occurred between the issuer's last submission of relevant party information and April 1 of that year. The Bureau is also adding new comment 19(b)(2)-2 to provide examples illustrating the submission requirement in final § 1005.19(b)(2)(ii). In addition, the Bureau is adding a new sentence to § 1005.19(b)(2)(i), for clarity, stating that if other identifying information about the issuer and its submitted agreements previously submitted to the Bureau is amended, the issuer must submit updated information to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective.[85] This addition parallels existing language regarding amended agreements and is intended to avoid confusion about whether issuers must submit to the Bureau agreements that are revised as well as changes to related required information. The Bureau is adopting the proposed revision to comment 19(a)(2)-1.vii (to add a reference to § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau), with an additional conforming change to align it with revised language in § 1005.19(b)(2)(ii). The Bureau is also making conforming changes in § 1005.19(b)(1)(i) and (iii), (c)(3), and (d)(2)(v), and comments 19(b)(1)-1, 19(b)(2)-1, and 19(b)(6)-1 to reflect the changes made in final § 1005.19(b)(2).

The Bureau continues to believe that revisions to § 1005.19(b)(2) are warranted to address the concerns raised by industry related to the requirement that an issuer update its

[85] The proposed text of § 1005.19(b)(2) also included a technical correction (changing "comes" to "becomes"), which the Bureau is finalizing.

submission to the Bureau each time there is a change to the list of names of other relevant parties to an agreement. At the same time, the Bureau is cognizant of the necessity for industry to provide timely information in order for their submissions to be useful to the Bureau, consumers, and other interested parties. As noted above, the Bureau sought comment on alternative approaches the Bureau might adopt to reduce burden on issuers while still ensuring that information about other relevant parties is submitted in a timely manner, such as by requiring submission of updated information on other relevant parties at least once per quarter. Although the Bureau received no responses to that solicitation for comment, it has continued its own analysis. Upon further consideration, the Bureau believes it is appropriate to include an annual backstop as part of this accommodation, ensuing that the Bureau will have reasonably up-to-date information about other relevant parties to all prepaid account agreements while still permitting issuers to delay submitting changes to the list of names of other relevant parties to an agreement beyond 30 days after the change becomes effective.

Thus, in most cases, what triggers the requirement to make a submission regarding the names of other relevant parties to a particular prepaid account agreement is a substantive change to the content of the agreement itself or the identifying information enumerated in § 1005.19(b)(1)(i) other than the names of other relevant parties to the agreement. Amendments to one agreement submitted to the Bureau do not trigger the requirement to submit updated lists of the names of other relevant parties to all the issuers' agreements. Issuers may, but are not required to, submit changes to the list of names of other relevant parties to an agreement within 30 days of the change becoming effective (that is, following the same schedule as for submitting other changes to the Bureau). However, in situations in which the Bureau does not have an up-

to-date relevant party list from the issuer as of April 1 of a given year, the issuer must provide such updates by May 1 of that year.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

19(b)(6)(ii) Fee Information

The 2016 Final Rule's version of § 1005.19(b)(6)(ii) stated that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. It further stated that the agreement or the addendum thereto must contain all of the fee information, which § 1005.19(a)(3) defines as 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). As explained in the 2016 Final Rule, the Bureau believed that permitting issuers to include the short form and long form disclosures together as part of the prepaid account agreement or in a single addendum to that agreement would provide issuers some flexibility, while ensuring that consumers and other parties reviewing the agreements have access to such information.[86]

The Bureau's Proposal

As explained in the June 2017 Proposal, the Bureau was concerned that permitting the short form and long form disclosures to be included either as part of the prepaid account agreement or in a single addendum might not provide issuers the flexibility the Bureau intended.[87] Given the form and content requirements of the short form and long form disclosures, the Bureau expects that many issuers will likely create two separate documents,

[86] 81 FR 83934, 84143 (Nov. 22, 2016).

[87] 82 FR 29630, 29645 (June 29, 2017).

making the task of combining the documents into the agreement or a single addendum potentially unnecessarily complex.[88]

The Bureau therefore proposed to revise § 1005.19(b)(6)(ii) to allow issuers to submit the pre-acquisition disclosures either as one or separate addenda. Specifically, proposed § 1005.19(b)(6)(ii) would have provided that fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both 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 long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). The agreement or addenda thereto must contain all of the fee information, as defined by § 1005.19(a)(3). The Bureau also proposed to make conforming changes to § 1005.19(b)(6)(iii) and comment 19(b)(6)-3, which govern the requirements for integrated prepaid account agreements and which reference an optional fee information addendum, to reflect the proposed changes to § 1005.19(b)(6)(ii).

Comments Received

Several industry commenters, including trade associations, a program manager, and a think tank, supported the proposed revisions to § 1005.19(b)(6)(ii) and (iii). One of the trade associations confirmed the Bureau's expectation that many issuers will likely create two separate documents (one for the short form disclosure and another for the long form disclosure) and thus would be forced to combine the documents into the agreement or into a single addendum, which they asserted will complicate the submission process if the requirement is left unchanged.

[88] As noted above, § 1005.19(a)(3) defines fee information, in part, as 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). It does not require that the long form itself, in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7), be submitted. Some issuers may integrate the long form in that fashion into, or append it to, their agreements, in order to satisfy the requirements of §§ 1005.7(b), 1005.18(b)(4) and (f)(1) simultaneously.

Several of the other industry commenters stated that the proposed changes would facilitate compliance and potentially reduce the cost and burden associated with the § 1005.19 submission and posting requirements.

A group of consumer advocates stated that, although they had no objection to the Bureau's proposal to permit issuers to submit the short form and long form disclosures as separate documents, the Bureau should require the fee information to be submitted separately from the full prepaid account agreements, which they believed would allow consumers and other parties to find the fee information more quickly and easily without having to read the entire terms and conditions document to search for the fee information.[89]

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the revisions to § 1005.19(b)(6)(ii) and (iii) and comment 19(b)(6)-3 as proposed to provide issuers some flexibility when submitting prepaid account agreements and fee information, as it intended in the 2016 Final Rule. The Bureau continues to believe that allowing issuers to include the fee information either as part of the prepaid account agreement or as one or separate addenda will also facilitate compliance.[90] The Bureau is also making a conforming change in comment 19(b)(2)-1 to align with the modified language in the regulatory text.

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[89] This group also stated they supported the proposed revisions to § 1005.19(b)(6)(iii), which prohibits issuers from providing the Bureau provisions of an agreement or fee information in the form of change-in-terms notices or riders, because they believed a series of change-in-terms notices or riders would be complicated to piece together. However, the proposed changes to § 1005.19(b)(6)(iii) were not substantive in nature and were proposed merely to conform to the revisions to § 1005.19(b)(6)(ii).

[90] Final § 1005.19(b)(6)(iii) states that 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 addenda described in § 1005.19(b)(6)(ii)). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addenda, as appropriate. This requirement is unchanged from the 2016 Final Rule other than the revision from "addendum" to "addenda" and the addition of the cross-reference to § 1005.19(b)(6)(ii).

With respect to the advocates' suggestion to require fee information to be submitted separately, the Bureau is not adopting the advocates' suggestion because doing so would impose an additional affirmative requirement to create separate addenda for the fee information (if an issuer does not already have such information separated) and would be contrary to the Bureau's reasoning for revising § 1005.19(b)(6)(ii), which was to provide issuers flexibility when submitting prepaid account agreements to the Bureau pursuant to § 1005.19(b). However, as discussed above, the Bureau expects that many issuers will likely create a separate document at least for the short form disclosure, and possibly for the long form disclosure as well, given the form and content requirements for such disclosures set forth in § 1005.18(b); the Bureau expects that those issuers will prefer to submit the fee information separately, even without a requirement to do so.[91] The Bureau will monitor the quality and format of agreements and addenda submitted by issuers, and may revisit this issue in a future rulemaking if warranted.

19(f) Initial Submission Date

As discussed in detail in part VI below, the Bureau is extending by an additional 12 months the general effective date of the Prepaid Accounts Rule, to April 1, 2019. The Bureau is likewise extending the effective date of § 1005.19(b) for the agreement submission requirement to April 1, 2019, as it does not believe it is warranted to have an earlier effective date for only that provision. The unified effective date of April 1, 2019 for all Prepaid Accounts Rule provisions renders most of the text of § 1005.19(f) unnecessary, and thus the Bureau is making substantial changes to § 1005.19(f) and related commentary to reflect this.

[91] The Bureau is designing the submission system for prepaid account agreements to allow issuers to submit separate files for the agreement, the short form disclosure, and the long form disclosure information and statements. Issuers will not be required to submit a single file that contains the agreement combined with short form and long form disclosures.

In the June 2017 Proposal, the Bureau proposed revisions to clarify how the October 1, 2018 effective date was described in § 1005.19(f)(2) and comment 19(f)-1 to avoid any potential confusion between the delayed effective date for § 1005.19(b) and the general effective date of the Prepaid Accounts Rule. In that proposal, the Bureau also stated its continued belief that the October 1, 2018 effective date for the agreement submission requirement of § 1005.19(b) was appropriate, given its ongoing work to develop a streamlined electronic submission process. Although the Bureau received comments seeking a further extension of the April 1, 2018 general effective date, the Bureau did not receive any comments specific to the proposed changes to clarify the interaction of the two effective dates.

As stated in the June 2017 Proposal, the Bureau expects that its streamlined electronic submission process will be fully operational before that provision's original effective date of October 1, 2018. However, because the Bureau is extending the effective date for all provisions of the Prepaid Accounts Rule to April 1, 2019, much of § 1005.19(f)—which had established the separate effective date of the agreement submission requirement along with related provisions (both as set forth in the 2016 Final Rule and as proposed in the June 2017 Proposal)—is now unnecessary. Accordingly, the Bureau is removing most of § 1005.19(f), including its three sub-paragraphs, and replacing it with simplified regulatory text stating the general April 1, 2019 effective date. The Bureau is retaining the portion of § 1005.19(f)(2), renumbered as § 1005.19(f), stating that an issuer must submit to the Bureau no later than May 1, 2019 all prepaid account agreements it offers as of April 1, 2019. The Bureau is also revising the heading for § 1005.19(f) for clarity and removing the commentary that accompanied § 1005.19(f). These changes do not affect the substance of issuers' obligations to submit prepaid account agreements to the Bureau pursuant to § 1005.19(b).

Appendix A-7 Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

The 2016 Final Rule's version of appendix A-7(c) provides model language for use by a financial institution that chooses not to provide provisional credit while investigating an alleged error for prepaid accounts for which it has not completed its consumer identification and verification process, in accordance with the 2016 Final Rule's general limited liability and error resolution provisions. The Bureau proposed to revise that model language to reflect the proposed amendments to § 1005.18(d)(1)(ii) and (e)(3). The proposed language was similar to the language used in the 2014 Proposal, with additional language to clarify that limited liability and error resolution rights would apply only upon successful verification of the consumer's identity.[92] One prepaid issuer commented in support of the proposed model language. The Bureau has removed the last sentence of the proposed model language to conform to the change to § 1005.18(e)(3) pursuant to which financial institutions are not required to resolve pre-verification errors, but otherwise is adopting the model language as proposed.

The language of final appendix A-7(c) reads: "It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. 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."

[92] The Bureau tested a version of this model language with consumers as part of its pre-proposal disclosure testing. *See* 79 FR 77102, 77203 and n.327 (Dec. 23, 2014) and ICF Int'l, *ICF Report: Summary of Findings: Design and Testing of Prepaid Card Fee Disclosures*, at 23 (Nov. 2014), *available at* https://www.consumerfinance.gov/documents/4776/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf.

Regulation E Technical Corrections

The Bureau is making technical corrections, such as correcting typographical errors, editing text for consistency, and making similar minor changes, to various provisions of the Prepaid Accounts Rule in Regulation E, which are not intended to change the meaning of the Prepaid Accounts Rule. Where these changes are being made to provisions that the Bureau is also revising for other reasons, these changes are noted in the section-by-section analyses above.[93] In addition, the Bureau is making the following other technical corrections in Regulation E:

- Changing "customer" to "consumer" identification and verification in § 1005.18(b)(2)(xi) and comments 18(b)(2)(xi)-2 and 18(b)(4)(iii)-1 for consistency with usage of that term elsewhere in Regulation E, including the error resolution and limited liability provisions in revised § 1005.18(e). The Bureau is also correcting the cross-reference at the end of comment 18(b)(2)(xi)-2 (changing "comments 18(e)-4 and 5" to "comments 18(e)-4 through 6").
- Revising the last sentence of comment 18(b)(5)-2, for consistency with the regulatory text, to state that the § 1005.18(b)(5) disclosure is deemed in close proximity to the "access device's packaging material", rather than the "short form disclosure", when disclosure of the purchase price is made on or near the sales rack or display for the packaging material at retail locations. The Bureau is also making a grammatical correction in that paragraph (changing "written short form disclosures" to "a written short form disclosure").

[93] See the section-by-section analyses of § 1005.18(b)(1)(ii), (b)(2)(ix), (b)(6)(i), (b)(9), and (h) above.

- Adjusting terminology for consistency with other portions of the regulatory text and commentary in § 1005.18(b)(7)(i)(B) (changing "information" to "statements" in reference to § 1005.18(b)(4)(iii) through (vi) and "disclosures" to "statements" in reference to § 1005.18(b)(4)(vi)) and in comments 2(b)(3)(i)-6 (changing "prepaid account" to "product" in the heading), 18(b)(2)(viii)(A)-2.i introductory text and 2.ii introductory text (changing "fees" to "fee types" in the first sentence of each comment), 18(b)(4)(vii)-1 (changing "disclosures" to "statements" in reference to § 1005.18(b)(4)(vi)), 18(b)(7)(ii)-1 (changing "type/pixel" to "point/pixel"), 18(c)-5 (changing "make available" to "provide"), and 19(a)(4)-2 (changing "submit" to "make submissions of").
- Correcting grammar and typographical errors in § 1005.18(b)(1)(iii) (changing "disclosures" to "disclosure" and "are" to "is"), § 1005.18(b)(6)(ii) (changing "long form disclosures" to "a long form disclosure"), § 1005.18(b)(6)(iii)(A) (changing "disclosures" to "disclosure"), § 1005.18(b)(6)(iii)(B)(*2*) (changing "preferred-" to "preferred"), § 1005.18(b)(7)(i)(B) (changing "§ 1005.18(b)(4)(vii)" to "paragraph (b)(4)(vii) of this section"), and § 1005.18(b)(7)(ii)(C) (changing "long form disclosures" to "the long form disclosure"), and in comments 18(b)(2)(iv)-1 (changing "comments" to "comment") and 18(b)(2)(viii)(A)-2.v (adding "the" before the first reference to "United States").
- Correcting a cross-reference in comment 18(c)-6 (changing "§ 1005.18(e)(3)(i)(A) through (C)" to "§ 1005.18(e)(3)(ii)(A) through (C)").

Regulation Z

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Section 1026.61 Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

Background

In the 2016 Final Rule, the Bureau amended Regulations Z and E to establish a set of requirements in connection with "hybrid prepaid-credit cards" that can access overdraft credit features offered by the prepaid account issuer, its affiliate, or its business partner.[94] The Bureau was concerned about overdraft credit features associated with prepaid accounts in part because of the way that such services have evolved on traditional checking accounts. As explained in detail in the 2016 Final Rule, checking account overdraft originally developed as an occasional courtesy to consumers by honoring checks that would otherwise overdraw their accounts, and was exempted from the normal rules governing credit under Regulation Z.[95] As debit card use expanded and fees rose, overdrafts increased substantially and depository institutions changed their account pricing structures in part in reliance on overdraft income. In the 2016 Final Rule, the Bureau noted that a substantial number of consumers have moved to prepaid accounts specifically because they have had difficult experiences with overdraft services on traditional checking accounts, and that prepaid account providers have frequently marketed their products as safer and easier to use than comparable products with credit features. In light of these and

[94] Under the Prepaid Accounts Rule, overdraft credit features involve credit that can be accessed from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

[95] 81 FR 83934, 84158 (Nov. 22, 2016).

other considerations, the Bureau concluded that it was appropriate to apply traditional credit card rules to overdraft credit features accessible by hybrid prepaid-credit cards, as well as to adopt a short list of tailored provisions to reduce the risk that consumers would experience problems in accessing and managing prepaid accounts linked to such credit features.[96]

Overdraft credit features accessible by hybrid prepaid-credit cards are referred to as "covered separate credit features" in the Prepaid Accounts Rule, as set forth in § 1026.61(a)(2)(i). The Bureau designed this portion of the Prepaid Accounts Rule to ensure that these products will be treated consistently regardless of certain details about how the credit relationship is structured. For example, the rules for covered separate credit features accessible by hybrid prepaid-credit cards apply regardless of whether the credit is offered by the prepaid account issuer itself, its affiliate, or its business partner. The 2016 Final Rule's version of § 1026.61(a)(5)(iii) defined the term "business partner" as a person (other than the prepaid account issuer or its affiliate) 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. The 2016 Final Rule's version of comment 61(a)(5)(iii)-1 explained that there are two types of arrangements that create a business partner relationship for purposes of § 1026.61(a)(5)(iii): (1) an agreement between the parties under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) a cross-marketing or other similar agreement between the parties to cross-market the credit feature or the prepaid account, where the prepaid

[96] *Id*. at 84158-61.

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 prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

As explained in the 2016 Final Rule, the Bureau believed that it was appropriate to consider a third party that can extend credit to be the prepaid account issuer's business partner in the above circumstances because such arrangements can be used to replicate overdraft programs on a prepaid account. Specifically, the Bureau believed that these types of relationships between the prepaid account issuer and the unaffiliated third party were likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related.[97]

However, the Bureau did not apply the rules related to hybrid prepaid-credit cards in situations where there is less of a connection between the person offering credit and the prepaid account issuer, such that the person offering credit may not be aware its credit feature is being used as an overdraft credit feature with respect to a prepaid account.[98] This could occur if the prepaid account issuer allows consumers to link their prepaid cards to credit card accounts offered by unrelated third-party card issuers.[99] Where the two parties do not have a business arrangement or where the prepaid card cannot be used from time to time to draw, transfer, or authorize a draw or transfer of credit in the course of a transaction with the prepaid account, the

[97] *Id*. at 84253.

[98] *See id.* at 84252-53.

[99] The unaffiliated third-party card issuer might not realize that its credit feature is accessible by a prepaid card in the course of transaction, so that the card issuer would have no reason to think that the provisions in the Prepaid Accounts Rule tailored to hybrid prepaid-credit cards would apply to its product. The Bureau was concerned that card issuers might try to mitigate compliance risk in ways that would make it harder for prepaid account consumers to access credit. *Id.* at 84253.

separate credit feature is deemed a "non-covered separate credit feature" as set forth in § 1026.61(a)(2)(ii) and does not trigger the Prepaid Accounts Rule's provisions governing hybrid prepaid-credit cards, although the separate credit feature generally will be subject to Regulation Z in its own right.

The 2016 Final Rule also set forth an exception in § 1026.61(a)(4) allowing prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The Bureau created this exception to allow prepaid account issuers to provide certain forms of incidental credit to their customers, including situations where a negative balance results because a consumer completes transactions with his or her prepaid account while an incoming load of funds from an asset account is still being processed.[100] However, to limit evasion, the exception only would have applied where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees. If the conditions in § 1026.61(a)(4) are not met, the prepaid card is a hybrid prepaid-credit card with respect to the negative balance under § 1026.61(a)(3), and § 1026.61(b) prohibits the card issuer from structuring the overdraft credit feature as a negative balance on the asset feature of the prepaid account. In that case, the card issuer must structure the overdraft credit feature as a separate

[100] Under the 2016 Final Rule, this exception extended to three types of incidental credit so long as the prepaid account issuer generally did not charge credit-related fees for the credit and the prepaid card could not access any covered separate credit feature: (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.

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. This separate credit feature is a "covered separate credit feature" under § 1026.61(a)(2)(i) and is subject to the credit card rules in Regulation Z, as well as the targeted provisions in Regulations Z and E applicable to hybrid prepaid-credit cards. The Bureau believed that prohibiting negative balances on a prepaid account in the situations discussed above would promote transparency and compliance with the credit card requirements.[101]

Concerns Raised Related to Application of Credit Rules to Digital Wallets

Since issuance of the 2016 Final Rule, the Bureau has received feedback indicating digital wallet providers were concerned that application of the substantive credit rules in certain circumstances would create a number of unique challenges for their products. Unlike a GPR card, which is generally designed to be used as a standalone product similar to a checking account, a digital wallet is a product that by its nature is generally intended to facilitate the consumer's use of multiple payment options in online and mobile transactions, similar to a physical wallet holding credit and debit cards as well as cash. As set forth in Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)-6, the term "prepaid account" includes digital wallets that are capable of being loaded with funds; those that simply hold payment credentials for other accounts but that are incapable of having funds stored in them are not covered. Even where a digital wallet provides the ability to store funds directly, consumers also may want to store credentials for their existing credit, debit, and prepaid cards and deposit accounts so that they have a range of payment options available. These digital wallet providers may actively

[101] 81 FR 83934, 84264-65 (Nov. 22, 2016).

encourage consumers to use both functions, either by direct marketing to consumers or through joint arrangements with card issuers.

In response to the 2017 Effective Date Proposal, a digital wallet provider whose product can store funds (such that its digital wallet accounts are prepaid accounts under Regulation E § 1005.2(b)(3)) submitted a comment letter. That digital wallet provider raised several concerns about the account number for a digital wallet account becoming a hybrid prepaid-credit card where a consumer links a digital wallet account to credit card accounts that are offered by companies with which the digital wallet provider has cross-marketing or other agreements that would create a business partner relationship under the 2016 Final Rule's version of § 1026.61(a)(5)(iii).

This commenter especially was concerned about several targeted provisions of the Rule. First, the commenter pointed to a provision in § 1026.61(c) that generally requires a card issuer to wait 30 days after a prepaid account has been registered before soliciting or opening new credit features or linking existing credit features to the prepaid account that would be accessible by a hybrid prepaid-credit card. The commenter expressed concern that this requirement would delay a consumer's ability to link credit card accounts offered by its business partners to the digital wallet account, noting that where a digital wallet provider has a business partner relationship with Issuer A but not Issuer B, consumers could add Issuer B's credit card accounts to their digital wallet accounts immediately, but could not add Issuer A's credit card accounts until 30 days after the digital wallet accounts are registered because Issuer A is a business partner of the digital wallet provider. The commenter asserted that the policy concerns underlying the Bureau's decision to impose the 30-day waiting period are inapplicable to digital wallet accounts

in these circumstances and that such a delay would likely lead to consumer confusion and reduced consumer choice.

Second, the commenter asserted that additional consumer confusion is likely to arise from the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii), which mandate that disclosures of key credit pricing terms set forth in § 1026.60(e)(1) be included on a prepaid account's long form disclosure if a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to a consumer in connection with the prepaid account. The commenter indicated that these credit disclosures for each credit card product offered by each business partner would have to be provided to all new digital wallet account holders in the digital wallet account's long form disclosure even if many of the digital wallet account holders never hold, or apply for, credit card accounts offered by those business partners. The commenter indicated that such disclosures might be numerous depending on how many business partners the digital wallet provider has and how many credit card products are offered by each business partner and thus asserted that additional consumer confusion was likely to arise from the inclusion of those disclosures in the long form for its digital wallet accounts.

