are manufactured, printed, or otherwise produced on or after October 1, 2017 must comply with all the requirements of subpart A of Regulation E.

18(h)(2)(ii). Because the final rule does not require financial institutions to pull and replace packaging materials manufactured, printed, or otherwise produced before October 1, 2017, the Bureau believes it is appropriate to require financial institutions to provide a notice of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via such non-compliant packaging materials. Specifically, new § 1005.18(h)(2)(ii)(A) requires that, if a financial institution has changed a prepaid account's terms and conditions as a result of this final rule taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must provide to the consumer a notice of the change within 30 days of obtaining the consumer's contact information. Separately, § 1005.18(h)(2)(ii)(B) requires that the financial institution mail or deliver to the consumer initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) that have been updated as a result of this final rule taking effect, within 30 days of obtaining the consumer's contact information. The Bureau notes that financial institutions must mail or deliver initial disclosures pursuant to § 1005.18(h)(2)(ii)(B) even if § 1005.18(h)(2)(ii)(A) does not apply.

Because of changes made in the final rule relative to the proposal, the Bureau believes that it is even less likely that financial institutions will make broad changes to their prepaid programs as a result of the final rule taking effect of the kind that would trigger requirements to provide a change-in-terms notice to existing customers under § 1005.8(a) or § 1005.18(f)(2). Those rules require that existing customers be provided with an advance notice in writing only for changes that would result for the consumer in increased fees, increased liability, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of transfers. For instance, because the final rule requires that Regulation E limited liability and error resolution requirements apply to all accounts, even if they are not registered or verified, the Bureau no longer anticipates that financial institutions would be making changes to their account agreements that would increase liability for consumers. However, based on comments the Bureau received from industry, the Bureau is aware that some financial institutions anticipate discontinuing an available EFT service as it is currently offered as a result of the final rule taking effect, in that the new requirements imposed on overdraft credit features offered in conjunction with prepaid accounts would require certain program restructuring in ways that may affect availability in certain circumstances or for certain consumers.

In light of these circumstances, the Bureau believes it is appropriate to impose a requirement (in § 1005.18(h)(2)(ii)(A)) on financial institutions that is parallel to the spirit of Regulation E change-in-terms requirements to notify consumers who acquire a prepaid account after the effective date of the final rule via non-compliant packaging if such changes to the prepaid account's terms and conditions are being made as a result of the rule taking effect. Accordingly, § 1005.18(h)(2)(ii) requires such notice to be provided, via the method specified in § 1005.18(h)(2)(iv), within 30 days of obtaining the consumer's contact information.

While the Bureau believes that changes to existing programs' terms and conditions as a result of this final rule taking effect that would trigger change-in-terms requirements under Regulation E for existing customers will be rare, the Bureau expects that financial institutions will make other types of changes to their initial disclosures pursuant to §§ 1005.7 and 1005.18(f)(1) in response to this final rule. Accordingly, in light of the decision not to require that outdated packaging be pulled and replaced, the Bureau believes it is appropriate to require (in § 1005.18(h)(2)(ii)(B)) that consumers who acquire a prepaid account with packaging that was printed prior to the effective date receive updated initial disclosures that accurately describe the account's terms, conditions, and related information as required under the final rule.

The Bureau is adopting § 1005.18(h)(2)(ii) pursuant to its authority under EFTA sections 904(a) and (c) and 905(a), and section 1032 of the Dodd-Frank Act. The Bureau believes that the notices required pursuant to new § 1005.18(h)(2)(ii) will, consistent with section 1032(a) of the Dodd-Frank Act, ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account. In addition, consistent with EFTA sections 904 and 905(a), the Bureau believes the updated initial disclosures will help consumers understand the new terms of their prepaid accounts, as authorized under EFTA section 904(a) and (c) to effectuate the purposes of EFTA.[528]

Because financial institutions generally mail to consumers a personalized prepaid card embossed with the consumer's name, and other informational materials, after the account is registered, the Bureau believes that requiring financial institutions to include a notice of the applicable changes to the prepaid account's terms and conditions and the updated initial disclosures in that mailing will impose very little burden on industry. Further, as discussed under new § 1005.18(h)(2)(iv) below, a financial institution is permitted to deliver the notice and disclosures electronically, without regard to E-Sign consent, if it is not otherwise already mailing or delivering to the consumer written account-related communications within the time periods specified in new § 1005.18(h)(2)(ii). The Bureau believes that the combined effect of new § 1005.18(h)(2)(i) and (ii) will help reduce compliance burden on industry relative to the proposal, while still providing appropriate transparency to consumers.

18(h)(2)(iii). The Bureau is adopting new § 1005.18(h)(2)(iii) to specify and balance burden concerns with respect to providing notices of changes to prepaid accounts' terms and conditions to consumers who acquired prepaid accounts before October 1, 2017. As with § 1005.18(h)(2)(ii) discussed above, the Bureau recognizes that some financial institutions may make changes to prepaid account terms and conditions as a result of this final rule taking effect that would otherwise require a change-in-terms notice under Regulation E, in that the new requirements imposed on overdraft credit features offered in conjunction with prepaid accounts would require certain program restructuring in ways that may affect availability in certain circumstances or to certain consumers. The Bureau believes that financial institutions that offer such features typically require consumers to consent to delivery of electronic disclosures pursuant to the E-Sign Act before any credit is extended, but there may be other consumers with prepaid accounts in the same prepaid account program who have never sought

[528] The Bureau notes that this approach is similar to EFTA section 905(c), which provided that for any account of a consumer made accessible prior to EFTA's effective date, the initial disclosures required by EFTA section 905(a) were required to have been disclosed not later than the earlier of (1) the first periodic statement required by EFTA section 906(c) after EFTA's effective date or (2) 30 days after EFTA's effective date.

to activate that feature on their prepaid accounts and who have not specifically consented to electronic delivery.

In light of these unusual circumstances and other considerations with regard to general implementation of the final rule, the Bureau believes that financial institutions may choose to effectuate such changes in terms as of October 1, 2017, or may want to do so earlier depending on operational convenience. New § 1005.18(h)(2)(iii), which applies to prepaid accounts acquired by consumers before October 1, 2017, is designed to address both scenarios. Specifically, it provides that if a financial institution has changed a prepaid accounts' terms and conditions as a result of this final rule taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must provide to the consumer a notice of the change at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to notify the consumer of the change in accordance with the timing requirements set forth in § 1005.18(h)(2)(ii)(A). The financial institution is not required to send a change-in-terms notice for such change pursuant to § 1005.8(a) or § 1005.18(f)(2). As discussed under new § 1005.18(h)(2)(iv) below, a financial institution may provide the notice pursuant to § 1005.18(h)(2)(iii) in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act in certain circumstances.

The Bureau believes this special notice requirement provides appropriate flexibility to financial institutions in informing consumers with regard to changes to their accounts as a result of the final rule taking effect. The Bureau emphasizes, however, that all changes to a prepaid account's terms and conditions as a result of this final rule taking effect must nevertheless become effective by October 1, 2017. That is, if a financial institution were to provide to a consumer a notice of a change that is subject to § 1005.18(h)(2)(iii) on September 20, the change must nonetheless become effective by October 1; a financial institution is not permitted to delay the effective date of such a change until October 11 (*i.e.,* 21 days after the financial institution notified the consumer).

The Bureau is adopting § 1005.18(h)(2)(iii) pursuant to its authority under EFTA sections 904(a) and (c), and section 1032 of the Dodd-Frank Act. EFTA section 905(b) requires financial institutions to notify consumers in writing at least 21 days prior to the effective date of any change in any term or condition of the consumer's account if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. Because of the unique circumstances involved in effectuating the final rule particularly with regard to consumers who have never sought to activate a credit or overdraft feature in conjunction with a prepaid account and consumers who may be acquiring prepaid accounts close to the date that certain services are discontinued or restricted, the Bureau is exempting financial institutions in this limited circumstance from complying with the change-in-terms notice requirements in § 1005.8(a) and § 1005.18(f)(2). Instead, financial institutions must notify consumers of the change, using the method specified in § 1005.18(h)(2)(iv), 21 days in advance of the change taking effect or, in some circumstances, within 30 days of obtaining the consumer's contact information. Pursuant to EFTA section 904(c), the Bureau believes that exemption from the change-in-terms notice requirement is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers and to facilitate compliance, by assisting consumers' understanding of the new terms and conditions of their prepaid accounts that are purchased in outdated packaging. In addition, the Bureau believes that the notice to consumers regarding changes to terms and conditions pursuant to § 1005.18(h)(2)(iii) will, consistent with section 1032(a) of the Dodd-Frank Act, ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account.

Although the Bureau did not propose, nor is it finalizing, a requirement that financial institutions to provide updated initial disclosures to all consumers who opened prepaid accounts prior to the effective date of this final rule, the Bureau notes that it believes it would nonetheless be beneficial for financial institutions to provide updated initial disclosures to existing customers so that they will understand their rights under the new regime and to avoid potential consumer confusion. Accordingly, as discussed in connection with § 1005.18(h)(2)(iv) below, the Bureau has provided a special rule to facilitate delivery of such communications.

18(h)(2)(iv). The Bureau is adopting new § 1005.18(h)(2)(iv) to facilitate delivery of notices of certain changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Specifically, it provides that for these accounts, if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the E-Sign Act, or is not otherwise already mailing or delivering to the consumer written account-related communications within the respective time periods specified in § 1005.18(h)(2)(ii) or (iii), the financial institution may provide to the consumer a notice of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii) or required or voluntary updated initial disclosures as a result of this final rule taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

As discussed above, the Bureau has decided, in response to comments, that financial institutions should not be required to pull and replace prepaid account packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. In addition, the Bureau believes specific provisions are necessary to address how financial institutions should provide notices of certain changes to prepaid account terms and conditions and updated initial disclosures for prepaid accounts that are acquired via outdated packaging. As discussed above, the Bureau believes that most financial institutions will be able to send the notices and disclosures pursuant to § 1005.18(h)(2)(ii) and (iii) at the same time it sends an embossed card following account registration, and therefore there should be little additional burden. For existing customers from whom the financial institution has not already obtained consent to receive disclosures electronically pursuant to the E-Sign Act, or for customers to whom the financial institution is not otherwise mailing or delivering written account-related communications during the relevant time period, the Bureau believes that permitting electronic delivery of notices of changes in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii) or required or

voluntary updated initial disclosures as a result of this final rule taking effect will minimize compliance burden while still facilitating consumers' understanding of the new terms and conditions of their prepaid accounts in a timely way. Accordingly, new § 1005.18(h)(2)(iv) addresses delivery of voluntary disclosures as well as disclosures that are specifically required under final rule § 1005.18(h)(2)(ii) and (iii) in order to incentivize and facilitate such communications.

The Bureau is adopting new comments 18(h)–3, –4, and –5 to provide further guidance regarding the provision of consumers with notices pursuant to final § 1005.18(h)(2). Specifically, new comment 18(h)–3 explains that a financial institution that is required to notify consumers of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii), or that otherwise provides updated initial disclosures as a result of this final rule taking effect, may provide the notice or disclosures either as a separate document or included in another notice or mailing that the consumer receives regarding the prepaid account to the extent permitted by other laws and regulations. New comment 18(h)–4 explains that a financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(h)(2)(ii) or (iii). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

The Bureau is adopting new comment 18(h)–5 to explain the requirements for closed and inactive accounts. Specifically, new comment 18(h)–5 explains that the requirements of § 1005.18(h)(2)(iii) do not apply to prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive account becomes active, the financial institution must comply with the applicable portions of those provisions within 30 days of the account becoming active again in order to avail itself of the timing requirements and accommodations set forth in § 1005.18(h)(2)(iii) and (iv).

18(h)(3). As discussed above, the Bureau is adopting new § 1005.18(h)(3) and new comment 18(h)–6 to provide an accommodation for financial institutions that do not have sufficient data in a readily accessible form in order to fully comply with the requirements for providing electronic and written account transaction history pursuant to final § 1005.18(c)(1)(ii) and (iii) and the summary totals of fees pursuant to final § 1005.18(c)(5) by October 1, 2017. New § 1005.18(h)(3)(i) provides that if, on October 1, 2017, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to final § 1005.18(c)(1)(ii) or to provide 24 months of written account transaction history upon request pursuant to final § 1005.18(c)(1)(iii), the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in § 1005.18(c)(1)(ii) and (iii).

New comment 18(h)–6.i provides the following example to illustrate the provisions of final § 1005.18(h)(3)(i): a financial institution that had been retaining only 60 days of account history before October 1, 2017 would provide 60 days of written account transaction history upon a consumer's request on October 1, 2017. If, on November 1, 2017, the consumer made another request for written account transaction history, the financial institution would be required to provide three months of account history. The financial institution must continue provide as much account history as it has accumulated at the time of a consumer's request until it has accumulated 24 months of account history. Thus, all financial institutions must fully comply with the electronic account transaction history requirement set forth in § 1005.18(c)(1)(ii) no later October 1, 2018 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later October 1, 2019.

Similarly, new § 1005.18(h)(3)(ii) provides that if, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to § 1005.18(c)(5), the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). New comment 18(h)–6.ii explains that if, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on November 1, 2017 for the month of October, and the year-to-date fee total beginning on October 1, 2017, provided the financial institution discloses that it is displaying the year-to-date total beginning on October 1, 2017 rather than for the entire calendar year 2017. On January 1, 2018, financial institutions must begin displaying year-to-date fee totals for calendar year 2018.

19(f). The effective dates for the prepaid account agreement submission and posting requirements in final § 1005.19 are discussed in more detail in the section-by-section analysis of § 1005.19(f) below. Final § 1005.19(f)(1) provides that the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017, except as provided in final § 1005.19(f)(2), which sets forth a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b).

Section 1005.19 Internet Posting of Prepaid Account Agreements

In 2009, section 204 of the Credit CARD Act added new TILA section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditor's Web sites and to submit those agreements to the Board for posting on a publicly-available Web site established and maintained by the Board.[529] The Board implemented these provisions in what is now Regulation Z § 1026.58.[530] The Bureau's receipt of credit card agreements pursuant to Regulation Z § 1026.58 has aided the Bureau in its market monitoring functions, and the Bureau's posting of those credit card agreements on its Web site may, among other things, enable consumers to more effectively compare credit cards.

The Bureau proposed and is finalizing § 1005.19 for substantially the same reasons with respect to prepaid accounts. Specifically, the Bureau proposed § 1005.19 to require prepaid account issuers to submit agreements for prepaid accounts to the Bureau for posting on a publicly-available Web site established and maintained by the

[529] 15 U.S.C. 1632(d).

[530] In 2015, the Bureau suspended temporarily the requirement that credit card issuers submit agreements to the Bureau. *See* Regulation Z § 1026.58(g); 80 FR 21153 (Apr. 17, 2015). The temporary suspension expired one year later. *See* 81 FR 19467 (Apr. 5, 2016).

Bureau. The Bureau also proposed to require issuers to make prepaid account agreements available to the public on the issuers' own Web sites or, in certain limited circumstances, provide agreements directly to consumers holding prepaid accounts via a restricted Web site or in writing upon request. The Bureau expects to use the prepaid account agreements it receives from issuers pursuant to § 1005.19 to assist in its market monitoring efforts pursuant to its authority under Dodd-Frank Act section 1022(c)(1) and (4). In addition, the Bureau believes that posting prepaid account agreements on the Bureau's Web site in the future will allow consumers to more easily compare terms of prepaid accounts currently in the marketplace as well as facilitate third parties' analysis of prepaid accounts and the development of online shopping tools. Consumers will also benefit from having access to their prepaid account agreements available through the issuers' Web sites (or available upon request in limited instances).

The specific requirements in proposed § 1005.19 largely mirrored existing provisions in Regulation Z § 1026.58. The final rule mirrors Regulation Z § 1026.58 in many respects as well, although the final rule deviates from the proposal and Regulation Z § 1026.58 in some instances, as discussed below. The Bureau expects these rules to generally function in the same manner, albeit with certain modifications made in proposed § 1005.19 to address differences between the credit card and prepaid account markets. However, the requirements of Regulation Z § 1026.58 and those of § 1005.19 are distinct and independent of one another. In other words, issuers must comply with both as appropriate. The Bureau notes, however, that it does not believe it is likely that any agreement will constitute both a credit card agreement and a prepaid account agreement and thus be required to be submitted under both § 1005.19 and Regulation Z § 1026.58. Given the requirement in new Regulation Z § 1026.61(b) that credit features accessible by hybrid prepaid-credit cards generally must be structured as separate sub-accounts or accounts distinct from the prepaid asset account, in conjunction with the account-opening disclosure requirements in existing Regulation Z § 1026.6 and the initial disclosure requirements in existing § 1005.7(b) as well as final § 1005.18(f)(1), the Bureau believes it is unlikely that an issuer would use a single agreement to provide all such disclosures for both a prepaid account and for a covered separate credit feature.

The Bureau proposed and is finalizing § 1005.19 pursuant to its disclosure authority in EFTA section 905(a), its adjustment authority in EFTA section 904(c), and its authority in section 1032(a) of the Dodd-Frank Act. The Bureau believes collection and disclosure of the agreements allows for clear and accessible disclosure of the terms and conditions of prepaid accounts, and is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, because the final rule will assist consumers' understanding of and shopping for prepaid accounts based on the terms and conditions of those accounts. In addition, collection and disclosure of the agreements will, consistent with section 1032(a) of the Dodd-Frank Act, permit the Bureau to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. The Bureau also proposed and is finalizing § 1005.19 pursuant to its authority in section 1022(c)(4) of the Dodd-Frank Act. Section 1022(c)(1) of the Dodd-Frank Act directs the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. In support of this function, the Bureau has authority under section 1022(c)(4) to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. Thus, pursuant to the Bureau's authority under section 1022(c), the Bureau is finalizing a requirement that prepaid account issuers submit prepaid account agreements to the Bureau on a rolling basis, subject to certain exceptions, in order to aid the Bureau's monitoring for risks to consumers in the offering or provision of consumer financial products or services under section 1022(c)(1) and (4) of the Dodd-Frank Act.

In the future, the Bureau intends to publish on its Web site a database of the prepaid account agreements collected, similar to the database currently available for credit card agreements. Under section 1022(c)(3) of the Dodd-Frank Act, the Bureau "shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year," and "may make public such information obtained by the Bureau under this section as is in the public interest." The Bureau is not finalizing proposed § 1005.19(b)(7) regarding posting of agreements on the Bureau's Web site, however, given that the requirement speaks to the Bureau's actions and not to regulated entities, and thus there is no need to finalize the provision through regulatory text.

For the reasons discussed below, the Bureau is generally finalizing § 1005.19 as proposed with certain modifications as summarized here and discussed in detail below. Specifically, the Bureau is finalizing § 1005.19(a) largely as proposed, but is adopting new § 1005.19(a)(6) to define the term "offers to the general public" to accommodate a revision in final § 1005.19(c) to require only agreements that are offered to the general public to be posted to the issuer's publicly available Web site. The Bureau is also finalizing § 1005.19(b) with several modifications to revise the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. Furthermore, the Bureau is adopting new § 1005.19(b)(1)(v) to add to the list of criteria set forth in § 1005.19(b)(1)(i) through (iv) that issuers must also include in their submission any other identifying information about each agreement, as required by the Bureau, which may include the effective date, the name of the program manager, and the name of other relevant parties, if applicable, such as the employer for a payroll card program. In addition, as discussed above, the Bureau has removed proposed § 1005.19(b)(7) regarding posting of agreements on the Bureau's Web site, though the Bureau still intends to publish the agreements it receives in the future. The Bureau is finalizing the general requirement in § 1005.19(c) that issuers post and maintain prepaid account agreements on their publicly available Web sites, except if those agreements are not available to the general public or if they qualify for one of the proposed exceptions. The Bureau is also finalizing the general requirement in § 1005.19(d) to provide consumers with access to their individual prepaid account agreements. Furthermore, the Bureau is finalizing § 1005.19(e) as proposed to waive the requirement that issuers obtain E-Sign consent from consumers in order to provide prepaid account agreements in electronic form pursuant

to § 1005.19(c) and (d). Finally, the Bureau is adopting new § 1005.19(f) to state that the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017, except for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b), which has a delayed effective date of October 1, 2018.

19(a) Definitions

The Bureau proposed in § 1005.19(a) certain definitions specific to proposed § 1005.19. The Bureau is largely finalizing § 1005.19(a) as proposed, with several modifications as discussed below.

19(a)(1) Agreement

The Bureau proposed § 1005.19(a)(1) to define ''agreement'' or ''prepaid account agreement'' for purposes of proposed § 1005.19 as the written document or documents evidencing the terms of the legal obligation, or prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement or prepaid account agreement would have also included fee information, as defined in proposed § 1005.19(a)(3), discussed below. Proposed § 1005.19(a)(1) would have mirrored the definition of ''agreement'' or ''credit card agreement'' in Regulation Z § 1026.58(b)(1).

Proposed comment 19(a)(1)–1 would have explained that an agreement may consist of several documents that, taken together, define the legal obligation between the issuer and the consumer. The Bureau did not include the second part of Regulation Z comment 58(b)(1)–2, which gives the example of provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract. The Bureau did not believe that prepaid account agreements contain arbitration clauses or provisions allowing the issuer to unilaterally alter contract terms in documents that are separate from the main agreement, and therefore does not believe such examples are necessary to include in proposed comment 19(a)(1)–1. The Bureau also did not include a comment similar to Regulation Z comment 58(b)(1)–1, which addresses inclusion of certain pricing information in a credit card agreement, as the Bureau did not believe such a comment was relevant to prepaid accounts.

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(1) and comment 19(a)(1)–1 as proposed.

19(a)(2) Amends

The Bureau proposed § 1005.19(a)(2) to provide that for purposes of proposed § 1005.19, an issuer ''amends'' an agreement if it makes a substantive change (an ''amendment'') to the agreement. A change would have been considered substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in proposed § 1005.19(a)(3) would have been deemed to be substantive. Proposed § 1005.19(a)(2) mirrors the definition of the term amends in Regulation Z § 1026.58(b)(2).

With respect to Regulation Z § 1026.58, the Board had determined that requiring resubmission of credit card agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency.[531] The Bureau believed the same would be true for prepaid account issuers and therefore proposed a similar definition here.

Proposed comment 19(a)(2)–1 would have given examples of changes, other than changes to fee information, that generally would be considered substantive, including: (i) addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

Proposed comment 19(a)(2)–2 would have given examples of changes that generally would not be considered substantive, such as: (i) Correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the prepaid account to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

The Bureau received comments from two consumer groups regarding whether certain changes, such as to an issuer's corporate name or to the name of the prepaid account program to which the agreement applies, should be considered substantive for the purposes of § 1005.19. These commenters argued that such changes should be deemed substantive, explaining that they could impact a consumer's or researcher's ability to find an agreement if it was searched for using a different name.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(2) as proposed. The Bureau is also finalizing comment 19(a)(2)–1 with several revisions. The Bureau has modified comment 19(a)(2)–1 to include the following as examples of changes that would generally be considered substantive: changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number; and changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program; and changes to the name of the prepaid account program to which the agreement applies. In addition, the Bureau is finalizing comment 19(a)(2)–2 with corresponding revisions to remove changes to the name of the prepaid account program to which the agreement applies as an example of a change that generally would not be considered substantive. The Bureau agrees with commenters that if changes to the corporate name of the issuer or program manager and changes to the name of the prepaid account program to which the agreement applies are not reflected in agreements posted to the issuer's Web site or to the Bureau's Web site in the future, a consumer might not be able to locate an agreement for an existing prepaid account or effectively compare agreements when shopping for a new prepaid account. Other parties, such as researchers, would likely also find it difficult to locate particular agreements.

19(a)(3) Fee Information

The Bureau proposed § 1005.19(a)(3) to define ''fee information'' for purposes

[531] 75 FR 7658, 7760 (Feb. 22, 2010).

of proposed § 1005.19 as the information listed in the long form fee disclosure in proposed § 1005.18(b)(2)(ii).

Proposed § 1005.19(a)(3) was similar to the definition of pricing information in Regulation Z § 1026.58(b)(7), but omitted the exclusion for temporary or promotional rates and terms or rates and terms that apply only to protected balances, as the Bureau did not believe there is currently an equivalent to such rates and terms for prepaid accounts.

The Bureau received comments from several consumer groups regarding whether issuers should be required to include the short form disclosure (required by proposed § 1005.18(b)(2)(i)) in the definition of fee information and thus be required to submit it to the Bureau and post it on the issuer's Web site. Two consumer groups requested that issuers be required to submit short form disclosures to the Bureau for posting on the Bureau's Web site. Another consumer group stated that the short form disclosure should be required to be placed on either the issuer's homepage or the landing page for the product.

The Bureau is finalizing § 1005.19(a)(3) with several modifications. The Bureau is retaining the general definition of fee information from the proposal, but is modifying it to also include the short form disclosure. The Bureau has also made changes to the internal paragraph citations to reflect other numbering changes made in this final rule. Specifically, final § 1005.19(a)(3) provides that the term fee information means the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to final § 1005.18(b)(4).

The Bureau continues to believe that to enable consumers to shop for prepaid accounts and to compare information about various prepaid accounts in an effective manner, it is necessary that the agreements posted to the issuer's Web site and on the Bureau's Web site in the future include fees and other pricing information. The Bureau expects that most issuers will include the long form disclosure itself as required by final § 1005.18(b)(4) (or the long form information pursuant to final § 1005.18(f)(1)) directly in their prepaid account agreements. Others may perhaps maintain the long form disclosure as an addendum or other supplement to their prepaid account agreements.

Upon further consideration, the Bureau believes it is necessary that issuers also submit the short form disclosure to the Bureau and post it to their Web sites, as suggested by some commenters. The Bureau believes submitting the short form disclosure, in addition to the information on the long form disclosure, will be useful to both the Bureau in its market monitoring efforts and to consumers and other parties in the future when prepaid account agreements are posted to the Bureau's Web site. The Bureau believes the short form disclosure, particularly the disclosures related to additional fee types pursuant to final § 1005.18(b)(2)(viii) and (ix), will provide the Bureau with insight into industry practices in implementing this final rule's disclosure requirements across a range of prepaid account types. In addition, the Bureau does not believe the requirement to submit this one additional document will be particularly burdensome or complicated for issuers, especially because the Bureau believes that issuers will generally maintain their short form disclosures in a readily accessible, electronic format.

19(a)(4) Issuer

The Bureau's Proposal

The Bureau proposed § 1005.19(a)(4) to define ''issuer'' or ''prepaid account issuer'' for purposes of proposed § 1005.19 as the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement. Proposed § 1005.19(a)(4) would have mirrored the definition of card issuer in Regulation Z § 1026.58(b)(4).

In some cases, more than one financial institution is involved in the administration of a prepaid program. For example, a smaller bank may partner with a larger bank to market prepaid accounts to the smaller bank's customers, or a bank may partner with a program manager to offer prepaid accounts. The Bureau understands that the terms of the arrangements can vary, for example with respect to which party uses its name and brand in marketing materials, sets fees and terms, conducts customer identification and verification, provides access to account information, holds the pooled account, and absorbs the risk of default or fraud.

The Board believed that with respect to the definition of card issuer in what is now Regulation Z § 1026.58(b)(4), without a bright-line rule defining which institution is the issuer, institutions might find it difficult to determine their obligations under § 1026.58.[532] Similarly, absent clarification from the Bureau, the Bureau was concerned that it may be difficult to determine which entity would be responsible for compliance with proposed § 1005.19 for a particular prepaid account. For example, if two financial institutions are involved in issuing a prepaid program, one may have fewer than 3,000 open accounts while the other has more than 3,000 open accounts. It may be difficult to determine whether, for example, the de minimis exception in proposed § 1005.19(b)(4) applies in such cases. In addition, it may be unclear which institution is obligated to post and maintain the agreements on its Web site pursuant to proposed § 1005.19(c) or (d)(1)(i) or respond to telephone requests for copies of agreements pursuant to proposed § 1005.19(d)(1)(ii), discussed below. The Bureau therefore believed it would be beneficial to clarify which institution would be the prepaid account issuer for purposes of proposed § 1005.19. The Bureau thus proposed to define the term issuer in proposed § 1005.19(a)(4) as described above.

Proposed comment 19(a)(4)–1, which mirrors Regulation Z comment 58(b)(4)–1, would have provided an example of how the definition of issuer would have applied when more than one bank is involved in a prepaid program.

Proposed comment 19(a)(4)–2, which mirrors Regulation Z comment 58(b)(4)–2, would have explained that while an issuer has a legal obligation to comply with the requirements of proposed § 1005.19, it generally may use a third-party service provider to satisfy its obligations under proposed § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding the use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of proposed § 1005.19 on the issuer's behalf. Proposed comment 19(a)(4)–2 would have provided an example describing such an arrangement between a bank and a program manager.

Proposed comment 19(a)(4)–3, which mirrors Regulation Z comment 58(b)(4)–3.i, would have noted that, as explained in proposed comment 19(c)–2, if an issuer provides consumers with access to specific information about their individual accounts, such as providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii), through a third-party Web site, the issuer would have been

[532] *See* 76 FR 22948, 22987 (Apr. 25, 2011).

deemed to maintain that Web site for purposes of proposed § 1005.19. Such a Web site would have been deemed to be maintained by the issuer for purposes of proposed § 1005.19 even where, for example, an unaffiliated entity designs the 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 would have been considered an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of proposed § 1005.19. Proposed comment 19(a)(4)–3 would have provided an example describing such an arrangement between a bank and a program manager.

The Bureau did not propose a comment similar to that of Regulation Z comment 58(b)(4)–3.ii which addresses Web site posting of private label credit card plans, as the Bureau did not believe such a comment was relevant for prepaid accounts, as discussed below.