Third, the commenter raised concerns about the exception in the 2016 Final Rule's version of § 1026.61(a)(4) allowing prepaid account issuers to provide certain incidental forms of credit as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The commenter pointed out that it could not take advantage of this exception when a customer links a credit card account offered by one of its business partners. Rather, the 2016 Final Rule would prohibit a negative balance and instead would require that even incidental credit be obtained using a separate credit

account or subaccount of the prepaid account that is subject to the full protections of Regulation Z. The commenter expressed concern that this could cause consumer confusion and increase the likelihood that consumers would be charged fees or interest because the incidental credit would be provided formally via the separate credit feature, rather than as a temporary negative balance on the asset account.

Overview of the Final Rule

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) below, in the June 2017 Proposal, the Bureau proposed to create a limited exception from the definition of "business partner" that would have excluded certain arrangements between card issuers and prepaid account issuers (including digital wallet providers) from the tailored provisions in the Prepaid Accounts Rule applicable to covered separate credit features accessible by hybrid prepaid-credit cards. As explained below, where the credit card accounts would already be subject to traditional credit card rules under Regulation Z and certain other safeguards are present, the Bureau believed that it might not be necessary to apply the Prepaid Accounts Rule's tailored provisions to such business arrangements. The Bureau is adopting this exception generally as proposed with some revisions as discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii) and (a)(5)(iii)(D)(*2*) and (*5*) below.

Also, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, the Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to provide certain forms of incidental credit structured as a negative balance on the asset feature of the prepaid account without triggering Regulation Z and the other protections for hybrid prepaid-credit cards in situations when a covered separate credit feature offered by a business partner is attached to the prepaid account, so long as the other conditions contained in § 1026.61(a)(4) are

satisfied. The Bureau also is making changes to certain other provisions in Regulation Z for consistency with the changes to § 1026.61(a)(4). *See* final § 1026.61(a)(1)(iii) and (a)(3)(ii) and final comments 4(b)(11)-1.i and iii, 61(a)(3)(i)-1.ii, 61(a)(3)(ii)-1, and 61(a)(4)-1. The changes to these provisions are discussed in the section-by-section analysis of § 1026.61(a)(4) below.

61(a)(4) Exception for Credit Extended Through a Negative Balance

The Bureau's Proposal

As discussed in the section-by-section analysis of § 1026.61(a) above, the Bureau adopted § 1026.61(a)(4) in the 2016 Final Rule to allow prepaid account issuers to provide certain incidental forms of credit as a negative balance on the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The exception only would have applied where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees. If the conditions of § 1026.61(a)(4) were met, the prepaid card is not a hybrid prepaid-credit card and the incidental credit is not subject to Regulation Z and the other protections in Regulations Z and E for hybrid prepaid-credit cards. Instead, this credit is regulated under Regulation E as credit incidental to the prepaid card transaction.

If the conditions of § 1026.61(a)(4) were not met, the prepaid card would be a hybrid prepaid-credit card with respect to the negative balance under § 1026.61(a)(3), and § 1026.61(b) prohibits the card issuer from structuring the overdraft credit feature as a negative balance on the asset feature of the prepaid account. In that case, the 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. This separate credit feature is a "covered separate credit feature" under § 1026.61(a)(2)(i) and is subject to the credit card rules in Regulation Z, as well as the targeted provisions in Regulations Z and E applicable to hybrid prepaid-credit cards.

As discussed in the section-by-section analysis of § 1026.61(a) above, in response to the 2017 Effective Date Proposal, one digital wallet provider expressed concern that it could not take advantage of the exception in the 2016 Final Rule's version of § 1026.61(a)(4) permitting a negative balance on the asset feature of the prepaid account in situations in which a consumer links a credit card account offered by a business partner of the digital wallet provider. Rather, the 2016 Final Rule would prohibit negative balances and instead would require that even incidental credit be obtained using a separate credit account or subaccount of the prepaid account that is subject to the full protections of Regulation Z. The commenter expressed concern that this could cause consumer confusion and make it more likely that consumers would be charged fees or interest because the incidental credit would be provided formally via the separate credit feature, rather than as a temporary negative balance on the asset account.

In the June 2017 Proposal, the Bureau did not propose changes to § 1026.61(a)(4). The Bureau believed that the exception to the definition of "business partner" it proposed in § 1026.61(a)(5)(iii)(D) would address the commenter's concern by substantially narrowing the circumstances in which digital wallets would be likely to trigger these Regulation Z requirements. The Bureau also believed that when the exception in proposed § 1026.61(a)(5)(iii)(D) did not apply, the prepaid account issuer and the card issuer would have a substantial relationship such that the parties could avoid the concerns raised by the digital wallet

provider by structuring the terms of the accounts to prevent consumers from being charged fees or interest when incidental credit was provided formally via the credit card account.[102]

Nevertheless, the Bureau solicited comment on whether it should permit incidental credit to be provided via a negative balance on a prepaid account even when a covered separate credit feature is connected to the prepaid account, as requested by the digital wallet commenter. The Bureau also solicited comment on whether prepaid account issuers or card issuers are likely to incur any significant difficulties in structuring the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account, such as any significant difficulties in identifying for the card issuer which transactions on the prepaid account relate to incidental credit.

Comments Received

In response to the June 2017 Proposal, the digital wallet provider and an industry trade association requested that the Bureau revise § 1026.61(a)(4) to permit negative balances on a prepaid account even if a covered separate credit feature is attached to the prepaid account so long as the other conditions set forth in § 1026.61(a)(4) are met. The digital wallet provider indicated that consumers are likely to become confused if the digital wallet provider opens a separate credit account or subaccount in its digital wallet to avoid a negative balance when a credit card account issued by a business partner is linked to the digital wallet. The commenter indicated that this consumer confusion is particularly likely to arise for consumers who previously incurred negative balances in their prepaid accounts for incidental credit when their digital wallets were linked only to credit card accounts issued by card issuers that are not

[102] 82 FR 29630, 29650 (June 29, 2017).

business partners. The commenter indicated that consumers may not understand why the incidental credit is now being provided through a separate credit account or subaccount (as opposed to a negative balance) and why they are receiving Regulation Z disclosures, including monthly statements, for this separate credit account or subaccount. The commenter also indicated that building systems to comply with Regulation Z to hold otherwise permissible negative balances in separate credit accounts or subaccounts when business partner credit card accounts are linked (and converting the accounts back if consumers subsequently remove such credit card accounts from their digital wallet accounts) would be a major technological and financial undertaking.

This commenter recognized that the rule did not prohibit a prepaid account issuer from charging incidental credit to the linked covered separate credit feature offered by the business partner. Nonetheless, this commenter indicated that such charges would not always be possible. For example, it said that the prepaid account issuer would not be able to charge the incidental credit to a linked credit card when doing so would cause the credit card account to exceed the credit limit set by the card issuer. Even when it is possible to charge the incidental credit to the linked covered separate credit feature, this commenter suggested that doing so likely would be financially detrimental to consumers. In particular, the commenter stated that incidental credit charged to the linked covered separate credit feature would likely be deemed a cash advance by the card issuer and thus is likely to subject the consumer to interest and fees. The commenter also indicated that it is not likely that card issuers would be willing to waive interest or fees when incidental credit (that would otherwise take the form of a negative balance in a digital wallet) is instead converted to an extension of credit through the linked covered separate credit feature. This commenter believed that it was much more likely that credit card issuers would impose

interest and fees directly on the consumers for this credit or would expect digital wallet providers to incur those costs on behalf of their customers.

The trade association also raised similar concerns as discussed above related to consumer confusion and implementation burdens for digital wallet providers.

The Final Rule

For the reasons set forth herein, the Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to take advantage of the exception permitting a negative balance on the asset feature of the prepaid account even if a covered separate credit feature offered by a business partner is attached, so long as the other conditions contained in § 1026.61(a)(4) are satisfied. As discussed above, the 2016 Final Rule's version of § 1026.61(a)(4) provided that a prepaid card is not a hybrid prepaid-credit card and thus is not a credit card under Regulation Z if three conditions were met: (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit); and (3) the prepaid account issuer generally does not charge credit-related fees.

The Bureau is making several revisions to § 1026.61(a)(4). First, the Bureau is revising the lead-in paragraph to § 1026.61(a)(4) to provide that a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account and is not a credit card for purposes of Regulation Z with respect to that credit if the conditions of § 1026.61(a)(4) are met. Second, the Bureau is adjusting the first condition in § 1026.61(a)(4)(i) to provide that the prepaid card cannot access credit from a covered separate credit feature, as described § 1026.61(a)(2)(i), that is offered by a prepaid account issuer or its

affiliate. Third, the Bureau is modifying the heading for § 1026.61(a)(4) to make clear that this exception relates to credit extended through a negative balance on the asset feature of the prepaid account. With these revisions, under final § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account and is not a credit card for purposes of Regulation Z with respect to that credit, even if a covered separate credit feature offered by a business partner is attached to the prepaid account, so long as the other conditions contained in § 1026.61(a)(4) are satisfied. If the conditions in § 1026.61(a)(4) are met, the incidental credit extended through the negative balance is not subject to Regulation Z and the other protections in Regulations Z and E for hybrid prepaid-credit cards. *See* final comment 61(a)(4)-1.v. Instead, this credit is regulated under Regulation E as credit incidental to the prepaid card transaction.

If the conditions of final § 1026.61(a)(4) are not met, such as where the prepaid card can access a covered separate credit feature offered by the prepaid account issuer or its affiliate, the prepaid card is a hybrid prepaid-credit card under § 1026.61(a)(3) with respect to credit extended through the negative balance on the asset feature of the prepaid account. As a result, § 1026.61(b) prohibits the card issuer from structuring the overdraft credit feature as a negative balance on the asset feature of the prepaid account. In that case, the card issuer must structure the overdraft credit feature as a separate credit feature, such as a credit account or subaccount to the prepaid account that is separate from the asset feature of the prepaid account. This separate credit feature is a "covered separate credit feature" under § 1026.61(a)(2)(i) and is subject to the credit card rules in Regulation Z, as well as the targeted provisions in Regulations Z and E applicable to hybrid prepaid-credit cards.

The Bureau notes that the exception in final § 1026.61(a)(4) only applies to credit extended through the negative balance on the prepaid account's asset feature in compliance with that provision. However, if the prepaid card is *also* attached to a covered separate credit feature that is offered by a business partner, the prepaid card is a hybrid prepaid-credit card with respect to that covered separate credit feature pursuant to § 1026.61(a)(2)(i). In contrast, where a prepaid card is not attached to any type of covered separate credit feature, the prepaid card is not a hybrid prepaid-credit card in any respect. *See* final comment 61(a)(4)-1.ii.

The Bureau also is amending comment 61(a)(4)-1 and several other provisions in Regulation Z to reflect the revised exception in final § 1026.61(a)(4) and to make other clarifications consistent with final § 1026.61(a)(4). *See* final § 1026.61(a)(1)(iii) and (a)(3)(ii) and final comments 4(b)(11)-1.i and iii, 61(a)(3)(i)-1.ii, 61(a)(3)(ii)-1, and 61(a)(4)-1. The revisions to comment 61(a)(4)-1 are discussed in more detail below.[103]

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[103] In addition to revisions to comment 61(a)(4)-1, the Bureau is making conforming changes to the following provisions for consistency with final § 1026.61(a)(4). As revised:

(1) Section 1026.61(a)(1)(iii) provides that with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in § 1026.61(a)(3), a prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of Regulation Z if the conditions set forth in § 1026.61(a)(4) are met;

(2) Section 1026.61(a)(3)(ii) provides that 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 with respect to that credit as described in § 1026.61(a)(4);

(3) Comment 4(b)(11)-1.i provides that the rules for classification of fees or charges as finance charges with respect to a covered separate credit feature are specified in § 1026.4(b)(11) and related commentary;

(4) Comment 4(b)(11)-1.iii provides that if the prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(4), with regard to that credit, fees charged on the asset feature of the prepaid account in accordance with § 1026.61(a)(4)(ii)(B) are not finance charges;

(5) Comment 61(a)(3)(i)-1.ii provides that unless the credit extended through a negative balance on the asset feature of the prepaid account meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b); and

(6) Comment 61(a)(3)(ii)-1 provides that unless § 1026.61(a)(4) applies, a card issuer would violate § 1026.61(b) if it structures a credit feature as a negative balance on the asset feature of the prepaid account

To facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a) so that a prepaid card that accesses credit structured as a negative balance on the prepaid account is excluded from the definition of "credit card" under TILA section 103(*l*)[104] and Regulation Z § 1026.2(a)(15)(i) (as amended by the 2016 Final Rule), even if a covered separate credit feature offered by a business partner is attached to the prepaid account, so long as the other conditions set forth in § 1026.61(a)(4) are met. For the reasons discussed below, the Bureau is therefore making this exception to § 1026.61(a)(4).

The Bureau recognizes that when a covered separate credit feature offered by a business partner is attached to a prepaid account, it may not always be possible to charge incidental credit to the linked covered separate credit feature when doing so would cause the account to exceed the credit limit set by the card issuer. In addition, even when it is possible to charge the incidental credit to the linked covered separate credit feature, the card issuer may not be willing to waive interest and fees on that credit. To avoid having a negative balance in the asset feature of the prepaid account and thus violating § 1026.61(b), the prepaid account issuer could open a separate credit account or subaccount in the digital wallet in those cases where a covered separate credit feature issued by a business partner is linked.

The Bureau also agrees with the industry commenters that, absent its exception to § 1026.61(a)(4), this aspect of the Prepaid Accounts Rule likely would create significant operational burdens for prepaid account issuers. A prepaid account issuer would need to build

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and provides that 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 with respect to that credit as described in § 1026.61(a)(4).

[104] 15 U.S.C. 1602(*l*).

Regulation Z-compliant systems to hold otherwise permissible negative balances in separate accounts or subaccounts when consumers link business partner credit card accounts (and, the Bureau presumes, convert the account back when such accounts are removed). The Bureau also is persuaded that this approach could be confusing to consumers, especially in the context of digital wallets and how consumers have historically used them.

When discussing their concerns about § 1026.61(a)(4), the industry commenters generally focused on situations that arise when a covered separate credit feature offered by a business partner is linked to a prepaid account. The Bureau does not believe that these same concerns arise when a covered separate credit feature is offered by the prepaid account issuer or its affiliate (as opposed to a business partner) and thus is not amending § 1026.61(a)(4) to allow a negative balance on the prepaid account when a covered separate credit feature offered by the prepaid account issuer or its affiliate is attached to the prepaid account. Among other things, the prepaid account issuer or its affiliate, in these cases, would already offer Regulation Z-compliant covered separate credit features. The Bureau believes when the prepaid account issuer itself or an affiliated party offer both the prepaid account and the covered separate credit feature, it will encounter fewer difficulties in charging the incidental credit to the covered separate credit feature, or waiving interest and fees on the incidental credit when it is charged to the covered separate credit feature if desired.

Revisions to comment 61(a)(4)-1. The Bureau is making several revisions to comment 61(a)(4)-1 for consistency with the changes noted above to § 1026.61(a)(4). Specifically, the Bureau is amending comment 61(a)(4)-1.i to explain that a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account if: (1) the card cannot access credit from a covered separate credit feature under

§ 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate, though it is permissible for it to access credit from a covered separate credit feature offered by a business partner or from a non-covered separate credit feature as described under § 1026.61(a)(2)(ii); and (2) 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).

The Bureau also is adding a new comment 61(a)(4)-1.ii to provide additional guidance on circumstances when a prepaid card accesses both a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) and other credit features. Specifically, consistent with final § 1026.61(a)(4), new comment 61(a)(4)-1.ii explains that if the conditions of § 1026.61(a)(4) are met and the prepaid card can access credit from a covered separate credit feature, as defined in § 1026.61(a)(2)(i), that is offered by a business partner, the prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i) but it is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii). New comment 61(a)(4)-1.ii also explains that, if the conditions of § 1026.61(a)(4) are met and the prepaid card cannot access credit from any covered separate credit feature, as defined in § 1026.61(a)(2)(i), the prepaid card is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii).

The 2016 Final Rule's version of comment 61(a)(4)-1.ii provided an example of when a prepaid card was not a hybrid prepaid-credit card because the conditions in § 1026.61(a)(4) had been met. The Bureau is renumbering this comment as final comment 61(a)(4)-1.iii and is revising it to be consistent with final § 1026.61(a)(4). Specifically, final comment 61(a)(4)-1.iii explains that a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account in the following circumstances because the conditions set forth in § 1026.61(a)(4) have been met: (1) 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); and (2) the card can access credit from a non-covered separate credit feature as defined in § 1026.61(a)(2)(ii) and from a covered separate credit feature as defined in § 1026.61(a)(2)(i) offered by a business partner, but cannot access credit for a covered separate credit feature that is offered by a prepaid account issuer or its affiliate.

The 2016 Final Rule's version of comment 61(a)(4)-1.iii provided an example of when a prepaid card was a hybrid prepaid-credit card because the conditions of § 1026.61(a)(4) had not been met. The Bureau is renumbering this comment as final comment 61(a)(4)-1.iv and is revising it for consistency with the changes made to § 1026.61(a)(4). Specifically, final comment 61(a)(4)-1.iv makes clear that a prepaid account issuer does not qualify for the exception in § 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 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 or its affiliate during the authorization phase to complete the transaction so that credit is not

extended on the asset feature of the prepaid account. In this case, the exception in final § 1026.61(a)(4) does not apply because the prepaid card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature defined in § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate. Final comment 61(a)(4)-1.iv also explains that, in this example, the card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(3) and with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i). In that case, a card issuer has violated § 1026.61(b) because it has structured the credit feature as a negative balance on the asset feature of the prepaid account. *See* § 1026.61(a)(3)(ii) and (b).

The 2016 Final Rule's version of comment 61(a)(4)-1.iv provided guidance on how the regulation applied in cases where the prepaid card was not a hybrid prepaid-credit card. The Bureau is renumbering this comment as final comment 61(a)(4)-1.v and revising it for consistency with final § 1026.61(a)(4). Specifically, final comment 61(a)(4)-1.v provides that, in the case where a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions in § 1026.61(a)(4) are met, the prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.17(a)(iii) or (iv) because it is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) with respect to credit extended through the negative balance on the asset feature of the prepaid

account as a result of imposing fees on the prepaid account because those fees are not finance charges with respect to that credit, as described in final comment 4(b)(11)-1.iii.

61(a)(5) Definitions

61(a)(5)(iii)

The Bureau's Proposal

As discussed in the section-by-section analysis of § 1026.61(a) above, overdraft credit features accessible by hybrid prepaid-credit cards are referred to as "covered separate credit features" in the Prepaid Accounts Rule, as set forth in § 1026.61(a)(2)(i). These covered separate credit features are subject to the traditional credit card rules in Regulation Z, as well as other tailored provisions established by the 2016 Final Rule in both Regulations Z and E. The rules for covered separate credit features accessible by hybrid prepaid-credit cards apply regardless of whether the credit is offered by the prepaid account issuer itself, its affiliate, or its business partner. Specifically, the 2016 Final Rule's version of § 1026.61(a)(5)(iii) defined the term "business partner" as a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with the prepaid account issuer or its affiliate. Comment 61(a)(5)(iii)-1 explained that there were two types of arrangements that create a business partner relationship for purposes of § 1026.61(a)(5)(iii): (1) an agreement between the parties under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) a cross-marketing or other similar agreement between the parties to cross-market the credit feature or the prepaid account, where 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 prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

As discussed above, a digital wallet provider raised several concerns in its comment letter on the 2017 Effective Date Proposal about the account number for the digital wallet account becoming a hybrid prepaid-credit card when consumers link their digital wallet accounts to credit card accounts that are offered by companies with which the digital wallet provider has cross-marketing or other agreements that would create a business partner relationship under the 2016 Final Rule's version of § 1026.61(a)(5)(iii).

This commenter especially was concerned about several targeted provisions of the Prepaid Accounts Rule, as discussed above in detail in the section-by-section analysis of § 1026.61(a). In particular, it indicated that consumers would likely be confused if they had to wait 30 days after registering a prepaid account that is a digital wallet before linking a credit card account offered by a business partner to the digital wallet, but they could add a credit card account immediately after opening the digital wallet account if there was no business partner arrangement. The commenter expressed concern that additional consumer confusion would likely arise from the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii), which mandate that disclosures of key credit pricing terms set forth in § 1026.60(e)(1) be included on a prepaid account's long form disclosure if a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to a consumer in connection with the prepaid account. The commenter indicated that these credit disclosures for each credit card product offered by each business partner, which could be numerous, would have to be provided to all new digital wallet account holders in the digital wallet account's long form

disclosure even though many of the digital wallet account holders may never hold, or apply for, credit card accounts offered by those business partners.

In an effort to address these concerns, the Bureau proposed to narrow the definition of "business partner" in § 1026.61(a)(5)(iii) to exclude certain arrangements between prepaid account issuers and companies that offer products already subject to traditional credit card rules, provided that certain additional safeguards are in place. Under the proposed exception, the prepaid account issuer and the card issuer would not have been "business partners" under proposed § 1026.61(a)(5)(iii), and thus the prepaid card would not have been a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to the credit card account if certain conditions were met.

To effectuate this potential exception, the Bureau proposed several revisions to the definition of "business partner" in § 1026.61(a)(5)(iii). First, the Bureau proposed to move certain guidance on when there is an arrangement between business partners from comment 61(a)(5)(iii)-1 to the regulatory text itself in proposed § 1026.61(a)(5)(iii)(A) through (C), and to revise this language for clarity, as discussed in more detail below. In particular, this proposed change would have included moving the descriptions of the two types of arrangements that trigger coverage as business partners, as discussed above, to proposed § 1026.61(a)(5)(iii)(B) and (C).

Second, in response to concerns raised by the digital wallet provider, the Bureau proposed to add an exception, in § 1026.61(a)(5)(iii)(D), to the definition of business partner. Specifically, proposed § 1026.61(a)(5)(iii)(D) would have provided that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with

which it has an arrangement, as defined in proposed § 1026.61(a)(5)(iii)(A) through (C), with regard to such credit card account if all of the following conditions are met:

(1) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(2) The prepaid account issuer and the card issuer will not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time 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, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account, as described above.

(3) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account, as described above in proposed § 1026.61(a)(5)(iii)(D)(*2*).

(4) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account, as described above, in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from a credit card account that is linked to the prepaid account, as described above, as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement.

(5) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Each of these conditions is discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*), and (*5*) below, respectively.

Under proposed § 1026.61(a)(5)(iii)(D), a person that can extend credit through a credit card account that can be linked to a prepaid account would not be a business partner of the prepaid account issuer with which it has an arrangement, as defined in proposed § 1026.61(a)(5)(iii)(A) through (C), with respect to the credit card account. The credit feature would be subject to traditional credit card rules in its own right because one of the conditions for the proposed exception (proposed § 1026.61(a)(5)(iii)(D)(*1*)) is that the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan. The prepaid card that is linked to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), would not be a hybrid prepaid-credit card with respect to that credit card account, and thus the Prepaid Accounts Rule's tailored provisions applicable in connection with covered separate credit features accessible by hybrid prepaid-credit cards would not apply, such as the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements set

forth in Regulation E § 1005.18(b)(4)(vii).[105] In addition, when the exception in proposed § 1026.61(a)(5)(iii)(D) were to apply, the fact that the prepaid card can access the credit card account would not prevent the prepaid account issuer from providing incidental credit through a negative balance on the linked prepaid account if the conditions of § 1026.61(a)(4) were met.