Comments Received

In the proposal, the Bureau acknowledged that an institution that partners with multiple other entities to issue prepaid accounts, such as in the payroll card account context, will in many cases use the same agreement for all of the prepaid accounts issued in connection with those arrangements. Therefore, while the number of prepaid accounts issued with a given partner may be small, the total number of consumers subject to the corresponding agreement may be quite large. The Bureau solicited comment on whether submission of a separate agreement for each issuer is the best approach in this situation or whether such agreements should be submitted in some other manner. The Bureau received comments from one consumer group regarding this issue, stating that a single agreement could be submitted as long as the agreement is labeled and searchable in such a way that the names of the multiple entities are listed on it. This commenter explained that this approach would enable the public to see that the agreement is the same for several entities, without having to spend time reviewing each agreement. The Bureau did not receive any other comments on this portion of the proposal.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(4) and its related commentary substantially as proposed, with several revisions for clarity. The Bureau has also changed the name of final comment 19(a)(4)–3 from *Partner Institution Web sites* as proposed to *Third-Party Web sites* because the content of the comment is primarily related to third-party Web sites; a partner institution Web site is merely an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of final § 1005.19.

The Bureau continues to believe that the definition of issuer creates a bright-line rule that will enable institutions involved in issuing prepaid accounts to determine their obligations under final § 1005.19. The Bureau also believes that the definition is consistent with the actual legal relationship into which a consumer enters under a prepaid account agreement. In addition, the Bureau believes that the institution to which the consumer is legally obligated under the agreement may be in the best position to provide accurate, up-to-date agreements to both the Bureau and consumers.

Regarding situations in which an institution partners with multiple other entities to issue prepaid accounts, the Bureau is adopting new comment 19(b)(1)–2, to explain that if a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. This comment also explains that each issuer may use the program manager to submit the agreement on its behalf, in accordance with final comment 19(a)(4)–2. Because the number and the role of the entities involved in a particular prepaid account agreement may vary, the Bureau believes it is clearer to require issuers, not program managers (or other parties), to submit these agreements to the Bureau. In addition, the Bureau believes that submitting a separate agreement for each issuer, rather than submitting one agreement with multiple issuers listed, as suggested by one commenter, will be less confusing to consumers and other parties reviewing agreements on the Bureau's Web site in the future.

19(a)(5) Offers

The Bureau proposed § 1005.19(a)(5) to provide that for purposes of proposed § 1005.19, an issuer "offers," or "offers to the public," a prepaid account agreement if the issuer solicits applications for or otherwise makes available prepaid accounts that would be subject to that agreement.

Proposed comment 19(a)(5)–1 would have explained that an issuer is deemed to offer a prepaid account agreement to the public even if the issuer solicits applications for or otherwise makes available prepaid accounts only to a limited group of persons. For example, agreements for affinity cards marketed to students and alumni of a particular institution of higher education, or agreements offered only to residents of a specific geographic location for a particular prepaid account, would have been considered to be offered to the public. Similarly, agreements for prepaid accounts issued by a credit union would have been considered to be offered to the public even though such prepaid accounts are available only to credit union members. Agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs would have also been considered to be offered to the public.

Proposed § 1005.19(a)(5) was similar to the definition of the term "offers" in Regulation Z § 1026.58(b)(5). Regulation Z § 1026.58(b)(5) provides that an issuer "offers" or "offers to the public" an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement. The Bureau did not believe that prepaid account issuers solicit or accept applications for prepaid accounts in the same manner as credit card issuers do for credit card accounts, and thus modified this language for purposes of proposed § 1005.19(a)(5). Proposed comment 19(a)(5)–1 was similar to Regulation Z comment 58(b)(5)–1 but would have included several additional examples of prepaid accounts offered to the public. The Bureau did not propose an equivalent comment to Regulation Z comment 58(b)(5)–2, which provides that a card issuer is deemed to offer a credit card agreement to the public even if the terms of that agreement are changed immediately upon opening to terms not offered to the public, as the Bureau did not believe that prepaid account terms are modified in this manner.

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(5) with modifications to accommodate the revision in final § 1005.19(c), discussed below, to require only agreements that are offered to the general public to be posted to the issuer's publicly available Web site. Specifically, the Bureau has removed the phrase "offers to the public" from § 1005.19(a)(5) and, as discussed below, is adopting new § 1005.19(a)(6) to define

the term ''offers to the general public.'' Final § 1005.19(a)(5) provides that an agreement is ''offered'' if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public. Furthermore, because proposed comment 19(a)(5)–1 described agreements that are offered to the public, which is now discussed in new § 1005.19(a)(6), the Bureau has renumbered this comment as comment 19(a)(6)–1 and has made revisions for consistency with new § 1005.19(a)(6) discussed below.

19(a)(6) Offers to the General Public

As noted above, the Bureau is adopting new § 1005.19(a)(6) to define the term ''offers to the general public.'' Specifically, new § 1005.19(a)(6) provides that for purposes of final § 1005.19, an issuer ''offers to the general public'' a prepaid account agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.

The Bureau is finalizing proposed comment 19(a)(5)–1, renumbered as comment 19(a)(6)–1, with modifications for consistency with new § 1005.19(a)(6). Specifically, final comment 19(a)(6)–1 explains that an issuer is deemed to offer a prepaid account agreement to the general public even if the issuer markets, solicits applications for, or otherwise makes available prepaid accounts only to a limited group of persons. This comment explains that if, for example, an issuer solicits only residents of a specific geographic location for a particular prepaid account, the agreement would be considered to be offered to the general public. In addition, this comment explains that agreements for prepaid accounts issued by a credit union are considered to be offered to the general public even though such prepaid accounts are available only to credit union members.

The Bureau is also adopting new comment 19(a)(6)–2 to explain prepaid account agreements not offered to the general public. Specifically, this comment explains that a prepaid account agreement is not offered to the general public when a consumer is offered the agreement only by virtue of the consumer's relationship with a third party. This comment provides that agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs are examples of agreements that are not offered to the general public.

19(a)(7) Open Account

The Bureau proposed § 1005.19(a)(6) to provide that for purposes of proposed § 1005.19, a prepaid account is an ''open account,'' or ''open prepaid account,'' if (i) there is an outstanding balance in the prepaid account; (ii) if the consumer can load funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit through a credit plan that would be a credit card account under Regulation Z (12 CFR part 1026) that is offered in connection with a prepaid account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) would have been considered an open account or open prepaid account.

Proposed comment 19(a)(6)–1 would have explained that a prepaid account that meets any of the criteria set forth in proposed § 1005.19(a)(6) is considered open even if the issuer considers the account inactive. The term open account was used in the provisions regarding the de minimis and product testing exceptions in proposed § 1005.19(b)(4) and (5) and the requirements in proposed § 1005.19(d) for agreements not submitted to the Bureau, discussed below.

Proposed § 1005.19(a)(6) was similar to the definition of open account or open credit card account in Regulation Z § 1026.58(b)(6). While Regulation Z § 1026.58(b)(6) defines an open credit card account as one in which the cardholder can obtain extensions of credit on the account, or there is an outstanding balance on the account that has not been charged off, the Bureau modified the definition to better reflect what it believed constitutes an open account in the prepaid context. Proposed § 1005.19(a)(6) would have included the explanation used in Regulation Z § 1026.58(b)(6), which provides that an account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is nonetheless considered an open account. Proposed comment 19(a)(6)–1 was similar to Regulation Z comment 58(b)(6)–1, with modifications to reflect the terms of proposed § 1005.19(a)(6).

The Bureau received no comments regarding this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(a)(6), renumbered as § 1005.19(a)(7), largely as proposed, with revisions to reflect the changes in final Regulation Z § 1026.61 regarding hybrid prepaid-credit cards. Specifically, final § 1005.19(a)(6) provides, in part, that for the purposes of § 1005.19, a prepaid account is an ''open account'' or ''open prepaid account'' if the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z § 1026.61, in connection with the account. The Bureau is also finalizing comment 19(a)(6)–1, renumbered as comment 19(a)(7)–1, as proposed, with minor revisions for clarity.

19(a)(8) Prepaid Account

The Bureau proposed § 1005.19(a)(7) to provide that for purposes of proposed § 1005.19, ''prepaid account'' means a prepaid account as defined in proposed § 1005.2(b)(3). Proposed comment 19(a)(7)–1 would have explained that for purposes of proposed § 1005.19, a prepaid account includes, among other things, a payroll card account as defined in proposed § 1005.2(b)(3)(iii) and a government benefit account as defined proposed §§ 1005.2(b)(3)(iv) and 1005.15(a)(2).

The Bureau received comments from several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, in response to the Bureau's request for comment regarding whether there were any types of prepaid accounts as defined in proposed § 1005.2(b)(3) that should be excluded from the definition of prepaid account for purposes of § 1005.19, or that should be excluded from certain requirements in § 1005.19. These commenters urged the Bureau to exclude prepaid account agreements that are not offered to the public (such as for payroll card, government benefit, and campus card accounts) from the requirement in proposed § 1005.19(b) to submit agreements to the Bureau for posting on the Bureau's publicly available Web site and the requirement in proposed § 1005.19(c) to post agreements on the issuer's publicly available Web site. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the Bureau's and issuer's Web sites, overwhelm consumers, and cause confusion because consumers might not understand which agreement

applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. The commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General urged the Bureau not to exclude any prepaid account agreements from the requirement to submit agreements to the Bureau for posting on the Bureau's publicly available Web site and the requirement to post agreements on the issuer's publicly available Web site. These commenters argued that publicly posting these agreements would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they stated would result in more informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by market participants. This commenter explained that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once a card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(a)(7), renumbered as § 1005.19(a)(8), as proposed. The Bureau is also finalizing comment 19(a)(7)–1, renumbered as comment 19(a)(8)–1, with minor revisions for clarity and an updated internal paragraph citation to reflect numbering changes made in this final rule.

The Bureau believes that the submission of all prepaid account agreements, including payroll card, government benefit, campus card, and other account agreements that are not available to the general public, is essential for the Bureau's market monitoring efforts. Furthermore, the Bureau's posting of these agreements to its Web site in the future will increase transparency in the terms of these agreements and the types and amounts of the fees imposed in these programs. The increased transparency will allow the public, including consumers, to become better informed about these accounts, which will likely encourage competition and improve fees in the various markets. In addition, the public posting to the Bureau's Web site in the future will allow entities such as employers, government agencies, and universities considering making prepaid account programs available to their constituencies to review similar agreements with other institutions and compare the various terms before entering into their own agreements. The Bureau also agrees that consumers of accounts with agreements that are not available to the general public, such as payroll card accounts, will be able to make meaningful comparisons with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts. For these reasons, the Bureau declines to exclude payroll card, government benefit, campus card, and other account agreements that are not available to the general public from the final rule's submission requirement, as requested by some commenters.

The Bureau is persuaded, however, that posting agreements that are not offered to the general public to the issuer's publicly available Web site may impose unnecessary administrative burden and have little consumer benefit. The Bureau has thus modified § 1005.19(c), discussed below, to exempt agreements that are not offered to the general public from the posting requirement. The final rule does not require issuers to post on the issuer's publicly available Web site agreements that are not offered to the general public, such as payroll card, government benefit, and campus card agreements. However, issuers of these agreements are still required to provide consumers with access to their specific agreements, as required by final § 1005.19(d). See the section-by-section analysis of § 1005.19(c) below for additional information regarding the posting requirement.

Private Label Credit Cards

The Board defined the term "private label credit card account" in what is now Regulation Z § 1026.58(b)(8)(i) as a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. The term "private label credit card plan" in Regulation Z § 1026.58(b)(8)(ii) is similarly defined as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. Regulation Z contains an exception and other specific provisions tailored specifically to private label credit card accounts and plans.[533]

The Bureau did not believe that equivalent provisions were necessary or appropriate for proposed § 1005.19, as the equivalent of a private label credit card in the prepaid context would be a closed-loop gift card. Such gift cards were outside the scope of the term prepaid account, as defined in proposed §§ 1005.2(b)(3) and 1005.19(a)(7). The Bureau did not receive any comments on this issue.

19(b) Submission of Agreements to the Bureau

Proposed § 1005.19(b) would have required each issuer to electronically submit to the Bureau prepaid account agreements offered by the issuer on a quarterly basis for the Bureau to post on its Web site pursuant to proposed § 1005.19(b)(7).

The Bureau received many comments from consumer groups and industry on this portion of the proposal. Consumer groups generally supported the proposal, arguing that it would provide important consumer benefits and impose little burden on industry. On the other hand, industry commenters, including trade associations, issuing banks, credit unions, a payment

[533] *See, e.g.*, Regulation Z § 1026.58(b)(8), (c)(6); comments 58(b)(8)–1 through –4; comments 58(c)(6)–1 through –6; and comment 58(d)–3.

network, and a law firm writing on behalf of a coalition of prepaid issuers, cited reasons for why they believed the proposal would be burdensome and unnecessary. Several of these commenters also argued that the submission requirement in proposed § 1005.19(b) should be suspended until the Bureau develops an automated, streamlined submission process and system. A few of these commenters stated that submitting agreements to the Bureau should be manageable, assuming the process is similar to the process for submitting credit card agreements to the Bureau pursuant to Regulation Z § 1026.58. Other commenters argued, however, that the submission process should not be compared to the submission process for credit card agreements because there are many more prepaid account agreements than credit card agreements.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b) with several modifications. The final rule also establishes a delayed effective date of October 1, 2018 for final § 1005.19(b), as discussed in the section-by-section analysis of § 1005.19(f)(2) below. The Bureau is finalizing § 1005.19(b)(1) with revisions to change the time period in which issuers must submit prepaid account agreements to the Bureau from a quarterly basis to a rolling basis and to clarify the information that each submission must contain. The Bureau is finalizing § 1005.19(b)(2) and (3), regarding the submission requirements for amended and withdrawn agreements, substantially as proposed. The Bureau is also finalizing § 1005.19(b)(4) and (5), regarding the de minimis and product testing exceptions, with modifications to clarify that whether an issuer or agreement qualifies for either exception is determined as of the last day of the calendar quarter. Moreover, the Bureau is finalizing § 1005.19(b)(6), regarding the form and content requirements for submissions to the Bureau, generally as proposed. Finally, the Bureau is not adopting § 1005.19(b)(7) at this time, as discussed below. The Bureau notes that due to the change requiring submissions to be made on a rolling, rather than quarterly, basis, as well as other modifications the Bureau has made for this final rule, the Bureau believes that the Regulation Z § 1026.58 guidance referenced in a number of the proposed comments would no longer be particularly useful to prepaid account issuers and thus the Bureau has modified the comments accordingly to include examples specific to prepaid directly in the commentary text.

19(b)(1) Submissions on a Rolling Basis

The Bureau's Proposal

The Bureau proposed § 1005.19(b)(1) to require issuers to make quarterly submissions of prepaid account agreements to the Bureau, in the form and manner specified by the Bureau, unless certain exceptions applied. Such quarterly submissions would have been required to be sent to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Proposed comment 19(b)(1)–1 would have referred to Regulation Z comment 58(c)(1)–1 for additional guidance as to the quarterly submission timing requirement.

Regulation Z § 1026.58(b)(3) defines the term "business day," for purposes of § 1026.58, to mean a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. Section 1005.2(d) contains a similar definition of the term business day (any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions). Because that definition applies generally in subpart A and the Bureau believed it was appropriate for use in proposed § 1005.19, the Bureau believed it was unnecessary to define the term again within proposed § 1005.19.

Proposed § 1005.19(b)(1) would have required that each quarterly submission contain the following four items. First, a quarterly submission would have been required to contain identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), and the name of the program manager, if any, for each agreement.

Second, the quarterly submission would have been required to contain the prepaid account agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer had not previously submitted to the Bureau.

Third, the quarterly submission would have been required to contain any prepaid account agreement previously submitted to the Bureau that was amended during the previous calendar quarter and that the issuer offered to the public as of the last business day of the preceding calendar quarter, as described in proposed § 1005.19(b)(2).

Finally, the quarterly submission would have been required to contain notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer was withdrawing, as described in proposed § 1005.19(b)(3), (4)(iii), and (5)(iii).

Proposed comment 19(b)(1)–2.i would have explained that an issuer would not be required to make any submission to the Bureau at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions: (A) Offering a new prepaid account agreement that was not submitted to the Bureau previously; (B) amending an agreement previously submitted to the Bureau; or (C) ceasing to offer an agreement previously submitted to the Bureau. Proposed comment 19(b)(1)–2.ii would have referred to Regulation Z comment 58(c)(1)–2.ii for additional guidance as to when a quarterly submission is not required.

Proposed comment 19(b)(1)–3 would have explained that proposed § 1005.19(b)(1) permits an issuer to submit to the Bureau on a quarterly basis a complete, updated set of the prepaid account agreements the issuer offers to the public. Proposed comment 19(b)(1)–3 would have also referred to Regulation Z comment 58(c)(1)–3 for additional guidance regarding quarterly submission of a complete set of updated agreements.

Proposed § 1005.19(b)(1) generally mirrored Regulation Z § 1026.58(c)(1), except for the addition of the program manager's name into proposed § 1005.19(b)(1)(i). Proposed comments 19(b)(1)–1, –2, and –3 were similar to Regulation Z comments 58(c)(1)–1, –2, and –3 except that proposed comments 19(b)(1)–1, –2.ii and –3 were shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding quarterly submission of agreements as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts.

Comments Received

The Bureau received comments from both consumer groups and industry regarding whether the submission of agreements on a quarterly basis would be appropriate. The consumer groups and most of the industry commenters urged the Bureau to require issuers to submit agreements whenever changes are made. A few other industry commenters requested an annual submission. The industry commenters stated that because prepaid account agreements do not change often, imposing a quarterly submission requirement would result in burden associated with constantly monitoring

agreements for updates and ensuring that updated agreements are submitted to the Bureau. The consumer groups argued that a quarterly submission would not ensure that the Bureau has the most recent agreements, which they believed could erode consumer confidence and the value posting the agreements to the Bureau's Web site.

Several consumer groups and a labor organization requested that submissions to the Bureau include the names of the issuing bank, program manager, and branding entity (such as an employer, government agency, or institute of higher education), and other names that might be associated with a prepaid account (such as the entity that provides customer support). One of these commenters explained that many issuers use marketing or other affinity-related names that make it difficult for a consumer to know which entity issued the prepaid account. Another commenter suggested that submissions also include employer information and the effective date of the agreement. Conversely, one credit union trade association objected to providing to the Bureau the issuer's identifying information, arguing that such information is provided on the agreement as well as the disclosures, and the tax identification number and program manager are irrelevant.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(1) with modifications to revise the time period in which issuers must make prepaid account agreement submissions to the Bureau from a quarterly basis to a rolling basis. Specifically, final § 1005.19(b)(1)(i) provides that an issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Final § 1005.19(b)(1)(i) also provides that submissions must be made to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer a prepaid account agreement, as described in final § 1005.19(b)(1)(ii) through (iv).

The Bureau believes that requiring submission of a prepaid account agreement on a rolling basis will help alleviate potential compliance burden related to the submission requirement. Specifically, the Bureau believes it will be less burdensome for issuers to submit agreements as they are offered or amended (or notification when an agreement is being withdrawn) than it would be for issuers to wait to submit agreements on a fixed schedule, especially since prepaid account agreements do not change often. Furthermore, the Bureau expects that issuers will incorporate the agreement submission process into their own internal business processes and believes the revision to require submission on a rolling basis (rather than quarterly) will help align those processes. In addition, the Bureau believes that requiring submission no later than 30 days after an issuer offers, amends, or ceases to offer an agreement will help ensure that the most up-to-date agreements are available to the Bureau for its market monitoring purposes, as well as on the Bureau's Web site in the future.

As noted above, § 1005.19(b)(1)(i) through (iv) lists the items that each submission to the Bureau must contain. Based on the comments it received, the Bureau has revised § 1005.19(b)(1)(i) to require that each submission also contain the effective date of the prepaid agreement, the name of the program manager, and the names of other relevant parties, if applicable, such as the employer for a payroll card program or the agency for a government benefit program. The Bureau believes that providing this identifying information about each agreement will help the Bureau, consumers, and other parties locate agreements quickly and more effectively. For example, submitting the name of each employer that offers a payroll card account under a specific agreement will assist consumers in identifying the agreement to which their payroll card account is subject. The Bureau notes, however, that submissions should not contain personally identifiable information relating to any consumer, such as the consumer's name, address, telephone number, or account number.

The Bureau is finalizing comment 19(b)(1)–1, with modifications for clarity and consistency with the revisions to § 1005.19(b)(1). This comment does not refer to Regulation Z comment 58(c)(1)–1 for additional guidance because, given that final § 1005.19(b)(1) requires submission of prepaid account agreements on a rolling rather than quarterly basis, the Bureau does not believe that comment would provide useful guidance. The Bureau is therefore adopting new comment 19(b)(1)–1 to provide examples illustrating the 30-day time period in which issuers must submit agreements.

The Bureau is not finalizing proposed comments 19(b)(1)–2 and –3, which would have provided clarification for the quarterly submission requirement, because the Bureau has revised § 1005.19(b)(1) to require issuers to make submissions of prepaid account agreements to the Bureau on a rolling basis.

As noted in the section-by-section analysis of § 1005.19(a)(4) above, the Bureau is adopting new comment 19(b)(1)–2 to explain the submission requirement for an institution that partners with multiple other entities to issue prepaid accounts. This comment explains that if a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. This comment further explains that each issuer may use the program manager to submit the agreement on its behalf, in accordance with comment 19(a)(4)–2. Because the number and role of the parties involved in a particular prepaid account agreement may vary, the Bureau believes it is clearer to require issuers, not program managers (or other parties), to submit these agreements to the Bureau. In addition, the Bureau believes that submitting separate agreements for each issuer, rather than submitting one agreement with multiple issuers as suggested by one commenter, will be less confusing to consumers and other parties reviewing agreements on the Bureau's Web site in the future.

19(b)(2) Amended Agreements

The Bureau's Proposal

The Bureau proposed § 1005.19(b)(2) to provide that if a prepaid account agreement has been submitted to the Bureau, the agreement has not been amended, and the issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. Proposed comment 19(b)(2)–1 would have referred to Regulation Z comment 58(c)(3)–1 for additional guidance regarding no requirement to resubmit agreements that have not been amended.

Proposed § 1005.19(b)(2) would have also required that if a prepaid account agreement that previously has been submitted to the Bureau is amended, and the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. Proposed comment 19(b)(2)–2 would have further explained that the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of

the calendar quarter in which the change became effective and would have referred to Regulation Z comment 58(c)(3)–2 for additional guidance regarding the submission of amended agreements. Proposed comment 19(b)(2)–3 would have reiterated that agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau and would have referred to Regulation Z comment 58(c)(3)–3 for additional guidance on agreements that have been amended but are no longer offered to the public.

Finally, proposed comment 19(b)(2)–4 would have explained that an issuer may not fulfill the requirement in proposed § 1005.19(b)(2) to submit the entire amended agreement to the Bureau by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments would have been required to be integrated into the text of the agreement (or the optional addendum described in proposed § 1005.19(b)(6)), not provided as separate riders. Proposed comment 19(b)(2)–4 would have also referred to Regulation Z comment 58(c)(3)–4 for additional guidance as to the submission of revised agreements.

Proposed § 1005.19(b)(2) mirrored the Regulation Z provisions regarding submission of amended agreements in Regulation Z § 1026.58(c)(3). Proposed comments 19(b)(2)–1 through –4 mirrored Regulation Z comments 58(c)(3)–1 through –4, although the proposed 19(b)(2) comments were shortened to cross-reference the parallel comments in Regulation Z for specific examples of submission of amended agreements as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts.

The Final Rule

The Bureau received no comments on this portion of the proposal. Accordingly, the Bureau is finalizing § 1005.19(b)(2) as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from quarterly to rolling. Specifically, final § 1005.19(b)(2) provides that if a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change comes effective. Given the revisions to § 1005.19(b)(1), the Bureau has removed proposed comments 19(b)(2)–1 and –2, which would have explained the requirement to submit amended agreements on a quarterly basis.

The Bureau is not finalizing proposed comment 19(b)(2)–3, which would have provided guidance for issuers submitting amended agreements that are no longer offered, because under the revised rolling submission requirement, an issuer would not likely amend an agreement and less than 30 days later decide to stop offering that agreement. If the issuer stopped offering the agreement, the issuer would be required to notify the Bureau that it is withdrawing the agreement, as required by final § 1005.19(b)(3) and as explained in final comment 19(b)(3)–1.

The Bureau is finalizing comment 19(b)(2)–4, renumbered as comment 19(b)(2)–1, largely as proposed, with several minor revisions for clarity and conformity with the revisions to § 1005.19(b)(1). Final comment 19(b)(2)–1 explains that if an agreement previously submitted to the Bureau is amended, final § 1005.19(b)(2) requires the issuer to submit the entire revised agreement to the Bureau. This comment further explains that an issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. Amendments must be integrated into the text of the agreement (or the optional addendum described in § 1005.19(b)(6)), not provided as separate riders. This comment does not refer to Regulation Z comment 58(c)(3)–4 for additional guidance because the Bureau does not believe the example illustrated in comment 58(c)(4)–4 regarding APRs would be useful for prepaid account issuers. The Bureau continues to believe that permitting issuers to submit change-in-terms notices or riders containing amendments or revisions would make it difficult to determine a prepaid account's current fees and terms. Consumers could be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Bureau believes that issuers are better placed than consumers to assemble this information and customarily incorporate revised terms into their prepaid account agreements on a regular basis rather than only issue separate riders or notices.

19(b)(3) Withdrawal of Agreements No Longer Offered

The Bureau proposed § 1005.19(b)(3) to provide that if an issuer no longer offers to the public a prepaid account agreement that previously has been submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. Proposed § 1005.19(b)(3) mirrored the Regulation Z provisions regarding withdrawal of agreements previously submitted to the Bureau in Regulation Z § 1026.58(c)(4). Proposed comment 19(b)(3)–1 would have referenced Regulation Z comment 58(c)(4)–1 for a specific example regarding withdrawal of submitted agreements as the Bureau intended that this provision would function the same for prepaid accounts as it does for credit card accounts.

With respect to credit cards, the Board found that the number of credit card agreements currently in effect but no longer offered to the public was extremely large, and thus providing such agreements to the Board would have posed a significant burden on issuers as well as diluted the active agreements posted on the Board's Web site to such an extent that they might no longer be useful to consumers.[534] The Bureau did not believe that prepaid issuers have open prepaid accounts subject to agreements no longer offered to the public the same way that credit card issuers do. However, the Bureau believed that the primary benefit of making prepaid account agreements available on the Bureau's Web site would be to assist consumers in comparing prepaid account agreements offered by various issuers when shopping for a new prepaid account; including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers because consumers could not obtain the accounts subject to these agreements.

The Bureau received one comment from a consumer group on this aspect of the proposal. The consumer group argued that issuers with programs that have a significant number of open accounts whose agreements are no longer offered to the public should be required to submit such agreements to the Bureau, with a notation that the agreement is no longer offered. This commenter explained that doing so would avoid confusion about active programs that would otherwise be absent from the Bureau's Web site and would allow users to compare those programs to newer programs. The Bureau does not believe such a requirement is necessary at this time in light of the limited benefits to consumers, and thus declines to require

[534] 74 FR 54124, 54189 (Oct. 21, 2009).

the submission of agreements of open accounts that are no longer offered to the public.

The Bureau is therefore finalizing § 1005.19(b)(3) and its related commentary substantially as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. The Bureau has also made several revisions to conform with the changes made to the proposed definition of ''offers,'' reflected in final § 1005.19(a)(5) and (6), discussed above. Specifically, final § 1005.19(b)(3) provides that if an issuer no longer offers a prepaid account agreement that was previously submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the issuer ceases to offer the agreement that it is withdrawing the agreement. Upon further consideration, the Bureau believes that it is necessary to provide clarification on what it means for a prepaid account to no longer be offered. Therefore, the Bureau has revised comment 19(b)(3)–1 to clarify that an issuer no longer offers an agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement. In addition, final comment 19(b)(3)–1 does not refer to Regulation Z comment 58(c)(4)–1 for additional guidance because comment 58(c)(4)–1 describes a scenario in which an issuer must notify the Bureau that it is withdrawing an agreement by a quarterly submission deadline, which is not relevant to final § 1005.19(b)(3).

19(b)(4) De Minimis Exception

The Bureau's Proposal

The Bureau proposed § 1005.19(b)(4) to provide a de minimis exception for the requirement to submit prepaid account agreements to the Bureau. Proposed § 1005.19(b)(4)(i) would have stated that an issuer is not required to submit any prepaid account agreements to the Bureau if the issuer had fewer than 3,000 open prepaid accounts as of the last business day of the calendar quarter. As in Regulation Z, this de minimis exception would have applied to all open prepaid accounts of the issuer, not to each of the issuer's prepaid account programs separately.

For Regulation Z, the Board was not aware of a way to define a ''credit card plan'' that would not divide issuers' portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception.[535] The Board therefore established a de minimis exception based on an issuer's total number of open accounts in what is now Regulation Z § 1026.58(c)(5). The Bureau believed that the same issues apply in attempting to define a ''prepaid account program'' for purposes of a de minimis threshold, and therefore similarly proposed to adopt a de minimis threshold that applies to all of an issuer's prepaid programs, rather than on a program-by-program basis.

The Bureau proposed to use a lower de minimis threshold of 3,000 open prepaid accounts, in place of the 10,000 open accounts threshold used in Regulation Z. The prepaid accounts market is smaller than the credit card market (based on number of open accounts) and there are some indications that smaller issuers (*i.e.,* with small numbers of open accounts rather than small based on entity size) may account for more of the prepaid market than do smaller issuers in the credit card market. The Bureau sought to create a de minimis threshold that would exempt a similar portion of open prepaid accounts from this requirement as are exempted by the current analogous requirement for credit cards. However, at the time of the proposal, the Bureau did not have specific data that would permit it to accurately determine a comparable threshold for prepaid accounts.