The Bureau did not propose to specifically tailor the proposed exception to digital wallet accounts because the Bureau believed that it may be difficult to distinguish these digital wallet accounts from other types of prepaid accounts, particularly those that operate without a physical access device. Nonetheless, the Bureau believed that the proposed exception would address most of the concerns raised by the digital wallet provider, as discussed above. While prepaid account issuers do not generally permit card-based prepaid accounts to be linked to credit card accounts in order to back up transactions where the prepaid account lacks sufficient funds, the Bureau believed that the potential risk to consumers if issuers were to do so would be minimal if the conditions in proposed § 1026.61(a)(5)(iii)(D) were met.

The Bureau did not propose to extend the exception to situations where the prepaid account issuer or its affiliate was the party offering the credit card account. The Bureau believed that ensuring separation and independence is more complicated when both accounts are issued

[105] Other provisions in Regulations Z and E setting forth additional protections that only apply to covered separate credit features accessible by hybrid prepaid-credit cards or to prepaid accounts that are connected to such credit features include:

(1) Restrictions in Regulation E § 1005.18(g) on account terms, conditions, and features imposed on the asset feature of the prepaid account and applicability of the fee restriction in § 1026.52(a) to certain fees imposed on the asset feature of the prepaid account;

(2) Repayment-related provisions applicable to covered separate credit features in §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12(d)(2) and (3), and Regulation E § 1005.10(e)(1);

(3) Applicability of the claims and defenses provision in § 1026.12(c); and

(4) Applicability of limits on liability for unauthorized use and error resolution provisions in §§ 1026.12(b) and 1026.13 and Regulation E § 1005.12(a).

by the same entity or entities under common control, particularly given that offset, security interests, and other types of linkages may be present. Therefore, the Bureau believed that the Prepaid Accounts Rule's tailored protections, including the 30-day waiting period, were warranted in such cases.

Comments Received

Industry commenters that provided specific feedback on the proposed exception to the definition of "business partner" generally supported the exception with some suggested modifications. For example, several industry commenters, including trade associations, program managers, and a prepaid issuer, requested that the Bureau expand the proposed exception in § 1026.61(a)(5)(iii)(D) to apply to credit card accounts that are offered by the prepaid account issuer or its affiliate, so long as the same conditions set forth in the proposed exception were met. These commenters asserted that such an approach would avoid what they called an unfair and differential impact to prepaid account issuers that also issue credit cards, and that a broader exception should not introduce new risks to the consumer nor undermine the important policy goals of the Bureau.

In addition, the digital wallet provider commenter discussed above suggested that the Bureau not adopt the proposed conditions that the parties do not vary certain terms and conditions based on whether the two accounts are linked as set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*) and (*5*) to qualify for the exception, at least with respect to digital wallets. This commenter indicated that such conditions were likely to chill innovation and would limit digital wallet providers' and credit card issuers' abilities to offer consumer benefits that take advantage of synergies created by linked offerings. On the other hand, a group of consumer advocates commented in support of the proposed conditions. These commenters

indicated that if a consumer can only get advantageous terms by linking accounts, the linkage is not voluntary.

The group of consumer advocates also requested that the Bureau require an additional condition to qualify for the exception. Specifically, they suggested that any credit card account arrangement that is excepted from the definition of hybrid prepaid-credit card under § 1026.61(a)(5)(iii)(D) should be required to comply with § 1026.12(d)(3)(ii), which permits a written plan authorizing periodic deductions from the prepaid account only if the deductions are no more frequent than once per calendar month, such as on the date disclosed on the credit card statement. They were concerned that the credit card accounts might only be marketed to prepaid account holders, and these consumers could be led easily to believe that linking the two accounts is required and to agree to automatic payments on a daily or weekly basis.

A prepaid issuer requested that the Bureau ensure that the language of the exception, including the commentary, is drafted to clearly apply to all types of prepaid accounts, rather than limiting its purported applicability and underlying rationale to digital wallets.

With respect to the condition contained in proposed § 1026.61(a)(5)(iii)(D)(*2*), several industry commenters, including program managers and a trade association, requested that the condition to obtain a written authorization not apply where the two accounts were linked prior to the effective date of the Prepaid Accounts Rule. They argued that requiring prepaid account issuers or card issuers to obtain a "written request" from consumers for accounts that are already linked prior to the effective date would likely prove to be an extremely expensive and burdensome condition for providers and consumers who have previously agreed to the linkage. The Bureau also received several other comments related to the specific conditions of the

proposed exception, which are discussed in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), and (*5*) below.

Several industry commenters, including trade associations, program managers, and an issuing bank, requested that the Bureau generally reconsider the 2016 Final Rule's extension of provisions of TILA and Regulation Z to overdraft services on prepaid accounts and instead apply those protections currently afforded consumers of deposit accounts under Regulation E, largely for reasons that the Bureau previously addressed in the 2016 Final Rule. In addition, another issuing bank requested that the Bureau evaluate and consider the need for further revisions to the Prepaid Accounts Rule's credit-related provisions that apply to digital wallets linked to traditional credit cards. This commenter indicated that the Prepaid Accounts Rule's credit related provisions, as applied to digital wallets, should be appropriately tailored to the unique functionality of digital wallets.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(A) through (C) as proposed and is adopting the exception in § 1026.61(a)(5)(iii)(D) generally as proposed with certain revisions. Specifically, final § 1026.61(a)(5)(iii)(D)(*2*) provides guidance on how this condition applies as of April 1, 2019 (the new effective date of the Prepaid Accounts Rule, as discussed in part VI below), if the prepaid account is linked to the credit card account prior to that date, or prior to an arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C), as discussed in more detail below. Final § 1026.61(a)(5)(iii)(D)(*3*) also provides guidance on how this condition applies as of April 1, 2019, if the prepaid account is linked to the credit card account prior to that date, as discussed in more detail below. The Bureau also is adopting § 1026.61(a)(5)(iii)(D)(*5*) and related

commentary with modifications to clarify the intent of those provisions, as discussed in the section-by-section analysis of that provision below.

For the reasons discussed below, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a) so that a prepaid card that is linked to a credit card account meeting the conditions in final § 1026.61(a)(5)(iii)(D) is excluded from the definition of "credit card" under TILA section 103(*l*)[106] and Regulation Z § 1026.2(a)(15)(i) (as amended by the 2016 Final Rule).[107] The exception facilitates compliance by allowing the card issuer to comply with the rules in Regulation Z that already apply to the credit card account without also requiring the card issuer or the prepaid account issuer to comply with the tailored provisions in Regulations Z and E that were adopted in the 2016 Final Rule.

The Bureau believes that is appropriate and proper to use its exception authority under TILA section 105(a) for several reasons. First, the credit card account, even if not subject to the specific rules for hybrid prepaid-credit cards, is subject to the credit card rules in Regulation Z in its own right because it is a credit card account under an open-end (not home-secured) consumer credit plan that the consumer can access with a traditional credit card, pursuant to final § 1026.61(a)(5)(iii)(D)(*1*). Thus, the linked credit feature will still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan.

[106] 15 U.S.C. 1602(*l*).

[107] For the same reasons, the Bureau declines to extend the additional tailored provisions of the Prepaid Accounts Rule authorized under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and EFTA section 904(c) to these cards that are excluded from coverage as hybrid prepaid-credit cards.

Second, the Bureau believes that the conditions a prepaid account issuer and a card issuer must satisfy to qualify for the exception create substantial safeguards to protect against the prepaid account and the credit card account being connected in a way that would pose the kinds of risks to consumers that motivated the Bureau's approach to the general rules for covered separate credit features accessible by hybrid prepaid-credit cards. For example, the 30-day waiting period in § 1026.61(c) was designed to ensure that consumers do not feel undue pressure to decide at the time that they purchase or register a prepaid account whether to link a covered separate credit feature to such account without having the opportunity to fully consider the terms of the prepaid account, the separate credit feature, and the consequences of linking the two.[108] The Bureau also carefully crafted rules to govern the pricing for prepaid accounts and covered separate credit features upon linkage via a hybrid prepaid-credit card, and the disclosure thereof, to better ensure that the consumer could understand the cost and consequences of linking credit to a prepaid account. The Bureau believes that these requirements are not necessary when the safeguards of the exception are met because those safeguards will help make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure. In particular, the Bureau has tailored this exception to ensure that it is limited to traditional credit card accounts already covered by Regulation Z's open-end credit card rules and that the consumer could not be required to link the prepaid account and the credit card account to obtain or retain either account. In addition, to qualify for the exception, certain terms and conditions that apply to the credit card account and the prepaid account must be the same regardless of whether the two accounts are linked. Thus, the consequences to the consumer of

[108] 81 FR 83934, 84268 (Nov. 22, 2016).

linking the two accounts are less complex. As discussed in more detail below, the Bureau believes that when the conditions of the exception are met, it is not necessary to apply the 30-day waiting period in § 1026.61(c) or the other additional protections in Regulations Z and E that are applicable only to covered separate credit features or to prepaid accounts that are connected to covered separate credit features.

Additional guidance for accounts linked prior to April 1, 2019 or prior to an arrangement described in final § 1026.61(a)(5)(iii)(A) through (C). Based on comments received and its own analysis, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*2*) generally as proposed, with modifications to provide guidance on how this condition applies as of April 1, 2019 (the new effective date of the Prepaid Accounts Rule), if a prepaid account is linked to a credit card account prior to that date, or prior to an arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C). Final § 1026.61(a)(5)(iii)(D)(*3*) also provides guidance on how this condition applies as of April 1, 2019 if the prepaid account is linked to the credit card account prior to that date.

Specifically, final § 1026.61(a)(5)(iii)(D)(*2*) states that if the credit card account is linked to the prepaid account prior to April 1, 2019 or prior to the arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C), the prepaid account issuer and the card issuer will be deemed to have satisfied this condition even if they have not received from the consumer a written request as described in final § 1026.61(a)(5)(iii)(D)(*2*). The Bureau agrees with industry commenters that requiring a prepaid account issuer or the card issuer to obtain a consumer's written request to link the two accounts in order to take advantage of the exception where the linkage occurred prior to the effective date of the Prepaid Accounts Rule could prove to be an extremely expensive and burdensome

condition for digital wallet providers and consumers who have previously agreed to the linkage. The Bureau also recognizes that a linkage of the two accounts may occur after the effective date of the Prepaid Accounts Rule but prior to an arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C). In this case, the Bureau believes that it may be burdensome for digital wallet providers to obtain a consumer's written request to link the two accounts in order to take advantage of the exception where the linkage occurred prior to the arrangement between the two parties as described in final § 1026.61(a)(5)(iii)(A) through (C). The Bureau believes that digital wallet providers currently receive a consumer's consent to link a credit card account to a digital wallet, and thus it is not necessary to require digital wallet providers to obtain a consumer's written request in accordance with final § 1026.61(a)(5)(iii)(D)(*2*) for accounts linked prior to the effective date of the Prepaid Accounts Rule or prior to the arrangement between the prepaid account issuer and card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C).

In addition, the conditions in final § 1026.61(a)(5)(iii)(D)(*3*) through (*5*) specifically reference the condition in final § 1026.61(a)(5)(iii)(D)(*2*) that a consumer authorizes the prepaid card to access the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*). Consistent with final § 1026.61(a)(5)(iii)(D)(*2*), for purposes of the conditions in final § 1026.61(a)(5)(iii)(D)(*3*) through (*5*), if the credit card account is linked to the prepaid account prior to April 1, 2019 or prior to the arrangement between the prepaid account issuer and the card issuer as described in final § 1026.61(a)(5)(iii)(A) through (C), a consumer will be considered to have authorized linking the prepaid card to the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*), even if the consumer has not provided a written request that is

separately signed or initialized to authorize the prepaid card to access the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*).

The Bureau also believes that additional guidance is needed regarding how the condition in final § 1026.61(a)(5)(iii)(D)(*3*) applies as of April 1, 2019 if the prepaid account is linked to the credit card account prior to that date. Thus, final § 1026.61(a)(5)(iii)(D)(*3*) states that if the credit card account is linked to the prepaid account prior to April 1, 2019, this condition only applies to the retention of the prepaid account and the credit card account on or after April 1, 2019. This revision allows the prepaid account issuer and the card issuer to satisfy this condition as of the effective date of the Prepaid Accounts Rule even if the two accounts were linked prior to that date and the acquisition of the prepaid account or credit account was conditioned on the link, so long as the retention of the prepaid account and the credit card account are not conditioned on the link beginning on April 1, 2019.

The Bureau does not believe that similar guidance is needed with respect to how the conditions in final § 1026.61(a)(5)(iii)(D)(*1*), (*4*), and (*5*) apply as of April 1, 2019 if the two accounts are linked prior to that date. In order to qualify for the exception in final § 1026.61(a)(5)(iii)(D), the prepaid account issuer or the card issuer, as applicable, must meet the conditions of § 1026.61(a)(5)(iii)(D)(*1*), (*4*), and (*5*) as of April 1, 2019 with respect to the prepaid account or credit card account as applicable, even for accounts linked prior to that date.

Responses to Comments Received

The Bureau is not making additional revisions to the exception in final § 1026.61(a)(5)(iii)(D) as requested by some commenters (summarized in detail above), for the reasons discussed below.

Extend the exception to apply to credit card accounts offered by the prepaid account issuer or its affiliate. The Bureau is not extending the exception in final § 1026.61(a)(5)(iii)(D) to credit card accounts that are offered by the prepaid account issuer or its affiliate, even if the conditions in the exception are met, as requested by several industry commenters. The Bureau continues to believe that ensuring separation and independence is more complicated when both accounts are issued by entities under common control, particularly given that offset, security interests, and other types of linkages may be present. In addition, consumers' expectations that that these accounts must be linked in order to obtain or retain either account may be stronger if both accounts are issued by the same entity or entities under common control. Thus, the 30-day waiting period in § 1026.61(c) and other targeted protections may be more needed in that context to promote deliberative decision making without undue pressure.

Remove conditions in proposed § 1026.61(a)(5)(iii)(D)(4) and (5). The Bureau is not removing the conditions that the parties do not vary certain terms and conditions based on whether the two accounts are linked that were set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*) and (*5*), as requested by one industry commenter. As discussed above, the Bureau believes that these conditions are critically important to ensuring that the targeted provisions in the 2016 Final Rule are not needed with respect to these credit card accounts. These conditions, along with the other conditions of the exception, provide important safeguards to help ensure that consumers' decisions about account acquisition, retention, and link authorization are simpler and less prone to undue pressure, such that it is not necessary to apply the 30-day waiting period in § 1026.61(c) or the other additional protections in Regulations Z and E that are applicable only to covered separate credit features or to prepaid accounts that are connected to covered separate credit features. In particular, these conditions help ensure that consequences to the consumer of linking

the two accounts are less complex. The Bureau notes that card issuers generally are not prohibited from providing more favorable specified terms and conditions on the credit card account if the two accounts are linked. Nonetheless, in that case, the exception in final § 1026.61(a)(5)(iii)(D) does not apply and the prepaid card is a hybrid prepaid-credit card with respect to the credit card account.[109]

Add a condition related to repayment. At this time, the Bureau is not including an additional condition to qualify for the exception, as requested by the group of consumer advocates, that card issuers would need to comply with § 1026.12(d)(3)(ii), which permits a written plan authorizing periodic deductions from the prepaid account only if the deductions are no more frequent than once per calendar month. The Bureau believes that the condition in final § 1026.61(a)(5)(iii)(D)(*5*) provides sufficient protections to consumers to prevent card issuers from manipulating repayment terms on the credit card account when the two accounts are linked. The condition in final § 1026.61(a)(5)(iii)(D)(*5*) prevents the card issuer from varying the repayment terms of the credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account, or depending on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card. In addition, if the Bureau were to adopt this additional condition, in order to qualify for the exception in final § 1026.61(a)(5)(iii)(D), a card issuer that has an arrangement with the prepaid account issuer as described in final § 1026.61(a)(5)(iii)(A) through (C) would need to restrict

[109] A prepaid account issuer, however, cannot provide more favorable terms and conditions on the prepaid account if a covered separate credit feature is attached. Specifically, under Regulation E § 1005.18(g), 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, except the financial institution is permitted to charge 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.

automatic payments to once per calendar month on all its credit card accounts regardless of whether the prepaid account and credit card account are linked, given that the condition in final § 1026.61(a)(5)(iii)(D)(*5*) would restrict the card issuer from varying the repayment terms of the credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account. The Bureau does not believe that such a restriction on the ability of consumers to agree to automatic payments more frequent than once per month is needed to prevent evasion at this time. Nonetheless, the Bureau will continue to monitor the use of automatic payment plans in relation to the exception in final § 1026.61(a)(5)(iii)(D) to ensure that consumers retain control over the funds in their prepaid accounts even when credit card accounts that satisfy the conditions of the exception in final § 1026.61(a)(5)(iii)(D) are linked.

Clarify that the exception applies to prepaid accounts generally and not just digital wallets. The Bureau does not believe that it is necessary to modify the language of § 1026.61(a)(5)(iii)(D) or its associated commentary to clarify that the exception applies to all types of prepaid accounts, rather than just applying to digital wallets, as suggested by one industry commenter. The Bureau believes that the regulatory language of final § 1026.61(a)(5)(iii)(D) and its associated commentary is clear that the exception applies to all prepaid accounts that meet the conditions set forth in the provision, not just digital wallets. Those provisions use the term "prepaid account" and do not limit this exception to prepaid accounts that are digital wallets.

Reconsider applying TILA and Regulation Z to overdraft services. The Bureau believes that it is not appropriate at this time to generally reconsider the extension of provisions of TILA and Regulation Z to overdraft services on prepaid accounts, as requested by several industry commenters. This request is outside the scope of the proposed amendments in the June 2017

Proposal. In addition, for the reasons set forth in the section-by-section analysis of § 1026.61(a) above and in the 2016 Final Rule, the Bureau continues to believe that it is appropriate to apply traditional credit card rules to overdraft credit features accessible by hybrid prepaid-credit cards, as well as the tailored provisions established by the 2016 Final Rule.[110]

Add guidance for digital wallets. At this time, the Bureau is not including additional guidance related to how the 2016 Final Rule's credit-related provisions relate to digital wallets, as requested by one industry commenter. This commenter did not specify particular guidance that would be helpful. Nonetheless, the Bureau will continue to monitor whether additional guidance is needed with respect to the application of the 2016 Final Rule's credit-related provision to digital wallets.

61(a)(5)(iii)(A) through (C)

The 2016 Final Rule's version of § 1026.61(a)(5)(iii) defined 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 affiliate) 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. The Bureau proposed generally to retain this language in proposed § 1026.61(a)(5)(iii) with a revision to reference the proposed exception in § 1026.61(a)(5)(iii)(D).

The 2016 Final Rule's version of comment 61(a)(5)(iii)-1 described the two types of business arrangements that created a business partnership for purposes of the rule, separately provided in paragraphs i and ii. The Bureau proposed to move most of this language into the

[110] 81 FR 83934, 84158-61 (Nov. 22, 2016).

regulatory text, with introductory language in proposed § 1026.61(a)(5)(iii)(A) and the two types of business arrangements described in proposed § 1026.61(a)(5)(iii)(B) and (C), respectively, with small revisions for clarity. The Bureau also proposed to consolidate the language regarding membership in card networks or payment networks that appeared in comments 61(a)(5)(iii)-1.i and ii as new proposed comment 61(a)(5)(iii)-1, which would have explained that a draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network, but would have emphasized that for the purposes of proposed § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an "agreement" or a "business, marketing, or promotional agreement or other arrangement" described in proposed § 1026.61(a)(5)(iii)(B) or (C), respectively. The Bureau did not propose any changes to comment 61(a)(5)(iii)-2.

The Bureau did not receive any specific comments on this aspect of the proposal. The Bureau is adopting § 1026.61(a)(5)(iii)(A) through (C) and new comment 61(a)(5)(iii)-1 as proposed.

61(a)(5)(iii)(D)

The Bureau's Proposal

For the reasons explained above in the section-by-section analyses of § 1026.61(a) and (a)(5)(iii) above, the Bureau proposed to add an exception in proposed § 1026.61(a)(5)(iii)(D) to the definition of "business partner." Specifically, proposed § 1026.61(a)(5)(iii)(D) would have provided that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with regard to such credit card account if certain conditions were met. The conditions were broadly designed to ensure that the credit card account would be

subject to Regulation Z credit card requirements in its own right and that the acquisition, retention, and pricing terms of the prepaid account and credit card account would not depend on whether a consumer authorizes the linking of the two accounts to allow the prepaid card to access credit from time to time 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. Each of the proposed conditions is discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*) and (*5*) below, respectively.

Proposed comment 61(a)(5)(iii)(D)-1 would have provided that if the exception in proposed § 1026.61(a)(5)(iii)(D) were to apply, a person that can extend credit through the credit card account would not be a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C). Accordingly, in those cases where a consumer has authorized his or her prepaid card in accordance with proposed § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), the linked prepaid card would not be a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account would be a non-covered separate credit feature, as discussed in § 1026.61(a)(2)(ii). The proposed comment would have further noted that in this case, by definition, the linked credit card account would be subject to the credit card rules in Regulation Z in its own right because it would be a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(*1*).

Comments Received

The Bureau received several comments on the proposed exception generally, which are discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above. In addition, the Bureau also received some comments related to specific proposed conditions, which are discussed in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*), and (*5*). The Bureau did not receive any specific comments on proposed comment 61(a)(5)(iii)(D)-1.

The Final Rule

For the reasons set forth in the section-by-section analysis of § 1026.61(a)(5)(iii) above, the Bureau is adopting the exception in § 1026.61(a)(5)(iii)(D) generally as proposed with several modifications as described in the section-by-section analyses of § 1026.61(a)(5)(iii) above and § 1026.61(a)(5)(iii)(D)(*2*) and (*5*) below. The Bureau is adopting comment 61(a)(5)(iii)(D)-1 as proposed.

61(a)(5)(iii)(D)(1)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*1*), the credit card account at issue would have to have been a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. Proposed comment 61(a)(5)(iii)(D)(*1*)-1 would have explained that, for purposes of the proposed exception, the term "traditional credit card" would have meant a credit card that is not a hybrid prepaid-credit card. Thus, the condition in proposed § 1026.61(a)(5)(iii)(D)(*1*) would not have been satisfied if the only credit card that a consumer could use to access the credit card account under an open-end (not home-secured) consumer credit plan was a hybrid prepaid-credit card.

This proposed condition would have ensured that the exception only applies to credit features subject to the full protections of the credit card rules in Regulation Z that are applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. As discussed in the 2016 Final Rule, these protections include a range of requirements governing pricing, restrictions on repayment terms, limits on liability for unauthorized use, and requirements that card issuers must assess the consumer's ability to pay the credit before opening the account. The pricing protections include restrictions on the fees that an issuer can charge during the first year after an account is opened, and limits on the amount of fees that issuers can charge when a consumer makes a late payment or exceeds his or her credit limit. The protections also restrict the circumstances under which issuers can increase interest rates on credit card accounts and establish procedures for doing so. As explained in the 2016 Final Rule, the Bureau believed that applying these protections to overdraft features in connection with prepaid accounts would promote transparent pricing for prepaid accountholders.[111]

Comments Received

A group of consumer advocate commenters requested that the Bureau revise the definition of "traditional credit card" contained in proposed comment 61(a)(5)(iii)(D)(*1*)-1. These commenters suggested that this definition was circular in that a card is not a hybrid prepaid-credit card if it is a traditional credit card, and it is a traditional credit card if it is not a hybrid prepaid-credit card. These commenters also stated that Regulation Z's definition of credit card is quite vague and could arguably apply to accounts that bear no resemblance to traditional credit cards. These commenters suggested that the Bureau define "traditional credit card" to

[111] *Id.* at 84161.

mean a card, plate, or other single credit device that may be used from time to time to obtain consumer credit under an open-end credit plan and that is either: (a) accepted by every merchant that participates in a widely accepted payment card network and is accepted upon presentation at multiple, unaffiliated merchants for goods or services, or (b) accepted solely for the bona fide purchase of goods or services at a particular retail merchant or group of merchants and not to access cash; and that the term "traditional credit card" does not include an overdraft line of credit that is accessed by a debit or prepaid card or an account number.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*1*) and comment 61(a)(5)(iii)(D)(*1*)-1 as proposed. The Bureau does not believe that the definition of "traditional credit card" set forth in final comment 61(a)(5)(iii)(D)(*1*)-1 is circular, as suggested by the group of consumer advocates. A prepaid card cannot be a "traditional credit card" because it is either a hybrid prepaid-credit card or not a credit card at all, and thus can never be a traditional credit card. See comment 2(a)(15)-2.ii.D, which provides that a prepaid card is not a credit card if it is not a hybrid prepaid-credit card. Thus, the prepaid card described in final § 1026.61(a)(5)(iii)(D) will not be a traditional credit card. To satisfy final § 1026.61(a)(5)(iii)(D)(*1*), the credit card account must be accessed by another access device (other than the prepaid card) and that access device must be a traditional credit card.