As the Bureau explained in the proposal, recent public data indicated that none of the top 100 Visa and MasterCard credit card issuers (ranked by dollar amount of outstandings, and which covers both consumer and commercial credit cards) came close to falling below the 10,000 Regulation Z de minimis threshold, even as those issuers (when combined with Discover and American Express, which are the two largest U.S. issuers that are not MasterCard or Visa issuers) amount to more than 92 percent of total general purpose credit card loans outstanding.[536] The smallest credit card issuers in this top-100 list, based on total accounts and total active accounts, exceed the de minimis threshold by a factor of between two (for active accounts) and nearly four (for total accounts).

In comparison, the same public source indicated that three of the top 50 Visa and MasterCard prepaid account issuers would fall below a 10,000 threshold, and one of these is right at the proposed 3,000 threshold.[537] Furthermore, the data in this report included a number of other types of prepaid products beyond commercial cards that were outside the proposed definition of prepaid account, such as consumer gift, healthcare, and rebates/rewards, creating the likelihood that additional top-50 prepaid issuers could fall below a de minimis threshold of 10,000 open prepaid accounts.[538] Although it is not straightforward to calculate exactly how much of the market these top-50 prepaid issuers represent, available indications are that it is significantly below the 92 percent accounted for by the top-100 credit card issuers.[539]

Proposed comment 19(b)(4)–1 would have explained that the de minimis exception in proposed § 1005.19(b)(4) is distinct from the product testing exception in proposed § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the financial institution's total number of open accounts. Proposed comment 19(b)(4)–2 would refer to Regulation Z comment 58(c)(5)–2 for additional guidance on the de minimis exception.

Proposed § 1005.19(b)(4)(ii) would have stated that if an issuer that previously qualified for the de minimis

[535] 74 FR 54124, 54191 (Oct. 21, 2009).

[536] HSN Consultants, Inc., *The Nilson Report, Issue 1035,* at 8, 10–11 (Feb. 2014), and HSN Consultants, Inc., *The Nilson Report, Issue 1038,* at 10–11 (Apr. 2014). Public data for the next tranche of credit card issuers does not include account volume, but it does include outstandings volume. The lowest outstandings for an issuer in the third 50 cohort are more than 60 percent of the outstandings for the smallest issuer by total account volume in the top-100. *See* HSN Consultants, Inc., *The Nilson Report, Issue 1042* at 11 (June 2014). As the smallest issuer by total account volume in the top-100 exceeded the de minimis threshold by several factors, the available indications are that the third 50 cohort would not fall below the de minimis threshold either.

[537] HSN Consultants, Inc., *The Nilson Report, Issue 1043,* at 10 (June 2014). One issuer had 9,000 cards in circulation, another had 8,000, and a third had only 3,000.

[538] One issuer was reported to have 14,000 cards in circulation, another had 16,000, and a third had 18,000.

[539] Nilson reports that the top-50 prepaid issuers accounted for some $118 billion in purchase volume in 2013. HSN Consultants, Inc., *The Nilson Report, Issue 1043,* at 1 (June 2014). One leading consultancy estimated load on open-loop prepaid products for that year at over $242 billion. Mercator Advisory Group, *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014–2017* (Nov. 2014).

exception ceases to qualify, the issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. Proposed comment 19(b)(4)–3 would have referred to Regulation Z comment 58(c)(5)–3 for additional guidance on the date for determining whether an issuer qualifies for the de minimis exception. Proposed comment 19(b)(4)–4 would have also referred to Regulation Z comment 58(c)(5)–4 for additional guidance on the date for determining whether an issuer ceases to qualify for the de minimis exception.

Finally, proposed § 1005.19(b)(4)(iii) would have stated that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make quarterly submissions to the Bureau until the issuer notifies the Bureau that it is withdrawing all agreements it previously submitted to the Bureau. Proposed comment 19(b)(4)–5 would have also referred to Regulation Z comment 58(c)(5)–5 for additional guidance on an issuer's option to withdraw its agreements submitted to the Bureau.

Proposed § 1005.19(b)(4) mirrored the provisions regarding the de minimis exception in Regulation Z § 1026.58(c)(5), except for the lower proposed de minimis threshold figure. Proposed comments 19(b)(4)–1 to –5 mirrored Regulation Z comments 58(c)(5)–1 to –5, although proposed comments 19(b)(1)–2 to –5 were shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding the de minimis exception as the Bureau intended that these provisions would function the same for prepaid accounts as they do for credit card accounts. In addition, the references to the private label credit card exception in Regulation Z comment 58(c)(5)–1 were removed as the Bureau did not believe that exception was relevant in the prepaid card context, as discussed above.

Comments Received

The Bureau received comments from several credit unions, a credit union trade association, and consumer groups regarding this portion of the proposal. The credit unions and the trade association indicated that they appreciated the Bureau's proposal to include a de minimis threshold but argued that the proposed de minimis threshold was too low and that overregulating prepaid accounts will negatively impact the dynamic and growing market. These commenters urged the Bureau to raise the threshold to 10,000 open accounts, which they believed would help alleviate burden, especially for small credit unions.

The consumer groups requested that the Bureau either lower the threshold or eliminate the proposed de minimis exception altogether. Responding to the argument about the impact to small issuers, one consumer group stated that small issuers can have some of the highest fees and need public scrutiny. This commenter also stated that submitting agreements to the Bureau is not time-consuming and should not overburden small issuers. Another consumer group argued that the threshold should be lowered to 500 "active" accounts, which the commenter defined as any account with a transaction in the prior quarter. This commenter also stated that large banks with ample resources should not be permitted to qualify for a de minimis exception, regardless of the number of accounts they have.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(4) with several revisions explained below. The Bureau has modified § 1005.19(b)(4)(i) to make clear that whether an issuer qualifies for the de minimis exception is determined by the number of open prepaid accounts it has as of the last day of the calendar quarter. Despite changing the submission requirement from quarterly to rolling, the Bureau believes it is appropriate to keep the de minimis exception on a quarterly schedule so that issuers have a measurable time frame to determine whether they qualify for the exception. Final § 1005.19(b)(4)(i) provides that an issuer is not required to submit any prepaid account agreements to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. Final § 1005.19(b)(4)(i) makes clear that if the issuer has 3,000 or more open prepaid accounts as of the last day of the calendar quarter, the issuer must submit to the Bureau its prepaid account agreements no later than 30 days after the last day of that calendar quarter. The Bureau has eliminated proposed § 1005.19(b)(4)(ii), which would have explained an issuer's obligation to make quarterly submissions to the Bureau if it ceased to qualify for the de minimis exception, because this concept is now addressed in final § 1005.19(b)(4)(i). The Bureau is finalizing § 1005.19(b)(4)(iii), renumbered as § 1005.19(b)(4)(ii), which provides that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. In addition, the Bureau has removed the term "business" from the phrase "last business day" from the regulatory text of final § 1005.19(b)(4) and its related commentary to simplify the de minimis exception. The Bureau has also made several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) requiring submission to the Bureau on a rolling basis.

The Bureau declines to modify the proposed threshold of 3,000 open prepaid accounts, as requested by some commenters. A more recent version of the public data described above continues to indicate that none of the top 100 Visa and MasterCard credit card issuers (ranked by dollar amount of outstandings, and which covers both consumer and commercial credit cards) come close to falling below the 10,000 Regulation Z de minimis threshold. Those issuers (when combined with Discover and American Express, which are the two largest U.S. issuers that are not MasterCard or Visa issuers) now amount to more than 93 percent of total general purpose credit card loans outstanding.[540] The smallest credit card issuers in this top-100 list, based on total accounts and total active accounts, exceed the de minimis threshold by a factor of between two (for active accounts) and nearly three (for total accounts).

In comparison, the same public source now indicates that three of the top 50 Visa and MasterCard prepaid account issuers would fall below a 10,000 threshold, and two of these fall below the 3,000 threshold.[541] Furthermore, as noted above, the data in this report includes a number of other types of prepaid products beyond commercial cards that are outside this

[540] HSN Consultants, Inc., *The Nilson Report, Issue 1081,* at 1, 8, 10–11 (Feb. 2016), and HSN Consultants, Inc., *The Nilson Report, Issue 1083,* at 10–11 (Mar. 2016). Public data for the next tranche of credit card issuers, *i.e.,* issuers 101–150, does not include account volume, but it does include outstandings volume. The lowest outstandings for an issuer in this third 50 cohort are more than 60 percent of the outstandings for the smallest issuer by total account volume in the top-100. *See* HSN Consultants, Inc., *The Nilson Report, Issue 1090,* at 9 (July 2016). As the smallest issuer by total account volume in the top-100 exceeded the de minimis threshold by several factors, the available indications are that the third 50 cohort would not fall below the de minimis threshold either.

[541] HSN Consultants, Inc., *The Nilson Report, Issue 1091,* at 8–9 (July 2016). One issuer had 3,000 cards in circulation, another had 2,000, and a third had only 1,000.

final rule's definition of prepaid account, such as healthcare and rebates/rewards, creating the likelihood that additional top-50 prepaid issuers would fall below a de minimis threshold of 10,000 open prepaid accounts.[542] Although it remains not straightforward to calculate exactly how much of the market these top-50 prepaid issuers represent, available indications are that it is significantly below the 93 percent accounted for by the top-100 credit card issuers.[543] As noted in the proposal, the de minimis threshold is meant to exempt issuers based on the number of open accounts they have, not on their asset size. Therefore, larger entities (based on asset size) with fewer than 3,000 open accounts as of the last day of the calendar quarter would qualify for the de minimis exception, whereas smaller entities (based on asset size) with 3,000 or more open accounts as of the last day of the calendar quarter would not qualify.

The Bureau has made several changes to the commentary explaining the de minimis exception. Specifically, the Bureau is finalizing comment 19(b)(4)–1, which explains that the de minimis exception in final § 1005.19(b)(4) is distinct from the product testing exception in final § 1005.19(b)(5), as proposed. The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with a product test for a prepaid account program with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

The Bureau is also finalizing comment 19(b)(4)–2, with several modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example of an issuer that qualifies for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)–2 for additional guidance because the Bureau believes it is clearer to include an example that specifically addresses the de minimis exception for prepaid accounts.

Furthermore, the Bureau is finalizing comment 19(b)(4)–3, with modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example illustrating how an issuer determines whether it qualifies for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)–3 for additional guidance because the Bureau believes it is clearer to include an example that explains how an issuer determines whether it qualifies for the de minimis exception for prepaid accounts. The Bureau has also removed from final comment 19(b)(4)–3 the word "business" from the phrase "last business day," as explained above.

In addition, the Bureau is finalizing comment 19(b)(4)–4 with modifications for consistency with the revisions to § 1005.19(b)(4). This comment also provides an example illustrating how an issuer determines whether it ceases to qualify for the de minimis exception. This comment does not refer to Regulation Z comment 58(c)(5)–4 for additional guidance because the Bureau believes it is clearer to include an example that explains how an issuer determines whether it ceases to qualify for the de minimis exception for prepaid accounts. The Bureau has also removed from final comment 19(b)(4)–4 the word "business" from the phrase "last business day," as explained above.

Finally, the Bureau is finalizing comment 19(b)(4)–5 with modifications for clarity and consistency with the revisions to § 1005.19(b)(1) and (4). This comment does not refer to Regulation Z comment 58(c)(5)–5 for additional guidance because the Bureau believes it is clearer to include an example regarding the issuer's option to withdraw agreements when it qualifies for the de minimis exception for prepaid accounts. Thus, final comment 19(b)(4)–5 explains that if an issuer qualifies for the de minimis exception, the issuer has two options. The issuer may either notify the Bureau that it is withdrawing the agreements and cease making rolling submissions to the Bureau or not notify the Bureau and continue making rolling submissions to the Bureau as required by final § 1005.19(b).

19(b)(5) Product Testing Exception

The Bureau's Proposal

The Bureau proposed § 1005.19(b)(5) to provide a product testing exception to the requirement to submit prepaid account agreements to the Bureau. Proposed § 1005.19(b)(5) mirrored the provisions regarding the product testing exception in Regulation Z § 1026.58(c)(7).

Proposed § 1005.19(b)(5)(i) would have provided that an issuer is not required to submit to the Bureau a prepaid account agreement if, as of the last business day of the calendar quarter, the agreement: (A) is offered as part of a product test offered to only a limited group of consumers for a limited period of time; (B) is used for fewer than 3,000 open prepaid accounts; and (C) is not offered to the public other than in connection with such a product test.

Proposed § 1005.19(b)(5)(ii) would have provided that if an agreement that previously qualified for the product testing exception ceases to qualify, the issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify. Finally, proposed § 1005.19(b)(5)(iii) would have provided that if an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

Comments Received

Two consumer groups commented on the Bureau's proposed product testing exception. One of the consumer groups requested that the product testing exception be limited to three months and not be available to a payroll card account program if substantially all of a company's employees are enrolled in that program. The other consumer group stated that the exception should only be granted in response to the Bureau's review.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(5) with several revisions discussed below. The Bureau has modified § 1005.19(b)(5)(i) to make clear that whether an agreement qualifies for the product testing exception is determined based on whether it meets certain criteria as of the last day of the calendar quarter. Despite changing the submission requirement from quarterly to rolling, the Bureau believes it is appropriate to keep the product testing exception on a quarterly schedule so that issuers have a measurable time frame to determine whether they qualify for the exception. Final § 1005.19(b)(5)(i) provides that an issuer is not required to submit a prepaid account agreement to the Bureau if as of the last day of the calendar quarter the agreement is

[542] *Id.* at 8. One issuer was reported to have 13,000 cards in circulation and another had 14,000.

[543] Nilson reports that the top-50 prepaid issuers accounted for some $145 billion in purchase volume in 2015. HSN Consultants, Inc., *The Nilson Report, Issue 1091,* at 1, 8–9 (July 2016). One leading consultancy has projected load on open-loop prepaid products for that year at over $280 billion. *See* Mercator 12th Annual Market Forecasts at 8.

offered as part of a product test offered to only a limited group of consumers for a limited period of time; is used for fewer than 3,000 open prepaid accounts; and is not offered other than in connection with such a product test. Final § 1005.19(b)(5)(i) makes clear that if an agreement fails to meet the product testing criteria set forth in final § 1005.19(b)(5)(i)(A) through (C) as of the last day of the calendar quarter, the issuer must submit to the Bureau that agreement no later than 30 days after the last day of that calendar quarter. The Bureau has eliminated proposed § 1005.19(b)(5)(ii), which would have explained an issuer's obligation to make quarterly submissions to the Bureau if an agreement ceased to qualify for the product testing exception, because this concept is now addressed in final § 1005.19(b)(5)(i). Furthermore, the Bureau is finalizing § 1005.19(b)(5)(iii), renumbered as final § 1005.19(b)(5)(ii), which provides that if an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement. In addition, the Bureau has removed the term "business" from the phrase "last business day" from final § 1005.19(b)(5)(i) to simplify the product testing exception. The Bureau has also made several modifications for clarity and consistency with the revisions to § 1005.19(b)(1) requiring submission to the Bureau on a rolling basis.

The Bureau believes that requiring issuers to submit agreements that would qualify for the product testing exception would provide little benefit at this time. Specifically, consumers would not benefit from comparison shopping as the agreements would only be offered to discrete, targeted groups for a limited period of time. For similar reasons, the submission of these agreements would only minimally assist the Bureau's market monitoring efforts. In addition, the Bureau understands that preparing and submitting agreements used for a small number of prepaid accounts in connection with a product test could result in administrative burden to issuers that would likely not be justified by the consumer benefit at this time.

The Bureau declines to add to additional requirements or modifications to this portion of the final rule, as requested by some commenters. The Bureau does not believe it is necessary at this time to disallow a payroll card account program from qualifying for the product testing exception if most of a company's employees are enrolled in that program, as suggested by one commenter. The Bureau also declines to limit the product testing exception to three months, as requested by another commenter, because efforts to test new prepaid account strategies and products can vary significantly, and the Bureau does not have the necessary data at this time to determine what an appropriate time frame would be. The Bureau notes, however, that this exception is intended for the testing of new products and strategies that spans a limited period of time, and the Bureau expects issuers will avail themselves of the exception only when their agreements meet the specific criteria set forth in final § 1005.19(b)(5). Finally, the Bureau also declines to grant the product testing exception only in response to the Bureau's review, as recommended by a commenter, because it does not believe it is necessary to do so at this time. However, the Bureau intends to monitor industry practices in this area and will consider modifications in future rulemakings, if warranted.

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

Section 1005.19(b)(6) sets forth the form and content requirements for prepaid account agreements submitted to the Bureau. The Bureau is finalizing § 1005.19(b)(6) largely as proposed, with several modifications as discussed below.

19(b)(6)(i) Form and Content Generally

The Bureau proposed § 1005.19(b)(6)(i) to provide that each prepaid account agreement must contain the provisions of the agreement and the fee information in effect as of the last business day of the preceding calendar quarter. Proposed comment 19(b)(6)–1 would have provided the following example to aid in determining the "as of" date of an agreement: On June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers to the public. The change in that fee will become effective on August 1. If the issuer submits the agreement to the Bureau on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower out-of-network ATM withdrawal fee because that lower fee was not in effect on June 30, the last business day of the preceding calendar quarter. Proposed comment 19(b)(6)–1 was similar to Regulation Z comment 58(c)(8)–1.

Proposed § 1005.19(b)(6)(i) would have also stated that agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number. Proposed § 1005.19(b)(6)(i) would have also stated that the following would not be deemed to be part of the agreement for purposes of proposed § 1005.19, and therefore are not required to be included in submissions to the Bureau: (1) ancillary disclosures required by State or Federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act; (2) solicitation or marketing materials; (3) periodic statements; and (4) documents that may be sent to the consumer along with the prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security. Finally, proposed § 1005.19(b)(6)(i) would have required that agreements must be presented in a clear and legible font.

Proposed § 1005.19(b)(6)(i) generally mirrored the provisions in Regulation Z § 1026.58(c)(8)(i) regarding the form and content of agreements that would be submitted to the Bureau. This provision would have excluded, however, two additional items listed in Regulation Z § 1026.58(c)(8)(i)(C) that are not deemed to be part of a credit card agreement—ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements, and offers for credit insurance or other optional products and other similar advertisements—because the Bureau did not believe these items were relevant in the prepaid account context.

The Bureau received no comments specifically addressing § 1005.19(b)(6)(i) and is therefore finalizing it as proposed, with modifications for consistency with the revisions to proposed § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from a quarterly basis to a rolling basis. The Bureau notes that final § 1005.19(b)(6)(i) is not intended to provide an exhaustive list of the ancillary State and Federal law disclosures that are not deemed to be part of an agreement under final § 1005.19. As indicated by the use of the term "such as," the listed disclosures are merely examples of "ancillary disclosures required by Federal or State law." The Bureau does not believe it is feasible to include in this paragraph a comprehensive list of all such disclosures, as such a list would be extensive and would change as State and Federal laws and regulations are amended. The Bureau notes that an

issuer would not be prohibited by this or any other provision of § 1005.19 from choosing to include these items in submitted agreements.

The Bureau received comments from several consumer groups and one credit union trade association regarding the Bureau's request for comment about whether issuers should be required to post agreements on their Web sites in an electronic format that is readily usable by the general public, or whether issuers should be required to provide agreements using, for example, a machine-readable text format, such as JSON or XML, that could be used by the Bureau or third parties to more easily create comparison shopping tools.[544] The consumer groups argued that agreements should be submitted in a machine-readable text format because this format would allow researchers and other third parties to analyze information more easily and create comparison shopping tools. The credit union trade association disagreed, however, arguing that requiring agreements to be submitted in a format other than PDF would impose substantial software engineering fees on issuers. The Bureau appreciates the comments it received and continues to believe that it is important for issuers to submit agreements in a machine-readable format for these agreements to be useful to both the Bureau in its market monitoring efforts and to the consumers and other parties reviewing agreements on the Bureau's Web site in the future. The Bureau will provide technical specifications that will include details regarding appropriate file formats that the Bureau expects issuers will use when submitting new agreements and amended agreements following a substantive change.

The Bureau also received comments from several consumer groups and a labor organization requesting that in addition to including with each submission the names of the bank issuer, program manager, and branding entity (such as an employer, organization, institution of higher education), and other names that might be associated with a prepaid account (such as the entity that provides customer support), agreements should be searchable by such information. One of these commenters explained that many issuers use marketing or other affinity related names that make it difficult for a consumer to know which entity issued the prepaid account. The Bureau has considered these comments will consider incorporating such search functionality into its Web site.

The Bureau is finalizing comment 19(b)(6)–1 substantially as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(b)(1). In addition, the Bureau has removed from final comment 19(b)(6)–1 the reference to "offers to the public" and leaving only the term "offers" to reflect the changes to § 1005.19(a)(5) as discussed. Specifically, final comment 19(b)(6)–1 explains that agreements submitted to the Bureau must contain the provisions of the agreement and fee information currently in effect. For example, on June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers. The change in that fee will become effective on August 1. The issuer must submit and post the amended agreement with the decreased out-of-network ATM withdrawal fee to the Bureau by August 31 as required by final § 1005.19(b)(2) and (c).

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

The Bureau proposed § 1005.19(b)(6)(ii) to provide that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. The agreement or addendum thereto would have been required to contain all of the fee information, which was defined by proposed § 1005.19(a)(3) as the information listed for the long-form fee disclosure in proposed § 1005.18(b)(2)(ii).

Proposed § 1005.19(b)(6)(ii) deviated from the provisions governing pricing information in Regulation Z § 1026.58(c)(8)(ii) in that the proposed language would have permitted, but did not require, prepaid account fee information to be provided in an addendum to the prepaid account agreement. Proposed § 1005.19(b)(6)(ii) also omitted the provisions contained in Regulation Z § 1026.58(c)(8)(ii)(B) and (C) that address how to disclose pricing information that varies from one cardholder to another (such as APRs) and how to disclose variable rates and margins. Because prepaid account fees and terms currently do not vary between consumers based on creditworthiness or other factors in the same way that credit card account pricing and other terms do, the Bureau did not believe these provisions were either applicable or necessary with respect to prepaid account agreements. The Bureau likewise did not propose an equivalent to Regulation Z § 1026.58(c)(8)(iii) which allows for an optional variable terms addendum that allows provisions other than those related to pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness, State of residence or other factors to be set forth in a single addendum separate from the pricing information addendum. The Bureau likewise did not propose a comment equivalent to that of Regulation Z comment 58(c)(8)–2 regarding pricing information, nor that of Regulation Z comment 58(c)(8)–4 regarding the optional variable terms addendum.

With credit cards, issuers offer a range of terms and conditions and issuers may make those terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. In Regulation Z, pricing information is required to be set out in a separate pricing information addendum, regardless of whether pricing information is also contained in the main text of the agreement. The Board concluded that it could be difficult for consumers to find pricing information if it is integrated into the text of the credit card agreement. The Board believed that requiring pricing information to be attached as a separate addendum would ensure that this information is easily accessible to consumers.[545] The Bureau did not believe that prepaid account agreements vary in the same manner.

Proposed comment 19(b)(6)–2, which is largely similar to Regulation Z comment 58(c)(8)–3, would have explained that fee agreement variations do not constitute separate agreements. Fee information that may vary from one consumer to another depending on the consumer's State of residence or other factors would have been required to be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the fee information would not have constituted separate agreements for purposes of proposed § 1005.19. For example, an issuer offers two types of prepaid accounts that differ only with respect to the monthly fee. The monthly fee for one type of account is $4.95, while the monthly fee for the other type of account is $0 if the consumer regularly receives direct deposit to the prepaid account. The provisions of the agreement and fee information for the two types of accounts are otherwise identical. Under

[544] The Bureau solicited comment on this issue in the section-by-section analysis of proposed § 1005.19(b)(2); however, the Bureau believes it is more appropriate to discuss this issue here in the section-by-section analysis § 1005.19(b)(6)(i), regarding the requirements for the form and content of the agreements submitted to the Bureau.

[545] 75 FR 7658, 7769 (Feb. 22, 2010).

the proposal, the issuer should not submit to the Bureau one agreement with fee information listing a $4.95 monthly fee and another agreement with fee information listing a $0 monthly fee. Instead, the issuer should submit to the Bureau one agreement with fee information listing possible monthly fees of $4.95 or $0, including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

The Bureau received comments from several consumer groups requesting that fee information be searchable separately from the terms and conditions. These commenters argued that consumers and other parties reviewing agreements on the Bureau's Web site will only want to compare fee schedules and that many will only be interested in the short form disclosures, which should include most of the relevant fees.

For the reasons set forth herein, the Bureau is finalizing § 1005.19(b)(6)(ii) as proposed, with modifications for consistency with the revisions to § 1005.19(b)(1) to change the time period in which issuers must submit agreements to the Bureau from quarterly to rolling. The Bureau continues to believe that permitting issuers to submit fee information either in a prepaid account agreement or in a single addendum to that agreement provides issuers flexibility in submitting the fee information, while ensuring that consumers and other users of the database have access to such information. For example, for some issuers, requiring fee information to be provided in a separate addendum to the agreement might increase the administrative burden related to submitting a separate document to the Bureau.

In addition, the Bureau continues to believe that, unlike credit card issuers, prepaid account issuers do not typically offer a range of terms and conditions or make those terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. Therefore, the Bureau does not believe it would be difficult for consumers to find fee information if it is integrated into the text of the agreement.

The Bureau is finalizing comment 19(b)(6)–2 with several modifications to explain that issuers are not permitted to disclose fee information that varies from one consumer to another by providing a range of the possible fee variations; rather, issuers must disclose such fee information by setting forth all the possible variations. Upon further consideration, the Bureau believes that providing a range of possible fee variations would not present a clear picture of what the actual fees are and therefore would not be as helpful to the Bureau in its market monitoring, or to consumers or third parties in the future when prepaid account agreements are posted to the Bureau's Web site. Therefore, final comment 19(b)(6)–2 explains that fee information that may vary from one consumer to another depending on the consumer's State of residence or other factors must be disclosed by setting forth all the possible variations. The Bureau has removed from final comment 19(b)(6)–2 the explanation that two agreements that differ only with respect to variations in the fee information do not constitute separate agreements, as the Bureau does think the comment is necessary. The Bureau has also revised the example in final comment 19(b)(6)–2 to explain that if an issuer offers a prepaid account with a monthly fee of $4.95 or $0 if the consumer regularly receives direct deposit to the prepaid account, the issuer must submit to the Bureau one agreement with fee information listing the possible monthly fees of $4.95 or $0 and including an explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

19(b)(6)(iii) Integrated Agreement

The Bureau proposed § 1005.19(b)(6)(iii) to prohibit issuers from providing provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addendum). Changes in provisions or fee information would have been required to be integrated into the text of the agreement, or the optional fee information addendum, as appropriate. Proposed comment 19(b)(6)–3 would have provided the following example illustrating this requirement: It would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document dated January 1, 2015, four subsequent change-in-terms notices, and two addenda showing variations in fee information. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and a single optional addendum displaying variations in fee information.

Proposed § 1005.19(b)(6)(iii) was similar to Regulation Z § 1026.58(c)(8)(iv) in that they both prohibit providing agreements and fee (or pricing) information to the Bureau in the form of change-in-terms notice or riders, but the Bureau modified the proposed language to reflect that prepaid account fee information may, but is not required to be, provided in an optional fee information addendum. Proposed comment 19(b)(6)–3 was similar to Regulation Z comment 58(b)–5.

The Bureau received no comments on this aspect of the proposal and is therefore finalizing § 1005.19(b)(6)(iii) as proposed with minor revisions for clarity. The Bureau continues to believe that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of the agreements posted on the Bureau's Web site. In addition, the Bureau believes that prepaid account issuers customarily incorporate revised terms into their prepaid account agreements on a regular basis.

In addition, the Bureau believes that, unlike credit card agreements, a single prepaid account agreement does not typically contain a variety of variable terms predicated on the consumer's credit worthiness or other factors. With respect to Regulation Z § 1026.58(c)(8)(iv), the Board believed that there could potentially be significant burden on issuers for updating credit card agreements following changes in terms because of the potential variety in terms offered under a single agreement.[546] The Bureau does not believe a similar burden exists for prepaid account agreements because a single prepaid account agreement would not contain a variety of variable terms predicated on the consumer's credit worthiness or other factors. Furthermore, the Bureau does not believe that prepaid account issuers modify the terms of prepaid account agreements as frequently as credit card issuers do. Therefore, the Bureau does not believe this requirement would significantly burden issuers.

The Bureau is finalizing comment 19(b)(6)–3 substantially as proposed, with revisions to simplify the example that explains that an issuer would not be permitted to submit to the Bureau an agreement in the form of a terms and conditions document and subsequently submit a change-in-terms notice or an addendum to indicate amendments to the previously submitted agreement.

[546] *See* 75 FR 7658, 7770 (Feb. 22, 2010).

Bureau Posting of Prepaid Account Agreements

The Bureau's Proposal

The Bureau proposed § 1005.19(b)(7) to provide that the Bureau shall receive prepaid account agreements submitted by prepaid account issuers pursuant to proposed § 1005.19(b) and shall post such agreements on a publicly available Web site established and maintained by the Bureau. There is no equivalent to proposed § 1005.19(b)(7) in Regulation Z § 1026.58 as the Bureau's posting of credit card agreements it receives is directed by TILA section 122(d).[547]

Comments Received

The Bureau received several comments from consumer groups, State government agencies, and industry, including industry and credit union trade associations and credit unions, regarding the proposal to post prepaid account agreements to the Bureau's publicly available Web site.[548] The industry commenters opposed this portion of the proposal, arguing that it is unnecessary and would provide little to no consumer benefit. These commenters argued that consumers would not likely visit the Bureau's Web site to compare prepaid account agreements, especially when consumers can obtain agreements from other sources, such as the issuer's Web site or otherwise prior to acquisition. These commenters also expressed concern that the version of an agreement on the Bureau's Web site might differ from the version on the issuer's Web site, causing consumer confusion.

Furthermore, as discussed in the section-by-section analysis of § 1005.19(a)(8) above, several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, urged the Bureau to exclude agreements that are not offered to the public (such as payroll card, government benefit, and campus card accounts) from being posted to the Bureau's publicly available Web site. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the Bureau's Web site, overwhelm consumers, and cause confusion because consumers might not understand which agreement applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. These commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General supported a requirement to post all agreements, including agreements that are not offered to the public, on the Bureau's publicly available Web site because they believed it would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they said would result in more informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by market participants.

With respect to publicly posting agreements that are not offered to the public, one consumer group asserted that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once a card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with other wage payment options, such as a checking account, direct deposit, and other prepaid accounts.

One trade association argued that the Bureau lacks authority to post prepaid account agreements to its Web site. This commenter argued that EFTA is concerned specifically with EFTs, not bank accounts generally or non-electronic transactions, such as cash and check deposits, which are features of prepaid accounts. This commenter also argued that EFTA focuses on the rights, liabilities, and responsibilities of participants with regard to EFTs, not the consumer's ability to shop for bank accounts or understand the cost of the accounts. This commenter further stated that if EFTA was intended to ensure that consumers could understand the costs of their prepaid accounts and to be able to shop, EFTA would require the disclosure of all fees, not just charges associated with EFTs and certain ATM fees. Furthermore, this commenter argued that the Bureau's authority under section 1022 of the Dodd-Frank Act to monitor risk for consumers in financial products and to gather information regarding financial service markets does not allow the Bureau to post agreements on its Web site. Regarding the Bureau's authority under section 1032(a) of the Dodd-Frank Act, this commenter stated that consumers will already have the ability to understand the costs, benefits, and risks associated with prepaid accounts by obtaining the information from the issuer's Web site or otherwise prior to acquisition, and therefore, posting the agreements on the Bureau's Web site is unnecessary. This commenter further stated that, if Congress had intended for issuers to submit agreements to the Bureau (as it did for credit card agreements under TILA), it would have specifically required it in the Dodd-Frank Act.

The Final Rule

Upon further consideration, the Bureau believes it is unnecessary to finalize § 1005.19(b)(7). Consistent with its request for comment, the Bureau intends to publish on its Web site in the future the agreements that issuers have submitted pursuant to final § 1005.19(b). Given that the requirement speaks to the Bureau's actions and not to regulated entities, however, there is no need to finalize the provision through regulatory text.

The Bureau continues to believe that posting prepaid accounts agreements

[547] 15 U.S.C. 1632(d).

[548] Commenters generally addressed the public posting requirements in proposed § 1005.19(b) and (c) together. There are thus some overlaps between the comments summarized here and those in the section-by-section analysis of § 1005.19(c) below.

that are offered will benefit consumers, as it will allow consumers to more easily compare terms of prepaid accounts currently in the marketplace as well as facilitate third parties' analysis of prepaid accounts and the development of online shopping tools. The Bureau believes it is important to publicly post the agreements of all prepaid accounts, including accounts whose agreements are not offered to the general public, such as payroll cards, government benefit, and campus card accounts, because publicly posting these agreements will encourage competition and increase transparency. Regarding agreements that are not offered to the public, the Bureau agrees with one of the commenters that consumers can still compare these agreements with other wage payment options, despite not being able to choose their program. The Bureau also agrees with another commenter that publicly posting these agreements will allow employers, government agencies, and nonprofit organizations, and other entities considering a prepaid account program to see and compare the various terms offered in the market.

As discussed above, the Bureau proposed and is finalizing § 1005.19 pursuant to its authority in section 1022(c)(4) of the Dodd-Frank Act. Under section 1022(c)(3) of the Dodd-Frank Act, the Bureau "shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year," and "may make public such information obtained by the Bureau under this section as is in the public interest." As discussed above, the Bureau is requiring submission of this information to the Bureau under section 1022(c)(1) of the Dodd-Frank Act, which directs the Bureau to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services, and section 1022(c)(4), which provides the Bureau with authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers.

19(c) Posting of Agreements Offered to the General Public

The Bureau's Proposal

The Bureau proposed § 1005.19(c) to require an issuer to post and maintain on its publicly available Web site the prepaid account agreements that the issuer would be required to submit to the Bureau under proposed § 1005.19(b). Agreements posted pursuant to proposed § 1005.19(c) would have been required to conform to the form and content requirements for agreements submitted to the Bureau specified in proposed § 1005.19(b)(6)(i)(B) through (D) and would have been permitted to be posted in any electronic format that is readily usable by the general public. Agreements posted pursuant to proposed § 1005.19(c) would have been required to be accurate and updated whenever changes are made. Agreements would have been required to be placed in a location that is prominent and readily accessible by the public and without submission of personally identifiable information.

Regulation Z § 1026.58(d)(1) requires credit card issuers to update the agreements posted on their Web sites at least as frequently as the quarterly schedule required for submission of agreements to the Bureau, but permits an issuer to update its agreements more frequently if it so chooses. For Regulation Z, the Board considered a consumer group comment requesting that the online agreement be updated within a specific period of time no greater than 72 hours. The Board declined to adopt such a requirement because it believed that the burden to card issuers of updating agreements in such a short time would outweigh the benefit. In addition, the Board noted that if a consumer applies or is solicited for a credit card, the consumer will receive the updated disclosure under existing rules in Regulation Z subpart B.[549] The Bureau believed that prepaid account issuers generally update their agreements posted online as changes are made. The Bureau did not believe that prepaid account issuers would face the same burdens as credit card issuers in updating prepaid account agreements posted online because the terms of such agreements do not vary in the same manner as credit card agreement terms, which may offer a variety of rates and fees depending on the creditworthiness of the consumer. Thus, for prepaid account agreements, the Bureau proposed in § 1005.19(c)(3) that prepaid account agreements posted only be accurate and that issuers update their agreements whenever changes are made.

Proposed comment 19(c)–1 would have explained that an issuer's obligation to post and maintain prepaid account agreements on its Web site pursuant to proposed § 1005.19(c) is distinct from that of § 1005.7, which requires an issuer to provide certain disclosures at the time a consumer contracts for an EFT service or before the first EFT is made involving the consumer's account, as well as the change-in-terms notice required under § 1005.8(a). This requirement would have also been distinct from that of proposed § 1005.18(b)(2)(ii), which would have required issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, would have required posting of the long form disclosure on the issuer's Web site. If, for example, an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under proposed § 1005.19(b)(4), the issuer would not have been required to post and maintain any agreements on its Web site under proposed § 1005.19(c). The issuer would have still been required to provide each individual consumer with access to his or her specific prepaid account agreement under proposed § 1005.19(d), discussed below, by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the consumer's request. The issuer may have also been required to post the long form disclosure required by proposed § 1005.18(b)(2)(ii) online as well, depending on the methods by which the issuer offers prepaid accounts to consumers.

Proposed comment 19(c)–2 would have explained that if an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer would have been considered to maintain that Web site for purposes of proposed § 1005.19. Such a third-party Web site would have been deemed to be maintained by the issuer for purposes of proposed § 1005.19(c) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party Web site would have been able to comply with proposed § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with proposed § 1005.19(c).

[549] 75 FR 7658, 7772 (Feb. 22, 2010).

Proposed § 1005.19(c) was similar to Regulation Z § 1026.58(d), but did not include provisions regarding private label credit cards, as discussed above. Specifically, the Bureau did not propose an equivalent to the provision addressing the Web site to be used for posting private label credit card agreements in Regulation Z § 1026.58(d)(1) as well as Regulation Z § 1026.58(d)(4) requiring quarterly updates of credit card agreements posted on card issuers' Web sites, as discussed above. Proposed comment 19(c)–1 was similar to Regulation Z comment 58(d)–1, although the Bureau had modified it to distinguish the requirement in proposed § 1005.19(c) from other disclosure-related obligations in Regulation E. Proposed comment 19(c)–2 would have mirrored Regulation Z comment 58(d)–2, although the Bureau had modified both it and proposed comment 19(c)–1 to remove the portions discussing the private label credit card exception. An equivalent to Regulation Z comment 58(d)–3, regarding private label credit card plans, was likewise omitted.

Comments Received

The Bureau received comments from consumer groups, State government agencies, and industry commenters (including trade associations, credit unions, a program manager, and a payment network) regarding the proposed posting requirement in § 1005.19(c).[550] The industry commenters argued that the proposed posting requirement would burden industry and provide little to no consumer benefit. These commenters explained that the proposed requirement would be problematic for issuers as they would have to constantly update their Web site with new and revised agreements. One of the credit unions argued that the requirement would be an intrusion into its business practices, but also stated that issuers already post agreements online without direction from the Bureau. Several commenters expressed concern that the version of an agreement on the Bureau's Web site might differ from the version on the issuer's Web site, causing consumer confusion.

Furthermore, as discussed in the section-by-section analysis of § 1005.19(a)(8) above, several industry commenters, including issuing banks, industry trade associations, program managers, a think tank, and a law firm writing on behalf of a coalition of prepaid issuers, urged the Bureau to exclude agreements that are not offered to the public (such as payroll card, government benefit, and campus card accounts) from the requirement in proposed § 1005.19(c) to post agreements to the issuer's publicly available Web site. These commenters explained that for these types of accounts, an issuer could have thousands of agreements that have been negotiated between the issuer and a third party (such as an employer, a government agency, or a university) and that are often tailored to fit the needs of individual programs. These commenters stated that such volume and variety would clutter the issuer's Web site, overwhelm consumers, and cause confusion because consumers might not understand which agreement applies to their account or why the terms differ. These commenters stated that even if consumers could navigate the volume of agreements, the third party—not the consumers—chooses these agreements, so comparison shopping would not be an option. In addition, these commenters stated that the public posting of these agreements raises confidentiality concerns regarding the disclosure of proprietary account features, which would compromise the issuer's ability to negotiate customized account agreements. These commenters also argued that a public posting requirement would undermine competition because it would inhibit the incentive for companies to develop novel products.

Several consumer groups and the office of a State Attorney General supported a requirement to post all agreements, including agreements that are not offered to the public, on the issuer's public Web site because they believed it would encourage competition and transparency, which they stated would help lower fees, and facilitate comparison shopping, which they stated would result in better informed consumer decisions. One consumer group argued that the public posting of agreements would assist the Bureau, researchers, and consumer advocates in compiling information to issue reports and shed light on inappropriate practices by some market participants.

With respect to publicly posting agreements that are not offered to the public, one consumer group explained that the payroll card market, in particular, is secretive and issuers and employers in this market do not generally provide fee schedules when asked. This commenter added that when it began issuing reports on unemployment compensation cards, fees started to come down. This commenter also argued that employers, government agencies, nonprofit organizations, and other entities considering a prepaid card program would be able to see and compare the various terms offered in the market. This commenter further argued that, while payroll card issuers may have confidentiality clauses in their contracts with employers, those clauses do not bind employees because once the card is issued to an employee, the agreement is no longer confidential. Finally, the office of a State Attorney General argued that even though consumers who enroll in payroll card programs are not typically able to comparison shop because the employer selects their program, they would still be able to compare their plan with wage other payment options, such as a checking account, direct deposit, and other prepaid accounts.

Regarding whether the Bureau should specify a timeframe for updating agreements posted on the issuer's Web site, one credit union requested that the Bureau not designate a timeframe, and one consumer group requested that the Bureau require issuers to post agreements within seven business days of issuing the agreement.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(c) generally as proposed, with several modifications. The Bureau has revised § 1005.19(c)(1) to exclude prepaid account agreements that are not offered to the general public from the requirement that issuers post agreements to their publicly available Web sites. In addition, the Bureau has revised § 1005.19(c)(3) to clarify that an issuer must post on its publicly available Web site and update the posted agreements as frequently as the issuer is required to submit new and amended agreements to the Bureau pursuant to § 1005.19(b). The Bureau has also made several minor revisions for clarity and consistency.

The Bureau continues to believe that the general requirement to post prepaid account agreements on the issuer's publicly available Web site will increase transparency in the terms of these agreements and the amounts of the fees assessed against the prepaid accounts. The increased transparency will allow the public and consumers to become better informed about these accounts, which will likely encourage competition and improve fees in the various markets.

[550] These commenters generally addressed the public posting requirements in proposed § 1005.19(b) and (c) together. There are thus some overlaps between the comments summarized here and those in the section-by-section analysis of § 1005.19(b) under *Bureau Posting of Prepaid Account Agreements* above.

Furthermore, the public posting of agreements will allow consumers to compare the terms and fees among various agreements. In addition, the Bureau does not believe this general requirement will be problematic for issuers, as posting agreements on the issuer's Web site is consistent with industry practice today.

The Bureau is persuaded, however, that posting to the issuer's publicly available Web site agreements that are not offered to the general public may impose unnecessary administrative burden and have little consumer benefit. The Bureau understands that issuers of payroll card, government benefit, campus card, and other types of accounts whose agreements are not offered to the general public could potentially have thousands of agreements to post and maintain on their publicly available Web sites, which could take a considerable amount of time and resources to set up and maintain without necessarily being easy for consumers to navigate. In addition, the Bureau believes that consumers who use these types of accounts would not likely visit the issuer's general Web site to access their individual agreements. The Bureau notes that issuers of these accounts are still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d), discussed below, and to submit the agreements to the Bureau under § 1005.19(b) (unless the de minimis exception under final § 1005.19(b)(4) or the product testing exception under final § 1005.19(b)(5) applies). In contrast, the Bureau believes that there are benefits to consumers and third parties in having agreements not available to the general public posted all in one place on the Bureau's Web site. See the section-by-section analysis of § 1005.19(a)(8) above.

The Bureau is finalizing comments 19(c)–1 and –2 generally as proposed, with several modifications for clarity and consistency with the revisions to § 1005.19(c) discussed above.

Final comment 19(c)–1 explains the differences between final § 1005.19(c) and other provisions in § 1005.19, as well as other requirements elsewhere in of Regulation E, and clarifies that, for agreements that are not offered to the general public, the issuer is not required to post and maintain the agreements on its publicly available Web site, but is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d). This comment also clarifies the requirements for issuers that are not required to submit agreements to the Bureau because they qualify for the de minimis exception under § 1005.19(b)(4) or the agreements qualify for the product testing exception under § 1005.19(b)(5). In addition, this final comment does not contain the proposed explanation that an issuer that is not required to submit agreements to the Bureau may be required to post the long form disclosure required by proposed § 1005.18(b)(2)(ii) online, depending on the methods by which the issuer offers prepaid accounts to consumers, as the Bureau does not believe it is necessary to include this clarification in commentary.

Final comment 19(c)–2 explains that, if an issuer offers an agreement to the general public as defined by § 1005.19(a)(6), that issuer must post that agreement on a publicly available Web site it maintains. If an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of § 1005.19. Such a third-party Web site is deemed to be maintained by the issuer for purposes of § 1005.19(c) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party Web site can comply with § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with § 1005.19(c).

19(d) Agreements for All Open Accounts

19(d)(1) Availability of an Individual Consumer's Prepaid Account Agreement

The Bureau's Proposal

The Bureau proposed § 1005.19(d)(1) to provide that, with respect to any open prepaid account, unless the prepaid account agreement is provided to the Bureau pursuant to proposed § 1005.19(b) and posted to the issuer's publicly available Web site pursuant to proposed § 1005.19(c), an issuer must either post and maintain the consumer's agreement on its Web site, or promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. Agreements posted pursuant to proposed § 1005.19(d) would have been permitted to be housed on a portion of the issuer's Web site that is available to consumers once they have logged into their accounts. If the issuer makes an agreement available upon request, the issuer would have been required to provide the consumer with the ability to request a copy of the agreement by telephone. The issuer would have been required to send to the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request.

Proposed comment 19(d)–1, which was similar to Regulation Z comment 58(e)–1, would have provided examples illustrating the requirements of proposed § 1005.19(d)(1). An issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under proposed § 1005.19(b)(4) would still have been required to provide consumers with access to their specific agreements under proposed § 1005.19(d). Similarly, an agreement that is no longer offered to the public would not have been required to be submitted to the Bureau under proposed § 1005.19(b), but would still have been required to be provided to the consumer to whom it applies under proposed § 1005.19(d).

The Board believed that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's Web site might be substantial for some issuers, particularly smaller institutions with limited information technology resources, and thus gave issuers the option of providing copies of agreements in response to cardholders' requests. The ability to provide agreements in response to a request made via telephone or Web site would ensure that cardholders still be able to obtain copies of their credit card agreements promptly.[551]

The Bureau did not know whether similar challenges are faced by prepaid account issuers, particularly for issuers that would qualify for the de minimis or product testing exceptions. The Bureau thus proposed to similarly allow prepaid account issuers to satisfy the requirements of proposed § 1005.19(d)(1) by providing a copy of a consumer's prepaid account agreement to the consumer upon the consumer's request.

Regulation Z § 1026.58(e)(1) requires a credit card issuer to accept cardholders' requests for copies of their credit card agreements via the issuer's Web site as

[551] *See* 74 FR 54124, 54192 (Oct. 21, 2009).

well as by telephone. The Bureau believed that prepaid account issuers would generally post prepaid account agreements to their Web sites pursuant to proposed § 1005.19(d)(1)(i), even if the agreement is posted in a location that is only accessible to prepaid account consumers after they have logged in to their accounts. The Bureau thus expected that few, if any, issuers would be required to provide agreements in response to a consumer's request pursuant to proposed § 1005.19(d)(1)(ii). The Bureau therefore did not believe it was necessary to require issuers to receive requests via their Web sites, although issuers could certainly allow consumers to make requests in that manner if they so choose.

Regulation Z § 1026.58(e)(1)(ii) also requires credit card issuers to allow cardholders to request copies of their agreements by calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to its purpose. Regulation Z comment 58(e)–2 provides additional clarification as to what is required to satisfy the ''readily available telephone line'' standard. Because the Bureau proposed to require prepaid account issuers to provide telephone numbers for a variety of other purposes,[552] the Bureau did not believe it was necessary to provide the same level of specificity regarding the telephone number to be used to request a copy of a prepaid account agreement pursuant to proposed § 1005.19(d)(1)(ii) nor to provide a comment equivalent to that of Regulation Z comment 58(e)–2.

Regulation Z § 1026.58(e)(1) also allows a credit card issuer, in response to such a cardholder's request for a copy of the cardholder's agreement, to provide that agreement to the cardholder electronically, such as by posting a copy of the agreement to its Web site in a location that is accessible by the cardholder. Because the Bureau expected that few, if any, issuers would be required to provide agreements upon request pursuant to proposed § 1005.19(d)(1)(ii), it did not appear to be necessary or useful to allow an issuer to post a prepaid account agreement to a consumer's online account in response to a consumer's request. The Bureau thus did not propose to permit issuers to provide copies of prepaid account agreements electronically in response to consumers' requests, except as permitted in proposed § 1005.19(d)(2)(vi), discussed below. In addition, a provision corresponding to Regulation Z § 1026.58(e)(2), containing a special provision for issuers without interactive Web sites, was not included in proposed § 1005.19, as the Bureau was not aware of any prepaid issuers that do not maintain Web sites (or do not use a third-party service provider to maintain such a Web site) from which consumers can access specific information about their individual prepaid accounts and thus does not believe such a provision is necessary for prepaid accounts. The Bureau did not propose an equivalent to Regulation Z comment 58(e)–3, which provides examples regarding the deadline for providing copies of requested agreements, as the Bureau did not believe such examples were necessary given the more limited ways that issuers are permitted to respond to requests under proposed § 1005.19(d)(1)(ii).

Regulation Z § 1026.58(e)(2) provides that the card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. The Board originally proposed requiring issuers to respond to such a request within 10 business days, but some commenters contended that 10 business days would not provide sufficient time to respond to a request. The commenters noted that they would be required to integrate changes in terms into the agreement and providing pricing information, which, particularly for older agreements that may have had many changes in terms over the years, could require more time. The Board believed it would be reasonable to provide more time for an issuer to respond to a cardholder's request for a copy of the credit card agreement, and thus allowed for 30 days in the final rule.[553]

The Bureau did not believe that issuers would face the same challenges in integrating changes in terms into prepaid account agreements in the same manner as with credit card agreements. The Bureau believed that requiring issuers to provide prepaid account agreements within five business days would give issuers adequate time to respond to requests while providing consumers with prompt access to their prepaid account agreements.

Comments Received

The Bureau received comments from several industry and consumer group commenters on this aspect of the proposal. The commenters generally supported a requirement to provide consumers with access to their individual prepaid account agreements. One industry trade association and one issuing bank argued that an issuer should be required to post and maintain the consumer's payroll card agreement on a portion of the issuer's Web site that is available to the consumer once he or she has logged into his or her account. These commenters suggested that the Bureau provide a statement on its dedicated prepaid account Web site directing consumers of payroll cards to visit their issuer's Web site for a copy of their agreement and to submit a complaint to the Bureau if the consumer has trouble obtaining it (similar to what is included on the Bureau's Web site for credit card agreements).

One consumer group urged the Bureau to require issuers to both post prepaid account agreements on the issuer's Web site and make agreements available in paper form upon the consumer's request, not one or the other. This commenter also requested that the Bureau require issuers to post a consumer's agreement on a password protected section of their Web site, even if the agreement is identical to the one currently offered to the public. This commenter explained that consumers who obtained their accounts in the past will not know that their agreements are the same as those currently offered. This commenter also stated that the ''my account'' area of the Web site is also where consumers will logically search for their agreements. In addition, this commenter urged the Bureau to make clear that issuers may not charge consumers a fee for requesting a copy of their agreement.

One program manager requested that the Bureau strike proposed § 1005.19(d) in its entirety from this final rule. This commenter argued that consumers would need to sort through thousands of agreements—each containing multiple pages—without knowing which account is applicable to their programs. This commenter stated that consumers will not likely seek out a multi-page agreement in order to compare the features of the program most important to that consumer. This commenter also stated that it does not feel comfortable making agreements, which they explained contain proprietary and confidential information, available to the public and subject to the scrutiny of competitors in the marketplace. This commenter stated that employers and other clients with whom the commenter has negotiated certain terms would not be comfortable with their competitors' ability to see the terms that resulted

[552] *See, e.g.,* proposed § 1005.18(b)(7), which would have required disclosure of a telephone number on the prepaid account access device, to be used to contact the financial institution about the prepaid account.

[553] 75 FR 7658, 7773 (Feb. 22, 2010).

from private, business-to-business negotiations. This commenter argued that the risks of exposing sensitive proprietary and confidential information outweighs any potential benefit to consumers. This commenter requested that the Bureau instead require issuers to provide consumers with access to their individual, tailored account agreement via the issuer's Web site, after the consumer's identity has been verified through their login credentials. This commenter stated that this approach would offer a more meaningful outcome and process for consumers since consumers would gain easy access to the exact agreement applicable to their programs.[554]

The Final Rule

For the reasons set forth herein, the Bureau is finalizing § 1005.19(d) substantially as proposed, with one revision for clarity. Specifically, final § 1005.19(d) provides that with respect to any open prepaid account, an issuer must either post and maintain the consumer's agreement on its Web site, or promptly provide a copy of the consumer's agreement to the consumer upon request.

The Bureau continues to believe that it would not be appropriate to apply the de minimis exception, the product testing exception, or the exception for accounts not currently offered to the general public to the requirement that issuers provide consumers with access to their specific prepaid account agreement through the issuer's Web site. The Bureau believes that the benefit of increased transparency of providing individual consumers with access to their specific prepaid account agreements is substantial regardless of the number of open accounts an issuer has and regardless of whether an agreement continues to be offered by the issuer or is offered as part of a product test. In addition, the Bureau believes that requiring issuers to provide prepaid account agreements within five business days gives issuers adequate time to respond to requests while providing consumers with prompt access to their prepaid account agreements. The Bureau is adopting new comment 19(d)–2, discussed below, to explain the requirements for sending an agreement.

[554] The Bureau notes that this commenter's concerns were likely in reference to the Bureau's proposed posting requirements in § 1005.19(b)(1) and (c), as proposed § 1005.19(d) would have permitted issuers to provide consumers access to their individual agreements after logging in to their online accounts. However, the Bureau included this comment here because the issuer specifically requested that the Bureau to strike proposed § 1005.19(d) from this final rule.

The Bureau declines to modify the provision to require issuers to post an individual consumer's prepaid account agreement on the issuer's Web site *and* make the agreement available in paper form upon the consumer's request, as suggested by a consumer group commenter. The Bureau believes that the administrative burden associated with posting each consumer's agreement on the issuer's Web site might be substantial for some issuers, particularly smaller institutions with limited information technology resources. Therefore, the final rule allows issuers to provide written copies of agreements in response to consumers' requests. The ability to provide agreements in response to a request made via telephone ensures that consumers are still able to obtain copies of their agreements promptly. For similar reasons, the Bureau declines to require issuers to post a consumer's agreement on a password protected section of their Web site, as suggested by a commenter, although issuers may certainly choose to do so for the convenience of their customers. Related, the Bureau reminds issuers that neither they nor their service providers are permitted to charge consumers a fee for requesting a copy of their prepaid account agreement pursuant to § 1005.19(d).

The Bureau is finalizing comment 19(d)–1 largely as proposed, with several modifications for consistency with the revisions to § 1005.19(d)(1) discussed above and to clarify that an issuer that is not required to post on its Web site agreements not offered to the general public must still provide consumers with access to their specific agreements under final § 1005.19(d).

The Bureau is adopting new comment 19(d)–2 to clarify the requirement for providing a consumer a copy of the consumer's agreement no later than five business days after the issuer receives the consumer's request. Specifically, this comment explains that, if the issuer mails the agreement, the agreement must be posted in the mail five business days after the issuer receives the consumer's request. If the issuer hand delivers or provides the agreement electronically, the agreement must be hand delivered or provided electronically five business days after the issuer receives the consumer's request. For example, if the issuer emails the agreement, the email with the attached agreement must be sent no later than five business days after the issuer receives the consumer's request.

19(d)(2) Form and Content of Agreements

The Bureau proposed § 1005.19(d)(2) to address the form and content requirements for agreements provided to consumers pursuant to proposed § 1005.19(d)(1). Proposed § 1005.19(d)(2)(i) would have stated that, except as otherwise provided in proposed § 1005.19(d), agreements posted on the issuer's Web site pursuant to proposed § 1005.19(d)(1)(i) or sent to the consumer upon the consumer's request pursuant to proposed § 1005.19(d)(1)(ii) must conform to the form and content requirements for agreements submitted to the Bureau as specified in proposed § 1005.19(b)(6). Proposed § 1005.19(d)(2)(ii) would have provided that if the issuer posts an agreement on its Web site pursuant to proposed § 1005.19(d)(1)(i), the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer. Proposed § 1005.19(d)(2)(iii) would have stated that agreements posted or otherwise provided pursuant to proposed § 1005.19(d) may contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized persons.

Proposed § 1005.19(d)(2)(iv) would have stated that agreements posted or otherwise provided pursuant to proposed § 1005.19(d) must set forth the specific provisions and fee information applicable to the particular consumer. Proposed § 1005.19(d)(2)(v) would have provided that agreements posted pursuant to proposed § 1005.19(d)(1)(i) must be accurate and updated whenever changes are made. Agreements provided upon consumer request pursuant to proposed § 1005.19 (d)(1)(ii) would have been required to be accurate as of the date the agreement is mailed or electronically delivered to the consumer. Proposed § 1005.19(d)(2)(vi) would have stated that agreements provided upon the consumer's request pursuant to proposed § 1005.19(d)(1)(ii) must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

Proposed § 1005.19(d)(2) was generally similar to Regulation Z § 1026.58(e)(3), except that it contained modifications to reflect the changes in proposed § 1005.19(d)(1) regarding the methods in which prepaid account agreements may be provided to

consumers pursuant to proposed § 1005.19(d). Proposed § 1005.19(d)(2) did not, however, include the provision contained in Regulation Z § 1026.58(e)(3)(iv) that requires agreements for all open accounts that are posted to a card issuer's Web site or otherwise provided to consumers to contain complete and accurate provisions and pricing information as of a date no more than 60 days prior to the date on which the agreement is posted to the card issuer's Web site pursuant to Regulation Z § 1026.58(e)(1)(i) or the date the cardholder's request is received under Regulation Z § 1026.58(e)(1)(ii) or (e)(2). As described above, the Bureau did not believe that updating prepaid account agreements is as complex as for credit card agreements, nor that prepaid account agreements are modified as frequently as credit card agreements may be. Therefore, the Bureau did not believe that prepaid account issuers should be permitted to provide agreements to consumers that are as much as 60 days out of date. Instead, pursuant to proposed § 1005.19(d)(2)(v), the Bureau proposed to require that agreements posted online be accurate and updated when changes are made, and that agreements provided upon the consumer's request be accurate as of the date the agreement is mailed or electronically delivered to the consumer.

The Bureau received no comments on this aspect of the proposal. Accordingly, the Bureau is finalizing § 1005.19(d)(2) substantially as proposed, with modifications for consistency with the revisions to § 1005.19(c)(3). The Bureau has also made a revision to proposed § 1005.19(d)(2)(v) to make clear that agreements provided upon a consumer's request must be accurate as of the date the agreement is sent to the consumer, rather than the date the agreement is mailed or electronically delivered to the consumer. The Bureau believes it is clearer to use the term ''sent'' in final § 1005.19(d)(2) and to explain in final comment 19(d)–2, discussed above, the methods in which a consumer may send an agreement to the consumer. Therefore, in addition to requiring that agreements posted pursuant to § 1005.19(d)(1)(i) must be updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to § 1005.19(b)(2), final § 1005.19(d)(2)(v) states that agreements provided upon consumer request pursuant to § 1005.19(d)(1)(ii) must be accurate as of the date the agreement is sent to the consumer.