The Bureau also does not believe that it is necessary to narrow the definition of "traditional credit card," as suggested by the group of consumer advocate commenters, to prevent evasion. The Bureau believes that introducing additional concepts into the definition of "traditional credit card" like the fact that the credit card must be accepted at "every" merchant that participates in a widely accepted payment card network, or that the credit card must be

accepted only for "bona fide" purchases of goods or services at a particular retail merchant or group of merchants, could complicate the definition and add to compliance burden. The Bureau does not believe that adding these concepts is warranted at this time, particularly without the benefit of additional public comment, but will monitor market developments for risk of evasion.

61(a)(5)(iii)(D)(2)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*2*), the prepaid account issuer and the card issuer would have been prohibited from allowing the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time 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, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account, as described above. To aid compliance with the proposed exception, proposed comment 61(a)(5)(iii)(D)(*2*)-1 would have explained that any accountholder on either the prepaid account or the credit feature may make the written request.

Comments Received

Several industry commenters, including program managers and a trade association, requested that the condition to obtain a written authorization not apply where the two accounts were linked prior to the effective date of the Prepaid Accounts Rule. They argued that requiring prepaid account issuers or card issuers to obtain a "written request" from consumers for accounts linked prior to the effective date would likely prove to be an extremely expensive and burdensome condition for providers and consumers who have previously agreed to the linkage.

These comments are discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

In addition, several industry commenters, including program managers and a trade association, stated that section 101(a) of the E-Sign Act would apply to enable a signature or agreement obtained electronically to have the same effect if it were obtained in writing, and requested that the Bureau confirm this point in regulatory text or commentary. A group of consumer advocates requested that the written request should be required to be "clear and readily understandable," just as written authorizations for preauthorized electronic fund transfers must be under Regulation E (*see* Regulation E § 1005.10(b) and comment 10(b)-6).

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*2*) as proposed with two modifications and is adopting comment 61(a)(5)(iii)(D)(*2*)-1 as proposed. First, the Bureau is modifying § 1026.61(a)(5)(iii)(D)(*2*) to provide guidance on how this condition applies as of April 1, 2019 (the new effective date of the Prepaid Accounts Rule) when the two accounts are linked prior to that date, or prior to an arrangement between the prepaid account issuer and the card issuer as described in § 1026.61(a)(5)(iii)(A) through (C). This revision is discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) above. Second, as a technical modification, the Bureau is replacing the phrase "will not" in the first sentence of § 1026.61(a)(5)(iii)(D)(*2*) with the phrase "do not" for consistency with the phrase "do not" used in § 1026.61(a)(5)(iii)(D)(*3*).

In response to industry commenters' requests regarding the applicability of the E-Sign Act, the Bureau notes that the writing and signature conditions of final § 1026.61(a)(5)(iii)(D)(*2*) may be satisfied electronically if in accordance with the E-Sign Act. The Bureau does not

believe that it is necessary to include this point in the regulation or commentary because the E-Sign Act is self-effectuating.

In response to the group of consumer advocate commenters' request to require that the written request be "clear and readily understandable," the Bureau does not believe that it is necessary to specifically require this in the regulatory text or commentary at this time. The Bureau expects that, if a prepaid account issuer or card issuer provides language to consumers to sign or initialize to authorize the two accounts to be linked, the prepaid account issuer or card issuer will use language that is understandable to consumers so that the consumers are aware that they are making a request to link the two accounts. The Bureau will monitor the processes that prepaid account issuers or card issuers use to gain authorization to link the two accounts to ensure that the processes are understandable to consumers.

In adopting final § 1026.61(a)(5)(iii)(D)(*2*), the Bureau believes that this condition, in combination with others described further below, helps to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account so as to access credit from time to time in the course of transactions conducted with the prepaid card. In particular, it helps to underscore to consumers that the prepaid account and credit card account are not required to be linked in order for the consumer to obtain or retain the two accounts, and to ensure that consumers have made a deliberate, affirmative decision before authorizing such a link. Two of the tailored provisions adopted in the 2016 Final Rule—the 30-day waiting period in § 1026.61(c), and the requirement in Regulation E § 1005.18(b)(4)(vii) to provide certain credit disclosures in the prepaid long form disclosure—were similarly designed to promote deliberative decision making without undue pressure. The Bureau believes that it is not necessary to apply these tailored provisions to a credit card account when the conditions of the exception are met,

given that detailed application and solicitation disclosures for the credit card account still are required under § 1026.60. In addition, the other conditions in final § 1026.61(a)(5)(iii)(D) make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and make the consequences of linking the two accounts less complex. Specifically, as described below, to satisfy the condition in final § 1026.61(a)(5)(iii)(D)(*3*), a prepaid account issuer and a card issuer could not condition the acquisition or retention of either account upon whether a consumer authorized linking the two accounts together, and final § 1026.61(a)(5)(iii)(D)(*4*) and (*5*) are designed to ensure that certain terms and conditions (including pricing) that apply to the two accounts are not dependent on whether they are linked.

61(a)(5)(iii)(D)(3)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*3*), the prepaid account issuer and the card issuer would not have been permitted to condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*).

Comments Received and the Final Rule

The Bureau did not receive any specific comments on this aspect of the proposal. For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*3*) generally as proposed with one revision to provide guidance on how this condition applies when the two accounts are linked prior to April 1, 2019 (the new effective date of the Prepaid Accounts Rule). This

revision is discussed in more detail in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

For the same reasons described above in connection with final § 1026.61(a)(5)(iii)(D)(*2*), the Bureau believes that the condition in final § 1026.61(a)(5)(iii)(D)(*3*) helps to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account. As described above, the Bureau believes that the prohibition on conditioning the acquisition or retention of the two accounts, in combination with the other conditions discussed above in connection with final § 1026.61(a)(5)(iii)(D)(*2*), helps to obviate the need for the tailored protections adopted in the 2016 Final Rule, including both the 30-day waiting period in § 1026.61(c) for linking a prepaid account to a covered separate credit feature, and the credit disclosures under Regulation E § 1005.18(b)(4)(vii).

61(a)(5)(iii)(D)(4)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer would have been required to apply the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer would have needed to apply the same fees to load funds from a credit card account that is linked to the prepaid account, as described above, as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the

prepaid account issuer has an arrangement, as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Each of these proposed conditions is discussed in more detail below.

Proposed comment 61(a)(5)(iii)(D)(*4*)-1 would have provided examples of the types of account terms, conditions, and features that would be subject to the conditions set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*), underscoring that it would have applied both to pricing and to such items as account access devices, minimum balance requirements, and account features such as online bill payment services.

Same terms, conditions, and features on the prepaid account regardless of whether the prepaid account is linked to the credit card account. With respect to the first condition set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*), proposed comment 61(a)(5)(iii)(D)(*4*)-2 would have provided an example of impermissible variations in account terms under this condition in proposed § 1026.61(a)(5)(iii)(D)(*4*). For example, a prepaid account issuer would not satisfy this proposed condition if it provides on a consumer's prepaid account reward points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), while not providing such reward points or cash back on the consumer's account if the consumer has not authorized such a linkage.

Same load fees. Proposed § 1026.61(a)(5)(iii)(D)(*4*) also would have provided a standard for comparing load fees for credit extensions from the credit card account that is linked to the prepaid account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*). For these fees, to satisfy the conditions of proposed § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account, as described above, as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person

with which the prepaid account issuer has an arrangement, as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Proposed comment 61(a)(5)(iii)(D)(*4*)-3 would have provided an example to illustrate this proposed condition. Specifically, the proposed comment would have provided that a prepaid account issuer would not satisfy this condition if it charges on the consumer's prepaid account $0.50 to load funds in the course of a transaction from the credit card account offered by a card issuer with which the prepaid account issuer has an arrangement as discussed in proposed § 1026.61(a)(5)(iii)(A) through (C), but $1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have such an arrangement.

Comments Received and the Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*4*) and comments 61(a)(5)(iii)(D)(*4*)-1 and 3 as proposed. The Bureau is adopting comment 61(a)(5)(iii)(D)(*4*)-2 as proposed with technical revisions to refer to "rewards points" instead of "reward points." As discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above, a digital wallet provider commenter requested that the Bureau remove the condition in proposed § 1026.61(a)(5)(iii)(D)(*4*), while a group of consumer advocate commenters specifically requested that the Bureau retain this proposed condition. The Bureau is not removing this condition for the reasons discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

The Bureau believes that ensuring that the terms, conditions, and features of the consumer's prepaid account do not depend on whether the consumer authorizes a link with the credit card account, as provided for in final § 1026.61(a)(5)(iii)(D)(*2*), is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of

§ 1026.61(a)(5)(iii)(D)(*2*) above, the fact that the prepaid account terms, conditions, and features cannot vary based on whether the consumer authorizes a linkage makes consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex, and thus, along with the other conditions, obviates the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the condition helps to ensure that certain terms and conditions of the prepaid account and the credit card account operate independently of whether the two accounts are linked and restrict the kind of price restructuring that the Bureau observed with regard to overdraft service programs on checking accounts and that various provisions adopted in the 2016 Final Rule were designed to address.[112]

Same terms, conditions, and features on the prepaid account regardless of whether the prepaid account is linked to the credit card account. To satisfy the exception in final § 1026.61(a)(5)(iii)(D), under final § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in final § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. The Bureau believes that an appropriate comparison for purposes of final

[112] With the 2016 Final Rule, the Bureau was concerned that prepaid account issuers might inflate fees imposed on prepaid accounts as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84222-23 (Nov. 22, 2016). To prevent this, the 2016 Final Rule included in Regulation Z several provisions to ensure that where a fee imposed on the prepaid account with a covered separate credit feature is higher than a comparable fee on a prepaid account without such a credit feature, the excess amount of the fee is subject to certain fee restrictions applicable to credit card accounts. *See, e.g.*, § 1026.52(a) and comments 6(b)(3)(iii)(D)-1 and 52(a)(2)-2. Final § 1026.61(a)(5)(iii)(D)(*4*) ensures that this type of activity does not occur when the exception applies.

§ 1026.61(a)(5)(iii)(D)(*4*) is between the terms of the consumer's prepaid account when the consumer has authorized a linkage between the two accounts and the terms of the consumer's prepaid account when the two accounts are not linked. This approach will ensure that the pre-acquisition disclosures for the prepaid account provided to the consumer reflect the same terms, conditions, and features regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. This standard also is consistent with the comparison standard adopted under final § 1026.61(a)(5)(iii)(D)(*5*), where the card issuer will compare the specified terms and conditions on the consumer's credit card account if there is a link to the prepaid account with the specified terms and conditions that apply to the consumer's account if there is no such link. The Bureau believes that this approach for the comparison of terms, conditions, and features on the consumer's prepaid account will aid compliance by ensuring that a consistent comparison approach can be used for both the prepaid account and the credit card account (which is addressed in final § 1026.61(a)(5)(iii)(D)(*5*), discussed below).[113]

[113] This approach for comparison of the terms, conditions, and features on the prepaid account differs from the approach used in the 2016 Final Rule for comparing the terms, conditions, and features of the prepaid account when a covered separate credit feature is connected with the prepaid account. *See* § 1026.4(b)(11) and Regulation E § 1005.18(g). For those provisions, the approach used is to compare the terms, conditions, and features of prepaid accounts held by different consumers in the same prepaid program. While these two approaches might yield similar results in comparing the terms, conditions, and features on the prepaid account, the Bureau believes that the approach set forth in the 2016 Final Rule would not be appropriate with respect to comparing specified terms and conditions on the credit card account because risk-based pricing might cause one consumer's pricing to differ from another consumer's pricing based on the consumers' creditworthiness. Thus, the Bureau is adopting an approach for comparing the terms, conditions, and features of the prepaid account that is consistent with the one adopted in final § 1026.61(a)(5)(iii)(D)(*5*) for comparing specified terms and conditions imposed on the credit card account. See the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*5*) below for a more detailed discussion on the approach for comparing specified terms and conditions imposed on the credit card account.

Same load fees. Final § 1026.61(a)(5)(iii)(D)(*4*) also provides a standard for comparing load fees for credit extensions from the credit card account that is linked to the prepaid account, as described in final § 1026.61(a)(5)(iii)(D)(*2*). For these fees, to satisfy the conditions of final § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account (as described above) as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in final § 1026.61(a)(5)(iii)(A) through (C).

The Bureau believes that this standard provides an appropriate test with regard to comparing load fees by focusing specifically on what fees are charged on the consumer's prepaid account in a comparable load from a separate credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in final § 1026.61(a)(5)(iii)(A) through (C). The Bureau believes that this approach will facilitate compliance and is appropriate given that the Bureau expects that the exception in final § 1026.61(a)(5)(iii)(D) will most likely be used with respect to digital wallet accounts that consumers may choose to associate with multiple credit card accounts, including those offered by unaffiliated third parties.[114]

[114] This standard for comparing load fees set forth in final § 1026.61(a)(5)(iii)(D)(*4*) differs from the comparison for load fees adopted in the 2016 Final Rule with regard to covered separate credit features accessible by hybrid prepaid-credit cards. Specifically, as adopted in the 2016 Final Rule, Regulation E comment 18(g)-5.iii compares what fees are charged for a load from a covered separate credit feature accessible to a hybrid prepaid-credit card in the course of a transaction to the per transaction fee that is charged to access available funds in prepaid accounts in the same prepaid account program without a covered separate credit feature. Also, Regulation E comment 18(g)-5.iv compares what fees are charged for a load from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction to the 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 in the same prepaid

61(a)(5)(iii)(D)(5)

The Bureau's Proposal

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*5*), the card issuer would have been required to apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, to satisfy proposed § 1026.61(a)(5)(iii)(D)(*5*), the card issuer would have been required to apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Proposed § 1026.61(a)(5)(iii)(D)(*5*) would have specifically defined "specified terms and conditions" to mean the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions that apply to the credit card account. Proposed comment 61(a)(5)(iii)(D)(*5*)-1 would have provided additional detail regarding this definition. Specifically, proposed comment 61(a)(5)(iii)(D)(*5*)-1.i would have explained that the terms and conditions required to be disclosed under § 1026.6(b) include: (a) pricing terms, such as periodic rates, annual percentage rates (APRs), and fees and charges imposed on the credit account; (b) any security interests

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account program without a covered separate credit feature. The Bureau took this approach in the 2016 Final Rule because it believed that many prepaid accountholders who wish to use covered separate credit features may not have other asset or credit accounts from which they can draw or transfer funds, and was concerned that prepaid account issuers might therefore inflate such load fees as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84187 (Nov. 22, 2016). In contrast, the Bureau believes that competitive pressures would discourage digital wallet providers seeking to qualify for the exception in final § 1026.61(a)(5)(iii)(D) from artificially inflating all load fees in this manner. Nonetheless, the Bureau will continue to monitor this issue to ensure that concerns discussed above do not occur in relation to the exception in final § 1026.61(a)(5)(iii)(D).

acquired under the credit account; (c) claims and defenses rights under § 1026.12(c); and (d) error resolution rights under § 1026.13. Proposed comment 61(a)(5)(iii)(D)(*5*)-1.ii would have explained that the repayment terms and conditions related to a credit card account include the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit card account. The Bureau notes that the limits on liability for unauthorized use of a credit card are set forth in § 1026.12(b), and error resolution procedures applicable to unauthorized use of an open-end credit account are set forth in § 1026.13. Proposed comments 61(a)(5)(iii)(D)(*5*)-2 and 3 would have provided more detailed guidance on application of the two conditions, as discussed below.

Same specified terms and conditions regardless of whether the credit feature is linked to the prepaid account. As discussed above, to satisfy the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(*5*), a card issuer would have been required to apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. Proposed comment 61(a)(5)(iii)(D)(*5*)-2 would have provided examples of the circumstances in which a card issuer would not meet the condition described above. Proposed comment 61(a)(5)(iii)(D)(*5*)-2.i would have provided that a card issuer would not satisfy this condition if the card issuer structures the credit card account as a "charge card account" (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to a prepaid card, as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card

account structure) if there is no such link.[115] As another example, proposed comment 61(a)(5)(iii)(D)(*5*)-2.ii would have provided that a card issuer would not satisfy the condition if the card issuer imposes a $50 annual fee on a consumer's credit card account if the credit feature is linked as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), but does not impose an annual fee on the consumer's credit card account if there is no such link.

Same specified terms and conditions regardless of whether credit is accessed by the prepaid card or the traditional credit card. For the proposed exception in proposed § 1026.61(a)(5)(iii)(D) to apply, proposed § 1026.61(a)(5)(iii)(D)(*5*) would have provided that the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. As discussed above, under proposed § 1026.61(a)(5)(iii)(D)(*1*), to qualify for the proposed exception, the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.[116]

Proposed comment 61(a)(5)(iii)(D)(*5*)-3 would have provided several examples illustrating the condition described above. Proposed comment 61(a)(5)(iii)(D)(*5*)-3.i would have set forth examples of circumstances in which a card issuer that has an arrangement with a prepaid account issuer would not meet the condition of proposed § 1026.61(a)(5)(iii)(D)(*5*) described above. For example, proposed comment 61(a)(5)(iii)(D)(*5*)-3.i.A would have provided that the card issuer would not meet this condition if it considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as

[115] The term "charge card" is defined in § 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.

[116] As discussed above, for purposes of proposed § 1026.61(a)(5)(iii)(D), proposed comment 61(a)(5)(iii)(D)(*1*)-1 would define the term "traditional credit card" to mean a credit card that is not a hybrid prepaid-credit card.

purchase transactions with certain APRs, fees, and a grace period that applies to those purchase transactions, but treats transactions involving extensions of credit using the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer as a cash advance that is subject to different APRs, fees, grace periods, and other specified terms and conditions. As another example, proposed comment 61(a)(5)(iii)(D)(*5*)-3.i.B would have provided that the card issuer would not satisfy this condition if it generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

Proposed comment 61(a)(5)(iii)(D)(*5*)-3.ii would have provided guidance on how a card issuer would have been required to meet this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights set forth in § 1026.61(c). These rights apply in certain circumstances to purchases of property or services made with a credit card. Proposed comment 61(a)(5)(iii)(D)(*5*)-3.ii would have explained that to satisfy this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights in § 1026.12(c), the card issuer must treat the prepaid card when it is used to access credit from the credit card account to purchase property or services as if it is a credit card and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card.

Proposed comment 61(a)(5)(iii)(D)(*5*)-3.iii would have provided guidance on how a card issuer must meet this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to limits on liability set forth in § 1026.12(b). Section 1026.12(b) sets forth certain limits on liability for unauthorized use of a credit card. Proposed comment 61(a)(5)(iii)(D)(5)-3.iii would have provided that to apply the same limits on liability for unauthorized extensions of credit from the

credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat the prepaid card as if it were an accepted credit card for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) as it applies to unauthorized transactions using the traditional credit card.

Comments Received

A digital wallet provider commenter requested that the Bureau remove the condition in proposed § 1026.61(a)(5)(iii)(D)(*5*), while a group of consumer advocates specifically requested that the Bureau retain this proposed condition.[117]

One trade association requested that the Bureau revise proposed § 1026.61(a)(5)(iii)(D)(*5*) to eliminate any suggestion that the prepaid card, as opposed to the credit card account, extends credit. This commenter also requested that the Bureau remove proposed comments 61(a)(5)(iii)(D)(*5*)-3.ii and iii, pertaining to the claims and defenses right in § 1026.12(c) and limits on liability for unauthorized use in § 1026.12(b) respectively. This commenter suggested that those provisions are confusing, do not reflect consumer expectations, and impose conditions that may not be feasible as a practical or technical matter in relation to overdraft credit features attached to prepaid accounts that may be offered in the future. This commenter noted that proposed comments 61(a)(5)(iii)(D)(*5*)-3.ii and iii require a credit card issuer to "treat" a prepaid card offered and maintained by another company as a credit card. The commenter indicated that a card issuer may not be able to treat the prepaid card as a credit card because the card issuer has no control over a product offered and controlled by a different

[117] The Bureau is not removing this condition for the reasons discussed in the section-by-section analysis of § 1026.61(a)(5)(iii) above.

company, even one with whom it may have a business arrangement for other purposes. In addition, this commenter indicated that the condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) should not require that the rights in § 1026.12(c) be applied to transactions where the prepaid card was used to transfer credit to the prepaid account in the course of a transaction to purchase goods or services with the prepaid account. The commenter raised concerns about how the claims and defenses right in § 1026.12(c) would apply to split-tender transactions where the prepaid transaction for the purchase of property or services is paid partly for with prepaid account funds and partly with credit transferred from the credit card account. This commenter asserted that it would be difficult for customers and the card issuer to identify when credit is transferred in connection with prepaid account transaction to purchase property or services if credit is used for only a portion of the transaction, as the amount of the prepaid account transaction is different from the amount of the credit extension shown on the credit card account's monthly statement. This commenter also indicated that, in the case of a transaction made with a prepaid card to purchase property or services, a customer who has used the prepaid card or card number for the transaction and has a receipt reflecting the prepaid account number and the amount of the purchase transaction, will naturally address inquiries about the transaction to the prepaid account issuer.

The Final Rule

For the reasons set forth herein, the Bureau is adopting § 1026.61(a)(5)(iii)(D)(*5*) and accompanying commentary generally as proposed with several modifications to clarify the intent of the provisions. In final § 1026.61(a)(5)(iii)(D)(*5*), the Bureau is adopting the condition as proposed that a card issuer must apply the same specified terms and conditions to the credit card account regardless of whether the credit feature is linked to the prepaid account. In addition, the

Bureau is adopting § 1026.61(a)(5)(iii)(D)(*5*) as proposed to define "specified terms and conditions" to mean terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions. The Bureau also is adopting comments 61(a)(5)(iii)(D)(*5*)-1 and 2 as proposed. As discussed in more detail below, the Bureau is adopting the condition in § 1026.61(a)(5)(iii)(D)(*5*) requiring the same specified terms and conditions on the credit card account regardless of whether the credit is accessed by the prepaid card or the traditional credit card, and related comment 61(a)(5)(iii)(D)(*5*)-3, as proposed with some revisions to clarify the intent of the provisions.