With respect to the statement in final § 1005.19(d)(2)(iii) regarding agreements containing personally identifiable information relating to the consumer, the Bureau cautions that this is permissible only if the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized parties. The Bureau understands that issuers will include a consumer's name and address when mailing agreements. However, the Bureau expects issuers to protect personally identifiable information relating to the consumer as appropriate, or not to include such information in the agreements if it is not necessary to do so.

19(e) E-Sign Act Requirements

The Bureau proposed § 1005.19(e) to state that, except as otherwise provided in proposed § 1005.19, issuers may provide prepaid account agreements in electronic form under proposed § 1005.19(c) and (d) without regard to the consumer notice and consent requirements the E-Sign Act. Because TILA section 122(d) specifies that a credit card issuer must provide access to cardholder agreements on the issuer's Web site, the Board did not believe that the requirements of the E-Sign Act applied to the regulations now contained at Regulation Z § 1026.58.[555] The Bureau proposed § 1005.19(e) for ease of administration of these requirements and for consistency with Regulation Z § 1026.58(f).

The Bureau received several comments from industry supporting the proposal to provide agreements in electronic form without complying with the E-Sign consent requirements. One consumer group recommended the Bureau require compliance with the E-Sign Act for prepaid account information. This commenter explained that a consumer giving E-Sign consent and providing an email address does not necessarily mean the consumer has regular access to the Internet or a computer.

The Bureau continues to believe that it is appropriate to waive the requirement that issuers obtain E-Sign consent from consumers in order to provide prepaid account agreements in electronic form pursuant to § 1005.19(c) and (d), and thus the Bureau is finalizing § 1005.19(e) as proposed.

19(f) Effective Date

The Bureau proposed, in general, a nine month effective date for its rulemaking on prepaid accounts, with an additional three months for certain disclosure-related obligations. Comments regarding the proposed effective date generally are discussed in the detail in the section-by-section analysis of § 1005.18(h) above and in part VI below.

With regard to application of the proposed effective date to the requirements of § 1005.19 in particular, the Bureau received comments from several industry and trade association commenters, arguing that nine months would be insufficient to make the proposed changes. Several commenters expressed concern that issuers would need additional time to comply with the proposed submission and posting requirements pursuant to proposed § 1005.19(b) and (c), respectively, to implement the necessary system and operational changes. These commenters explained that submitting and posting prepaid account agreements would require issuers to develop a process of maintaining inventory for the agreements, create a process to update them on a quarterly basis, and develop a periodic monitoring process to ensure accuracy of these agreements. In addition, these commenters explained that the posting requirement would also require issuers to create a location on their Web sites for the posting of agreements.

The Bureau is adopting an effective date of October 1, 2017 for this final rule generally, which is reflected in new § 1005.19(f)(1), which states that except as provided in new § 1005.19(f)(2), the requirements of final § 1005.19 apply to prepaid accounts beginning on October 1, 2017.

The Bureau is adopting new § 1005.19(f)(2) to establish a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b). An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. The Bureau continues to work to develop a streamlined electronic submission process, which it expects will be fully operational before final § 1005.19(b) becomes effective on October 1, 2018. The Bureau expects to provide technical specifications regarding the electronic submission process in advance of that date. Issuers will have no submission obligations under this provision until the Bureau has issued technical specifications addressing the form and manner for submission of agreements.

In addition, new § 1005.19(f)(3) provides that nothing in new § 1005.19(f)(2) shall affect the requirements to post prepaid account agreements on an issuer's Web site pursuant to final § 1005.19(c) and (d) or the requirement to provide a copy of the

[555] *See* 74 FR 54124, 54193 (Oct. 21, 2009).

consumer's agreement to the consumer upon request pursuant to final § 1005.19(d).

The Bureau is adopting new comment 19(f)–1 to further explain that, if an issuer offers a prepaid account agreement on October 1, 2018, the issuer must submit the agreement to the Bureau, as required by § 1005.19(b), no later than October 31, 2018, which is 30 days after October 1, 2018. After October 1, 2018, issuers must submit on prepaid account agreements or notifications of withdrawn agreements to the Bureau within 30 days after offering, amending, or ceasing to offer the agreements.

The Bureau is also adopting new comment 19(f)–2 to explain that, during the delayed agreement submission period set forth in new § 1005.19(f)(2), an issuer must post agreements on its Web site as required by final § 1005.19(c) and (d)(1)(i) using the agreements it would have otherwise submitted to the Bureau under final § 1005.19(b) and must provide a copy of the consumer's agreement to the consumer upon request pursuant to final § 1005.19(d)(1)(ii). For purposes of § 1005.19(c)(2) and (d)(2), agreements posted by an issuer on its Web site must conform to the form and content requirements set forth in final § 1005.19(b)(6). For purposes of final § 1005.19(c)(3) and (d)(2)(v), amended agreements must be posted to the issuer's Web site no later than 30 days after the change becomes effective as required by final § 1005.19(b)(2).

Prior to the October 1, 2018 effective date for the submission requirement in final § 1005.19(b), the Bureau will issue technical specifications addressing the form and manner for submission of agreements. The Bureau intends to publish a notice in the **Federal Register** to inform issuers when its streamlined electronic submission process is operational in order to on-board all issuers in advance of the October 1, 2018 effective date.

The Bureau reminds credit card issuers that while final § 1005.19(h) provides a delayed effective date of October 1, 2018 to submit prepaid account agreements to the Bureau, the requirement to submit credit card agreements under Regulation Z § 1026.58 for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan becomes effective with the rest of this final rule on October 1, 2017.

Appendix A–5 Model Clauses for Government Agencies (§ 1005.15(e)(1) and (2))

Existing appendix A–5 provides model language for government agencies that offer accounts for distributing government benefits to consumers electronically; this model language reflects the modifications made to certain Regulation E provisions by existing § 1005.15. The Bureau proposed to relabel appendix A–5 as *Model Clauses for Government Benefit Accounts (§ 1005.15(e)(1) and (2))* and to revise the heading of paragraph (a) for clarity. The Bureau also proposed to revise the text of paragraph (a) of appendix A–5, which currently explains to consumers how to obtain information about account balances and account histories, to note that the consumer's balance information, along with an 18 month history of the consumer's account transactions, was available online. The Bureau also proposed to revise the paragraph regarding a written transaction summary to correspond with the proposed revised language for prepaid accounts in paragraph (a) of appendix A–7, to state that the consumer had a right to at least 18 months of written history of account transactions by calling or writing to the agency (or its designee). The paragraph would have also stated that the consumer would not be charged a fee for such information unless the consumer requested it more than once per month. The paragraph would have retained the existing optional bracketed language stating that the consumer could also request such a history by contacting his or her caseworker.

The Bureau similarly proposed to revise paragraph (b) of appendix A–5, which sets forth model clauses regarding disclosure of error resolution procedures for government agencies that provide alternative means of obtaining account information. The Bureau proposed to revise the section citation in the paragraph heading, and to revise the first paragraph of paragraph (b) to correspond with the proposed revised language for prepaid accounts in paragraph (b) of appendix A–7. Specifically, the Bureau proposed to remove the sentence stating that the agency must hear from the consumer no later than 60 days after the consumer learns of the error, and to add language stating that the agency must allow the consumer to report an error until 60 days after the earlier of the date the consumer electronically accessed his or her account, if the error could be viewed in the electronic history, or the date the agency sent the first written history on which the error appeared. The paragraph would have also stated that the consumer could request a written transaction history at any time by calling or writing, or optionally by contacting the consumer's caseworker.

The Bureau did not receive any comments specifically regarding the proposed changes to appendix A–5. As discussed in the section-by-section analyses of §§ 1005.15(d) and 1005.18(c) below, however, the Bureau is revising the proposed time periods that apply to a consumer's right to obtain account information. Under the final rule, consumers will have the right to access up to 12 months of account history online, instead of the 18 months of account history in the proposed rule. In addition, consumers will have the right to request at least 24 months of written transaction history, instead of the 18 months set forth in the proposed rule. The Bureau is revising appendix A–5 to reflect these changed time periods and to make certain other conforming changes, but is otherwise finalizing appendix A–5 as proposed.

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

Existing appendix A–7 provides model clauses for financial institutions that offer payroll card accounts; these clauses reflect the modifications made by the Payroll Card Rule to certain Regulation E provisions in existing § 1005.18. To reflect the proposed expansion of § 1005.18 to cover prepaid accounts, the Bureau proposed to revise the heading for existing appendix A–7 as well as the heading for paragraph (a) of appendix A–7. The Bureau also proposed to revise paragraph (a) of appendix A–7, which currently explains to consumers how to obtain account information for payroll card accounts, to change the term payroll card account to prepaid account, and to state that at least 18 months of electronic and written account transaction history is available to the consumer, rather than 60 days, as proposed in § 1005.18(c)(1)(ii) and (iii). The Bureau also proposed to add a sentence at the end of paragraph (a) of appendix A–7 to inform consumers that they could not be charged for requesting such written account transaction history, unless requests were made more than once per month. As discussed above, the Bureau proposed to allow financial institutions to assess a fee or charge for subsequent requests for written account information made in a single calendar month, in proposed comment 18(c)–3.i.

The Bureau similarly proposed to revise the heading of paragraph (b), and

to revise the text of paragraph (b) of appendix A–7, which currently sets forth model clauses regarding disclosure of error resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information, to change the term payroll card account to prepaid account and to renumber the section citation in the heading.

The Bureau also proposed to add a new paragraph (c) at the end of appendix A–7, for use by a financial institution that chooses, as explained in proposed comment 18(e)–4, not to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for prepaid accounts with respect to which it had not completed its collection of consumer identifying information and identity verification.

This model language would have stated that it was important for consumers to register their prepaid accounts as soon as possible and that until a consumer registered the prepaid account, the financial institution was not required to research or resolve errors regarding the consumer's account. To register an account, the consumer was directed to a Web site and telephone number. The model language would have explained that the financial institution would ask for identifying information about the consumer (including full name, address, date of birth, and Social Security Number or government-issued identification number), so that it could verify the consumer's identity. Once the financial institution had done so, it would address the consumer's complaint or question as described earlier in appendix A–7.[556]

The Bureau did not receive any comments specifically regarding the proposed revisions to appendix A–7. The Bureau is, however, making several revisions to the substantive provisions in § 1005.18(c) and (e) that correspond to the disclosures set forth in appendix A–7, and is revising appendix A–7 to reflect those changes. First, as discussed in the section-by-section analysis of § 1005.18(c) above, the Bureau is revising the proposed time periods that apply to a consumer's right to obtain account information. Under the final rule, consumers will have the right to access up to 12 months of account history online, instead of the 18 months of account history in the proposed rule. In addition, consumers will have the right to request at least 24 months of written transaction history, instead of the 18 months set forth in the proposed rule. The Bureau is revising paragraph (a) of appendix A–7 to reflect these changed time periods.

Second, under the final rule, the Bureau is no longer requiring a financial institution to provide 24 months of written account transaction history upon request, as required under § 1005.18(c)(1)(iii), for prepaid accounts (other than payroll card accounts or government benefit accounts) with respect to which the financial institution has not completed its consumer identification and verification process. To reflect this exception, the Bureau is adding bracketed language clarifying that the language in appendix A–7 informing consumers of their right to request 24 months of written account transaction history only applies to accounts that have been or can be registered with the financial institution.

Third, the Bureau is making several revisions to § 1005.18(e)(3), which, as proposed, would have limited a financial institution's obligation to provide limited liability and error resolution for accounts with respect to which the financial institution had not completed its collection of consumer identifying information and identity verification. Under the final rule, financial institutions must provide limited liability and error resolution protections for all prepaid accounts, regardless of whether the financial institution has completed its consumer identification and verification process with respect to the account. However, for accounts with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no such process), the financial institution is not required to provisionally credit the consumer's account in the event the financial institution takes longer than 10 or 20 business days, as applicable, to investigate and determine whether an error occurred.

To reflect these changes, the Bureau is revising paragraphs (b) and (c) of appendix A–7 as follows. The Bureau is revising the language in paragraph (b) describing a consumer's right to receive provisional credit in certain circumstances to reflect that, under the final rule, an account must be registered with the financial institution in order to be eligible for provisional credit. The Bureau is also revising paragraph (c), which under the final rule is only applicable to prepaid accounts that have a customer identification and verification process but for which the process is not completed before the account is opened (*i.e.,* when the consumer must take an affirmative step to register the account after acquisition). Specifically, paragraph (c) is revised to reflect that, under the final rule, failure to register an account with the financial institution will not jeopardize a consumer's right to have an error investigated and resolved. Rather, as revised, final paragraph (c) explains that a consumer may not receive provisional credit while an error claim is pending on a prepaid account that has not been registered.

The Bureau is otherwise adopting appendix A–7 as proposed.

Appendix A–10 Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§§ 1005.15(c)) and 1005.18(b))

The Bureau proposed Model Forms A–10(a) through (d) and (f) and Sample Forms A–10(e) and (g) in appendix A in relation to the disclosure requirements set forth in proposed § 1005.15(c)(2) and proposed § 1005.18(b). Proposed Model Form A–10(a) would have set forth the short form disclosure for government benefit accounts as described in proposed § 1005.15(c)(2). Proposed Model Form A–10(b) would have set forth the short form disclosure for payroll card accounts as described in proposed § 1005.18(b)(2)(i)(A). Proposed Model Form A–10(c) would have set forth the short form disclosure for prepaid accounts that could offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(*9*). Proposed Model Form A–10(d) would have set forth the short form disclosure for prepaid accounts that would not offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(*9*). Proposed Model Form A–10(f) would have set forth the short form disclosure for prepaid accounts that offer multiple service plans and choose to disclose them on one short form disclosure as described in proposed § 1005.18(b)(3)(iii)(B)(*1*). Proposed Sample Form A–10(e) would have set forth the long form disclosure for prepaid accounts as described in proposed § 1005.18(b)(3)(iii)(A). Proposed Sample Form A–10(g) would have set forth the long form disclosure for prepaid accounts that offer multiple service plans as described in proposed § 1005.18(b)(3)(iii)(B)(*2*).

The Bureau did not receive any comments regarding the proposed model and sample forms with respect to appendix A–10 specifically. The Bureau received many comments regarding its proposed pre-acquisition disclosure regime in general as well as regarding its

[556] The Bureau tested a version of this proposed model language with consumers. *See* ICF Report I at 23.

specific proposed requirements for the short form and long form disclosures. For a general discussion of the pre-acquisition disclosure regime and the content and format of the short form and long form disclosures the Bureau is adopting in this final rule, see the section-by-section analysis of § 1005.18(b) above. For discussion of the specific requirements in the final rule for the short form and long form disclosures, see the section-by-section analyses above under § 1005.18(b) for each of the specific elements of the disclosures.

The Bureau is finalizing appendix A–10 generally as proposed, with revisions to reflect changes made to the regulatory text of the short form and long form disclosure requirements in final § 1005.(c) and § 1005.18(b). In addition, the Bureau has revised the order of the model and sample forms in the final rule to include all short form disclosures together as Model Forms A–10(a) through (e) and the long form disclosure as Sample Form A–10(f). The Bureau has also removed the proposed sample long form disclosure for prepaid accounts that offer multiple service plans to provide greater flexibility to industry to develop its own designs. Moreover, the Bureau believes that Sample Form A–10(f) provides a sufficient template from which to design a long form for multiple service plans.

Thus, the Bureau is finalizing Model Forms A–10(a) through (e) and Sample Forms A–10(f) in appendix A in relation to the disclosure requirements set forth in the final rule in final § 1005.15(c) and § 1005.18(b). Model Form A–10(a) sets forth the short form disclosure for government benefit account programs as described in final § 1005.15(c). Model Form A–10(b) sets forth the short form disclosure for payroll card account programs as described in final § 1005.18(b), including the additional content specific to payroll card accounts set forth in final § 1005.18(b)(2)(xiv). Model Form A–10(c) sets forth a general short form disclosure for prepaid account programs for which overdraft/credit features may be offered as described in final § 1005.18(b)(2)(x) and that are eligible for FDIC deposit insurance as described in final § 1005.18(b)(2)(xi). Model Form A–10(d) sets forth an alternate version of a general short form disclosure for prepaid account programs that do not offer an overdraft/credit feature as described in final § 1005.18(b)(2)(x) and that are not eligible for FDIC deposit insurance as described in final § 1005.18(b)(2)(xi). Model Form A–10(e) sets forth the short form disclosure for prepaid account programs that offer multiple service plans and choose to disclose those multiple service plans on one short form disclosure pursuant to final § 1005.18(b)(6)(iii)(B)(*2*). Sample Form A–10(f) sets forth the long form disclosure for prepaid account programs as described in final § 1005.18(b)(4).

Appendix A—Model Disclosure Clauses and Forms

The Bureau is updating comment –2 in the commentary to appendix A (Appendix A—Model Disclosure Clauses and Forms). Pursuant to existing comment –2, financial institutions and remittance transfer providers have the option of using the model disclosure clauses provided in appendix A to facilitate compliance with the disclosure requirements enumerated in the comment. The comment also explains how the use of the appropriate clauses provided in appendix A will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of EFTA, provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively. In this final rule, the Bureau is updating the enumerated disclosure requirements in comment –2 to reflect changes to the numbering of § 1005.15 and § 1005.18 in the final rule and to add the provisions for new disclosure requirements included in the final rule.

The Bureau also is updating existing comment –3 in the commentary to appendix A (Appendix A—Model Disclosure Clauses and Forms). Pursuant to comment –3, financial institutions may use clauses of their own design in conjunction with the Bureau's model clauses in appendix A. The Bureau is adding a sentence to comment –3 to clarify that the alterations set forth in the comment apply, unless otherwise expressly addressed in the rule. The Bureau is adding this sentence to clarify the alterations permitted under existing comment –3 may not apply to certain disclosures pursuant to this final rule. For example, alternations permitting deletion of inapplicable services does not apply to the short form disclosures required by § 1005.18(b)(2). *See* comment 18(b)(2)–1.

Subpart B—Requirements for Remittance Transfers

On February 7, 2012, the Bureau published a final rule implementing section 1073 of the Dodd-Frank Act, which added section 919 to EFTA to establish consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries.[557] Among other things, EFTA section 919 requires the following protections for covered transactions sent by remittance transfer providers: (i) the provision of disclosures prior to and at the time of payment by the sender of the transfer; (ii) cancellation and refund rights; and (iii) the investigation and remedy of errors by providers. It also establishes liability standards for providers for the acts of their agents. The final rule implemented these provisions in new subpart B of Regulation E.

A remittance transfer is the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider, regardless of whether the sender holds an account with the provider, and regardless of whether the transaction is also an EFT, as defined in § 1005.3(b).[558] A designated recipient is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.[559] A sender is a consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient.[560]

In order to assess whether a consumer is a sender or whether an authorized recipient is a designated recipient, the location of where the funds are sent from and the location of where the funds are sent to are determinative. If the transfer is sent from an account (*e.g.,* a consumer transfers $100 out of the consumer's checking account) or to an account (*e.g.,* a consumer sends $100 in cash to a family's member's bank account in a foreign country), the location of the account determines where the funds are being, as applicable, sent from or sent to. To illustrate, existing comment 30(c)–2.ii explains that if a recipient's account is located in a State, the funds will not be received at a location in a foreign country.[561]

With respect to products such as prepaid cards (other than prepaid cards that were already accounts under Regulation E) and digital wallets;

[557] 77 FR 6194 (Feb. 7, 2012). This rule was subsequently amended. *See* 77 FR 40459 (July 10, 2012), 77 FR 50244 (Aug. 20, 2012), 78 FR 6025 (Jan. 29, 2013), 78 FR 30662 (May 22, 2013), 78 FR 49365 (Aug. 14, 2013), and 79 FR 55970 (Sept. 18, 2014) (collectively, the Remittance Rule).

[558] § 1005.30(e).

[559] § 1005.30(c).

[560] § 1005.30(g).

[561] An account located on a U.S. military installation that is physically located in a foreign country is located in a State. *See* comments 30(c)–2.ii and 30(g)–1.

however, the Remittance Rule does not treat those products as accounts.[562] Because these products were not previously considered to be accounts as defined in § 1005.2(b) of current Regulation E, the Remittance Rule directs that one must look at where the funds are being sent from to determine if a consumer is a sender and where the funds are being sent to in order to determine if the person receiving the funds is a designated recipient. In other words, the location of the consumer sending the funds determines where the funds are being sent from, and the location of the person receiving the funds determines where the funds are received. To illustrate, existing comment 30(c)–2.iii explains that if a consumer in a State purchases a prepaid card, the remittance transfer provider has sufficient information to conclude that funds are to be received in a foreign country if the provider sends the prepaid card to a specified recipient in a foreign country.

As the Bureau noted in the proposal, the definition of prepaid account would mean that certain prepaid products such as GPR cards and certain digital wallets would be considered accounts under Regulation E. Yet, the Bureau also noted that it did not intend to change how the Remittance Rule applied to prepaid products. Accordingly, the Bureau sought comments on whether additional clarification or guidance is necessary with respect to the Remittance Rule. Although the Bureau did not receive comments on this aspect of the proposal, the Bureau believes that to facilitate compliance, it is necessary to clarify that for prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from. Accordingly, this final rule contains clarifying and conforming revisions to comments 30(c)–2.ii and 30(g)–1 to clarify that transfers involving a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account) are not transfers from an account or to an account. For the same reason, this final rule also amends § 1005.32(a), as discussed in greater detail below.

[562] 77 FR 6194, 6207 (explaining that where the funds that can be accessed by a prepaid card are held does not determine whether funds are being sent to a designated recipient because a prepaid card is generally not considered to be an account as defined in § 1005.2(b)).

Section 1005.30 Remittance Transfer Definitions

As amended, comment 30(c)–2.ii explains that for transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in a location physically outside of any State depends on whether the provider at the time the transfer is requested has information indicating that funds are to be received in a foreign country. In addition, for transfers to all other accounts, whether funds are to be received at a location physically outside of any State depends on where the account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Further, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then they are located in a State.

Further, comment 30(g)–1, as amended, explains that for transfers sent from a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), whether the consumer is located in a State depends on the location of the consumer. If the provider does not know where the consumer is at the time the consumer requests the transfer from the consumer's prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer. For transfers from all other accounts belonging to a consumer, whether a consumer is located in a State depends on where the consumer's account is located. Additionally, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then they are located in a State.

The Bureau additionally proposed making conforming changes to existing comment 30(g)–3. Comment 30(g)–3 references the regulatory citation for *bona fide* trust account in § 1005.2(b)(3). The Bureau proposed renumbering the regulatory citation for *bona fide* trust account, changing it from § 1005.2(b)(3) to § 1005.2(b)(2), because the Bureau proposed to set forth the definition of prepaid account in new § 1005.2(b)(3). The Bureau also proposed minor changes to comment 30(g)–3 to streamline the text of the comment without altering its meaning. The Bureau did not receive any comments on these proposed changes, and the Bureau is adopting comment 30(g)–3 as proposed.

Section 1005.32 Estimates

32(a) Temporary Exception for Insured Institutions

The Remittance Rule generally requires that a remittance transfer provider must disclose to a sender the actual exchange rate, fees, and taxes that will apply to a remittance transfer, and the actual amount that the designated recipient of the remittance transfer will receive. However, subpart B sets forth four exceptions to this general rule. These exceptions permit providers to disclose estimates instead of actual amounts. EFTA section 919 provides two such exceptions. The exception at issue in § 1005.32(a) is a temporary exception for insured institutions with respect to remittance transfers a sender sends from the sender's account with the institution, as long as the provider cannot determined the exact amounts for reasons beyond its control. When the Bureau made the determination to extend the temporary exception to July 20, 2020, the Bureau's determination was limited to accounts under existing Regulation E. In other words, GPR cards and digital wallets that will become accounts under this final rule were not included in the scope of the temporary exemption. Accordingly, the Bureau is amending § 1005.32(a) to set forth that for purposes of § 1005.32(a), a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account. This amendment is intended to continue the current application of the Remittance Rule to prepaid products.

The Bureau adopts these clarifying and conforming amendments in subpart B pursuant to its authority under EFTA sections 904(a). EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems and to provide individual consumer rights.[563]

Regulation Z

Overview of the Bureau's Proposed Approach to Regulation Z

In developing the proposal, the Bureau considered whether and how to

[563] EFTA section 902(b).

regulate credit features offered in connection with prepaid accounts. Specifically, the Bureau considered potential transactions where consumers are allowed to overdraw their prepaid accounts through a fee-based overdraft service, to draw credit from a separate overdraft line of credit using a prepaid card,[564] or to push credit funds into a specified prepaid account to cover transactions for which there are insufficient or unavailable funds. As explained in more detail below, the Bureau proposed generally to treat all three product structures as "credit cards" that access "open-end (not home-secured) credit plans" under Regulation Z, and thus to subject them to the credit card protections set forth in Regulation Z. In addition and as explained above, the Bureau also proposed to revise existing provisions in Regulation E regarding compulsory use (proposed § 1005.10(e)(1)) and to adopt other rules specific to prepaid accounts that offer credit features (proposed §§ 1005.12(a) and 1005.18(b)(2)(i)(B)(*9*), (b)(2)(ii)(B) and (g)) to provide consumers with greater control over how they enroll in a credit feature and pay any credit balances associated with their prepaid accounts, and also to prevent evasion of the Regulation Z protections.

The proposal would have provided guidance on when the following devices related to prepaid accounts would be "credit cards": (1) Prepaid cards; and (2) account numbers that are not prepaid cards that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. With respect to credit features accessed by prepaid cards, the proposal would have covered a broad range of credit plans as credit card accounts under Regulation Z when they were accessed by prepaid cards. Under the proposal, this would have applied where credit is being "pulled" by a prepaid card, such as when the consumer uses the prepaid card at point of sale to access an overdraft plan to fund a purchase. In the proposal, the Bureau intended broadly to capture a prepaid card as a credit card when it directly accessed a credit plan, regardless of whether that credit plan was structured as a separate credit plan or as a negative balance to the prepaid account.

In addition, the proposal also would have included certain account numbers that are not prepaid cards as "credit cards" under Regulation Z when the account number could access a credit plan that only allows deposits directly into particular prepaid accounts specified by the creditor. This proposal language would have covered credit plans that are not accessed directly by prepaid cards but are structured as "push" accounts. The Bureau proposed to cover these account numbers for push accounts as credit cards because of concerns that these types of credit plans could act as substitutes for credit plans directly accessed by prepaid cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to account numbers for the credit account were designed to prevent this type of evasion of the rules applicable to prepaid cards that are credit cards.

In proposing to subject all three product structures to the rules for credit cards, the Bureau recognized that it would be consciously departing from existing regulatory structures that apply in the checking account context, where overdraft services structured as a negative balance on a checking account generally are governed by a limited opt-in regime under Regulation E and other forms of credit are subject to more holistic regulation under Regulation Z. As discussed further below, the final rule maintains the major thrust of the proposal by generally treating prepaid cards that access overdraft credit features as credit cards subject to Regulation Z. The final rule thus extends the credit card rules to credit features that can be accessed in the course of a transaction conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers regardless of whether access is structured through a "pull" or "push" arrangement. However, the final rule excludes situations in which prepaid account issuers are only providing certain incidental forms of credit without charging credit-related fees (such as in so-called "force pay" transactions) as well as situations in which a consumer chooses to link a prepaid card to a credit feature offered by a third party that has no business relationship with the prepaid account issuer. The final rule also excludes situations where the prepaid card only can access a credit feature outside the course of a transaction conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau has also revised various elements of the proposed rule and provided additional clarity regarding operational practices to promote transparency and facilitate compliance for credit features offered in connection with prepaid accounts that are subject to the credit card rules under Regulation Z.

Comments Received

The majority of the comments received by the Bureau in response to this rulemaking concerned the Bureau's proposed approach to regulating credit features offered in connection with prepaid accounts. In general, most consumer groups urged the Bureau to ban overdraft services in connection with prepaid products, arguing that the overdraft fees and accumulating debt can be harmful (many individual consumers also commented in support of additional protections for overdraft services on prepaid cards, as discussed below). They argued that prepaid consumers are often more vulnerable than users of traditional deposit accounts or do not anticipate having to deal with credit on their prepaid accounts. They argued further that prepaid accounts should remain true to their name—prepaid—and similarly that prepaid consumers who wish to use credit should do so deliberately, and not inadvertently through overdraft transactions. In addition, consumer groups advocating a ban also argued that the financial incentives of an overdraft business model would become increasingly hard to resist for the issuers of prepaid accounts, most of whom do not currently offer overdraft services, and that the Bureau should remove these incentives through a regulatory prohibition on prepaid overdrafts.

For similar reasons, several consumer groups also advocated for a specific ban on overdraft features in connection with government benefit accounts and payroll card accounts, and one consumer group further advocated for a ban on overdraft features offered in connection with student cards. Several consumer groups argued that, if the Bureau did not adopt a ban on prepaid overdraft, any credit offered in connection with a prepaid account should be regulated as a credit card under Regulation Z and should be required to be offered separately from the prepaid account.

In contrast, most industry commenters (as well as some individual consumer commenters, as discussed below) generally objected to the Bureau adopting regulations that would limit

[564] This final rule's Regulation Z provisions reference credit features accessed through a prepaid *card*. The final rule's Regulation E provisions, by contrast, largely refer to prepaid *accounts*, and, separately, to access devices for prepaid accounts.

credit features on prepaid accounts.[565] In particular, these commenters stated that overdraft for prepaid accounts should function as it does for other types of deposit accounts with linked debit cards—*i.e.,* subject to the current Regulation E opt-in framework for overdraft. Several members of Congress likewise argued that prepaid overdraft should be regulated under the Regulation E opt-in approach. These industry and government commenters argued that to the extent the Bureau seeks to treat prepaid accounts as transaction account substitutes, such products should be subject to the same regulatory requirements (and exceptions) as those accounts, including opt-in requirements for overdraft services.

Some industry commenters that objected to the Bureau's Regulation Z approach, including trade associations, a credit union, and a program manager that offers overdraft on certain of its prepaid accounts, disputed the Bureau's proposed interpretation of the relevant Regulation Z provisions and expressed concern that the Bureau's proposed interpretation of certain credit-related definitions in Regulation Z would have broader implications for traditional overdraft services on checking accounts.

Several industry commenters argued that, if the Bureau finds that the current Regulation E opt-in approach is insufficient to regulate prepaid overdraft, the Bureau should consider other alternatives that would be preferable—and simpler—than a regime that subjects prepaid overdraft to credit card rules under Regulation Z. For example, several commenters, including a trade association and a credit union issuer, suggested that the Bureau consider a cap on overdraft fees, while others suggested that the Bureau impose a cap on the amount that any account may be overdrawn. Other commenters, including several members of Congress, urged the Bureau to put in place a set of requirements to limit overdraft credit features offered in connection with prepaid accounts, which would essentially mirror the structure of a program offered today by one industry participant. That program includes a maximum overdraft amount, limitations on the number of monthly overdrafts per account, and a cooling-off period for frequent overdrafters. A law firm writing on behalf of a coalition of prepaid issuers advocated for a similar structure, including a limit on the amount of an overdraft fee so it cannot exceed the dollar amount of the overdraft or prohibiting overdraft fees on transactions below a certain dollar threshold, together with an overdraft fee cap. An industry trade association likewise suggested that the Bureau adopt caps on overdraft amounts and fees, and also suggested that these be augmented by a limit on the number of times an overdraft fee could be charged in a given period, as well as requirements to provide detailed disclosures informing the consumer how the overdraft features work. Several industry commenters, including one credit union service organization, suggested that the Bureau adopt a dollar limit below which overdrafts occurring in connection with a prepaid account would be excluded from the definition of credit under Regulation Z and instead covered by the Regulation E opt-in regime.

Some industry commenters argued that their customers want—or even need—access to short-term credit in connection with their GPR cards. Several trade association commenters similarly stated that consumers want access to credit features on prepaid cards. These commenters expressed concern that subjecting overdraft credit on prepaid accounts to Regulation Z credit card rules would cut off consumers' access to short-term credit. The Bureau also received comments from several members of Congress stating that their constituents use and depend upon credit features attached to prepaid cards.

As noted above, the Bureau received around 6,000 comments from consumers who use prepaid products currently offering overdraft services. The Bureau understands that these letters were coordinated as part of a letter-writing campaign organized by a program manager that offers overdraft on certain of its prepaid accounts. These consumers voiced support for their overdraft services. Some noted, for example, that the overdraft fees charged on their prepaid accounts were less than the overdraft fees charged by banks, and that their overdraft services allowed them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs. By contrast, the Bureau also received comments from consumers opposed to prepaid overdraft features. As part of a letter-writing campaign organized by a consumer group, the Bureau received largely identical comments from approximately 56,000 consumers generally in support of the proposal—particularly related to the requirement under Regulation Z credit card rules to assess consumers' ability to pay before offering credit attached to prepaid cards—and urging the Bureau to finalize strong credit provisions in the final rule so that consumers can avoid hidden fees and unexpected debt.

In addition to these comments about the Bureau's general approach to regulating credit offered in connection with prepaid accounts, the Bureau also received numerous comment letters from industry and consumer groups on the specifics of this part of the proposal. Most industry commenters were concerned that the proposed regime would sweep in far more products than the Bureau intended by covering situations where credit is extended to cover so-called ''force pay'' transactions. Force pay transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the prepaid account to cover the transaction at settlement. Industry commenters were nearly universally concerned that force pay transactions would trigger coverage under the proposal even when the only fee charged in connection with the overdrawn transaction is a fee, such as a per transaction fee, that would be charged regardless of whether the transaction is paid from a positive balance on the prepaid account or overdraws the account. Industry commenters said requiring prepaid account issuers to waive neutral per transaction fees in order to avoid triggering the credit card rules on force pay transactions would be more complicated than the Bureau anticipated in the proposal and would impose substantial compliance costs. These commenters indicated that similar issues may also arise with other transaction-specific fees, such as currency conversion fees assessed on force pay transactions.

The Bureau also received industry comments that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is being offered by an unrelated third party. These commenters were concerned that unrelated third-party creditors may not be aware that their credit features are being used as overdraft credit features with respect to prepaid accounts. If unrelated third-party creditors were subject to the proposal, commenters said these creditors would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This would have been true even if the creditors were already subject to the

[565] One industry commenter, an issuing bank, urged the Bureau to ban overdraft features on prepaid accounts, though unlike the consumer group commenters who took the same position, this commenter argued that, absent a ban, the Bureau should regulate prepaid overdraft under Regulation E.

credit card rules in their own right because the proposal contained a number of provisions that would have applied only to prepaid cards that are credit cards and would not have applied to credit card accounts generally. On the other hand, several consumer groups supported the proposal to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

One industry commenter expressed concern that the proposal would trigger the credit card rules in situations in which a prepaid card could be used only to complete standalone loads or transfers of credit from a separate credit feature to the prepaid account, but not to access credit in the course of a transaction conducted with the prepaid card. This commenter noted that there are several circumstances in which consumers can consciously load value to their prepaid accounts using a debit card or credit card, where this load is not occurring as part of an overdraft feature in connection with the prepaid account. Specifically, in this scenario, the consumer does not access credit automatically in the course of a transaction conducted with the prepaid card, but rather uses the credit or debit card to make a one-time load outside the course of any particular transaction. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

On the other hand, several consumer group commenters suggested that the Bureau should apply the credit card rules to any credit plan from which credit is transferred to prepaid cards, rather than limiting application only to certain ''push'' arrangements as proposed (where a prepaid account is the only account designated by the creditor as a destination for the credit provided). Similarly, another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid card accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

Overview of the Final Rule's Amendments to Regulation Z

In the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with the prepaid card (except for very limited incidental credit, as described below). The reasons for this are explained further below, but to facilitate understanding, this subsection first gives an overview of the coverage decisions and structure of the final rule. As the Bureau noted in the proposal and as discussed below, the provisions addressing credit features in connection with a prepaid account in the final rule are not intended to alter treatment of overdraft services or products on checking accounts under Regulation Z.

The final rule sets forth the rules for when a prepaid card is a credit card under Regulation Z in new § 1026.61. The Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. While Regulation E provides protections for the asset account of a prepaid account, the Bureau believes separate protections are necessary under Regulation Z for certain overdraft credit features in connection with prepaid accounts.

New § 1026.61(b) generally requires that such credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to such separate credit features if the card meets the following two conditions: (1) the card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

To effectuate these provisions and provide compliance guidance to industry, the Bureau is also revising certain other credit card provisions as a result of new § 1026.61. For example, the final rule provides guidance in new § 1026.4(b)(11) and related commentary on how the definition of finance charge applies to covered separate credit features accessible by hybrid prepaid-credit cards. In addition, the Bureau notes that, pursuant to the final rule, accounts that are ''hybrid prepaid-credit cards'' will be subject to the credit card protections in Regulation Z, as well as all other applicable provisions of Regulation Z. This includes, for example, Regulation Z's requirement that creditors retain evidence of compliance with Regulation Z.[566]

As discussed in the section-by-section analysis of § 1026.61 below, the final rule provides certain exclusions from coverage for prepaid cards that access credit in certain situations. Specifically, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a credit card with respect to a credit feature that does not meet both conditions stated above, namely that the credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party (*i.e.,* that is not the prepaid account issuer, its affiliate, or its business partner). Such credit features are defined as ''non-covered separate credit features.'' Under the final rule, a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z in its own right, depending on the terms and conditions of the product.

In addition, under new § 1026.61(a)(4) a prepaid card also is not a credit card when the prepaid card only accesses credit that is incidental to certain transactions in the form of a negative balance on the asset account where the prepaid account issuer does not charge credit-related fees for the credit. This exception is intended to exempt three types of credit so long as the prepaid account issuer generally does not charge credit-related fees for the credit: (1) Credit related to ''force pay'' transactions; (2) a de minimis $10 payment cushion; and (3) a delayed load

[566] *See* § 1026.25.

cushion where credit is extended while a load of funds from an asset account is pending. Under the final rule, this type of credit generally is subject to Regulation E, instead of Regulation Z.[567] For example, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.12(a) above, Regulation E's provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. Also, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, although this incidental credit generally is governed by Regulation E, the Bureau is exempting this incidental credit from the opt-in rule in final § 1005.17. For the reasons discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, the Bureau is adding new § 1005.17(a)(4) to provide that credit accessed from an overdraft credit feature that is exempt from Regulation Z under § 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17.

The Bureau notes that the final rule does not adopt proposed provisions that would have made certain credit account numbers that were used to push credit onto a prepaid card into credit cards as described above. Instead, the Bureau in the final rule addresses the evasion concerns discussed in the proposal and raised by consumer group commenters through the definition of "hybrid prepaid-credit card" as discussed below. The Bureau will continue to monitor the market for potential evasion of the provisions addressing hybrid prepaid-credit cards, and will consider further modifications in future rulemakings if necessary.

Consideration of extension of existing exemptions for prepaid overdraft services. The Bureau has carefully considered the comments submitted by all interested stakeholders addressing the regulatory framework and implementation of the rule under a Regulation Z approach, and has decided to finalize its proposal to depart from the regulatory framework that applies to overdraft services on checking accounts, which was created by the Board through previous rulemakings. As discussed further separately below, the Bureau believes that the credit card rules under Regulation Z provide a more appropriate and protective regulatory framework for overdraft features on prepaid accounts.

The Board, acting in the late 1960s, decided to subject overdraft lines of credit in connection with traditional deposit accounts to Regulation Z requirements for open-end credit, while carving ad hoc "courtesy" overdraft services on traditional deposit accounts out from Regulation Z through operation of the definitions of the terms "creditor" and "finance charge." A creditor is generally defined under Regulation Z to mean a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.[568] In 1969, however, the Board adopted an exclusion to the definition of finance charge for "charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing."[569] Under the exception, the fees charged for the overdrafts are not "finance charges" under Regulation Z, and thus a financial institution extending credit is not a "creditor" under Regulation Z because it is not charging a finance charge and is not structuring the repayment of the credit by written agreement in more than four installments.[570] Rather, overdraft services are not subject to Regulation Z credit protections. While the Board later issued rules under Regulation E to specify disclosure requirements and to require an opt-in process for certain types of overdraft transactions, these rules generally provide fewer protections for consumers on an ongoing basis than does Regulation Z.

The Bureau believes that this existing patchwork approach should not be extended to prepaid accounts, both because the historical justification for the regulatory treatment of checking account overdraft services under Regulation Z does not apply to prepaid accounts and because there are notable differences between how prepaid accounts and checking accounts function. At the time the Board established the Regulation Z exemption, bounce-protection programs (as overdraft services were known) were necessarily check-based because checks and cash were—at that time—consumers' only ways of accessing funds in their deposit accounts. Further, a financial institution's decision whether to pay a given check that triggered an overdraft was at that time necessarily manual, or ad-hoc, because computers (and automated credit decision-making) were only in their infancy. Typically, a consumer's institution (the "paying bank," which is equivalent to the card-issuing bank in a card transaction) cannot authorize or decline a purchase by check when the consumer seeks to make payment (*i.e.,* while at the merchant). As the Board noted in 2009, institutions that historically provided overdraft coverage for check transactions on an ad-hoc basis often provided a benefit to consumers, insofar as paying the check was often a preferable outcome to a bounced, returned check which could trigger an NSF fee, additional fees imposed by merchants, and even potential criminal liability for passing bad checks.[571] With relatively low fees and low incidence, the programs were therefore considered a minor "courtesy" service that enabled consumers to avoid both the embarrassment of bouncing checks and the attendant costs.

[567] With respect to such credit, the final rule provides that a prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges as described in new comment 4(b)(11)–1.iii.

[568] *See* § 1026.2(a)(17)(i). The term "creditor" also includes a card issuer, which is a person that issues credit cards, when that person extends credit accessed by the credit card. *See* § 1026.2(a)(17)(iii) and (iv). Regulation Z defines the term "credit card" to mean any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 1026.2(a)(15). A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. *See* § 1026.2(a)(15)(iii). In addition to being creditors under TILA and Regulation Z, card issuers also generally must comply with the credit card rules in the FCBA and in the Credit CARD Act (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G. *See generally* §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12 and 1026.51 through 1026.60.

[569] *See* § 1026.4(c)(3).

[570] In addition, the commentary to the definition of "credit card" explains that a debit card is not a credit card where there is no credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft. *See* comment 2(a)(15)–2.ii.A. The Board adopted this commentary to exclude overdraft services from becoming subject to Regulation Z when they are accessed by a debit card, consistent with the exclusion for overdraft charges from the definition of finance charge where there is no written agreement to extend credit and charge a fee, as described above. *See* 75 FR 7657, 7664 (Feb. 22, 2010).

[571] 77 FR 59033, 59033 (Nov. 17, 2009); *see also generally* Fed. Deposit Ins. Corp., FIL–81–2010, *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance* (Fin. Inst. Letter, Nov. 24, 2010), *available at https://www.fdic.gov/news/news/financial/2010/fil10081.html.*

However, the account structure and logistics for prepaid accounts have never matched those for checking accounts that existed in 1969. Checking accounts generally allow consumers to write checks and present them to payees without first receiving authorization from their financial institution. Checking accounts also allow incoming debit ACH transactions without preauthorization. These types of transactions are relevant for two reasons. First, the exact timing of the check clearance and incoming ACH process can be difficult for the consumer to predict. For instance, it may sometimes take several days or longer for a check to be presented and funds to be withdrawn from the consumer's account, while other times checks may be presented faster. Uncertainty around the timing of check and ACH presentment may lead to inadvertent overdrafts. Second, where this occurs, there is a benefit to the consumer in paying the transaction rather than declining the transaction and exposing the consumer not only to NSF fees but to bounced check fees and late payment fees charged by the payee.

By contrast, the vast majority of prepaid account transactions are preauthorized, which means that the merchant seeks authorization from the financial institution before providing goods or services to the consumer.[572] In such cases, the consumer is not at risk of having a payment rejected after a transaction has already occurred and the consumer will not be subjected to NSF and merchant fees; rather, the financial institution can simply reject the transaction before the purchase occurs if there are insufficient funds in the account.[573] This is true for point-of-sale transactions as well as online bill pay transactions completed via ACH initiated from the prepaid account to the biller (or even with mailed, pre-authorized checks). Thus, a consumer using a prepaid account is less like the checking account customer that the Board focused on in creating the exemption for overdraft—a consumer being extended a courtesy in order to avoid potentially harsher repercussions—and instead is like any other consumer using credit to purchase goods or services.

There are several additional reasons why the Bureau believes the existing treatment of checking account overdraft would be inappropriate as applied to prepaid accounts. As stated in the proposal, a substantial portion of consumers holding prepaid accounts have had difficult experiences with overdraft services on traditional checking accounts.[574] In general, prepaid consumers are disproportionately unbanked or underbanked.[575] Some studies have also shown they are more likely to have limited education, and are often unemployed or recipients of public benefits.[576] Although the size of this group is not clear, the Bureau believes that some users of prepaid products do vary, in some degree, from users of traditional deposit accounts.

Moreover, as noted in the proposal, financial institutions deliberately market prepaid accounts to consumers as products that are safer and easier to use than comparable products with credit features, in particular checking accounts with overdraft. Specifically, many companies market prepaid accounts to consumers as products that increase consumers' financial control by preventing overspending and the incurring of debt.[577] Relatedly, the Bureau also believes that many of these consumers, and even many consumers who continue to maintain separate checking accounts, choose to purchase prepaid products because of their promise to allow consumers to control their spending. Indeed, many participants in the Bureau's pre-proposal consumer testing emphasized control as a primary reason they used prepaid cards.[578] Other studies have similarly found that a primary reason consumers use prepaid cards is that they want increased control over their finances and want to avoid incurring debt and related fees.[579]

The Bureau believes the final rule's approach with respect to overdraft credit features on prepaid accounts will help preserve the unique character of prepaid accounts as a safe alternative to products that offer credit features, in conformance with the expectations of most prepaid consumers. This treatment is in contrast to the historical evolution of checking accounts, where overdraft services have been common across almost all such accounts and consumers often expect such services to be offered in connection with checking accounts.

Further, unlike with respect to checking accounts where overdraft services have been structured to fit a unique and separate regulatory regime

[572] An exception is third-party ACH debits, which could be submitted without prior authorization from the financial institution. However, an informal review by the Bureau of major GPR card programs indicates that most will not accept incoming ACH debits or that, by contract, cardholders are not permitted to establish them.

[573] The Bureau is aware that, in some instances, a transaction will be authorized when the account balance is positive but will ultimately settle when the account balance is negative, because for some types of transactions the final settlement amount may be higher than the authorization amount (*e.g.*, at restaurants because tips are sometimes added after authorization).

[574] 2014 Pew Survey at 7–8 (noting both that "Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage" and that "Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees."). Separately, one major issuer estimated that 80 percent of its GPR card customers earn less than $50,000. *See* Kate Fitzgerald, *Green Dot Chief Sees Prepaid Mobile Payments As Company's Next Challenge* (May 7, 2012), *available at http://www.isoandagent.com/news/Green-Dot-Chief-Sees-Prepaid-Mobile-Payments-As-Companys-Next-Challenge-3010590–1.html* (explaining that "single mothers in their late 30s and early 40s comprise 55 percent of [one major prepaid card company's] target market, with most of them earning less than $50,000 annually."). Similarly, others have informed Bureau staff that the average credit score of prepaid account users is far below average.

[575] In its report on unbanked and underbanked consumers, the FDIC explained that households are identified as "unbanked" if they answered "no" to the question, "Do you or does anyone in your household currently have a checking or savings account?" The FDIC further explained that "underbanked households are defined as those households that have a checking and/or a savings account and had used non-bank money orders, non-bank check cashing services, non-bank remittances, payday loans, rent-to-own services, pawn shops, or refund anticipation loans (RALs) in the past 12 months." *See* FDIC, *2011 FDIC National Survey of Unbanked and Underbanked Households* (2011), *available at https://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf.* For discussion of prepaid consumers' background, *see* 2012 FRB Kansas City Study at 11–12 (although the report also notes no correlation due to income or education; possibly due to the different types of use by prepaid consumers).

[576] 2011 FDIC Survey at 16, 18, 40; *see also* Nat'l Council of La Raza, *Perspectives on Prepaid Cards from Low-Income Hispanic Tax Filers,* at 1–2 (2011), *available at http://www.nclr.org/images/uploads/publications/_on_prepaid_cards_(3).pdf.*

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

[578] *See* ICF Report I at 5.

[579] *See* Bretton Woods, Inc., *A Comparative Cost Analysis of Prepaid Cards, Basic Checking Accounts and Check Cashing,* at 4 (Feb. 2012), *available at http://bretton-woods.com/media/3e145204f3688479ffff832afffd524.pdf* (noting that 74 percent of prepaid users like the fact they cannot overspend or overdraft the most about prepaid cards); 2014 Pew Survey at 14 ex.12 (noting that the top two reasons consumers claim to use prepaid cards related to avoiding credit card debt (67 percent) and helping them not spend more money than they actually have (66 percent)).

for several decades, the Bureau is regulating prepaid overdraft services on a largely blank slate. Checking accounts and their pricing structures have evolved over the last several decades under compliance frameworks that were developed in accordance with existing regulations, exceptions to those regulations, and other agencies' guidance. In contrast, very few prepaid products currently offer overdraft services or other associated credit features. Most prepaid account programs do not have such a feature and, as a result, prepaid issuers would have to implement a new compliance regime in any event were they to decide to add such features.

Similarly, the Bureau is concerned that if it were to extend the exception for overdraft services in connection with checking accounts to prepaid accounts, financial institutions offering overdraft on prepaid accounts would come to rely heavily on back-end pricing like overdraft fees, while eliminating or reducing front-end pricing, as has occurred with overdraft services on checking accounts. Indeed, although there are few prepaid providers currently offering overdraft services, one commenter provided data that suggests that the fee revenue attributable to overdraft fees for those prepaid providers who do offer overdraft have come to make up a significant portion of their revenue.[580]

The Bureau believes such pricing structures can result in less transparent pricing for consumers. By labeling overdraft credit features offered on prepaid products as credit subject to the disclosure requirements of Regulation Z, the Bureau believes that the resulting product will be better understood and managed as credit by consumers to the extent some prepaid accountholders decide they want to access such credit.

Because it has elected to treat overdraft credit features offered on prepaid accounts as credit cards under Regulation Z, the Bureau declines to adopt additional restrictions or requirements in Regulation E for prepaid accounts offering overdraft credit, as some industry commenters suggested. As summarized above, some industry commenters suggested that, to the extent the Bureau was concerned that Regulation E's opt-in regime was not sufficiently robust to address the perceived consumer harms associated with prepaid overdraft, the Bureau could impose additional, prepaid-specific restrictions within Regulation E to, for example, limit the amount of prepaid overdraft fees, limit the amount by which a prepaid account could be overdrawn, or limit the number of times a prepaid account could be overdrawn during a given period. The Bureau declines to adopt this approach. For the reasons discussed below, the Bureau believes that the credit card rules provide a comprehensive existing framework that provides substantial benefits to consumers, and that it is more appropriate under these circumstances to adopt that framework than to create additional novel requirements in Regulation E.

With respect to the comment that the Bureau should adopt a dollar limit below which overdrafts occurring in connection with a prepaid account would be excluded from the definition of credit under Regulation Z and instead be covered by the Regulation E opt-in regime, the Bureau is concerned that allowing consumers to incur substantial debt in connection with an account that most do not intend to use as a credit account may pose a risk to those consumers by compromising their ability to manage and control their finances.[581] Thus, while the final rule would permit a financial institution to offer an incidental "payment cushion" of $10 without triggering the rules governing credit cards under Regulation Z so long as the issuer does not impose credit-related fees, the Bureau believes that the provision of a higher dollar amount of credit in connection with a prepaid account should be subject to full credit card protections unless otherwise excluded under the final rule.

Treatment of prepaid overdraft services under the credit card rules in Regulation Z. The Bureau has concluded that the open-end credit regime established under Regulation Z is an appropriate and fitting regime for the treatment of overdraft credit features offered in connection with prepaid accounts. The term "open-end credit" is defined to mean consumer "credit" extended by a creditor under a "plan" in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a "finance charge" from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. As explained in the proposal, the Bureau has analyzed whether it is reasonable to interpret "credit" to include when overdrafts are paid in relation to prepaid accounts. The Bureau continues to believe it is. The Bureau also believes that overdraft services, overdraft lines of credit, and similar products that could be offered in connection with prepaid accounts can be regulated by Regulation Z as a "plan" where the consumer is contractually obligated to repay the debt, even if the creditor retains, by contract, the discretion not to extend credit.

The Bureau has further evaluated whether such a plan satisfies the three prongs necessary to establish the plan as an open-end (not home-secured) credit plan under Regulation Z. The first prong asks whether overdraft services, including those offered in connection with prepaid accounts, can be plans under which the creditor reasonably contemplates repeated transactions. Every prepaid overdraft service that charges a fee of which the Bureau is aware contemplates and approves repeated transactions. The second prong of the definition asks whether the creditor may impose a finance charge from time to time on an outstanding unpaid balance.[582] The Bureau believes that overdraft fees and other charges on credit features offered in conjunction with prepaid accounts easily meet the general definition of finance charge. The Bureau believes that fees levied for overdraft services or other credit features on prepaid accounts—such as interest charges, transaction charges, service charges, and annual or other periodic fees to participate in the credit program—generally constitute finance charges, because they are directly payable by the consumer and imposed directly by the creditor as a condition of the extension of credit. Lastly, the Bureau believes that automated overdraft services for prepaid accounts generally will be structured such that the credit line for the plan will generally replenish to the extent that any outstanding balance is repaid, thus satisfying the final prong of the definition of open-end credit. Insofar as the Bureau has determined that the three prongs of an open-end credit plan are met, it finds that an overdraft service on a prepaid account is an open-end credit plan much like an overdraft line of credit or other similar products linked to prepaid accounts.

The Bureau also believes that covering overdraft services offered in connection with prepaid accounts under

[580] According to the office of a State Attorney General, overdraft fees and declined balance fees may comprise a substantial portion of the fee-based revenue for financial institutions offering payroll card programs, stating that, in its survey of 38 employers' payroll card programs, overdraft fees comprised over 40 percent of the fees assessed by those vendors that charge them.

[581] See also the section-by-section analyses of §§ 1026.2(a)(14) and 1026.61(a)(4) below.

[582] *See* § 1026.2(a)(20)(ii).

Regulation Z aligns with TILA's purpose to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.[583] The Bureau believes that regulation of prepaid account overdraft services as open-end (not home-secured) credit will serve to accomplish the stated purpose of TILA by requiring creditors and other persons to explain the terms of overdraft services to consumers in the context of Regulation Z, protect consumers from high fees during the first year (through Regulation Z's fee harvester provision) and from harms arising from various billing and improper credit card practices, and give consumers strong tools to manage their credit relationships.

Finally, the Bureau believes that Regulation Z's credit card provisions, particularly as augmented by some tailored provisions that the Bureau is adopting specifically for the prepaid context, provide substantially more consumer protections than other existing regulatory regimes. These include greater protections around pricing, protections around creditors taking payments from consumers' accounts, and regulations to govern the process by which consumers make an initial decision to select a credit feature. For example, regulations implementing the Credit CARD Act impose a number of restrictions concerning credit pricing. These include restrictions on the fees that an issuer can charge during the first year after an account is opened, and limits on the instances in which and the amount of such fees that issuers can charge as penalty fees when a consumer makes a late payment or exceeds his or her credit limit. The Credit CARD Act also restricts the circumstances under which issuers can increase interest rates on credit cards and establishes procedures for doing so. The Bureau believes that applying the Credit CARD Act provisions to overdraft features in connection with prepaid accounts would promote transparent pricing for prepaid accountholders.

In addition, application of the Fair Credit Billing Act and Credit CARD Act requirements, including the FCBA's no-offset provision,[584] along with application of the compulsory use provision in Regulation E § 1005.10(e)(1) to overdraft credit features offered in connection with prepaid accounts, will allow consumers to retain control over the funds in their prepaid accounts if a credit card feature becomes associated with those accounts because they will be able to control when and how debts are repaid.[585] The application of these provisions would mean that with respect to overdraft credit features subject to this final rule, card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements for the credit feature are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the covered separate credit feature held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date, (pursuant to the consumer's signed, written agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances on the covered separate credit feature other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site following a cash reload to the asset account). Card issuers also would be prohibited from extending credit without assessing the consumer's ability to pay, and must comply with special rules regarding the extension of credit to persons under the age of 21.

Furthermore, by not permitting financial institutions to accept applications for an overdraft credit feature until 30 days after registration of the prepaid account,[586] the Bureau believes the final rule will prevent consumers from being pressured to make a decision on overdraft credit when acquiring the prepaid account, such as when they purchase a GPR card at a retail location with an incentive to encourage consumers to sign up for overdraft, and protect them from incurring credit-related fees in the period during which they are getting accustomed to the features and uses of their account. It will also allow consumers time to decide whether the basic prepaid account is a good fit for them before deciding whether to layer on a separate credit feature that may be more difficult to walk away from.

The Bureau takes seriously concerns that the proposed approach could have had unintended consequences for all prepaid issuers in circumstances where they do not intend to extend credit as well as for credit that prepaid consumers receive through other channels. Specifically, to address commenters' concerns about coverage as a result of a prepaid issuer paying force pay transactions, the final rule clarifies that a prepaid card is not a credit card when the prepaid card accesses credit that is incidental to certain transactions in the form of a negative balance on the asset account where the prepaid account issuer generally is not charging credit-related fees for the credit. In addition, the Bureau is sensitive to concerns that, by subjecting credit offered in connection with prepaid cards to Regulation Z's credit card regime, this rulemaking may reduce access to some forms of credit. For that reason, under the final rule, a separate credit feature will not be covered if it is offered by an unrelated third party that is not the prepaid account issuer, its affiliates, or its business partners. This is true even if the separate credit feature is providing funds to the prepaid account to cover transactions for which there would not otherwise be sufficient funds. In addition, a separate credit feature is not covered under the final rule if it cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions even if the credit feature is offered by the prepaid account issuer, its affiliates, or its business partners. As noted above, the Bureau anticipates that credit plans in both of these latter scenarios will be subject to Regulation Z in their own right, but has concluded that they should not be subject to heightened regulation as a result of this final rule.

The Bureau also declines to issue a ban on overdraft. Very few existing products offer credit features in connection with prepaid accounts. As such, the Bureau does not believe such a blanket prohibition is necessary or appropriate to address the potential consumer harm in this market at this time and in light of the other consumer protections that the final rule provides. Indeed, the Bureau believes that the final rule, unlike an outright ban on prepaid overdraft, which several consumer groups and one issuing bank suggested, appropriately balances the need to address consumers' need and

[583] TILA section 102(a), 15 U.S.C. 1601(a).

[584] TILA section 169; 15 U.S.C. 1666h(a).

[585] *See* § 1026.12(d). This provision implements TILA section 169, which Congress added to TILA when it enacted the FCBA. The provision prohibits card issuers from taking any action to offset a cardholder's indebtedness arising from a consumer credit card transaction against the cardholder's funds held with the issuer, unless such action was previously authorized in writing by the cardholder in accordance with a plan whereby the cardholder agrees to permit the issuer periodically to deduct the debt from the cardholder's deposit account.