Same specified terms and conditions regardless of whether the credit feature is linked to the prepaid account. In adopting final § 1026.61(a)(5)(iii)(D)(*5*), the Bureau believes that ensuring that the specified terms and conditions of the credit card account do not vary depending on whether the consumer authorizes a prepaid card to access the account is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*2*) above, the fact that the specified terms and conditions on the credit card account would not vary based on whether the consumer authorizes the prepaid card to access the credit card account will help simplify consumers' decisions about account acquisition, retention, and link authorization and make these decisions less prone to undue pressure and the consequences of linking the two accounts less complex; thus, along with the other conditions, this condition obviates the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the condition helps to ensure that the specified terms and conditions of the prepaid account and the credit card account operate independently of whether the two accounts are linked, and restricts the kind of price restructuring that the Bureau observed with regard to overdraft service

programs on checking accounts. Third, this condition prevents a card issuer from manipulating repayment terms on the credit card account when it is linked to the prepaid account to ensure that the consumer retains control over the funds in his or her prepaid account even if the two accounts are linked.[118]

The Bureau believes that an appropriate comparison standard for determining whether the same specified terms and conditions are provided to the consumer is to compare the specified terms and conditions on the consumer's account if there is a link to the prepaid account as described above with the specified terms and conditions that apply to the consumer's account if there is no such link. This approach ensures that the application and solicitation disclosures provided to the consumer under § 1026.60 with respect to the credit card account would reflect the same specified terms and conditions regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. In addition, the Bureau believes that this comparison approach captures situations when the specified terms and conditions vary based on whether there is a link,

[118] As explained in the 2016 Final Rule, the Bureau was concerned that when a prepaid account was connected to a covered separate credit feature, the creditor may manipulate the repayment terms of the credit feature to better ensure repayment of the credit from the prepaid account funds. As a result, the 2016 Final Rule contained several provisions designed to prevent this type of manipulation. *See, e.g.,* §§ 1026.7(b)(11) and 1026.12(d)(3), comments 5(b)(2)(ii)-4.i and 12(d)(2)-1, and Regulation E § 1005.10(e)(1). The Bureau designed these provisions to ensure that consumers retain control over the funds in their prepaid accounts even when a covered separate credit feature becomes associated with that prepaid account. *See, e.g.,* 81 FR 83934, 83982, 84192, 84199, 84211, 84213 (Nov. 22, 2016). This condition ensures that the card issuer could not engage in this type of manipulation of repayment terms when the prepaid account is linked to the credit card account under the exception.

but it does avoid capturing situations where specified terms and conditions vary due to consumers' creditworthiness.[119]

In final § 1026.61(a)(5)(iii)(D)(*5*), the condition regarding credit card account terms and conditions is similar to the condition for prepaid account terms, conditions, and features set forth in final § 1026.61(a)(5)(iii)(D)(*4*), although it applies to a smaller set of account terms. Specifically, final § 1026.61(a)(5)(iii)(D)(*4*) applies to all account terms, conditions, and features on the prepaid account while final § 1026.61(a)(5)(iii)(D)(*5*) applies only to "specified terms and conditions" on the credit card account, which is defined to mean terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions. This smaller set of account terms allows card issuers to adjust credit limits or other metrics (other than the specified terms and conditions) to account for any change in credit risk where a consumer has linked the two accounts. In addition, the Bureau recognizes that the merchants at which the prepaid card and the traditional credit card can be used might not necessarily be the same, and the smaller set of account terms to which the condition in final § 1026.61(a)(5)(iii)(D)(*5*) applies ensures that a card issuer would not lose the exception because of these or similar differences in account features depending on whether the credit is accessed using the prepaid card or the traditional credit card itself.

Thus, a card issuer can satisfy final § 1026.61(a)(5)(iii)(D)(*5*) even if it applies different terms or conditions to the linked credit card account than it would apply if the accounts were not linked, so long as the those terms or conditions are not "specified terms and conditions," as defined in final § 1026.61(a)(5)(iii)(D)(*5*) and final comment 61(a)(5)(iii)(D)(*5*)-1. For example,

[119] See note 113 above for a discussion of how this approach differs from the approach for comparing terms, conditions, and features on the prepaid account in connection with a covered separate credit feature as adopted in the 2016 Final Rule.

a card issuer could offer different rewards points for purchases on the credit card account or offer a different credit limit on the credit card account, depending on whether the prepaid account is linked to the credit card account. Rewards points and the credit limit offered on the credit card account would not be "specified terms and conditions" because these terms are not required to be disclosed under § 1026.6(b), are not repayment terms or conditions, and are not limitations on liability for unauthorized use.

Same specified terms and conditions regardless of whether credit is accessed by the prepaid card or the traditional credit card. For the exception in proposed § 1026.61(a)(5)(iii)(D) to apply, proposed § 1026.61(a)(5)(iii)(D)(*5*) would have provided that the card issuer would have been required to apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. The Bureau is adopting this condition as proposed with slight adjustments to clarify that the credit is extended from the credit card account and the credit card account is accessed by the prepaid card or the traditional credit card. Specifically, for the exception in final § 1026.61(a)(5)(iii)(D) to apply, final § 1026.61(a)(5)(iii)(D)(*5*) provides that the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account accessed by the prepaid card as it applies to extensions of credit accessed by the traditional credit card. As discussed above, under final § 1026.61(a)(5)(iii)(D)(*1*), to qualify for the exception, the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. The Bureau believes that this condition is important to address the policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization

simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.[120]

Proposed comment 61(a)(5)(iii)(D)(*5*)-3 would have provided additional guidance on the condition described above and several examples illustrating the condition. The Bureau is adopting this comment as proposed with some modifications to clarify the intent of the provisions. Specifically, the Bureau is modifying the heading to comment 61(a)(5)(iii)(D)(*5*)-3 and a sentence in the lead-in paragraph to that comment to clarify that the credit is extended from the credit card account and the credit card account is accessed by the prepaid card or the traditional credit card. This sentence in final comment 61(a)(5)(iii)(D)(5)-3 now provides that for the exception in final § 1026.61(a)(5)(iii)(D) to apply, under final § 1026.61(a)(5)(iii)(D)(*5*), a card issuer must not vary the specified terms and conditions on the credit card account when a consumer authorizes linking the account with the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), depending on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card.

Proposed comment 61(a)(5)(iii)(D)(*5*)-3.i would have set forth two examples of circumstances in which a card issuer that has an arrangement with a prepaid account issuer would not meet the condition of proposed § 1026.61(a)(5)(iii)(D)(*5*) described above. The Bureau is adopting comment 61(a)(5)(iii)(D)(5)-3.i as proposed with some modifications to the

[120] In some cases, a card issuer may impose different terms and conditions to extensions of credit from a credit card account depending on how that credit is accessed. For example, a card issuer may impose a higher annual percentage rate on transactions made with a check that accesses the credit card account than it imposes on purchase transactions made with the credit card. In addition, the limits on liability for unauthorized use in § 1026.12(b) and the claims and defenses rights in § 1026.12(c) generally only apply to credit extended through use of a credit card, and they do not apply to credit accessed by use of a check. This condition ensures that a card issuer cannot vary the specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.

example in comment 61(a)(5)(iii)(D)(*5*)-3.i.A to clarify that it covers situations where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of completing transactions conducted with the prepaid card to purchase goods or services. Specifically, final comment 61(a)(5)(iii)(D)(*5*)-3.i.A provides that the card issuer would not meet the condition described above if it considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain APRs, fees, and a grace period that applies to those purchase transactions, but treats credit extensions as cash advances that are subject to different APRs, fees, grace periods, and other specified terms and conditions where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer. The Bureau is adopting the example in comment 61(a)(5)(iii)(D)(*5*)-3.i.B as proposed.

Proposed comment 61(a)(5)(iii)(D)(*5*)-3.ii would have provided guidance on how a card issuer would be required to meet this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights set forth in § 1026.61(c). These rights apply in certain circumstances to purchases of property or services made with a credit card. The Bureau is modifying comment 61(a)(5)(iii)(D)(*5*)-3.ii to clarify that it covers situations where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of completing transactions conducted with the prepaid card to purchase goods or services.

Specifically, final comment 61(a)(5)(iii)(D)(*5*)-3.ii provides that to apply the same rights under § 1026.12(c) regarding claims and defenses applicable to use of a credit card to purchase

property or services, the card issuer must treat an extension of credit as a credit card transaction to purchase property or services where a prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to purchase property or services and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card. This includes situations where a consumer uses a prepaid card to make a purchase to obtain property or services from a merchant and credit is transferred from the linked credit card account in the course of authorizing, settling, or otherwise completing the prepaid transaction to make the purchase. For a transaction where a prepaid card is used to obtain property 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 linked credit card account, the amount of the purchase transaction that is funded by credit would be subject to this guidance. A card issuer is not required to provide the rights under § 1026.12(c) with respect to the amount of the transaction funded from the prepaid account.

The Bureau is not removing comment 61(a)(5)(iii)(D)(*5*)-3.ii, as requested by one industry commenter discussed above. The Bureau believes that final comment 61(a)(5)(iii)(D)(*5*)-3.ii, along with the other conditions set forth in the exception, is important to address the policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. The Bureau also does not believe that final comment 61(a)(5)(iii)(D)(*5*)-3.ii imposes significant operational burdens on digital wallet providers or card issuers in order to take advantage of the exception in final

§ 1026.61(a)(5)(iii)(D). The Bureau believes that with respect to digital wallet transactions, payment networks currently are identifying when credit is transferred from a linked credit card account to the digital wallet in the course of completing a transaction with the digital wallet to purchase goods or services, and card issuers currently are applying the claims and defenses rights in § 1026.12(c) to these credit transactions. Therefore, they should be able to comply with this provision with minimal additional burden.

Proposed comment 61(a)(5)(iii)(D)(*5*)-3.iii would have provided guidance on how a card issuer must meet the condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) described above with respect to limits on liability set forth in § 1026.12(b). Section 1026.12(b) sets forth certain limits on liability for unauthorized use of a credit card. The Bureau has made modifications to this comment to clarify the intent of the provision. Specifically, final comment 61(a)(5)(iii)(D)(*5*)-3.iii provides that, to apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat an extension of credit accessed by the prepaid card as a credit card transaction for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) to this credit extension as it applies to unauthorized transactions using the traditional credit card.

The Bureau is not removing comment 61(a)(5)(iii)(D)(*5*)-3.iii, as requested by one industry commenter. The Bureau believes that final comment 61(a)(5)(iii)(D)(*5*)-3.iii, along with the other conditions set forth in the exception, is important to address the policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two

accounts less complex. The Bureau also does not believe that final comment 61(a)(5)(iii)(D)(*5*)-3.iii imposes significant operational burdens on digital wallet providers or card issuers in order to take advantage of the exception in final § 1026.61(a)(5)(iii)(D). The Bureau believes that, with respect to digital wallet transactions, payment networks currently are identifying when credit is transferred from a linked credit card account to the digital wallet, and card issuers currently are applying the limits on liability in § 1026.12(b) to these credit transactions.

Regulation Z Technical Corrections

The Bureau is making technical corrections to several provisions of the Prepaid Accounts Rule in Regulation Z, which are not intended to change the meaning of the Prepaid Accounts Rule. Specifically, the Bureau is correcting cross-references in comments 52(b)(2)(i)-7 (changing "§ 1026.52(a)(2)(i)(B)(*1*)" to "§ 1026.52(b)(2)(i)(B)(*1*)"), 61(a)(3)(i)-1.ii (changing "comment 61(a)(2)(i)-1.iv" to "comment 61(a)(3)(i)-1.iv"),[121] 61(a)(4)(ii)(A)-4 (changing "§ 1026.61(a)(4)(iii)(A)" to "§ 1026.61(a)(4)(ii)(A)"), and 61(a)(4)(ii)(B)(*1*)-1.i.B and ii.A (changing "§ 1026.61(a)(4)(A)(ii)(*2*)" to "§ 1026.61(a)(4)(ii)(A)(*2*)"); and correcting a typographical error in comments 6(b)(3)(iii)(D)-1 introductory text and 61(b)-2 (changing "assessed" to "accessed"). The Bureau is also adding a heading in commentary for *Paragraph 61(a)(4)(ii)*.

VI. Effective Date

As discussed below, the Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019, including the requirement to submit prepaid account agreements to the Bureau. This final rule adopting certain changes to the Prepaid Accounts Rule will

[121] Conforming changes related to the expanded negative balance exception are also being made in comment 61(a)(3)(i)-1.ii. See note 103 in the section-by-section analysis of § 1026.61(a)(4) above.

become effective 30 days after publication in the *Federal Register*, prior to the previous April 1, 2018 effective date and consistent with section 553(d) of the Administrative Procedure Act.[122]

A. Effective Date of the Prepaid Accounts Rule

The Bureau's Proposal

While the Bureau did not propose a further extension of the effective date of the Prepaid Accounts Rule in the June 2017 Proposal, the Bureau solicited comment on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments proposed therein. The Bureau also solicited comment on which provisions in particular might cause financial institutions to need additional time, whether any further modifications to any of the particular amendments proposed therein would reduce or eliminate that need, and the appropriate length of such a further delay.

Comments Received

A group of consumer advocates urged the Bureau not to delay the effective date of the rule any further. These commenters stated that the Prepaid Accounts Rule represents a long-awaited step towards ensuring consumer access to safe financial products, and argued that the Bureau had sufficiently solicited feedback and made accommodations to industry where it was necessary, specifically citing the changes the Bureau proposed in the June 2017 Proposal.

Industry commenters, including trade associations, issuing banks, program managers, and others, as well as a think tank, generally advocated for the Bureau to consider a further extension of the effective date. Some of these commenters suggested extensions of varying lengths, while others did not suggest a particular length of time in their comments. Of those that suggested a

[122] 5 U.S.C. 553(d).

specific length, some recommended that the Bureau adopt a specific effective date, ranging from October 1, 2018 to January 1, 2020. Other commenters suggested that the new effective date should depend on the publication date of this final rule, generally arguing for an effective date of 12 to 18 months after publication.

Regardless of the specific length of time requested for an extension, commenters requesting an extension offered similar arguments in support of their request for more time. Generally speaking, these commenters argued that once the Bureau issued this final rule, industry would need to review and analyze it, coordinate with internal and external parties to create a compliance plan, and implement the plan. Some commenters suggested that the amendments proposed by the Bureau in the June 2017 Proposal diverged significantly from the requirements of the 2016 Final Rule and, if adopted, implementing them would require additional compliance time. Specifically, some commenters raised concerns that any required changes to retail packaging would take significant time to implement, given the significant number of vendors and other outside companies involved in that process. Several commenters also referenced the "freeze" period many prepaid account programs are subject to during the winter holiday season that would make it difficult to adopt the sorts of changes contemplated by the Prepaid Accounts Rule and the June 2017 Proposal during that time. The level of detail regarding the extent of these logistical challenges varied by commenter. One trade association and one program manager provided detailed timelines regarding implementation; these commenters requested that the Bureau extend the effective date to April 1, 2019.

A digital wallet provider specifically argued that, if the Bureau did not address certain issues relating to negative balances on prepaid accounts linked to credit cards, it would need additional time to develop systems to address those situations. As discussed in the section-by-

section analysis of § 1026.61(a)(4) above, the Bureau believes that the final rule addresses those concerns such that this commenter would not need to modify its systems in the way described in its comment letter.

In addition, commenters raised other specific points that they contended warranted a further extension of the effective date. Two trade associations and a business advocacy group argued that, even if the Bureau had not proposed further changes to the Prepaid Accounts Rule, an effective date of April 1, 2018 still gave insufficient time for industry to implement the rule. One of the trade associations based its argument in part on an assertion that, notwithstanding the Bureau's decision to allow financial institutions to sell through packaging manufactured in the normal course of business prior to the effective date, continuing to sell prepaid accounts with out-of-date packaging and disclosures that no longer describe how the product will work could lead to consumer confusion or expose institutions to potential charges from the Federal Trade Commission or State attorneys general for unfair, deceptive, or abusive practices.[123] This commenter suggested that extending the effective date by an additional six months would allow institutions, who decide to pull and replace current stock, to exhaust and replenish their inventory.

A trade association representing technology companies suggested that the Bureau should take additional time to review the Prepaid Accounts Rule and make changes to the rule, particularly to exempt digital wallets from the rule. A trade association representing the prepaid

[123] It is unclear, based on this comment letter, whether the trade association or its members believe that this concern persists given the changes the Bureau proposed (and is finalizing) regarding error resolution and limited liability for unverified prepaid accounts.

industry argued that additional time was required to allow industry to implement additional changes necessitated by the Bureau's rule regarding pre-dispute arbitration agreements.[124]

Most commenters' requests for further extensions of the effective date were based on their estimates of how long it would take them to comply with the Prepaid Accounts Rule, as amended by this final rule. However, some commenters pointed to other factors. For example, one trade association argued that combining the rule's general effective date with the effective date of the requirement for prepaid account issuers to submit their agreements to the Bureau would reduce confusion arising from multiple dates, and suggested making both dates October 1, 2018. Several industry commenters, in requesting that the Bureau extend the effective date by another year, to April 1, 2019, argued that an April effective date would avoid disruption and the diversion of critical resources during the holiday period, during which, they said, it is often difficult for industry to make significant changes to prepaid account programs. Another trade association suggested that it would take until January 1, 2020 for the Bureau to address the issues raised in the June 2017 Proposal and for industry to comply with any resulting changes.

The Final Rule

For the reasons set forth herein, the Bureau believes it is necessary and appropriate to extend the general effective date of the Prepaid Accounts Rule by an additional 12 months, to April 1, 2019. The Bureau is likewise extending the effective date of § 1005.19(b) for the

[124] 82 FR 33210 (July 19, 2017). On November 1, 2017, the President signed a joint resolution passed by Congress disapproving the Arbitration Agreements Rule under the Congressional Review Act. *See* 82 FR 55500 (Nov. 22, 2017). Pursuant to the joint resolution, the Arbitration Agreements Rule has no force or effect. Public Law 115-74. This disapproval resolution was signed well before March 19, 2018, when compliance would have been required under the arbitration rule. Thus, the Bureau believes that this trade association should have no further concern that the Bureau's arbitration rule creates a need for a further delay of the Prepaid Accounts Rule's effective date.

agreement submission requirement to April 1, 2019. The rule will thus have one effective date, April 1, 2019, for all of its provisions.

The Bureau acknowledges that the amendments regarding error resolution and limited liability protections on unverified prepaid accounts may require some financial institutions to change language on or in retail packaging. This may be particularly true for those financial institutions that will not offer error resolution and limited liability protections on unverified prepaid accounts but will allow consumers to use them.[125] These financial institutions may thus need to modify the initial disclosures contained in their retail packaging to include the revised model language in appendix A-7(c), and put that revised packaging into production by the Prepaid Accounts Rule's effective date. The Bureau appreciates that in some circumstances these changes may be difficult to accomplish by April 1, 2018, and thus believes that a further extension of the effective date is appropriate. The Bureau notes that these revisions do not require wholesale changes to the pre-acquisition disclosures required by the rule. Rather, they involve replacing one set of model disclosure language with another set of model disclosure language. Thus, the Bureau does not believe that these changes should require the multiple rounds of extensive legal review and redesign of packaging suggested by some commenters. However, the Bureau appreciates concerns raised by industry regarding the limited availability of retail packaging manufacturers, particularly during a period when a large number of financial institutions will be making design changes simultaneously. The Bureau believes that the new effective date will also significantly mitigate concerns expressed by commenters relating to

[125] These concerns are discussed in detail in the section-by-section analysis of § 1005.18(e)(3) above.

potential charges of unfair, deceptive, or abusive practices, by allowing additional time to print compliant packaging material and sell through existing stock.

The Bureau notes that the other revisions to the Prepaid Accounts Rule adopted in this final rule do not generally impose new obligations on financial institutions and other participants in the prepaid industry. Rather, as discussed in detail in the section-by-section analysis of part V above, these amendments generally relieve burden, provide industry with additional flexibility in complying with the rule, or clarify provisions that were identified as being potentially ambiguous. Thus, the Bureau does not believe that these other revisions in the final rule should significantly increase the amount of time that industry will need to comply with the rule, even if some additional time is needed to modify systems for entities that wish to take full advantage of the additional flexibility provided by the amendments in this final rule.

However, given the concerns raised by industry regarding the time needed to comply with the Prepaid Accounts Rule, including the amendments finalized herein, the Bureau believes that a further extension of the effective date to April 1, 2019 is sufficient for industry to comply with the rule. Given the compliance concerns raised by commenters and the timing of this final rule, the Bureau is concerned that a six month extension of the effective date (to October 1, 2018) suggested by some commenters may not provide enough time, particularly as several commenters suggested that date assuming that this final rule would be issued in the fall of 2017. As noted by several commenters, an effective date during the winter holiday season would likely create significant complications for industry, given the common "freeze" period many prepaid account programs are subject to during that time of year. Thus, the Bureau believes that it is appropriate to provide an additional year for industry to comply with the Prepaid Accounts Rule, as amended by this final rule. Extending the effective date of the Prepaid Accounts Rule to April

1, 2019 will ensure that industry has sufficient time to implement the rule while also ensuring that consumers maintain access to prepaid accounts during the implementation period and after the rule's effective date.

To implement this effective date delay, the Bureau is making conforming changes in §§ 1005.18(b)(2)(ix)(D), (h), and 1005.19 and the commentary accompanying § 1005.18(b)(2)(ix)(D) and (E), and (h), and removing the commentary that accompanied § 1005.19(f).[126]

The Bureau will continue its efforts to support industry implementation of the Prepaid Accounts Rule, as amended by this final rule, including by monitoring industry's implementation efforts, and expects that continued engagement and dialogue will assist industry in complying with the rule.

B. Safe Harbor for Early Compliance

The Bureau's Proposal

In response to the 2017 Effective Date Proposal, two trade association commenters urged the Bureau to establish a safe harbor for financial institutions that comply with the Prepaid Accounts Rule (or portions of it) prior to the rule's effective date. These commenters were concerned that financial institutions may be exposed to potential liability if they comply early, suggesting the possibility that there may be some conflict between the Prepaid Accounts Rule and current requirements for payroll card accounts and government benefit accounts, though these commenters did not provide any specific examples. In response to those concerns, in the 2017 Effective Date Final Rule as well as the June 2017 Proposal, the Bureau noted its

[126] See also the section-by-section analyses of §§ 1005.18(b)(2)(ix)(D), (h), and 1005.19(f) above for additional discussion regarding these changes.

agreement that early compliance could benefit both industry and consumers, and stated that it was not aware of any conflicts between the requirements of the Prepaid Accounts Rule and current Federal regulations applying to accounts that will be covered by the rule.[127] Thus, while the Bureau did not propose language for a specific provision addressing early compliance with the Prepaid Accounts Rule, the Bureau sought comment on whether a specific provision addressing early compliance with the Prepaid Accounts Rule would be necessary and appropriate to address conflicts between the Prepaid Accounts Rule and current Federal requirements for accounts that will be covered by the rule.

Comments Received

Several industry trade association commenters and a think tank requested that the Bureau provide a safe harbor to ensure that early compliance with the Prepaid Accounts Rule will not expose financial institutions to liability, although commenters did not put forth specific theories of liability.[128] Two trade associations representing credit unions contended that, because the Prepaid Accounts Rule makes numerous changes to existing rules, compliance with the new rule in advance of the effective date could lead to financial institutions being targeted as non-compliant with the existing rules. A trade association representing the prepaid industry suggested that issuers could face potential liability stemming from a private action, alleging that financial institutions that change their disclosures to comply with the rule early would be noncompliant with the current version of Regulation E. The Bureau specifically solicited

[127] 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. *See* §§ 1005.18, 1005.15, and 1005.20, respectively. Regulations promulgated by the Department of the Treasury also require prepaid cards that are eligible to receive Federal payments to comply with the rules governing payroll card accounts, among other requirements. 31 CFR 210.5(b)(5)(i).

[128] With one exception described below, these commenters requested a safe harbor that would apply to all accounts covered by the Prepaid Accounts Rule, not just payroll card and government benefit accounts.

comment on whether specific provisions of current requirements for such accounts conflict with provisions of the Prepaid Accounts Rule; however, with one exception described below, commenters did not identify any specific provisions of current legal requirements for payroll card accounts, government benefit accounts, or any other types of prepaid accounts that they believed conflict with provisions of the Prepaid Accounts Rule.[129]

One trade association identified what it described as inconsistencies between current rules for government benefit accounts under Regulation E and the Prepaid Accounts Rule, in cases where the government agency elects to take advantage of the respective provisions in the current rules and the Prepaid Accounts Rule allowing for an alternative to providing a periodic statement.[130] The trade association asserted that three specific provisions that apply to government agencies using the periodic statement alternative presented inconsistencies: currently effective § 1005.15(d)(4) and revised § 1005.15(e)(4) in the Prepaid Accounts Rule, which pertain to error resolution time limits;[131] currently effective § 1005.15(d)(2) and revised

[129] The Bureau also solicited comment regarding whether a specific provision addressing early compliance should only be available to financial institutions that comply with the entire Prepaid Accounts Rule prior to its effective date, or whether it should also cover financial institutions that comply with portions of the Prepaid Accounts Rule prior to its effective date. The Bureau received no comments on this issue.

[130] Under currently effective § 1005.15(c), a government agency need not furnish the periodic statement required by § 1005.9(b) if the agency makes available to the consumer: the consumer's account balance, through a readily available telephone line and at a terminal; and 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 60 days preceding the date of a request by the consumer. Under the 2016 Final Rule's version of § 1005.15(d), a government agency need not furnish the periodic statement if the agency makes available to the consumer: the consumer's account balance, through a readily available telephone line and at a terminal; an electronic history of the consumer's account transactions, such as through a website, that covers at least 12 months preceding the date the consumer electronically accesses the account; and 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.

[131] With respect to error resolution time limits, the commenter noted that, under currently effective § 1005.15(d)(4), a government agency is required to comply with Regulation E's error resolution requirements 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 in which the error is first reflected. The 2016 Final Rule, in § 1005.15(e)(4), provides that an agency is required to comply with the error resolution requirements in response to

§ 1005.15(e)(2), which pertain to delivery of the annual error resolution notice;[132] and currently effective § 1005.15(d)(3) and revised § 1005.15(e)(3), which pertain to time limits for limitations on consumers' liability.[133] The commenter expressed concern that financial institutions and government agencies that comply with the Prepaid Accounts Rule's version of these provisions prior to the effective date would not be in compliance with current Regulation E, and thus argued that such financial institutions and government agencies should be provided with a safe harbor.

The Final Rule

The Bureau continues to believe that early compliance may benefit both industry and consumers. However, after having carefully considered the issue as described below, the Bureau does not believe that a specific provision for early compliance with the Prepaid Accounts Rule is warranted.

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an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer electronically accesses the consumer's account (provided that the history made available reflects the error), or the agency sends a written history of the consumer's transactions in which the error is first reflected. Alternatively, an agency may comply by investigating any oral or written notice of error received within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

[132] The commenter noted that the 2016 Final Rule's version of § 1005.15(e)(2) allows agencies to provide on or with each electronic or written history a notice substantially similar to the abbreviated notice for periodic statements contained in appendix A-3(b), as an alternative to the current requirement of providing an annual notice concerning error resolution that is substantially similar to the notice contained in appendix A-5(b).

[133] With respect to limited liability, the issue raised by the commenter was essentially the same as for error resolution: namely, the timelines that would apply for financial institutions that make use of the periodic statement alternative. Specifically, the commenter noted that under currently effective § 1005.15(d)(3), for purposes of § 1005.6(b)(3) (which generally provides 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 to avoid liability for subsequent transfers), the 60-day period begins with transmittal of a written account history or other account information provided to the consumer under § 1005.15(c). Under the 2016 Final Rule's version of § 1005.15(e)(3)(i), the commenter noted, the 60-day period begins on the earlier of the date the consumer electronically accesses the consumer's account, provided the electronic history made available reflects the unauthorized transfer; or the date the agency sends a written history in which the unauthorized transfer is first reflected. Section 1005.15(e)(3)(ii) further provides that an agency may comply with this provision by limiting the consumer's liability for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

Specifically, the Bureau considered early compliance issues with regard to two separate types of products that will be subject to the Prepaid Accounts Rule: those that are not currently covered by Regulation E, and those that are (namely, payroll card accounts and government benefit accounts, as well as cards receiving Federal payments via a Treasury rule that requires compliance with the payroll card rules in Regulation E).[134] For accounts not currently subject to Regulation E, a safe harbor for early compliance is neither necessary nor appropriate because current Federal law does not contain any obligations that conflict with the provisions of the Prepaid Accounts Rule. For accounts currently subject to Regulation E, neither commenters nor the Bureau have identified any affirmative requirements in current regulations that would conflict with affirmative requirements in the Prepaid Accounts Rule, and thus the Bureau does not believe that a safe harbor for early compliance is either necessary or appropriate for these products either.[135] This is consistent with the Bureau's approach in other rulemakings, where the Bureau has sometimes included in regulatory text specific provisions regarding early compliance in situations where compliance with a new regulation would cause a person to be noncompliant with a current regulation.[136] (For example, if a current rule requires a person to provide disclosure form A and only disclosure form A and a new rule requires disclosure form B, without a provision to address early compliance that person may be in violation of the current rule by providing disclosure form B in advance of the effective date.)

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[134] 31 CFR 210.5(b)(5)(i).

[135] For example, the Bureau understands that many financial institutions currently offer error resolution and limited liability protections on prepaid accounts that are equivalent to or greater than the parallel provisions of Regulation E. They are thus in partial early compliance with the rule.

[136] For example, the Bureau provided for an optional early compliance period for amendments to its mortgage disclosure rules in part because the amendments clarified potential ambiguity in the rule, and the Bureau determined that some creditors may have already complied with the amendments, for various reasons. 82 FR 37656, 37763-64 (Aug. 11, 2017).

With respect to the examples offered by one commenter relating to government benefit accounts, the Bureau believes that agencies and other financial institutions that move to early compliance with the Prepaid Accounts Rule would only be out of compliance with existing rules in two extraordinarily narrow circumstances that could easily be avoided by appropriate action during the transition period.[137] Moreover, these are not situations in which the Prepaid Accounts Rule requires entities to do something that is prohibited under the existing regulations; rather, compliance with the existing rule remains permissible under the Prepaid Accounts Rule, while the Prepaid Accounts Rule will provide certain additional compliance options that are not available under current regulations. Given how narrow the circumstances at issue are and how easy it would be for any agencies that choose to adopt early compliance to manage the transition period, the Bureau is not persuaded that a specific provision for early compliance with the Prepaid Accounts Rule's version of § 1005.15 is either necessary or appropriate.

The Bureau believes that rewriting the Prepaid Accounts Rule to allow industry to take advantage of the additional compliance options it permits in these two narrow circumstances before April 1, 2019 would be unduly complex, and that both industry and consumers will be best served by maintaining the same effective date for all prepaid accounts. In particular, to take advantage of the additional compliance options in the context of government benefit accounts,

[137] If an agency chooses to implement the Prepaid Accounts Rule's version of the periodic statement alternative prior to the rule's effective date, it would be out of compliance with the currently-effective version of Regulation E only if a consumer reported an unauthorized transaction or other error on a government benefit account that was inside the currently effective rule's timelines but outside the Prepaid Accounts Rule's timelines, and the financial institution elected to reject the claim as outside the reporting timeframes. (This could happen if a disputed transaction occurs on a date that is more than 60 days after the consumer first accessed the electronic account transaction history on which the error appeared, but which is less than 60 days after the date the agency sends to the consumer a written history of the consumer's account transactions at the consumer's request in which the error first appears.) Similarly, an agency may comply with both the existing and new annual error resolution notice requirements by sending an annual error resolution notice. It would be out of compliance with current Regulation E only if it failed to provide an annual error resolution notice under currently-effective § 1005.15(e)(2) prior to April 1, 2019.

financial institutions would need to be in full compliance with the Prepaid Accounts Rule's periodic statement alternative (on which the modified timing requirements are based) as well; initial disclosures regarding access to account information and error resolution/limited liability protections would also be implicated. Providing a safe harbor in this instance would thus necessitate an earlier effective date for the portions of the rule governing government benefit accounts coupled with a subsequent mandatory compliance date; the Bureau believes such an approach would be complicated, cause industry confusion, and run contrary to the Bureau's intentions in further extending the Prepaid Accounts Rule's overall effective date to April 1, 2019.

At the same time, the Bureau does not believe that the lack of a specific provision for early compliance imposes a burden on financial institutions, including government agencies, as the only cost to those entities will be delaying the date on which they activate systems that permit error resolution and limited liability claims to be resolved under the new timeframes established by the Prepaid Accounts Rule and cease to send annual error resolution notices in lieu of providing electronic and written account histories with such notices.[138] Nothing in the current regulation will prevent institutions from making available electronic account transaction histories in advance of the Prepaid Accounts Rule's new effective date; the Bureau notes that, in fact, many government benefit account programs currently offer electronic account transaction

[138] The Bureau notes that, to the extent government agencies have obtained the proper consent to deliver periodic statements electronically, government benefit accounts will be governed by the general limited liability and error resolution provisions of §§ 1005.6 and 1005.11, rather than the periodic statement alternative of currently effective § 1005.15.

histories.[139] Agencies and institutions simply may not resolve errors or limit liability using the Prepaid Accounts Rule's modified timelines based on accessing electronic account transaction history, or provide abbreviated error resolution notices on electronic and written account transaction histories in lieu of sending the annual notice, until the Prepaid Accounts Rule goes into effect. The Prepaid Accounts Rule's amendments to § 1005.15(d) and (e) were intended to more closely align the periodic statement alternative for government benefit accounts with the alternative for other prepaid accounts.[140] The Bureau does not believe that making significant revisions to the rule's effective date provisions to accommodate a rare and easily-avoided compliance concern would be in the best interest of industry or consumers.

As noted above, aside from this minor issue, the Bureau believes that early compliance with the Prepaid Accounts Rule may benefit both industry and consumers. The Bureau will continue its outreach to industry over the course of the implementation period to understand industry's ongoing experience in implementing the Prepaid Accounts Rule and monitor whether other concerns arise regarding perceived conflicts between current regulations and the Prepaid Accounts Rule.

VII. Section 1022(b)(2)(A) of the Dodd-Frank Act

In developing this final rule, the Bureau has considered the potential benefits, costs, and impacts as 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, including the potential reduction of consumer access to

[139] For example, all 65 of the government benefit account agreements reviewed by the Bureau in its 2014 Study of Prepaid Account Agreements indicated that at least 60 days of electronic access to account information was available. Study of Prepaid Account Agreements at 18 tbl. 5 and 19 tbl. 6 (Nov. 2014).

[140] 81 FR 83934, 84000 (Nov. 22, 2016).

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 the objectives those agencies administer. The Bureau 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 they administer.

The baseline[141] for this discussion is the market for prepaid accounts as it would exist "but for" this final rule. That is, the Bureau evaluates the benefits, costs, and impacts of this final rule on consumers and covered persons relative to the baseline established by the Prepaid Accounts Rule.[142] The discussion below covers the major provisions in this final rule as well as certain alternatives that the Bureau considered.

The major provisions of this final rule addressed in this discussion include:

- Amending the Prepaid Accounts Rule to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process;
- Creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule by narrowing the Prepaid Accounts Rule's definition of "business partner" in Regulation

[141] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

[142] As discussed above, the Bureau refers to the 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, as the Prepaid Accounts Rule. The Bureau previously considered the benefits, costs, and impacts of the major provisions of both the 2016 Final Rule and the 2017 Effective Date Final Rule. *See* 81 FR 83934, 84269 (Nov. 22, 2016); 82 FR 18975, 18979 (Apr. 25, 2017).

Z so that it no longer includes certain arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products;[143]

- No longer considering incidental credit extended through a negative balance on a prepaid account to be subject to Regulation Z where a covered separate credit feature offered by a business partner is attached to the prepaid account, provided certain conditions are met; and
- Extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019.

In addition to these changes, the Bureau is making clarifications and minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule. Like the major provisions discussed, these clarifications and minor adjustments will provide industry participants with additional options for compliance and should not increase burden on covered persons. In addition, the Bureau does not believe that this final rule's minor modifications to the Prepaid Accounts Rule's disclosure requirements will appreciably decrease transparency or have an adverse impact on informed consumer choice.[144]

In considering the relevant potential benefits, costs, and impacts of this final rule, the Bureau has applied its knowledge and expertise concerning consumer financial markets.

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[143] Although a credit card account is subject to the credit card provisions of Regulation Z in its own right if the account and the arrangement between the prepaid account issuer and credit card account issuer meet all conditions for this exception, it will not be subject to the provisions in Regulation Z that apply only to covered separate credit features accessible by a hybrid prepaid-credit card. In addition, the prepaid account with which it is linked will not be subject to the provisions in Regulation E that apply only to prepaid accounts connected to covered separate credit features.

[144] For example, revised § 1005.18(b)(1)(ii)(D) allows financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide the long form disclosure after acquisition by delivering such disclosure electronically without receiving consumer consent under the E-Sign Act in cases where the financial institution does not provide the long form disclosure inside the prepaid account packaging material and does not otherwise mail or deliver to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

Although the Bureau did not receive comments specific to its consideration of the benefits, costs, and impacts of the June 2017 Proposal, the Bureau has considered the comments on the substantive proposal in considering the relevant potential benefits, costs, and impacts of this final rule. Because the Prepaid Accounts Rule is not yet in effect and this final rule addresses potential impacts of the Prepaid Accounts Rule on some industry participants for a subset of their prepaid accounts, this discussion of the potential benefits, costs, and impacts on consumers and covered persons, evaluated relative to the baseline established by that rule, is largely qualitative.

This final rule generally decreases the burden incurred by industry participants and provides covered persons with more options for complying with the provisions of the Prepaid Accounts Rule. As described in more detail below, the Bureau does not believe that this final rule's provisions will reduce consumer access to consumer financial products and services. In particular, the provisions relating to error resolution and limited liability for unverified accounts may increase consumer access to consumer financial products and services relative to the baseline established by the Prepaid Accounts Rule.

Error resolution and limited liability for unverified accounts. The Bureau is revising §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), comments 18(e)-4 through 6, and appendix A-7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.*, accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process).[145] The Bureau is also

[145] Given current business practices, the Bureau believes that this amendment will predominately affect financial institutions distributing prepaid accounts to consumers through the retail channel.

making related changes to model disclosure language. In addition, the Bureau is requiring that, for accounts in programs where there is no verification process, financial institutions either explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there are no such protections, and that such institutions comply with the process (if any) that they disclose.

Covered persons will avoid the burdens associated with providing Regulation E's error resolution and limited liability protections for those prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process.[146] The Bureau considered the costs associated with providing error resolution and limited liability protections in its section 1022(b)(2) discussion for the 2016 Final Rule.[147] Potential sources of burden include, among other things, receiving oral or written error claims, investigating error claims, providing consumers with investigation results in writing, responding to consumer requests for copies of the documents that the financial institution relied on in making its determination, and correcting any errors discovered within the required timeframes.

During the Bureau's outreach efforts to industry regarding implementation and in comments submitted on the June 2017 Proposal, industry participants expressed concern that offering error resolution and limited liability protections for holders of unverified accounts, in particular, would significantly increase fraud risk. These industry participants mentioned various changes in functionality or processes that could mitigate this risk. For example, commenters asserted that financial institutions would limit pre-verification functionality on accounts. In pre-

[146] Covered persons that choose not to offer Regulation E error resolution and limited liability protections for unverified prepaid accounts will need to disclose which protections they do offer or that they do not offer such protections, and comply with any such protections they disclose.

[147] 81 FR 83934, 84292 (Nov. 22, 2016).

proposal outreach, some financial institutions told the Bureau that they believed that they would need to replace retail packaging to accurately reflect this decreased functionality, notwithstanding the Bureau's decision to allow financial institutions to use non-compliant packaging manufactured in the normal course of business prior to the effective date. In pre-proposal outreach and in response to the June 2017 Proposal, industry representatives suggested that financial institutions may issue paper checks to consumers holding unverified accounts in various scenarios, including when a consumer fails the verification process (instead of allowing the consumer to spend down the balance) and when a transaction on an unverified account is disputed (to decrease the likelihood that further errors are asserted on the account).

In addition to the direct cost associated with investigating errors and providing funds in response to claims by holders of unverified accounts, covered persons, under the requirements of the 2016 Final Rule, would incur costs in changing account functionality or refund processes. By amending the Prepaid Accounts Rule's requirement that financial institutions resolve errors and limit consumers' liability pursuant to Regulation E to exclude those prepaid accounts, other than payroll card accounts or government benefit accounts, for which the consumer identification and verification process has not been completed, this final rule will allow covered persons to avoid such costs.

Consumers holding or desiring to hold unverified prepaid accounts may both derive benefits and incur costs from this final rule's provisions relative to those benefits and costs they would experience were the baseline requirements established by the Prepaid Accounts Rule in force. Under this final rule, consumers holding unverified accounts will no longer be assured the benefits arising from the Prepaid Accounts Rule's error resolution and limited liability protections. However, if absent this final rule, financial institutions would have attempted to

mitigate potential fraud losses by not offering unverified prepaid accounts, consumers desiring to hold unverified accounts would have lost access to such products altogether. In such a scenario, consumers desiring to hold unverified prepaid accounts would be forced to choose a less-desired alternative and would not have enjoyed any of the benefits arising from the Prepaid Accounts Rule's consumer protections (unless that alternative product was a verified prepaid account). Alternatively, if financial institutions would have responded to the Prepaid Accounts Rule's requirement that unverified prepaid accounts offer error resolution and limited liability protections by decreasing the functionality associated with such accounts, this final rule will enable current and future accountholders to retain current functionality on unverified accounts, though they will not enjoy the error resolution and limited liability protections of the Prepaid Accounts Rule. Therefore, as a result of this final rule, consumers holding unverified prepaid accounts (or those desiring to hold unverified accounts) may experience increased product access or functionality relative to the baseline.

In addition to these impacts on consumers holding or desiring to hold unverified prepaid accounts, consumers holding verified prepaid accounts may also benefit relative to the baseline established by the Prepaid Accounts Rule's requirement that financial institutions offer error resolution and limited liability protections for unverified accounts. Under the Prepaid Accounts Rule, financial institutions may have raised prices to account for forecasted or actual fraud resulting from providing error resolution and limited liability protections on unverified accounts. This final rule allows financial institutions to avoid such costs. Financial institutions may pass through some portion of the cost savings to holders of verified accounts by lowering prices, or they may invest cost savings into innovation efforts to create higher quality products.

In terms of alternatives, the Bureau considered applying error resolution and limited liability protections to pre-verification transactions for those accounts later verified. The Bureau also considered applying these protections to only those pre-verification transactions occurring within a specified time (such as 30 days) prior to account verification. Although those approaches would have decreased the risk that holders of unverified accounts would experience a loss of funds in the event of an unauthorized transaction or other error, covered persons would have incurred the burdens associated with providing these protections (including any attendant fraud losses) for pre-verification transactions. Commenters stated that financial institutions rely on verified consumer information to identify fraudulent transactions when they are attempted. Therefore, even if the accountholder's identity is verified later, the financial institution is unable to leverage verified consumer information to limit fraud exposure on pre-verification transactions, thereby driving up costs. The Bureau's approach provides more incentive for consumers to verify accounts upon acquisition and, by so doing, may increase investigation speed (and decrease the costs associated with conducting those investigations), relative to these alternatives. The Bureau's approach should decrease uncertainty regarding responsibilities and liabilities among industry participants.

"Business partner" redefined to exclude certain arrangements. The Bureau is amending the definition of "business partner" in § 1026.6(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards, provided certain conditions are satisfied. The 2016 Final Rule had defined the term "business partner" to mean a person (other than the prepaid account issuer or its affiliate) 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 revised by this final rule, § 1026.61(a)(5)(iii)(D) now provides that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement, as defined in § 1026.61(a)(5)(iii)(A) through (C), with regard to such a credit card account so long as certain conditions are met. For example, under these conditions, the credit card account remains subject to Regulation Z's credit card requirements in its own right, and both the credit card and prepaid accounts' pricing terms must be independent of whether the two accounts are linked. Thus, if certain conditions are met, this final rule provides that prepaid account issuers may enter into certain business arrangements with credit card issuers without being subject to the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards.

Although the Bureau believes that few industry participants will be impacted directly by the Prepaid Accounts Rule's credit-related provisions, this change will relieve burden for those industry participants that currently qualify for the exception and will decrease the cost incurred by industry participants entering into qualifying relationships in the future. For example, under the Prepaid Accounts Rule's prior definition of "business partner," a provider of a digital wallet that could store funds that had a cross-marketing arrangement with a credit card issuer could have been subject to those provisions of the Prepaid Accounts Rule applicable to covered separate credit features accessible by a hybrid prepaid-credit card if the prepaid card from time to time could access credit from the credit card account in the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transfers. Among other things, the digital wallet provider would have been required to wait 30 days after the digital wallet account was registered before allowing a consumer to add a credit card account issued by a "business partner," though there would be no such required waiting period for credit card accounts offered by unaffiliated

card issuers with whom there is no such relationship. Under the 2016 Final Rule, this requirement applied even if the credit card account was subject to the provisions of Regulation Z that apply to credit card accounts in its own right.

Because the Bureau narrowly tailored this amendment, consumers likely will not incur many costs as a result. For example, § 1026.61(a)(5)(iii)(D)(*1*) provides that for the credit card account to be eligible for the exclusion, it must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card and thus subject to the applicable credit card provisions of Regulation Z in its own right. Therefore, consumers will still enjoy the credit card protections provided by Regulation Z with respect to the linked credit card account. In addition, the Bureau believes that when the conditions of the "business partner" exclusion in § 1026.61(a)(5)(iii)(D) are met, consumers will be further protected because of the provisions intended to help make the choice to acquire or retain a prepaid account independent of the choice of whether to link a credit feature to it. For example, § 1026.61(a)(5)(iii)(D)(*3*) generally prohibits both the prepaid account issuer and the credit card issuer from conditioning the acquisition or retention of either the prepaid or credit card account on whether the consumer authorizes their linkage. Also, under § 1026.61(a)(5)(iii)(D)(*4*) and (*5*), both the prepaid account issuer and card issuer generally are prohibited from varying the prepaid and credit card account terms and conditions based on whether the consumer chooses to link the accounts.[148] These provisions will help to ensure that

[148] More specifically, § 1026.61(a)(5)(iii)(D)(*4*) ensures that the prepaid account issuer applies the same terms, conditions, or features to the prepaid account regardless of whether a consumer authorizes linking the prepaid card to the credit card account offered by the card issuer subject to the exception. In addition, the prepaid account issuer is required to apply the same fees to load funds from a linked credit card account to the prepaid account as it charges for a comparable load from a credit feature offered by a person who is not the prepaid account issuer, its affiliate, or person with whom the prepaid account issuer has an arrangement. With respect to the credit card account, § 1026.61(a)(5)(iii)(D)(*5*) requires the card issuer to apply the same specified terms and conditions to the credit card

the consumer's choice to acquire or retain a prepaid account or a credit card account is distinct from his or her choice to link a credit card account and a prepaid account. By preventing pricing structures from depending on the individual consumer's choice to link the accounts, this final rule's provisions help provide the consumer with an opportunity to independently identify and appreciate the costs associated with each product. In addition, § 1026.61(a)(5)(iii)(D)(*2*) generally requires that the consumer provide either the prepaid account issuer or the card issuer a written request that is separately signed or initialized authorizing the prepaid card to access the credit card account, thereby helping to ensure that any account linkages are transparent and represent the consumer's deliberate choice.