[586] *See* § 1026.61(c).

demand for credit with the need to protect against consumer harm.

Finally, and as noted above, the Bureau received several comments from industry expressing concern that the Bureau's proposed interpretation of certain credit-related definitions in Regulation Z could impact the status of overdraft features accessed in connection with deposit accounts. As the Bureau noted in the proposal, the provisions addressing prepaid overdraft in the final rule are not intended to alter existing provisions that apply to deposit account overdraft, including exemptions for overdraft services from Regulation Z and Regulation E's compulsory use provision. The Bureau continues to study deposit account overdraft services on checking accounts and will propose any further regulatory consumer protections in that rulemaking initiative.[587] In addition to that initiative, the Bureau notes that it recently issued a Notice of Proposed Rulemaking on Payday, Vehicle Title, and Certain High-Cost Installment Loans (Payday NPRM).[588] The Bureau proposed excluding credit card accounts under an open-end (not home-secured) consumer credit plan from coverage under the Payday NPRM pursuant to proposed § 1041.3(e)(3).[589] The Bureau notes that under this final rule, a covered separate credit feature is a credit card account under an open-end (not home-secured) consumer plan under Regulation Z and accordingly, would be exempt from coverage for purposes of the Payday NPRM.

The implications of the Bureau's approach to credit products offered in conjunction with prepaid accounts for Military Lending Act compliance. As discussed above, the DOD recently issued a final rule expanding the scope of the coverage of its regulation (32 CFR part 232) that implements the MLA to include a broad range of open-end and closed-end credit products, including open-end (not home-secured) credit card accounts that are subject to Regulation Z.[590] Under the MLA and the implementing regulation, a creditor generally may not apply a MAPR greater than 36 percent in connection with an extension of consumer credit to a military service member or dependent. For covered credit card accounts, any credit-related charge that is a finance charge under Regulation Z (as well as certain other charges) would be included in calculating the MAPR for a particular billing cycle and the MAPR for that billing cycle could not exceed 36 percent.[591] In addition, the rule includes a limited exemption for credit card accounts—until October 3, 2017, consumer credit covered by the MLA and the implementing regulation will not include credit extended in a credit card account under an open-end (not home-secured) consumer credit plan.

Thus, starting October 3, 2017, fees levied for credit features (including overdraft services) on a hybrid prepaid-credit card held by military service members or their dependents would, as a result of the MLA and the Bureau's final rule on prepaid accounts in combination, generally be included in calculating the MAPR for a billing cycle unless excluded under the reasonable bona fide fee exception.

The Bureau sought comment on the consequences, if any, from the combined effect of the two rules with respect to overdraft services and credit features on prepaid accounts held by military service members. With the exception of generalized comments acknowledging the potential overlap outlined above, commenters did not provide any specific feedback in response to this request.

Other implications of the Bureau's approach to credit products offered in conjunction with prepaid accounts: Multipurpose cards and card network rules. The Bureau's approach to credit features in connection with prepaid products would result in a single plastic card or other access device functioning either as a prepaid card or as a credit card, depending on the balance in the asset account at the time of a transaction that the consumer makes. For example, if the asset account balance is sufficient to fund the transaction, the card could function as a prepaid card; if not, the card could function as a credit card. The final rule includes a number of provisions to promote consumer understanding, facilitate clear application of the various potentially applicable regulatory regimes, and address other challenges that may arise due to the multipurpose nature of the card product. For example, the Bureau is amending the provision in Regulation Z that addresses the relationship between the Regulation E and Z error resolution regimes to clarify the applicability of those regimes to an extension of credit incident to an EFT when a transaction accesses both funds in the prepaid account and credit from the overdraft credit feature.[592]

The Bureau sought comment on these specific amendments and whether further amendments or guidance would be appropriate. The Bureau also sought comment on consumer and industry experiences with similar multipurpose products historically, and whether they yield useful lessons for further refining the Bureau's proposal with regard to prepaid cards. The Bureau did not receive any specific comments in response to these requests.

Finally, the Bureau notes that card network rules may treat a card differently depending on whether it accesses an asset account or a credit account. In the proposal, the Bureau noted that its proposal could result in an increase in the number of cards that can access both an asset account and a credit account, and the Bureau requested comment on any card network rule issues that might arise from its proposal to treat most credit plans accessed by prepaid cards, for which finance charges are imposed, as open-end credit accessed by a credit card under Regulation Z. The Bureau did not receive any specific comments in response to this request.

Subpart A—General

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

Overview of Final Changes to Definitions

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in the section-by-section analysis of § 1026.61 below, the Bureau is adopting a new definition of "hybrid prepaid-credit card" in new § 1026.61 [593] to describe the circumstances in which the Bureau has decided to regulate prepaid cards [594] as credit cards under Regulation Z when they can access credit offered in connection with a prepaid account. The Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of

[587] *See* CFPB's Unified Agenda for Spring 2016, *available at http://www.consumerfinance.gov/about-us/blog/spring-2016-rulemaking-agenda/.*

[588] *See* 81 FR 47864 (July 22, 2016).

[589] *See id.* at 48168.

[590] 80 FR 43560 (July 22, 2015).

[591] 32 CFR 232.4(b).

[592] See the section-by-section analysis of § 1026.13(i) below.

[593] Throughout the section-by-section analyses of Regulations E and Z, the term "hybrid prepaid-credit card" refers to a hybrid prepaid-credit card as defined in new § 1026.61.

[594] New § 1026.61(a)(5)(vii) defines "prepaid card" to mean "any card, code, or other device that can be used to access a prepaid account." The term "prepaid card" includes a prepaid account number. *See* new comment 61(a)(5)(vii)–1. Consistent with final Regulation E, new § 1026.61(a)(5)(v) defines "prepaid account" to mean "a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3)."

credit. A number of supporting definitions that help to distinguish hybrid prepaid-credit cards from prepaid cards that are not credit cards under Regulation Z are provided in new § 1026.61 as described further below.

The Bureau is making conforming changes to general Regulation Z definitions in both existing §§ 1026.2 and 1026.4 to effectuate and reflect these distinctions. For example, the Bureau is making amendments to the definition of "credit card" in existing § 1026.2(a)(15)(i) and related commentary to make clear that the term "credit card" includes a hybrid prepaid-credit card. The Bureau also is making several amendments to the commentary relating to several other terms that are defined in existing § 1026.2 that pertain to the general regulation of credit and credit cards under Regulation Z. Specifically, the Bureau is amending the commentary regarding such terms as "card issuer" in existing § 1026.2(a)(7), "open-end credit" in existing § 1026.2(a)(20), and "credit card account under an open-end (not home-secured) consumer credit plan" in existing § 1026.2(a)(15)(ii). Finally, the Bureau also is amending the definition of "finance charge" in existing § 1026.4 and related commentary with respect to credit features accessible by hybrid prepaid-credit cards and with respect to other credit features that are accessible by prepaid cards that are not credit cards under Regulation Z. These changes are briefly summarized below before the more detailed discussion of specific amendments to specific subparagraphs of existing §§ 1026.2 and 1026.4, and their related commentary.

Definition of "credit card." Regulation Z defines the term "credit card" in current § 1026.2(a)(15)(i) to mean "any card, plate, or other single credit device that may be used from time to time to obtain credit." As discussed below, the Bureau is adopting a new definition of "hybrid prepaid-credit card" in new § 1026.61 which sets forth the circumstances in which a prepaid card is a credit card under Regulation Z. Accordingly, the Bureau is amending the general definition of "credit card" in existing § 1026.2(a)(15)(i) to state expressly that a prepaid card that is a hybrid prepaid-credit card as defined in new § 1026.61 is a credit card under Regulation Z. *See also* new § 1026.61(a)(1) and new comment 2(a)(15)–2.i.F. As described in new § 1026.61(a)(1), a prepaid card that is not a "hybrid prepaid-credit card" is not a credit card for purposes of Regulation Z. *See also* new comment 2(a)(15)–2.ii.D.

More specifically, as discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a "covered separate credit feature." Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as "non-covered separate credit features," as discussed in the section-by-section analysis of § 1026.61(a)(2). Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit.[595] A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4).

Definition of "card issuer." The term "card issuer" is generally defined in existing § 1026.2(a)(7) to mean "a person that issues a credit card or that person's agent with respect to the card." Under the general rules applicable to credit cards, card issuers are subject to certain direct regulation in their own right, and a card issuer that extends credit is a creditor under Regulation Z even if it does not meet the general definition of "creditor" under existing § 1026.2(a)(17)(i). Because under the final rule a hybrid prepaid-credit card is a credit card under Regulation Z, a prepaid account issuer is a "card issuer" under existing § 1026.2(a)(7) when it issues a hybrid prepaid-credit card. In addition, to further apply these concepts in the prepaid context, the Bureau is amending the commentary to existing § 1026.2(a)(7) to reflect that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, an affiliate or business partner offering the credit feature (if applicable) also is a "card issuer" under Regulation Z. Accordingly, under existing § 1026.2(a)(17)(iii) and (iv), the person offering the covered separate credit feature accessible by a hybrid prepaid-credit card (whether that person is a prepaid account issuer, its affiliate, or its business partner) also is a creditor under Regulation Z.

Definition of "open-end credit" and "credit card account under an open-end (not home-secured) consumer credit plan." As discussed further below, certain credit card rules only apply to credit card accounts under an open-end (not home-secured) consumer credit plan as defined in existing § 1026.2(a)(15)(ii). This definition in turn hinges largely on whether a credit card can access "open-end credit" as defined in existing § 1026.2(a)(20). The term "open-end credit" is defined to mean consumer "credit" extended by a "creditor" under a "plan" in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a "finance charge" from

[595] Throughout the section-by-section analyses of Regulations E and Z, the term "incidental credit" is used to refer to credit that meets the conditions of new § 1026.61(a)(4).

time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

The Bureau believes that a covered separate credit feature accessible by a hybrid prepaid-credit card generally will meet the definition of ''open-end credit,'' and is amending the regulation text and commentary to facilitate the classification of a covered separate credit feature accessible by a hybrid prepaid-credit card as ''open-end credit'' and a ''credit card account under an open-end (not home-secured) consumer credit plan.'' A person that is offering a covered separate credit feature involving open-end (not home-secured) credit that is accessible by a hybrid prepaid-credit card will be subject to Regulation Z's open-end (not home-secured) rules and credit card rules in subparts B and G.

The open-end (not home-secured) rules in subpart B include account-opening disclosures, periodic statement disclosures, change-in-terms notices, provisions on promptly crediting payments, and billing error resolution procedures. The credit card rules in subpart B include provisions that restrict the unsolicited issuance of credit cards, limit the liability for unauthorized use of credit cards, and prohibit the offset of the credit card debt against funds held in asset accounts by the card issuer. The credit card rules in subpart G include provisions that prohibit credit card issuers from extending credit without assessing the consumer's ability to pay and restrict the amount of required fees that an issuer can charge during the first year after a credit card account is opened. Application of the particular rules is discussed further below.

Definition of finance charge. As discussed above, whether a creditor may impose a finance charge from time to time on an outstanding balance is one of the elements that helps determine coverage as open-end credit. As discussed above, certain credit card rules apply only to open-end credit that is accessible by a credit card. The term ''finance charge'' generally is defined in existing § 1026.4(a) to mean ''the cost of consumer credit as a dollar amount.'' It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. It generally does not include any charges of a type payable in a comparable cash transaction. Currently, certain fees or charges are specifically excluded from the term ''finance charge'' as part of the exclusion for overdraft services on checking accounts as discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above. For example, existing § 1026.4(c)(3) excludes charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. In addition, existing § 1026.4(c)(4) excludes fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

The Bureau is amending existing § 1026.4 and its commentary to provide that the exclusion in existing § 1026.4(c)(3) does not apply to credit offered in connection with a prepaid account as defined in new § 1026.61 and that the exclusion in existing § 1026.4(c)(4) does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. As discussed further below, these amendments help to effectuate application of certain credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. In addition, the Bureau is adding new provisions to final § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and charges constitute ''finance charges'' related to credit offered in connection with a prepaid account. All of these changes are discussed in more detail below in the section-by-section analysis of § 1026.4.

2(a)(7) Card Issuer

As discussed above, the final rule contains additional guidance on the definition of ''card issuer'' with respect to credit offered in connection with prepaid accounts. TILA section 103(o) defines the term ''card issuer'' as any person who issues a credit card, or the agent of such person with respect to such a card.[596] Consistent with the TILA definition, Regulation Z defines the term ''card issuer'' in existing § 1026.2(a)(7) as ''a person that issues a credit card or that person's agent with respect to the card.'' The Regulation further defines the term ''credit card'' in existing § 1026.2(a)(15)(i) to mean ''any card, plate, or other single credit device that may be used from time to time to obtain credit.'' Card issuers must comply with certain provisions in Regulation Z as applicable. *See* existing §§ 1026.12 and 1026.60; for card issuers offering a ''credit card account under an open-end (not home-secured) consumer credit plan,'' *see, e.g.,* existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 through 1026.59. In addition, under existing § 1026.2(a)(17)(iii) and (iv), card issuers that extend credit are considered creditors for purposes of Regulation Z.

As noted above, under TILA and Regulation Z, the definition of ''card issuer'' means both a person who issues a credit card as well as the person's agent with respect to the card. Comment 2(a)(7)–1 currently provides guidance on the term ''agent'' for purposes of the definition of ''card issuer.'' Specifically, current comment 2(a)(7)–1 provides that because agency relationships are traditionally defined by contract and by State or other applicable law, Regulation Z generally does not define agent. Nonetheless, current comment 2(a)(7)–1 provides that merely providing services relating to the production of credit cards or data processing for others does not make one the agent of the card issuer. In contrast, current comment 2(a)(7)–1 also provides that a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

The Bureau's Proposal

Proposed comment 2(a)(15)–2.i.F would have provided that the term ''credit card'' generally includes a prepaid card that is a single device that may be used from time to time to access a credit plan.[597] Under the proposal, a person that issues a prepaid card that is a credit card would have been a ''card issuer'' under existing § 1026.2(a)(7).

The proposal also would have amended existing comment 2(a)(7)–1 to provide specific guidance on the term ''agent'' for purposes of existing § 1026.2(a)(7) where a credit plan offered by a third party is accessed by a prepaid card that is a credit card. Under the proposal, the language of existing comment 2(a)(7)–1 would have

[596] 15 U.S.C. 1602(o).

[597] The term ''prepaid card'' would have been defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a ''prepaid account'' as that term would have been defined in proposed § 1026.2(a)(15)(vi). Proposed § 1026.2(a)(15)(vi) would have defined the term ''prepaid account'' to mean a prepaid account as defined in Regulation E proposed § 1005.2(b)(3).

been moved to proposed comment 2(a)(7)–1.i. In addition, the Bureau proposed to add comment 2(a)(7)–1.ii that would have built on the last sentence of current comment 2(a)(7)–1 and provided that with respect to a prepaid card that is a credit card where the card accesses a credit plan that is offered by a third party, a party offering the credit plan that is accessed by the card would have been an agent of the person issuing the prepaid card and thus, would have been a card issuer with respect to the prepaid card that is a credit card.

Under proposed comment 2(a)(15)–2.i.F, the Bureau would have excluded from the regulation as a credit card situations in which a prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Consistent with this approach, proposed comment 2(a)(7)–2 would have explained that a person is not a card issuer where a prepaid card only accesses credit meeting this description.

Comments Received

Two industry trade associations indicated that the Bureau should limit the expansion of the term ''agent'' to creditors that have a direct agreement with the prepaid account issuer so that the third-party creditor is in a position to know that it has obligations under Regulation Z with respect to the prepaid card that is a credit card. Several consumer groups supported the proposed rule to consider a third party that offers an open-end credit plan accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z. They believed that this provision would help avoid evasion by third-party credit plans linked to prepaid cards. One consumer group commenter indicated that if the prepaid account issuer contracts with a third party to market credit to account holders, the Bureau should provide that both companies are classified as card issuers that must comply with the rules. This commenter indicated that without this safeguard, an affiliated third party could offer credit accessed by the prepaid card that would not be subject to the proposed rules.

The Final Rule

Consistent with the general approach in § 1026.61, the Bureau is limiting the circumstances in which an unaffiliated third party that can extend credit through a separate credit feature is considered an ''agent'' of a prepaid account issuer relative to the proposal. As discussed in more detail below, the Bureau is moving the existing language of current comment 2(a)(7)–1 to new comment 2(a)(7)–1.i. In addition, the Bureau is adding new comment 2(a)(7)–1.ii to provide that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer, as those terms are defined in new § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

In contrast, if a person offers a credit feature accessible by a prepaid card that does not meet the definition of a hybrid prepaid-credit card under new § 1026.61, such a person is not a ''card issuer'' under final § 1026.2(a)(7) with respect to the prepaid card. Accordingly, the Bureau is not finalizing language that it had proposed in comment 2(a)(7)–2 to effectuate the narrower exclusion contemplated under the proposal. Instead, the Bureau is adopting new language in final comment 2(a)(7)–2 consistent with new § 1026.61 with regard to treatment of prepaid cards that are not hybrid prepaid-credit cards as discussed in that section. Each scenario is discussed further below.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(i) defines a separate credit feature accessible by a hybrid prepaid-credit card' as a ''covered separate credit feature.'' Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. If both conditions are met, the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(a)(5)(i) and (iii) and their related commentary define ''affiliate'' and ''business partner'' respectively. Under new § 1026.61(a)(5)(i), an affiliate is any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*). Under new § 1026.61(a)(5)(iii), a business partner is a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature, where the person or its affiliate has an ''arrangement'' with a prepaid account issuer or its affiliate. New comment 61(a)(5)(iii)–1 describes two types of ''arrangements'' that would make such a person that can extend credit a ''business partner'' of the prepaid account issuer under new § 1026.61(a)(5)(iii). As described in new comment 61(a)(5)(iii)–1.i, the first arrangement is where the unaffiliated person that can extend credit, or its affiliate, has an agreement with the prepaid account issuer, or its affiliate, that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a separate credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 61(a)(5)(iii)–1.i provides, however, that the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

Second, new comment 61(a)(5)(iii)–1.ii provides that an unaffiliated person that can extend credit through a separate credit feature is a business partner of the prepaid account issuer if (1) the prepaid account issuer or its affiliate has a business, marketing, or promotional agreement or other arrangement with the person that can extend credit, or its affiliate, where the agreement or arrangement provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person who is extending credit, or that the credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and (2) at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the

course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, this requirement is satisfied even if there is no specific agreement between the parties that the card can access the separate credit feature, as described above under new comment 61(a)(5)(iii)–1.i. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the separate credit feature is effectuated through a card network or payment network.

The Bureau is amending the commentary to existing § 1026.2(a)(7)'s definition of card issuer to effectuate coverage of these relationships. Specifically, under the final rule, the Bureau is moving the existing language of current comment 2(a)(7)–1 to new comment 2(a)(7)–1.i. In addition, the Bureau is adding new comment 2(a)(7)–1.ii to provide that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card where that credit feature is offered by an affiliate or business partner of the prepaid account issuer, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card. Consistent with the general existing definition of card issuer, the Bureau believes that it is appropriate to consider a prepaid account issuer's affiliate or business partner to be an ''agent'' of the prepaid account issuer because, in those cases, there is a sufficient connection between the parties such that the affiliate or business partner should know that its credit feature is accessible by a prepaid card as an overdraft credit feature for the prepaid account.

The Bureau notes that current comment 2(a)(7)–1 provides that a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card. With regard to hybrid prepaid-credit cards, the final rule incorporates and expands upon this concept of when a person is an agent of a card issuer. The Bureau believes that the new, more expansive language provides additional clarity as to when there is an agent relationship in the prepaid context and, therefore, prevents circumvention of the final rules applicable to covered separate credit features accessible by hybrid prepaid-credit cards as defined by new § 1026.61 that are offered by the prepaid account issuer's affiliates or business partners.

In particular, the Bureau is concerned that without new comment 2(a)(7)–1.ii, prepaid account issuers could structure arrangements with their affiliates or business partners to avoid an agency relationship under State law. Such a result could frustrate the operation of certain consumer protections provided in the final rule. In addition, without considering the person that can extend credit through the covered separate credit feature to be an agent of the prepaid account issuer (and thus considering both the prepaid account issuer and the person that can extend credit to be ''card issuers''), it may not be clear whether the person that can extend credit through the covered separate credit feature or the prepaid account issuer must comply with particular provisions in Regulation Z. For example, existing § 1026.51(a) provides that a card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations. In cases where the prepaid account issuer's affiliate or business partner offers the covered separate credit feature accessible by the hybrid prepaid-credit card, it would not be clear what obligations under existing § 1026.51(a), if any, apply to the prepaid account issuer (who is a ''card issuer'' but who is not offering the credit card account) and what obligations, if any, apply to the affiliate or business partner (who is offering the credit card account but is not a card issuer) if the affiliate or business partner were not a card issuer under final § 1026.2(a)(7) with respect to the hybrid prepaid-credit card.

Accordingly, under the final rule, new comment 2(a)(7)–1.ii provides that with respect to a prepaid card that is a hybrid prepaid-credit card that can access a covered separate credit feature offered by an affiliate or business partner as those terms are defined in new § 1026.61, the affiliate or business partner offering the credit feature that is accessible by the hybrid prepaid-credit card is an agent of the prepaid account issuer and thus, is a card issuer with respect to the hybrid prepaid-credit card. As a result, in the example above related to existing § 1026.51(a), the affiliate or business partner would be a ''card issuer'' for purposes of that provision and would be required to comply with it.

Nonetheless, as discussed in more detail below and in the section-by-section analysis of § 1026.61(a)(2), the Bureau has decided to provide that a prepaid card is not a hybrid prepaid-credit card with respect to a credit feature that is offered by a third party that is not an affiliate or business partner of a prepaid account issuer, even if the consumer decides to link his or her prepaid card to the credit feature offered by the third party. This type of credit feature is a ''non-covered separate credit feature'' as defined in new § 1026.61(a)(2)(ii). The Bureau does not believe that it is appropriate to subject such an unrelated third party to the provisions in the final rule applicable to hybrid prepaid-credit cards. In this case, there is not a sufficient connection between the prepaid account issuer and the unrelated third party, and the unrelated third party may not know that its separate credit feature is functioning as an overdraft credit feature with respect to the prepaid account.

Accordingly, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to the non-covered separate credit feature discussed above. However, as described in new § 1026.61(a)(2)(ii), the unrelated third party that offers the non-covered separate credit feature typically will be subject to Regulation Z in its own right based on the terms and conditions of the separate credit feature, independent of the connection to the prepaid account.

Credit Features That Are Not Accessible by Hybrid Prepaid-Credit Cards

As discussed above, the Bureau proposed to exclude from the regulation as a credit card situations in which a prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and the credit is not payable by written agreement in more than four installments. Consistent with this approach, proposed comment 2(a)(7)–2 would have explained that a person is not a card issuer where a prepaid card only accesses credit meeting this description. As discussed above, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. Accordingly, the Bureau is not finalizing language that it had proposed in comment 2(a)(7)–2 to effectuate the narrower exclusion contemplated under the

proposal. Instead, the Bureau is adopting new language in final comment 2(a)(7)–2 consistent with new § 1026.61 with regard to prepaid cards that are not hybrid prepaid-credit cards, as discussed in that section. Specifically, final comment 2(a)(7)–2 provides cross-references to new § 1026.61(a), new comment 61(a)(2)–5.iii, and new comment 61(a)(4)–1.iv for guidance on the applicability of Regulation Z in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards. The Bureau's intent is to assure that where the prepaid card is not a hybrid prepaid-credit card with respect to a credit feature, the person that is offering the credit feature is not deemed to be a card issuer under final § 1026.2(a)(7) with respect to the prepaid card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. With respect to separate credit features, there are two circumstances, described in new § 1026.61(a)(2)(ii), where a prepaid card is not a hybrid prepaid-credit card when it accesses a separate credit feature. The first is where the prepaid card cannot be used to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second is where the separate credit feature is offered by an unrelated third party, rather than the prepaid account issuer, its affiliate, or its business partner. In addition, under new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

2(a)(14) Credit

TILA section 103(f) defines the term "credit" as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.[598] Consistent with the definition of credit in TILA, Regulation Z defines "credit" in existing § 1026.2(a)(14) to mean "the right to defer payment of debt or to incur debt and defer its payment." Under existing § 1026.2(a)(17)(i), a person is a creditor if the person regularly extends consumer "credit" that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. Under existing § 1026.2(a)(17)(iii), the term "creditor" also includes any card issuer (which is a person that issues credit cards or the person's agent) that extends credit even if no finance charge is imposed and repayment is not permitted in more than four installments.

The Bureau's Proposal

Proposed comment 2(a)(14)–3 would have provided that credit, for purposes of existing § 1026.2(a)(14), includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also would have included a paid transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Thus, the proposed definition would have included a situation where the consumer has sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is authorized, but insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid.

Comments Received

Several commenters, including industry trade associations, a program manager, and a credit reporting agency, asserted that overdraft credit does not meet the definition of "credit" because, with respect to overdraft credit, there is no "right to defer payment" and/or "no right to incur debt." One industry trade association and one issuing bank requested that the Bureau clarify that the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes is not intended to imply any similar treatment under State laws. Several industry commenters suggested that the Bureau should consider a dollar threshold below which overdraft transactions would not be covered as "credit" under Regulation Z. For example, one credit union service organization urged the Bureau to set a threshold of $250 for when negative balances on the prepaid account are considered credit, such that negative balances on the prepaid account exceeding $250 in magnitude would meet the definition of "credit" and negative balances on the prepaid account of $250 in magnitude or below would not be "credit" under Regulation Z.

The Final Rule

Definition of Credit

As discussed in more detail below, the Bureau is adopting new comment 2(a)(14)–3 as proposed with technical revisions to simplify the language of the comment and to be consistent with new § 1026.61. This comment provides that credit includes authorization of a transaction on an asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on an asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. Credit also includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. The comment also includes a cross-reference to new § 1026.61 and related commentary on the applicability of this regulation to credit extended in connection with a prepaid account.

The Bureau continues to believe that new comment 2(a)(14)–3 reflects a straightforward interpretation of the statutory term "credit." The Bureau believes that plain language of the definition of "credit" in TILA covers the situation when a consumer makes a transaction that exceeds the funds in the consumer's account and a person elects to cover the transaction by advancing funds to the consumer. Nothing in the statutory definition (or elsewhere in TILA) exempts overdraft services, including those that may be offered in connection with a prepaid account. By authorizing or paying a transaction where the consumer does not have

[598] 15 U.S.C. 1602(f).

sufficient or available funds in the asset feature of the prepaid account to cover the amount of the transaction when the transaction is authorized or paid, the person is allowing the consumer to incur a debt with the person where payment of that debt is not immediate. Thus, the person, in extending overdraft funds, has provided the consumer with "the right . . . to incur debt and defer its payment."

The Bureau further emphasizes that the final rule does not change how overdraft services on accounts other than prepaid accounts are treated under Regulation Z. As discussed in more detail in the *Overview of the Final Rule's Amendments to Regulation Z* section, with respect to overdraft services on checking accounts, while a person that is providing overdraft services generally would be providing credit under TILA and Regulation Z, the person generally does not meet the definition of "creditor" for purposes of Regulation Z because of certain exclusions to the definition of finance charge under final § 1026.4(c)(3). Thus, under this final rule, with respect to overdraft services on checking accounts, a financial institution that does not agree in writing to pay the items and does not structure the repayment of the credit by written agreement in more than four installments would not be a "creditor" with respect to the overdraft service under the general definition of creditor set forth in § 1026.2(a)(17)(i), even if the institution charges a fee for paying the overdraft item, because the fee would not be a "finance charge." In addition, a person does not become a card issuer or a creditor by issuing a debit card that accesses an overdraft service. Specifically, existing comment 2(a)(15)–2.ii.A provides that a debit card is not a credit card if there is no credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft. Thus, a person does not become a card issuer under existing § 1026.2(a)(7) and does not become a creditor under existing § 1026.2(a)(17)(iii) or (iv) by issuing a debit card that accesses an overdraft service. The final rule does not change the provisions in Regulation Z effectuating this treatment of overdraft services on accounts other than prepaid accounts.

Definition of Credit Under State Laws

As discussed above, one industry trade association and one issuing bank requested that the Bureau clarify that the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes is not intended to imply any similar treatment under State laws. The Bureau does not provide any specific guidance on how the treatment of overdrafts in connection with prepaid accounts as credit for Regulation Z purposes may impact State laws. The State law itself will determine whether, and the extent to which, the State law is impacted by the treatment of overdrafts in connection with prepaid accounts as credit under Regulation Z.

Threshold Amount of Negative Balance

As discussed above, several industry commenters suggested that the Bureau should consider a dollar threshold below which overdraft transactions would not be covered as "credit" under Regulation Z. For example, one credit union service organization urged the Bureau to set a threshold of $250 for when overdraft funds are considered "credit" under Regulation Z, where negative balances on the prepaid account exceeding $250 in magnitude would meet the definition of "credit" and negative balances on the prepaid account of $250 in magnitude or below would not be "credit" under Regulation Z. The Bureau does not adopt such an approach. The Bureau is concerned that allowing consumers to incur substantial debt in connection with a prepaid account that most consumers do not intend to use as a credit account may pose a risk to those consumers by compromising their ability to manage and control their finances. Thus, while new § 1026.61(a)(4) would permit a prepaid account issuer to offer an incidental "payment cushion" of $10 without triggering the rules governing credit cards under Regulation Z so long as the issuer generally does not impose credit-related fees, the Bureau believes that the provision of a higher dollar amount of credit in connection with a prepaid account should be subject to full credit card protections unless otherwise excluded under new § 1026.61(a)(4).