In addition, this change helps to decrease the likelihood of consumer confusion. Absent this final rule's amendment to the definition of "business partner," there would be more instances in which the Prepaid Accounts Rule's provisions would apply to some, but not all, of the credit card accounts provisioned to a consumer's digital wallet. This uneven application could have resulted in increased consumer confusion relative to the approach taken in this final rule because credit card payment credentials stored within the same digital wallet would have been subject to different disclosure regimes and use restrictions with greater frequency than will be experienced under this final rule's approach. By helping to foster uniformity in application and therefore increasing transparency, this final rule's amendment to the definition of "business partner" will benefit these consumers.

As discussed above, the Bureau also considered changing the basis for qualifying for the exception in § 1026.61(a)(5)(iii)(D), including extending the exception to apply to credit card

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account regardless of whether the consumer authorizes its linkage to the prepaid account and additionally requires that the issuer apply the same specified terms and conditions to extensions of credit accessed by the prepaid card from the credit card account as it applies to extensions of credit accessed by the traditional credit card.

accounts offered by the prepaid account issuer or its affiliate as well as allowing providers to vary certain terms and conditions based on whether the prepaid account and the credit card account are linked. The Bureau did not adopt these changes in this final rule. The Bureau believes that the approach taken in this final rule more adequately ensures the separation and independence of linked prepaid and credit card accounts and thereby leads to better-informed consumer choice. The Bureau believes that conditioning the exception on the requirement that providers not vary terms and conditions based on whether the prepaid account and the credit card account are linked will help to ensure that consumers' decisions about account acquisition, retention, and link authorization are simpler and less prone to undue pressure (and thereby do not require the protections provided by the tailored provisions in Regulations Z and E applicable only to covered separate credit features and linked prepaid accounts). Nonetheless, the Bureau does not believe that these safeguards would be sufficient to protect consumers when the prepaid account and the credit card account are offered by entities under common control. The Bureau believes that ensuring separation and independence is more complicated when both accounts are issued by entities under common control, particularly given that offset, security interest, and other types of linkages may be present.

The Bureau also considered requiring that card issuers comply with § 1026.12(d)(3)(ii), which permits a written plan authorizing periodic deductions from the prepaid account only if the deductions are no more frequent than once per calendar month, to qualify for the exception, as suggested by consumer advocate commenters. The Bureau is not adopting such a requirement in this final rule. The Bureau believes that adding such a repayment provision, which would

impose an additional burden on industry, is not necessary given the consumer protections already offered by limits on repayment terms.[149]

Treatment of negative balances. The Bureau is expanding the exception in § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit structured as a negative balance on the asset feature of prepaid accounts, to include those situations where a covered separate credit feature offered by a business partner is attached to the prepaid account, provided the other requirements in § 1026.61(a)(4) are met. In these situations, the incidental credit structured as a negative balance on the prepaid account will not be subject to Regulation Z, although the business partner's separate credit feature will be subject to Regulation Z.

Broadening the exception in § 1026.61(a)(4) to include those situations where a covered separate credit feature offered by a business partner is attached to the prepaid account, provided the other requirements in § 1026.61(a)(4) are met, enables industry participants to avoid several operational costs that they might incur in preventing negative balances on the prepaid account when a covered separate credit feature offered by a business partner is attached. These costs would have included building Regulation Z-compliant systems to hold otherwise permissible negative balances in separate subaccounts when covered separate credit features issued by a business partner are linked or charging the incidental credit to the linked covered separate credit features. One commenter indicated that when a covered separate credit feature is offered by a

[149] Final § 1026.61(a)(5)(iii)(D)(*5*) prevents the card issuer from varying the repayment terms of the credit card account based on whether the consumer has authorized linking the prepaid card to the credit card account or based on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card.

business partner, it may not always be possible to charge the incidental credit to the linked covered separate credit feature if doing so could cause the account to exceed its credit limit.

Although the negative balance may be repaid from the next incoming deposit because the offset provisions in § 1026.12(d) will not apply in these cases, consumers may benefit from this provision relative to the baseline even though they may have less control of their funds. For example, one commenter indicated that incidental credit that is charged to the linked covered separate credit feature would likely be deemed a cash advance by the card issuer, subjecting the customer to interest and fees. This final rule's approach helps to avoid that outcome. Further, without the exception in § 1026.61(a)(4), it is possible that a prepaid account issuer would build Regulation Z-compliant systems to hold otherwise permissible negative balances in separate subaccounts when business partner credit cards are linked. Consumers could be confused by the presence of subaccounts, especially to the extent that the trigger for their creation (whether a linked credit card is issued by the prepaid account issuer's business partner) may not be transparent to the consumer.

The Bureau considered multiple alternative approaches to address the treatment of incidental credit structured as a negative balance. This final rule's approach is more permissive than that articulated in the June 2017 Proposal, which would not have permitted those situations where a covered separate credit feature offered by a business partner is attached to the prepaid account to qualify for the negative balance exception in § 1026.61(a)(4). As observed by commenters, the Bureau's approach in this final rule relieves operational burden for prepaid account issuers and avoids potential consumer confusion.

The Bureau also considered broadening the exception for incidental credit structured as a negative balance to include situations in which a covered separate credit feature offered by the

prepaid issuer or its affiliate is attached to the prepaid account. However, the Bureau believes that the operational concerns that arise when a business partner offers a covered separate credit feature do not arise when the issuer or its affiliate offers the feature. In particular, the prepaid account issuer or its affiliate, in these cases, would already offer Regulation Z-compliant covered separate credit feature. The Bureau believes when the same or affiliated parties offer both the prepaid account and the covered separate credit feature, they will encounter fewer difficulties in charging the incidental credit to the covered separate credit feature or waiving interest and fees on the incidental credit when it is charged to the covered separate credit feature.

Extending the effective date to April 1, 2019. The Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019. The Bureau previously considered the benefits, costs, and impacts to consumers and covered persons of a six month effective date delay in the 2017 Effective Date Final Rule.[150] The Bureau acknowledges that the amendments regarding error resolution and limited liability protections on unverified accounts may require some financial institutions to change to language on or in retail packaging. The Bureau appreciates that in some circumstances these changes may be difficult to accomplish by April 1, 2018, and thus believes that a further extension of the effective date is appropriate. The Bureau believes that the other revisions to the Prepaid Accounts Rule adopted in this final rule do not generally impose new obligations on covered persons. Rather, these amendments generally relieve burdens, provide industry with additional flexibility in complying with the Prepaid Accounts Rule, or clarify provisions that were identified as being potentially ambiguous. Covered persons will benefit from receiving additional flexibility with respect to when they must

[150] 82 FR 18975, 18979 (Apr. 25, 2017).

be compliant with the provisions of the Prepaid Accounts Rule. However, consumers' realization of the benefits arising from the Prepaid Accounts Rule will be delayed by an additional year. Both consumers and covered persons may benefit from decreased disruption arising from the implementation of the Prepaid Accounts Rule that could result from this further delay.

Potential specific impacts of this final rule. The requirements of this final rule apply uniformly across covered financial institutions without regard to their asset size. The Bureau does not expect this final rule to have a differential 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. The Bureau solicited comment regarding the impact of the June 2017 Proposal's provisions on those depository institutions and credit unions with $10 billion or less in total assets and how those impacts may be distinct from those experienced by larger institutions. The Bureau did not receive any comments directly addressing this issue in response to that request.

The Bureau has no reason to believe that the additional flexibility offered to covered persons by this final rule will differentially affect consumers in rural areas. The Bureau requested comment regarding the impact of the June 2017 Proposal's provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally. The Bureau did not receive any comments directly addressing this issue in response to that request.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act,[151] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[152] (RFA) 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.[153] 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.[154]

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 head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[155] 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.[156]

The Bureau's director certified that the June 2017 Proposal would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not

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[151] Public Law 96-354, 94 Stat. 1164 (1980).

[152] Public Law 104-21, section 241, 110 Stat. 847, 864-65 (1996).

[153] 5 U.S.C. 601 through 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 under 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).

[154] 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.*

[155] 5 U.S.C. 601 *et seq*.

[156] 5 U.S.C. 609.

required.[157] Upon considering relevant comments as well as differences between this final rule and the June 2017 Proposal, the Bureau concludes that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a FRFA is not required.[158]

As discussed above, this final rule amends certain provisions of the Prepaid Accounts Rule. Specifically, the Bureau is amending the Prepaid Accounts Rule so that it no longer requires financial institutions to resolve errors or limit consumers' liability on unverified prepaid accounts (other than payroll card accounts or government benefit accounts). In addition, the Bureau is creating a limited exception to the credit-related provisions of the Prepaid Accounts Rule by narrowing the Prepaid Accounts Rule's definition of "business partner" in Regulation Z so that it no longer includes certain arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products.[159] Further, this final rule amends the Prepaid Accounts Rule so that it no longer considers incidental credit extended through a negative balance on a prepaid account to be subject to Regulation Z when a covered separate credit feature offered by a business partner is attached to the prepaid account, provided other requirements are satisfied. The Bureau also is extending the overall effective date of the Prepaid

[157] 82 FR 29630, 29661 (June 29, 2017). The June 2017 Proposal was the second rule proposed by the Bureau to amend the 2016 Final Rule, which created comprehensive consumer protections for prepaid accounts under Regulations E and Z. In the 2014 Proposal, the Bureau concluded that the rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. 79 FR 77102, 77283 (Dec. 23, 2014). That conclusion remained unchanged for the 2016 Final Rule. 81 FR 83934, 84308 (Nov. 22, 2016). In addition, the Bureau determined that both the 2017 Effective Date Proposal and the 2017 Effective Date Final Rule, which extended the general effective date of the 2016 Final Rule by six months, likewise would not have a significant economic impact on a substantial number of small entities. 82 FR 13782, 13785 (Mar. 15, 2017); 82 FR 18975, 18979 (Apr. 25, 2017).

[158] 5 U.S.C. 605(b).

[159] Although a credit card account is subject to the credit card provisions of Regulation Z in its own right if the account and the arrangement between the prepaid account issuer and credit card account issuer meet all conditions for this exception, it will not be subject to the provisions in Regulation Z that apply only to covered separate credit features accessible by a hybrid prepaid-credit card. In addition, the prepaid account with which it is linked will not be subject to the provisions in Regulation E that apply only to prepaid accounts connected to covered separate credit features.

Accounts Rule to April 1, 2019, and is making clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule.

This final rule's amendments generally benefit small entities by providing additional flexibility with respect to their implementation of the Prepaid Accounts Rule and will not increase burden on small entities. In particular, the credit-related amendments address certain complications that arise when a covered separate credit feature is attached to a digital wallet, and the Bureau believes that, at present, few small entities will be affected by the relevant provisions of the Prepaid Accounts Rule or these amendments.

Error resolution and limited liability for unverified accounts. The Bureau is revising §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), comments 18(e)-4 through 6, and appendix A-7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.*, accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). The Bureau is adopting related changes to model language in appendix A-7(c) and is requiring that those financial institutions offering prepaid account programs that do not have a consumer identification and verification process disclose to consumers any error resolution and limited liability protections offered (or, if applicable, that no such protections are offered).

Those small entities offering unverified prepaid accounts will benefit from avoiding the burdens associated with providing Regulation E's error resolution and limited liability protections for prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process. In addition, any increase in fraud risk arising

from the Prepaid Accounts Rule's requirement that financial institutions offer error resolution and limited liability protections to consumers holding unregistered accounts may be avoided. However, these benefits will be limited if small entities tend not to distribute prepaid accounts that can be used before verification or that offer significant pre-verification functionality.

"Business partner" redefined to exclude certain arrangements. The Bureau is amending the definition of "business partner" in § 1026.61(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards if certain conditions are satisfied. This amendment will facilitate compliance with the Prepaid Accounts Rule by digital wallet providers offering products that both offer the ability to store funds (such that the digital wallet is a prepaid account) and permit consumers to use the digital wallet account number from time to time to access stored credentials for credit card accounts in the course of a transaction. If the conditions described above are met, such products will be excepted from the tailored provisions in the Prepaid Accounts Rule applicable only to covered separate credit features and prepaid accounts with those features. Small entities offering products that qualify for the exception will be relieved of the burdens associated with complying with these tailored provisions as a result of this final rule.

Treatment of negative balances. The Bureau is amending § 1026.61(a)(4) to allow a prepaid account issuer to provide incidental forms of credit structured as a negative balance on the prepaid account when a covered separate credit feature offered by business partner is attached to the prepaid account.[160] In this case, the incidental credit structured as a negative

[160] As discussed above, the other prerequisites contained in § 1026.61(a)(4) must also be satisfied.

balance on the prepaid account will not be subject to Regulation Z. As described above, this amendment will relieve small entities offering certain digital wallet products (those which store funds and to which a covered separate credit feature offered by a business partner may be attached) from the potential implementation burdens associated either with (1) constructing Regulation Z-compliant subaccounts to hold otherwise permissible negative balances; or (2) charging the incidental credit to the business partner's linked covered separate credit feature.

Extending the overall effective date to April 1, 2019. The Bureau is extending the overall effective date of the Prepaid Accounts Rule to April 1, 2019. This extension will relieve burden on small entities by providing additional time to comply with the provisions of the Prepaid Accounts Rule.

Other modifications. In addition to these provisions, the Bureau is making clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule. Similar to those provisions discussed, these clarifications or minor adjustments will provide additional options for compliance and will not increase burden on small entities.

In summary, this final rule will not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Rule because this rulemaking's amendments provide additional flexibility to financial institutions with respect to how they may comply with the Prepaid Accounts Rule. Small entities retain the option of complying with the Prepaid Accounts Rule as it existed prior to these modifications. Therefore, small entities will not experience a significant economic impact as a result of this final rule.

Certification

Accordingly, the undersigned hereby certifies that this 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),[161] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the Prepaid Accounts Rule have been reviewed and approved by OMB previously in accordance with the PRA and assigned OMB Control Numbers 3170-0014 (Regulation E) and 3170-0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau did not receive any comments regarding its PRA discussion in the June 2017 Proposal. The Bureau has determined that this final rule amends the Prepaid Accounts Rule to provide firms with additional flexibility and clarity with respect to required disclosures; therefore, it will have only minimal impact on the industry-wide aggregate PRA burden relative to the baseline.

X. Congressional Review Act

Pursuant to the Congressional Review Act,[162] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a "major rule" as defined by 5 U.S.C. 804(2).

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[161] 44 U.S.C. 3501 *et seq.*

[162] 5 U.S.C. 801 *et seq*.

List of Subjects

12 CFR Part 1005

Automated teller machines, Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, 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 above, the Bureau is further amending 12 CFR parts 1005 and 1026, as amended November 22, 2016, at 81 FR 83934, and April 25, 2017, at 82 FR 18975, 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. Amend § 1005.2 by revising paragraph (b)(3)(ii)(D)(*3*) to read as follows:

§ 1005.2 Definitions.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(D) * * *

(*3*) A loyalty, award, or promotional gift card as defined in § 1005.20(a)(4), or that satisfies the criteria in § 1005.20(a)(4)(i) and (ii) and is excluded from § 1005.20 pursuant to § 1005.20(b)(4); or

* * * * *

3. Amend § 1005.11 by revising paragraphs (c)(2)(i)(A) and (B) and removing 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; or

(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).

* * * * *

4. Amend § 1005.18 by:

a. Revising paragraphs (b)(1)(i) and (ii).

b. Removing “long form disclosures” and adding in its place “long form disclosure” in the introductory text of paragraph (b)(1)(iii).

c. Revising paragraphs (b)(1)(iii)(C) and (b)(2)(ix)(C).

d. In paragraph (b)(2)(ix)(D):

i. Removing “type” and adding in its place “types” in the heading.

ii. Removing “April 1, 2018” everywhere it appears and adding in its place “April 1, 2019”.

e. Removing “disclosures” and adding in its place “disclosure” in paragraphs (b)(2)(ix)(E)(*2*) and (*3*).

f. Removing “additional fee types disclosures” and adding in its place “an additional fee types disclosure” in paragraph (b)(2)(ix)(E)(*4*).

g. Removing “customer” everywhere it appears and adding in its place “consumer” in paragraph (b)(2)(xi).

h. Revising paragraphs (b)(6)(i)(B) and (C).

i. Removing “long form disclosures” and adding in its place “a long form disclosure” in paragraph (b)(6)(ii).

j. Removing “disclosures” and adding in its place “disclosure” in paragraph (b)(6)(iii)(A).

k. Removing “preferred-” and adding in its place “preferred” in paragraph (b)(6)(iii)(B)(*2*).

l. Revising paragraph (b)(7)(i)(B).

m. Removing “Long form disclosures” and adding in its place “The long form disclosure” in paragraph (b)(7)(ii)(C).

n. Revising paragraphs (b)(9)(i)(C), (d)(1)(ii), and (e)(3).

o. Removing “April 1, 2018” everywhere it appears and adding in its place “April 1, 2019” in paragraph (h).

The revisions read as follows:

§ 1005.18 Requirements for financial institutions offering prepaid accounts.

* * * * *

(b) * * *

(1) * * *

(i) *General.* Except as provided in paragraph (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. When a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, for purposes of this paragraph, the disclosures required by paragraph (b) of this section may be provided at the time the consumer receives the prepaid account.

(ii) *Disclosures for prepaid accounts acquired in retail locations*. A financial institution is not required to provide the long form disclosure 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 disclosure required by paragraph (b)(2) of this section is provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material.

(C) The disclosure required by paragraph (b)(2) of this section includes 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 disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account. If a financial institution does not provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure pursuant to this paragraph in electronic form 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.*).

(iii) * * *

(C) The long form disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account.

(2) * * *

(ix) * * *

(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; for disclosures other than for multiple service plans, it may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories 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 paragraphs (b)(3)(i) and (b)(7)(ii)(B)(*1*) 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.

* * * * *

(6) * * *

(i) * * *

(B) *Electronic disclosures.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, 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.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, 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 pursuant to the exception in paragraph (b)(1)(iii) of this section. For prepaid accounts acquired in retail locations or orally by telephone, the disclosure required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(C) or (b)(1)(iii)(B) of this section also must be made orally.

* * * * *

(7) * * *

(i) * * *

(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 statements 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 paragraph (b)(4)(vii)

of this section, the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), such disclosures must appear below the statements required by paragraph (b)(4)(vi) of this section.

* * * * *

(9) * * *

(i) * * *

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. However, foreign language pre-acquisition disclosures are not required for payroll card accounts and government benefit accounts where the foreign language is offered by telephone via a real-time language interpretation service provided by a third party or by the employer or government agency on an informal or ad hoc basis as an accommodation to prospective payroll card account or government benefit account holders.

* * * * *

(d) * * *

(1) * * *

(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). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections.

* * * * *

(e) * * *

(3) *Limitations on liability and error resolution for unverified accounts.* (i) For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not successfully completed its consumer identification and verification process where:

(A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not registering and verifying 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) The financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account, but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying 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) The financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has made the alternative disclosure described in paragraph (d)(1)(ii) of this section and complies with the process it has disclosed.

(iii) *Resolution of errors following successful verification.* Once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized

transfers and resolve errors that occur following verification in accordance with § 1005.6 or § 1005.11, or the modified timing requirements in this paragraph (e), as applicable.

* * * * *

5. Amend § 1005.19 by:

a. Removing "names of other relevant parties" and adding in its place "list of names of other relevant parties" in paragraph (b)(1)(i).

b. Removing "(b)(2)" and adding in its place "(b)(2)(i)" in paragraph (b)(1)(iii).

c. Revising paragraphs (b)(2) and (b)(6)(ii) and (iii).

d. Removing "(b)(2)" and adding in its place "(b)(2)(i)" in paragraphs (c)(3) and (d)(2)(v).

e. Revising paragraph (f).

The revisions read as follows:

§ 1005.19 Internet posting of prepaid account agreements.

* * * * *

(b) * * *

(2) *Amended agreements*—(i) *Submission of amended agreements generally*. 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 becomes effective. If other identifying information about the issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section previously submitted to the Bureau is amended, the issuer must submit updated information to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective.

(ii) *Submission of updated list of names of other relevant parties*. Notwithstanding paragraph (b)(2)(i) of this section, an issuer may delay submitting a change to the list of names of other relevant parties to a particular agreement until the earlier of:

(A) Such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section; or

(B) May 1 of each year, for any updates to the list of names of other relevant parties for that agreement that occurred between the issuer's last submission of relevant party information and April 1 of that year.

* * * * *

(6) * * *

(ii) *Fee information.* Fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both 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 long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). The agreement or addenda 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 addenda described in paragraph (b)(6)(ii) of this section). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addenda, as appropriate.

* * * * *

(f) *Initial submission date*. The requirements of this section apply to prepaid accounts beginning on April 1, 2019. An issuer must submit to the Bureau no later than May 1, 2019 all prepaid account agreements it offers as of April 1, 2019.

6. In appendix A to part 1005, revise Model Clause A-7 to read as follows:

APPENDIX A TO PART 1005—MODEL DISCLOSURE CLAUSES AND FORMS

* * * * *

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 unverified prepaid accounts (§ 1005.18(e)(3)).*

It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. 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.

* * * * *

7. In supplement I to part 1005:

a. Under *Section 1005.2—Definitions*, revise *Paragraph 2(b)(3)*.

b. Under *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts*, revise *18(a) Coverage*, *18(b)(1) Timing of Disclosures*, *18(b)(2) Short Form Disclosure Content*, *18(b)(4) Long Form Disclosure Content*, *18(b)(5) Disclosure Requirements Outside the Short Form Disclosure*, *18(b)(6)(i) General*, *18(b)(7)(ii) Prominence and Size*, *18(b)(9) Prepaid Accounts Acquired in Foreign Languages*, *18(c) Access to Prepaid Account Information*, *18(e) Modified Limitations on Liability and Error Resolution Requirements*, and *18(h) Effective Date and Special Transition Rules for Disclosure Provisions*.

c. Under *Section 1005.19—Internet Posting of Prepaid Account Agreements*:

i. Revise *19(a) Definitions*, *19(b)(1) Submissions on a Rolling Basis*, *19(b)(2) Amended Agreements*, and *19(b)(6) Form and Content of Agreements Submitted to the Bureau*.

ii. Remove subsection *19(f) Effective Date*.

The revisions 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. *Product 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.

4. *Loyalty, award, or promotional gift cards*. Section 1005.2(b)(3)(ii)(D)(*3*) excludes loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). Section 1005.2(b)(3)(ii)(D)(*3*) also excludes cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from

coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public; such products are not required to set forth the disclosures enumerated in § 1005.20(a)(4)(iii) in order to be excluded pursuant to § 1005.2(b)(3)(ii)(D)(*3*).

* * * * *

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. If an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that the consumer has no other means by which to initially receive the funds in the prepaid account other than by accepting the access device, as well as the consequences of disposing of the access device.

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

* * * * *

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.

i. 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:

A. 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).

B. 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).

ii. Section 1005.18(b)(1)(i) permits delivery of the disclosures required by § 1005.18(b) at the time the consumer receives the prepaid account, rather than prior to acquisition, for prepaid accounts that are used for disbursing funds to consumers when the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account. For example, a utility company refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. Neither the utility company nor the financial institution that issues the prepaid accounts offer another means for a consumer to receive that refund other than by accepting the prepaid account. In this case, the financial institution may provide the disclosures required by § 1005.18(b) together with the prepaid account (*e.g.*, in the same envelope as the prepaid account); it is not required to deliver the disclosures separately prior to delivery of the prepaid account.

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 disclosure 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 disclosure 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. 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(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

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.

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 comment 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.* Fee types 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.* Fee types 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 the 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)(*1*) 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)(*1*). 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)(*1*) 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)(*1*) 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)(*1*), 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 has two options for the disclosure. The financial institution may 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*". Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery. In this case, the financial institution would make this disclosure on the short form as: "Bill payment (regular or expedited delivery)" and the fee amount as "$0.50* or $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 April 1, 2019

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 April 1, 2019 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 April 1, 2019 must assess its additional fee types disclosure from data collected during a consecutive 24-month period that took place between October 1, 2014 and April 1, 2019. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on April 1, 2019. 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 April 1, 2019 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 April 1, 2019, 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 April 1, 2019. For example, a financial institution begins offering to consumers a prepaid account program six months before April 1, 2019. Because the prepaid account program will not have 24 months of fee revenue data prior to April 1, 2019, 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 April 1, 2019. 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 disclosure, 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 April 1, 2019. Starting on April 1, 2021, 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 April 1, 2019. Starting on April 1, 2021, 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 July 1, 2021, 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 April 1, 2019. Starting on April 1, 2021, 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 April 1, 2018 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 April 1, 2020, it would use the data it collected over the previous 24 months (April 1, 2018 to March 31, 2020) and complete its reassessment and its update, if applicable, by July 1, 2020.

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 June 1, 2019 after having first assessed its additional fee types disclosure as of April 1, 2019, 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 June 1, 2021). 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 the additional fee types disclosure 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 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. *Consumer identification and verification processes.* For additional guidance on the timing of consumer identification and verification processes, and on prepaid account programs for which there is no consumer identification and verification process for any prepaid accounts within the prepaid account program, see § 1005.18(e)(3) and comments 18(e)-4 through 6.

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 of 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).

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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 consumer 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* for details." Conversely, if XYZ Bank offers another prepaid account program for sale at retail locations for which it conducts consumer 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 consumer 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 statements 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 a written short form disclosure 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 access device's packaging material.

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

1. *Written pre-acquisition disclosures*. If a financial institution provides the disclosures required by § 1005.18(b) in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), they need not also be provided electronically or orally. For example, an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account. The financial institution is not required to provide the § 1005.18(b) disclosures electronically via the Web site because the consumer has already received the disclosures pre-acquisition in written form.

18(b)(6)(i)(B) Electronic Disclosures

1. *Providing pre-acquisition disclosures electronically.* Unless provided in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), § 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)(i)(C) Oral Disclosures

1. *Disclosures for prepaid accounts acquired by telephone.* Unless it provides disclosures in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), 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 pursuant to the exception in § 1005.18(b)(1)(iii). 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.

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18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures

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18(b)(7)(ii) Prominence and Size

1. *Minimum type size.* Section 1005.18(b)(7)(ii) sets forth minimum point/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 point/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.

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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) 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. (But see § 1005.18(b)(9)(i)(C), which limits the obligation to provide foreign language disclosures for payroll card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

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. (But see § 1005.18(b)(9)(i)(C), which limits the obligation to provide foreign

language disclosures for payroll card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

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.

D. A consumer calls a government agency to enroll in a government benefits program. The government agency does not offer through its telephone system an option for consumers to proceed in a foreign language. An employee of the government agency assists the consumer with the enrollment process, including helping the consumer acquire a government benefits account. The employee also happens to speak the foreign language in which the consumer is most comfortable communicating, and chooses to communicate with the consumer in that language to facilitate the enrollment process. In this case, the employee offered language interpretation assistance on an informal or ad hoc basis to accommodate the prospective government benefits account holder.

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 provide 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)(ii)(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)(i) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its 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. Section 1005.18(e)(3)(iii) provides that once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with § 1005.6 or § 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. A financial institution is not required to limit a consumer's liability for unauthorized transfers or resolve errors that occur prior to the financial institution's successful completion of its consumer identification and verification process with respect to a prepaid account.

5. *Financial institution has not successfully completed verification.* Section 1005.18(e)(3)(ii)(A) states that, provided it discloses to the consumer the risks of not registering and verifying a prepaid account, a financial institution has not successfully completed its consumer identification and verification process where it has not concluded the process with respect to a particular prepaid account. For example, a financial institution initiates its consumer identification and verification process by collecting identifying information about a consumer, and attempts to verify the consumer's identity. The financial institution is unable to conclude the process because of conflicting information about the consumer's current address. The financial institution informs the consumer about the nature of the information at issue and requests

additional documentation, but the consumer does not provide the requested documentation. 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 consumer 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 successfully 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 disbursal 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 successfully completed its consumer identification and verification process with respect to those accounts.

* * * * *

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 April 1, 2019. 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 April 1, 2019. 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 on, in, or with access devices or packaging materials that are manufactured, printed, or otherwise produced on or after April 1, 2019 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 requirements of § 1005.18(h)(2)(ii) 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 April 1, 2019.* 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 April 1, 2019. If, on April 1, 2019, 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 April 1, 2019 would provide 60 days of written account transaction history upon a consumer's request on April 1, 2019. If, on May 1, 2019, 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 April 1, 2020 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later than April 1, 2021.

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 April 1, 2019. If, on April 1, 2019, 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 May 1, 2019 for the month of April, and the year-to-date fee total beginning on April 1, 2019, provided the financial institution discloses that it is displaying the year-to-date total beginning on April 1, 2019 rather than for the entire calendar year 2019. On January 1, 2020, financial institutions must begin displaying year-to-date fee totals for calendar year 2020.

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 list of names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program. But see § 1005.19(b)(2)(ii) regarding the timing of submitting such changes to the Bureau.

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 make submissions of 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)(i) 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)(i) 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 addenda described in § 1005.19(b)(6)), not provided as separate riders.

2. *Updates to the list of names of other relevant parties to an agreement.* Section 1005.19(b)(2)(ii) permits an issuer to delay making a submission to the Bureau regarding a change in the list of other relevant parties to a particular agreement until the earlier of such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i); or May 1 of each year, for any updates to the list of names of other relevant parties that occurred between the issuer's last submission of relevant party information for that agreement and April 1 of that year. Section 1005.19(b)(2)(ii) thus ensures that the Bureau has a list of names of other relevant parties for all submitted agreements that is up-to-date as of April 1 of each year. The following examples illustrate these requirements:

i. An issuer first submits to the Bureau a payroll card agreement, along with a list of names of the other relevant parties (*i.e.*, employers) to that agreement, on May 1, 2019. On July 1, 2020, the issuer adds four new employers under the agreement. The issuer is not required to make a submission to the Bureau regarding the addition of other relevant parties to that agreement at that time.

ii. On January 1, 2020, a change to the payroll card agreement becomes effective reflecting a new feature and accompanying fee that the issuer has added to the program. The issuer is required, by January 31, 2020, to submit to the Bureau its entire revised agreement and an updated list of the names of other relevant parties to that agreement.

iii. If the issuer has not added any other employers to the agreement by April 1, 2020, the issuer is not required to submit to the Bureau an updated list of names of other relevant parties to that agreement, because the list it previously submitted to the Bureau remains current.

iv. If, however, on March 1, 2020, the issuer adds two new employers under the agreement but makes no other changes to the agreement, then as of April 1 there are new relevant parties to the agreement that the issuer has not submitted to the Bureau. The issuer is required, by May 1, 2020, to submit to the Bureau an updated list of names of other relevant parties to that agreement reflecting the two employers it added in March. Because the issuer has not made any other changes to the agreement since it was submitted in January, the issuer is not required to re-submit the agreement itself by May 1, 2020.

* * * * *

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)(i) 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 addenda that may be submitted as part of an agreement are the optional fee information addenda 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 addenda. 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 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 the optional addenda displaying variations in fee information.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

8. 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 G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

9. Amend § 1026.61 by revising paragraphs (a)(1)(iii), (a)(3)(ii), (a)(4) introductory text, (a)(4)(i), and (a)(5)(iii) to read as follows:

§ 1026.61 Hybrid prepaid-credit cards.

(a) * * *

(1) * * *

(iii) 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, a prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of this regulation if the conditions set forth in paragraph (a)(4) of this section are met.

* * * * *

(3) * * *

(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 with respect to that credit as described in paragraph (a)(4) of this section.

(4) *Exception for credit extended through a negative balance*. A prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account and is not a credit card for purposes of this regulation with respect to that credit where:

(i) The prepaid card cannot access credit from a covered separate credit feature as described in paragraph (a)(2)(i) of this section that is offered by a prepaid account issuer or its affiliate; and

* * * * *

(5) * * *

(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 except as provided in paragraph (a)(5)(iii)(D) of this section.

(A) *Arrangement defined*. For purposes of paragraph (a)(5)(iii) of this section, a person 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 if the circumstances in either paragraph (a)(5)(iii)(B) or (C) of this section are met.

(B) *Arrangement by agreement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the parties have an agreement that allows the prepaid card from time to time to draw, transfer, or authorize a draw or transfer of 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.

(C) *Marketing arrangement*. A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if:

(*1*) The parties have a business, marketing, or promotional agreement or other arrangement which 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 separate credit feature offered by the person who can extend credit will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to encourage them

to authorize the prepaid card to access the separate credit feature as described in paragraph (a)(5)(iii)(C)(*2*) of this section); and

(*2*) At the time of the marketing agreement or arrangement described in paragraph (a)(5)(iii)(C)(*1*) of this section, 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 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. This requirement is satisfied even if there is no specific agreement between the parties that the card can access the credit feature, as described in paragraph (a)(5)(iii)(B) of this section.

(D) *Exception for certain credit card account arrangements*. For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in paragraphs (a)(5)(iii)(A) through (C) of this section with regard to such credit card account if all of the following conditions are met:

(*1*) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(*2*) The prepaid account issuer and the card issuer do not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time 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, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card

account as described above. If the credit card account is linked to the prepaid account prior to April 1, 2019, or prior to the arrangement between the prepaid account issuer and the card issuer as described in paragraphs (a)(5)(iii)(A) through (C) of this section, the prepaid account issuer and the card issuer will be deemed to have satisfied this condition even if they have not received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described in this paragraph.

(*3*) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section. If the credit card account is linked to the prepaid account prior to April 1, 2019, this condition only applies to the retention of the prepaid account and the credit card account on or after April 1, 2019.

(*4*) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in paragraphs (a)(5)(iii)(A) through (C) of this section.

(*5*) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as

described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit accessed by the prepaid card from the credit card account as it applies to extensions of credit accessed by the traditional credit card. For purposes of this paragraph, "specified terms and conditions" means the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions.

* * * * *

10. In supplement I to part 1026:

a. Under *Section 1026.4—Finance Charge*, revise *Paragraph 4(b)(11)*.

b. Under *Section 1026.6—Account-Opening Disclosures*, revise *Paragraph 6(b)(3)(iii)(D)*.

c. Under *Section 1026.52—Limitations on Fees*, revise *52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation*.

d. Under *Section 1026.61—Hybrid Prepaid-Credit Cards*, revise *61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance on the Asset Feature*, *61(a)(4) Exception* (including the heading), *Paragraph 61(a)(5)(iii)*, and *61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards*.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

* * * * *

Section 1026.4—Finance Charge

* * * * *

4(b) Examples of Finance Charges

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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 with respect to the covered separate credit feature 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 with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(4), with regard to that credit, 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.

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Subpart B—Open-End Credit

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Section 1026.6—Account-Opening Disclosures

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6(b) Rules Affecting Open-End (Not Home-Secured) Plans

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6(b)(3) Disclosure of Charges Imposed as Part of Open-End (Not Home-Secured) Plans

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Paragraph 6(b)(3)(iii)

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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 accessed 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.

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Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

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Section 1026.52—Limitations on Fees

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52(b) Limitations on Penalty Fees

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52(b)(2) Prohibited Fees

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52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

1. *Late payment fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that required minimum periodic payment. For example:

i. Assume that a $15 required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on September 25 ($15). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as above except that, on September 25, the card issuer receives a $10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the full amount of the required minimum periodic payment due on September 25 ($15), rather than the unpaid portion of that payment ($5). Thus, under § 1026.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

iii. Assume that a $15 required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is $50. On November 5, the card issuer

imposes a late payment fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on October 28 ($15), rather than the amount of the required minimum periodic payment due on November 28 ($50). Thus, under § 1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

2. *Returned payment fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and § 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on March 25. The card issuer receives a check for $100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)-1.

ii. Same facts as above except that the card issuer receives the $100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $30. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15), rather than the amount of the required minimum periodic payment due on April 25 ($30). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)). Furthermore, § 1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)-1.

iii. Same facts as paragraph i above except that, on March 28, the card issuer presents the $100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on August 25. The card issuer receives a check for $15 on August 23, which is not returned. The card issuer receives a check for $50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 1026.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on August 25 ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

3. *Over-the-limit fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed. Thus, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit fee that exceeds that amount. Nothing in § 1026.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with § 1026.56. The following examples illustrate the application of § 1026.52(b)(2)(i)(A) to over-the-limit fees:

i. Assume that the billing cycles for a credit card account with a credit limit of $5,000 begin on the first day of the month and end on the last day of the month. Assume also that, consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a $4,950 balance. On March 6, a $60 transaction is charged to the account, increasing the balance to $5,010. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds $15 (even if a higher fee would be permitted under § 1026.52(b)(1)).

ii. Same facts as above except that, on March 26, the card issuer receives a payment of $20, reducing the balance below the credit limit to $4,995. Nevertheless, for purposes of § 1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit

during the March billing cycle ($15). Thus, consistent with § 1026.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of $15.

4. *Declined access check fees.* For purposes of § 1026.52(b)(2)(i), the dollar amount associated with declining payment on a check that accesses a credit card account is the amount of the check. Thus, when a check that accesses a credit card account is declined, § 1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a $50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of § 1026.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check ($50). Thus, § 1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee that exceeds $50. However, the amount of this fee must also comply with § 1026.52(b)(1)(i) or (b)(1)(ii).

5. *Inactivity fees.* Section 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee with respect to a credit card account under an open-end (not home-secured) consumer credit plan based on inactivity on that account (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee when a credit card account under an open-end (not home-secured) consumer credit plan is not used for at least $2,000 in purchases over the course of a year. Similarly, § 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 annual fee on all accounts of a particular type but waiving the fee on any account that is used for at least $2,000 in purchases over the course of a year if the card issuer promotes the waiver or rebate of the annual fee for purposes of § 1026.55(e).

However, if the card issuer does not promote the waiver or rebate of the annual fee for purposes of § 1026.55(e), § 1026.52(b)(2)(i)(B)(*2*) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).

6. *Closed account fees.* Section 1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, § 1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from:

i. Imposing a one-time fee to consumers who close their accounts.

ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. *See also* comment 55(d)-1.

iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

7. *Declined transaction fees*. Section 1026.52(b)(2)(i)(B)(*1*) 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)(*1*) 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(b)(2)(i)(B)(*1*) 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)(*1*).

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Section 1026.61—Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

* * * * *

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 credit extended through a negative balance on the asset feature of the prepaid account 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)(3)(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. Unless § 1026.61(a)(4) applies, a card issuer would violate § 1026.61(b) if it structures a credit feature as a negative balance on the asset feature of the prepaid account. 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 with respect to that credit as described in § 1026.61(a)(4).

61(a)(4) Exception for Credit Extended Through a Negative Balance

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)(4) with respect to credit extended through a negative balance on the asset feature of the prepaid account is not a credit card under this regulation with respect to that credit. A prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account if:

A. The card cannot access credit from a covered separate credit feature under § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate, though it is permissible for it to access credit from a covered separate credit feature offered by a business partner or 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. If the conditions of § 1026.61(a)(4) are met and the prepaid card can access credit from a covered separate credit feature as defined in § 1026.61(a)(2)(i) that is offered by a business partner, the prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i) but is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii). If the conditions of § 1026.61(a)(4) are met and the prepaid card cannot access credit from any covered separate credit feature as defined in § 1026.61(a)(2)(i), the prepaid card is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of § 1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to § 1026.61(a)(2)(ii).

iii. Below is an example of when a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account 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) and from a covered separate credit feature as defined in § 1026.61(a)(2)(i) offered by a business partner, but cannot access credit for a covered separate credit feature that is offered by a prepaid account issuer or its affiliate.

iv. Below is an example of when a prepaid card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions set forth in § 1026.61(a)(4) have not been met.

A. 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 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 or its affiliate during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account. The exception in § 1026.61(a)(4) does not apply because the prepaid card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature defined in § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate. The card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(3) and with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i). In that case, a card issuer has violated § 1026.61(b) because it has structured the credit feature as a negative balance on the asset feature of the prepaid account. *See* § 1026.61(a)(3)(ii) and (b).

v. In the case where a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions set forth in § 1026.61(a)(4) are met:

A. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. 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 when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) with respect to credit extended through the negative balance on the asset feature of the prepaid account as a result of imposing fees on the prepaid account because those fees are not finance charges with respect to that credit. *See* comment 4(b)(11)-1.iii.

Paragraph 61(a)(4)(ii)

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)(ii)(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)(ii)(A)(*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)(ii)(A)(*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)(ii)(A)(*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. *Card network or payment network agreements*. A draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network. However, for purposes of § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an "agreement" or a "business, marketing, or promotional agreement or other arrangement" described in § 1026.61(a)(5)(iii)(B) or (C), respectively.

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.

61(a)(5)(iii)(D) Exception For Certain Credit Card Account Arrangements

1. *When the exception applies*. If the exception in § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through the credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in § 1026.61(a)(5)(iii)(A) through (C). Accordingly, where a consumer has authorized his or her prepaid card in accordance with § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*), the linked prepaid card is not a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account is a non-covered separate credit feature as discussed in § 1026.61(a)(2)(ii). *See* comment 61(a)(2)-5. In this case, by definition, the linked credit card account will be subject to the credit card rules in this regulation in its own right because it is a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in § 1026.61(a)(5)(iii)(D)(*1*).

Paragraph 61(a)(5)(iii)(D)(1)

1. *Traditional credit card*. For purposes of § 1026.61(a)(5)(iii)(D), "traditional credit card*"* means a credit card that is not a hybrid prepaid-credit card. Thus, the condition in § 1026.61(a)(5)(iii)(D)(*1*) is not satisfied if the only credit card that a consumer can use to access the credit card account under an open-end (not home-secured) consumer credit plan is a hybrid prepaid-credit card.

Paragraph 61(a)(5)(iii)(D)(2)

1. *Written request*. Under § 1026.61(a)(5)(iii)(D)(*2*), any accountholder on either the prepaid account or the credit card account may make the written request.

Paragraph 61(a)(5)(iii)(D)(4)

1. *Account terms, conditions, or features*. Account terms, conditions, and features subject to § 1026.61(a)(5)(iii)(D)(*4*) include, but are not limited to:

i. Interest paid on funds deposited into the prepaid account, if any;

ii. Fees or charges imposed on the prepaid account (see comment 61(a)(5)(iii)(D)(*4*)-3 for additional guidance on this element with regard to load fees);

iii. The type of access device provided to the consumer;

iv. Minimum balance requirements on the prepaid account; or

v. Account features offered in connection with the prepaid account, such as online bill payment services.

2. *The same terms, conditions, and features apply to the consumer's prepaid account*. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must not vary the terms, conditions, and features on the consumer's prepaid account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(*4*) if it provides on a consumer's prepaid account rewards points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account as discussed above while not providing such rewards points or cash back on the consumer's account if the consumer has not authorized such a linkage.

3. *Example of impermissible variations in load fees*. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account as described in § 1026.61(a)(5)(iii)(D)(*2*) as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliates, or a person with which the prepaid account issuer has an arrangement as described in § 1026.61(a)(5)(iii)(A) through (C). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(*4*) if it charges on the consumer's prepaid account $0.50 to load funds in the course of a transaction from a credit card account offered by a card issuer with which the prepaid account issuer has an arrangement, but $1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have an arrangement.

Paragraph 61(a)(5)(iii)(D)(5)

1. *Specified terms and conditions*. For purposes of § 1026.61(a)(5)(iii)(D), "specified terms and conditions" on a credit card account means:

i. The terms and conditions required to be disclosed under § 1026.6(b), which include pricing terms, such as periodic rates, annual percentage rates, and fees and charges imposed on the credit card account; any security interests acquired under the credit account; claims and defenses rights under § 1026.12(c); and error resolution rights under § 1026.13;

ii. Any repayment terms and conditions, including the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit feature; and

iii. The limits on liability for unauthorized credit transactions.

2. *Same specified terms and conditions regardless of whether the credit card account is linked to the prepaid account*. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*5*), the card issuer must not vary the specified terms and conditions on the consumer's credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*). The following are examples of circumstances in which a card issuer would not meet the condition described above:

i. The card issuer structures the credit card account as a "charge card account" (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card account structure) if there is no such link. See § 1026.2(a)(15)(iii) for the definition of "charge card."

ii. The card issuer imposes a $50 annual fee on a consumer's credit card account if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), but does not impose an annual fee on the consumer's credit card account if there is no such link.

3. *Same specified terms and conditions regardless of whether credit is accessed by the prepaid card or the traditional credit card.* To satisfy the condition of § 1026.61(a)(5)(iii)(D)(*1*), the credit card account must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. As explained in comment 61(a)(5)(iii)(D)(*1*)-1, for purposes of § 1026.61(a)(5)(iii)(D), "traditional credit card" means a credit card that is not a hybrid prepaid-

credit card. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*5*), a card issuer must not vary the specified terms and conditions on the credit card account when a consumer authorizes linking the account with the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*) depending on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card.

i. The following examples are circumstances in which a card issuer would not meet the condition of § 1026.61(a)(5)(iii)(D)(*5*) described above:

A. The card issuer considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain annual percentage rates (APRs), fees, and a grace period that applies to those purchase transactions, but treats credit extensions as cash advances that are subject to different APRs, fees, grace periods, and other specified terms and conditions where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer.

B. The card issuer generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

ii. To apply the same rights under § 1026.12(c) regarding claims and defenses applicable to use of a credit card to purchase property or services, the card issuer must treat an extension of credit as a credit card transaction to purchase property or services where a prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in

the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to purchase property or services and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card. This includes situations where a consumer uses a prepaid card to make a purchase to obtain property or services from a merchant and credit is transferred from the linked credit card account in the course of authorizing, settling, or otherwise completing the prepaid transaction to make the purchase. For a transaction where a prepaid card is used to obtain property 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 linked credit card account, the amount of the purchase transaction that is funded by credit would be subject to this guidance. A card issuer is not required to provide the rights under § 1026.12(c) with respect to the amount of the transaction funded from the prepaid account.

iii. To apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat an extension of credit accessed by the prepaid card as a credit card transaction for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) to this credit extension as it applies to unauthorized transactions using the traditional credit card.

* * * * *

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 accessed 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.

* * * * *

Dated: January 9, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2018-01305 Filed: 2/12/2018 8:45 am; Publication Date: 2/13/2018]