2(a)(15)

2(a)(15)(i) Credit Card

TILA section 103(*l*) defines "credit card" to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.[599] Regulation Z defines the term "credit card" in existing § 1026.2(a)(15)(i) to mean "any card, plate, or other single credit device that may be used from time to time to obtain credit." Current comment 2(a)(15)–2 provides examples of devices that are credit cards and devices that are not credit cards. A person that issues credit cards or the person's agent is a "card issuer" and must comply with certain credit card provisions in Regulation Z, as applicable. *See* existing §§ 1026.12 and 1026.60; for card issuers offering a "credit card account under an open-end (not home-secured) consumer credit plan," *see, e.g.,* existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 through 1026.59. Any card issuer that extends credit also is a creditor under Regulation Z and must comply with certain disclosure and other requirements in Regulation Z, as discussed in the section-by-section analysis of § 1026.2(a)(17) below. The proposal would have provided guidance on when the following devices related to prepaid accounts are "credit cards:" (1) Prepaid cards, as defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a "prepaid account," as defined in proposed § 1026.2(a)(15)(vi) consistent with proposed Regulation E; and (2) account numbers that are not prepaid cards that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor but does not allow consumers to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor, as defined in proposed § 1026.2(a)(15)(vii). Each of these circumstances is discussed in more detail below.

Hybrid Prepaid-Credit Cards

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by prepaid cards generally would have been credit card accounts under Regulation Z. In particular, proposed comment 2(a)(15)–2.i.F would have provided that the term "credit card" includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. A prepaid card that is solely an account number would have been a credit card if it satisfied the requirements of proposed comment 2(a)(15)–2.i.F. The proposal would have revised existing comment 2(a)(15)–2.ii.C that provides guidance on when account numbers are credit cards. The proposal

[599] 15 U.S.C. 1602(*l*).

would have revised existing comment 2(a)(15)–2.ii.C to provide that the current guidance for when a prepaid card is a credit card is set forth in proposed comment 2(a)(15)–2.i.F, rather than in comment 2(a)(15)–2.ii.C. As discussed below and in more detail in the section-by-section analysis of § 1026.61, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card under Regulation Z (*i.e.,* a hybrid prepaid-credit card). See the section-by-section analysis of § 1026.61 for a detailed description of the proposal to define prepaid cards as credit cards, the comments received on the proposal to define prepaid cards as credit cards, and the circumstances in which the final rule defines a prepaid card as a hybrid prepaid-credit card.

The Bureau is making conforming revisions to existing § 1026.2(a)(15)(i) to provide that the term ''credit card'' includes a hybrid prepaid-credit card, as defined in § 1026.61. In addition, the Bureau is revising new comment 2(a)(15)–2.i.F from the proposal to provide that the term ''credit card'' includes a prepaid card that is a hybrid prepaid-credit card, as defined in new § 1026.61. The Bureau also is adding new comment 2(a)(15)–2.ii.D to provide that the term ''credit card'' does not include a prepaid card that is not a hybrid prepaid-credit card, as defined in new § 1026.61. The Bureau also is revising existing comment 2(a)(15)–2.ii.C that provides guidance on when account numbers are credit cards. The Bureau is revising this comment to provide that the rules in new § 1026.61 and related commentary determine when a hybrid prepaid-credit card that solely is an account number is a credit card, as discussed in new comment 61(a)(1)–2.

As discussed above, if a person issues a prepaid card that is a hybrid prepaid-credit card, the person is a ''card issuer'' under final § 1026.2(a)(7) with respect to the prepaid card. In addition, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, an affiliate or business partner offering the credit feature (if applicable) also is a ''card issuer'' under final § 1026.2(a)(7). Under existing § 1026.2(a)(17)(iii) and (iv), the person also is a ''creditor'' if the card issuer extends credit under a covered separate credit feature accessible by the hybrid prepaid-credit card as described above. If the card issuer extends open-end (not home-secured) credit, the person generally would need to comply with the open-end (not home-secured) rules set forth in subpart B and the credit card rules set forth in subparts B and G. As discussed in the section-by-section analysis of § 1026.2(a)(20) below, the Bureau believes that prepaid account issuers, their affiliates, or their business partners that offer covered separate credit features accessible by hybrid prepaid-credit cards will be creditors offering open-end (not home-secured) credit under Regulation Z. See the section-by-section analysis of § 1026.2(a)(17) below for a discussion of situations in which a creditor may not be offering open-end credit in relation to a prepaid account.

Account Numbers That Are Not Prepaid Cards

Currently, under comment 2(a)(15)–2.ii.C, an account number for a credit plan is a credit card when that account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card. However, if the account number also can access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the internet), the account number is a credit card, regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction.

The Bureau's proposal. The Bureau proposed not to follow the current guidance in existing comment 2(a)(15)–2.ii.C in the context of credit accessed in connection with prepaid accounts. Instead, proposed § 1026.2(a)(15)(vii) would have included within the definition of credit card an ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.'' As used in the proposal, this term would have meant an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

Proposed comment 2(a)(15)–2.i.G would have provided that these account numbers were credit cards under the proposal. In addition, the proposal would have revised existing comment 2(a)(15)–2.ii.C to provide that the current guidance for when an account number is a credit card under Regulation Z would not have applied to these account numbers, as described in proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G. Proposed comment 2(a)(15)–5 would have provided additional guidance on these account numbers. Specifically, proposed comment 2(a)(15)–5 would have provided that a credit plan that permits a consumer to deposit directly extensions of credit into a checking account would not constitute a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Nonetheless, under proposed comment 2(a)(15)–5, a credit plan accessible by a consumer through checks or in-person withdrawals would have constituted a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, so long as the credit plan allowed deposits directly into particular prepaid accounts specified by the creditor but did not allow the consumer to deposit directly extensions of credit into other asset accounts.

With respect to account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the proposed rule would have covered credit plans that are not accessed directly by prepaid cards but are structured as ''push'' accounts. For example, such a credit plan may allow a consumer to use an account number to request an extension of credit be deposited directly into a particular prepaid account specified by the creditor when the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card. In the proposal, the Bureau expressed concern that these types of credit plans could act as substitutes for credit plans directly accessible by a prepaid card. The Bureau did not, however, propose to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

Comments received. Consumer group commenters indicated that the proposal with respect to push accounts was too limited. Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group

commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

One issuing bank and one law firm writing on behalf of a coalition of prepaid issuers did not support subjecting push accounts to credit card rules. These industry commenters indicated that the Board should leave in place the rule currently in Regulation Z that determines when an account number for a credit plan is a credit card. One of these industry commenters indicated that attempting to cover push accounts as credit card accounts under the proposal would create an overly complex regulatory regime to address the perceived risk of circumvention or evasion of the rules for overdraft plans set forth in the proposal. This commenter believed the Bureau has better tools (*e.g.,* its unfair, deceptive, or abusive acts or practices authority) to address circumvention or evasion, as well as the other risks of consumer harms discussed in the proposal.

One industry trade association commenter indicated that it would be inappropriate to treat the line of credit (or its associated account number) as a credit card when the consumer has the choice of whether to use the line of credit to cover specified overdrafts or to use the line of credit funds for other purposes. This commenter believed that the consumer's ability to choose how to use the line of credit makes it clear that the line of credit is a general use line of credit and not a substitute for an overdraft line of credit.

The final rule. Upon review of the comments and its own analysis, the Bureau has decided not to adopt the proposal to provide that an account number for a credit account would be a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In proposing these provisions, the Bureau was concerned that a prepaid account issuer and a creditor could design arrangements to circumvent the proposed rules in Regulation Z applicable to prepaid cards that are credit cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to credit account numbers were designed to prevent this type of evasion.

The Bureau is addressing this type of evasion by generally covering a prepaid card as a credit card (*i.e.,* "hybrid prepaid-credits card") when the card can access a separate credit feature that functions as an overdraft credit feature and is offered by a prepaid account issuer, its affiliate, or its business partner. Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a "covered separate credit feature." Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature. In this case, as described in new comment 61(a)(2)–1.ii, the prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

In addition, as described in new comment 61(a)(2)–1.iii, a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, as discussed above, regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that consumers will benefit from the application of the credit card rules generally to a credit account that functions as an overdraft credit feature in connection with a prepaid account when that overdraft feature is offered by a prepaid account issuer, its affiliate, or its business partner, regardless of whether the credit account can be used exclusively as an overdraft credit feature. In addition, the Bureau is concerned about potential evasion if the provisions applicable to overdraft credit features could be avoided simply by providing other uses for the credit account.

The Bureau believes that the provisions in the final rule described above with respect to a covered separate credit feature adequately capture situations where a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner functions as an overdraft credit feature in relation to a prepaid account. Thus, the Bureau believes that it is no longer necessary to treat a credit account number as a credit card to capture situations when the credit account may function as an overdraft credit feature in relation to the prepaid account. As a result, the Bureau has not adopted proposed § 1026.2(a)(15)(vii) and proposed comments 2(a)(15)–2.i.G and 2(a)(15)–5. The Bureau also has not adopted proposed revisions to existing comment 2(a)(15)–2.ii.C related to account numbers described in proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G. The Bureau proposed changes to other provisions in Regulation Z and related commentary to provide guidance on how these provisions would apply to such account numbers, which would have been credit cards under the proposal. The Bureau has not adopted these proposed changes to provisions in Regulation Z related to

these account numbers.[600] The Bureau also proposed changes to certain provisions in Regulation E and related commentary to provide guidance on how these Regulation E provisions would apply to such account numbers. The Bureau has not adopted these proposed changes to provisions in Regulation E related to these account numbers.[601]

As discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit. Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution, as or has a business relationship with, the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit.

As discussed above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

Debit Cards

Comment 2(a)(15)–2.i.B currently provides guidance on when a debit card is a credit card, and the comment provides examples of credit cards that include ''a card that accesses both a credit and an asset account (that is, a debit-credit card).'' Proposed § 1026.2(a)(15)(iv) would have defined the term ''debit card'' for purposes of Regulation Z to mean ''any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.'' The proposed definition of ''debit card'' also would have specified that it does not include a prepaid card. Because the term ''debit card'' under the proposal would not have included all cards that access asset accounts, existing comment 2(a)(15)–2.i.B would have been revised to be consistent with the proposed definition of debit card. Specifically, proposed comment 2(a)(15)–2.i.B would have been revised to provide that the term ''credit card'' includes a debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). This comment also would have been revised to provide a cross-reference to existing comment 2(a)(15)–2.ii.C for guidance on whether a debit card that is solely an account number is a credit card. No substantive changes were intended to the current rules for when debit cards are credit cards under existing § 1026.2(a)(15)(i).

The Bureau did not receive specific comment on this proposed definition. The Bureau is adopting the definition of ''debit card'' as proposed with one technical revision to provide a cross-reference to the definition of ''prepaid account'' in new § 1026.61. The Bureau also is adopting the changes to existing comment 2(a)(15)–2.i.B as proposed.

2(a)(15)(ii) Credit Card Account Under an Open-End (not Home-Secured) Consumer Credit Plan

Regulation Z defines the term ''credit card account under an open-end (not home-secured) consumer credit plan'' in existing § 1026.2(a)(15)(ii) to mean ''any open-end credit account that is accessed by a credit card, except: (A) [a] home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or (B) [a]n overdraft line of credit that is accessed by a debit card or an account number.'' As discussed above, certain requirements in the Credit CARD Act, which are generally set forth in subpart G, apply to card issuers offering a credit card account under an open-end (not home-secured) consumer credit plan. *See, e.g.,* existing §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), and 1026.51 to 1026.59.

The proposal would have clarified that the exception in current § 1026.2(a)(15)(ii)(B) regarding overdraft lines of credit accessed by a debit card or account number would not have applied to open-end credit plans accessed by prepaid cards that would have been credit cards under the proposal. The proposed definition of ''debit card'' in proposed § 1026.15(a)(2)(iv) would have excluded a prepaid card.[602] Thus, the exception in existing § 1026.2(a)(15)(ii)(B) would not have applied to overdraft lines of credit that are accessed by a prepaid card. In addition, the proposal would have revised existing § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. The proposal also would have moved the exception for overdraft lines of credit that are accessed by account numbers from existing § 1026.2(a)(15)(ii)(B) to proposed § 1026.2(a)(15)(ii)(C). The proposal also would have amended proposed § 1026.2(a)(15)(ii)(C) and existing comment 2(a)(15)–4 to provide that the exception would not have applied to an overdraft line of credit that is accessed by an account number

[600] Specifically, the proposal would have revised or added the following provisions in Regulation Z related to these account numbers: §§ 1026.2(a)(15)(ii)(C)(*2*) and (vii); 1026.4(b)(2)(ii), (c)(3), and (4); 1026.7(b)(11)(ii)(A)(*2*); 1026.12(d)(3)(ii) and (h) (renumbered in the final rule as § 1026.61(c)); 1026.60(a)(5)(iv); and comments 2(a)(15)–2.i.G, 2(a)(15)–2.ii.C, 2(a)(15)–3.ii, 2(a)(15)–4.ii, 2(a)(15)–5, 2(a)(20)–2.iii, 2(a)(20)–4.ii, 4(a)–4.iv, 4(b)(2)–1.ii through iv, 4(c)(3)–1, 5(b)(2)(ii)–4, 8(b)–1.vi, 10(a)–2.ii, 12(c)(1)–1.i, 12(d)(3)–3, 13(a)(3)–2.ii, 13(i)–1, 52(a)(2)–3, 52(b)(2)(i)–7, 57(a)(1)–1, 57(a)(5)–1, 57(b)–3, 57(c)–7, and 60(b)(8)–5. The final rule does not adopt the proposed changes to these provisions related to these account numbers.

[601] The proposal would have made changes to existing § 1005.10(e)(1) and comments 10(e)(1)–2 and –3 and added proposed § 1005.18(g)(1) and comments 18(g)–1 and –2 related to these account numbers. The final rule does not adopt the proposed provisions related to these account numbers.

[602] Proposed § 1026.2(a)(15)(iv) would have defined the term ''debit card'' for purposes of Regulation Z to mean ''any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.'' The proposed definition of ''debit card'' also would have specified that it does not include a prepaid card.

where the account number is a prepaid card that is a credit card.

The Bureau did not receive specific comments on the proposed changes to existing § 1026.2(a)(15)(ii) and related commentary. The Bureau is revising existing § 1026.2(a)(15)(ii) and existing comment 2(a)(15)–4 as proposed with revisions consistent with § 1026.61.[603] Consistent with the proposal, the Bureau is revising existing § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. Consistent with the proposal, the Bureau is defining "debit card" in new § 1026.2(a)(15)(iv) to exclude a prepaid card.[604] Thus, under the final rule, the exception in final § 1026.2(a)(15)(ii)(B) does not apply to overdraft lines of credit that are accessible by a hybrid prepaid-credit card as that term is defined in new § 1026.61. In addition, consistent with the proposal, the Bureau is moving the exception for overdraft lines of credit that are accessed by account numbers from existing § 1026.2(a)(15)(ii)(B) to new § 1026.2(a)(15)(ii)(C) and is revising that provision. The Bureau is amending new § 1026.2(a)(15)(ii)(C) and existing comment 2(a)(15)–4 to provide that the exception does not apply to a covered separate credit feature accessible by an account number where the account number is a hybrid prepaid-credit card as defined in new § 1026.61. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Generally, to be a "credit card account under an open-end (not home-secured) consumer credit plan," the credit must be "open-end credit," as defined in existing § 1026.2(a)(20), that is not home-secured and the open-end (not home-secured) credit plan must be accessible by a "credit card," as defined in final § 1026.2(a)(15)(i). As discussed in the section-by-section analysis of § 1026.2(a)(20) below, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of "open-end credit" and that credit will not be home-secured.[605] In addition, under the final rule, a prepaid card that is a hybrid prepaid-credit card as discussed in new § 1026.61 is a credit card under Regulation Z with respect to the covered separate credit feature. Thus, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of "credit card account under an open-end (not home-secured) consumer credit plan" in final § 1026.2(a)(15)(ii).[606] These covered separate credit features will be subject to the disclosure and credit card provisions set forth in subpart B and G.

2(a)(15)(iii) Charge Card

Regulation Z defines the term "charge card" in existing § 1026.2(a)(15)(iii) to mean "a credit card on an account for which no periodic rate is used to compute a finance charge." Current comment 2(a)(15)–3 provides guidance on how the term "charge card" is used throughout the regulation. In particular, the current comment provides that, in general, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. This comment also explains that under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term "charge card" is, however, distinguished from "credit card" or "credit card account under an open-end (not home-secured) consumer credit plan" in existing §§ 1026.6(b)(2)(xiv), 1026.7(b)(11) and (b)(12), 1026.9(e) and (f), 1026.28(d), 1026.52(b)(1)(ii)(C), and 1026.60, and Appendices G–10 through G–13. See also the discussion in the section-by-section analysis of § 1026.2(a)(20) below relating to charge card accounts as open-end credit.

The proposal would have revised existing comment 2(a)(15)–3 in a number of ways to accommodate the proposed inclusion of some forms of prepaid cards as charge cards. First, the existing text of the comment would have been placed in proposed comment 2(a)(15)–3.i and a new comment 2(a)(15)–3.ii would have been added. Specifically, proposed comment 2(a)(15)–3.ii would have explained that a prepaid card is a charge card if it also is a credit card where no periodic rate is used to compute the finance charge. This proposed comment also would have explained that, unlike other charge cards, a prepaid card that is a charge card that accesses a credit card account under an open-end (not home-secured) consumer credit plan would be subject to the requirements in proposed § 1026.7(b)(11)(i)(A), which would have required payment due dates to be disclosed on periodic statements for a credit card account under an open-end (not home-secured) consumer credit plan. See the section-by-section analysis of § 1026.7(b)(11) below. Thus, under proposed § 1026.5(b)(2)(ii)(A), for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer of a prepaid card that meets the definition of a charge card would have been required to adopt reasonable procedures designed to ensure that (1) periodic statements for the charge card account accessed by the prepaid card that is a charge card are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to proposed § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment on the charge card account received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

Under the proposal, the existing language in comment 2(a)(15)–3 (which would have been renumbered as proposed comment 2(a)(15)–3.i) would have been revised to be consistent with new proposed comment 2(a)(15)–3.ii and the definition of "charge card."

[603] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Thus, under proposed § 1026.2(a)(15)(ii)(C) and proposed comment 2(a)(15)–4, the exception in proposed § 1026.2(a)(15)(ii)(C) would not have applied to credit plans that would have been accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.2(a)(15)(ii)(C) and comment 2(a)(15)–4 related to these account numbers.

[604] Consistent with the proposal, new § 1026.2(a)(15)(iv) defines the term "debit card" for purposes of Regulation Z to mean "any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account as defined in § 1026.61." The definition of "debit card" specifies that it does not include a prepaid card as defined in § 1026.61.

[605] As discussed in more detail below in the section-by-section analysis of § 1026.2(a)(17), a person is not a creditor that is extending open-end credit where the person offers a covered separate credit feature accessible by a hybrid prepaid-credit card and a finance charge is not imposed in connection with the credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such a person would still be subject to certain Regulation Z requirements under certain circumstances.

[606] The Bureau plans to monitor the development of covered separate credit features accessible by hybrid prepaid-credit cards after the final rule becomes effective.

Currently, the first sentence of comment 2(a)(15)–3 provides that, generally, charge cards are cards used in connection with an account on which an outstanding balance cannot be carried from one billing cycle to another and is payable when a periodic statement is received. This sentence would have been revised to be more consistent with the definition of charge card in existing § 1026.2(a)(15)(iii) to state that charge cards are credit cards where no periodic rate is used to compute the finance charge; no substantive change would have been intended by this proposed revision. In addition, the last sentence of the existing comment would have been revised to cross-reference new proposed comment 2(a)(15)–3.ii.

The Bureau did not receive specific comments on the proposed changes to comment 2(a)(15)–3. Consistent with the proposal, the final rule places the language of current comment 2(a)(15)–3 in new comment 2(a)(15)–3.i and revises that language as proposed. The Bureau also is adding a new comment 2(a)(15)–3.ii as proposed, with revisions to clarify the intent of the language and to be consistent with new § 1026.61.[607]

Specifically, new comment 2(a)(15)–3.ii provides that a hybrid prepaid-credit card, as defined in new § 1026.61, is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 2(a)(15)–3.ii also explains that, unlike other charge card accounts, the requirements in final § 1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under final § 1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to final § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

2(a)(15)(iv) Debit Card

Although current Regulation Z and its commentary use the term "debit card," that term is not defined. Generally, under existing comment 2(a)(15)–2.i.B, the term "debit card" refers to a card that accesses an asset account. Specifically, existing comment 2(a)(15)–2.i.B provides as an example of a credit card: "A card that accesses both a credit and an asset account (that is, a debit-credit card)." In addition, existing comment 2(a)(15)–2.ii.A provides that the term credit card does not include a debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

Under the proposal, different rules generally would have applied in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account (which would have been defined in proposed § 1026.2(a)(15)(vi) to match the definition under proposed Regulation E § 1005.2(b)(3)) or a card or device that accesses another type of asset account. To assist compliance with the regulation, the proposal would have defined "debit card" for purposes of Regulation Z in proposed § 1026.2(a)(15)(iv) to mean "any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account." The proposed definition of "debit card" would have specified that it does not include a prepaid card. Proposed § 1026.2(a)(15)(v) would have defined "prepaid card" to mean "any card, code, or other device that can be used to access a prepaid account" and would have defined "prepaid account" in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in proposed Regulation E § 1005.2(b)(3). Proposed comment 2(a)(15)–6 would have provided that the term "prepaid card" in proposed § 1026.2(a)(15)(v) would have included any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code. The proposed comment would have provided that the phrase "credit accessed by a prepaid card" means any credit that is accessed by any card, code, or other device that also can be used to access a prepaid account.

The Bureau did not receive specific comment on the proposed definition of "debit card." The Bureau is adopting the definition of "debit card" in new § 1026.2(a)(15)(iv) as proposed with one technical revision to cross-reference the definition of "prepaid account" in new § 1026.61.[608] In addition, the Bureau is adopting the definitions of "prepaid account" and "prepaid card" as proposed, renumbered as new § 1026.61(a)(5)(v) and new § 1026.61(a)(5)(vii) respectively. The Bureau also is adopting comment 2(a)(15)–6 with revisions to provide guidance on the definition of "prepaid card," renumbered as new comment 61(a)(5)(vii)–1. See the section-by-section analysis of § 1026.61(a)(5) below for a discussion of the "prepaid account" and "prepaid card" definitions and related commentary.

2(a)(17) Creditor

Certain disclosure requirements and other requirements in TILA and Regulation Z generally apply to creditors. TILA section 103(g) generally defines the term "creditor" to mean a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required; and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of

[607] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(15)–3.ii would have provided that such an account number is a charge card if it accesses a credit card account where no periodic rate is used to compute the finance charge. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 2(a)(15)–3.ii related to these account numbers.

[608] As in the proposal, this definition of "debit card" does not apply to Regulation E, including the rules that apply to debit cards that access checking accounts with overdraft services.

indebtedness, by agreement.[609] Also, for purposes of certain disclosure provisions in TILA that relate to account-opening disclosures, and periodic statement disclosures, for open-end credit plans, the term ''creditor'' includes a card issuer whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required.[610]

Consistent with TILA, Regulation Z generally defines the term ''creditor'' in existing § 1026.2(a)(17)(i) to include a ''person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.'' Under existing § 1026.2(a)(17)(v) and existing comment 2(a)(17)(i)–4, for open-end credit, a person regularly extends consumer credit if it had more than 25 accounts outstanding in the preceding calendar year. If a person did not meet this numerical standard in the preceding calendar year, the numerical standards must be applied to the current calendar year. In addition, under existing § 1026.2(a)(17)(iii) and (iv), the term ''creditor'' includes a card issuer (which is a person that issues a credit card or its agent) that extends credit. For purposes of subpart B, under existing § 1026.2(a)(17)(iii), a person also is a ''creditor'' if the person is a card issuer that extends credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. Thus, under existing Regulation Z as generally structured, card issuers that only meet this narrow definition of creditor (*i.e.,* extend credit that is not subject to a finance charge and is not payable in more than four installments) generally are subject to the open-end (not home-secured) rules and the credit card rules in subpart B, but generally need not comply with the credit card rules in subpart G, except for the credit card disclosures required by existing § 1026.60.

The Bureau's Proposal

The Bureau's proposal generally would have applied this existing framework to the prepaid context. Thus, under the proposal, a card issuer that issues a prepaid card that is a credit card (or its agent) that extends open-end (not home-secured) credit would have met the general definition of ''creditor'' because the person charges a finance charge and would have been subject to the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subparts B and G. Under existing § 1026.2(a)(17)(iv), a card issuer that issues a prepaid card that is a credit card (or its agent) that extends closed-end (not home-secured) credit would have met the general definition of ''creditor'' where the person charges a finance charge or extends credit payable by written agreement in more than four installments. Such person would have been subject to the closed-end provisions in subpart C and, certain open-end (not home-secured) disclosure rules in subpart B, and the credit card rules in subpart B. A card issuer that issues a prepaid card that is a credit card (or its agent), extends credit (not home-secured), and charges a fee described in § 1026.4(c), but does not charge a finance charge and does not extend credit payable by written agreement in more than four installments, would have been a ''creditor'' under existing § 1026.2(a)(17)(iii) and would have been subject to the open-end (not home-secured) disclosure rules and the credit card rules in subpart B.

Proposed comment 2(a)(15)–2.i.F, however, would have provided that a prepaid card is not a credit card when the prepaid card only accesses credit that (1) is not subject to a finance charge; (2) is not subject to fees described in § 1026.4(c); and (3) is not payable by written agreement in more than four installments. The Bureau would have clarified in proposed comment 2(a)(17)(iii)–2 that existing § 1026.2(a)(17)(iii) does not apply to a person that is extending credit that is accessed by a prepaid card where the credit meets these same three restrictions. In this case, under the proposal, the prepaid card would not have been a credit card and therefore the person issuing the card would not have been a card issuer. Prepaid account issuers that satisfied this exclusion still would have been subject to Regulation E's requirements, such as error resolution, and limits on liability for unauthorized use.

Comments Received and the Final Rule

The Bureau did not receive comment on this aspect of the proposal, other than those related to general comments from industry not to cover overdraft plans offered on prepaid accounts under Regulation Z and instead cover these overdraft plans under existing Regulation E § 1005.17. See the *Overview of the Final Rule's Amendments to Regulation Z* section for a discussion of those comments. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card under Regulation Z. Under final § 1026.2(a)(15)(i), a prepaid card is a credit card under Regulation Z when it is a ''hybrid prepaid-credit card'' as defined in new § 1026.61. *See also* new § 1026.61(a), and new comment 2(a)(15)–2.i.F. The Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. The term ''covered separate credit feature'' is defined in new § 1026.61(a)(2)(i) to mean a separate credit feature accessible by a hybrid prepaid-credit card as described in new § 1026.61(a)(2)(i). Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate

[609] 15 U.S.C. 1602(g).

[610] *Id.*

credit features," as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

Consistent with the proposal, the Bureau generally applies the existing framework for the definition of "creditor" to the prepaid context. Thus, a card issuer of a hybrid prepaid-credit card (or its agent) that extends credit under a covered separate credit feature is a "creditor" under existing § 1026.2(a)(17). The card issuer must comply with different provisions in Regulation Z depending on the type of credit extended. Under existing § 1026.2(a)(17)(iii), a card issuer of a hybrid prepaid-credit card (or its agent) that extends open-end (not home-secured) credit (and thus charges a finance charge for the credit) in connection with the covered separate credit feature is a "creditor" for purposes of the rules governing open-end (not home-secured) credit plans in subpart B in connection with the covered separate credit feature. The card issuer also must comply with the credit card rules set forth in subparts B and G with respect to the covered separate credit feature and the hybrid prepaid-credit card. Under existing § 1026.2(a)(17)(iii), a card issuer of a hybrid prepaid-credit card (or its agent) that extends credit (not home-secured) through the covered separate credit feature that is not subject to a finance charge and is not payable in more than four installments generally is a "creditor" for purposes of the open-end (not home-secured) rules in subpart B with respect to the covered separate credit feature. The card issuer also generally must comply with the credit card rules in subpart B with respect to the covered separate credit feature and the hybrid prepaid-credit card, but generally need not comply with the credit card rules in subpart G, except for the credit card disclosures required by existing § 1026.60 and the provisions in new § 1026.61.[611] Under existing § 1026.2(a)(17)(iv), a card issuer of a hybrid prepaid-credit card (or its agent) that extends closed-end (not home-secured) credit through the covered separate credit feature, and charges a finance charge or extends credit payable by written agreement in more than four installments is a "creditor" for purposes of the closed-end provisions in subpart C and certain open-end (not home-secured) disclosure rules in subpart B. The card issuer also generally must comply with the credit card rules in subpart B with respect to the covered separate credit feature and the hybrid prepaid-credit card, but generally need not comply with the credit card rules in subpart G except for the provisions in § 1026.61.

With respect to guidance on the definition of "creditor" related to prepaid cards that are not hybrid prepaid-credit cards, the Bureau is revising new comment 2(a)(17)(iii)–2 from the proposal and is adding new comment 2(a)(17)(i)–8 to cross-reference new § 1026.61(a), new comment 61(a)(2)–5.iii and new comment 61(a)(4)–1.iv for guidance on the applicability of Regulation Z to prepaid cards that are not hybrid prepaid-credit cards.

2(a)(20) Open-End Credit

TILA section 103(j) defines the term "open-end credit plan" to mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.[612] Regulation Z defines the term "open-end credit" in existing § 1026.2(a)(20) to mean consumer "credit" extended by a "creditor" under a "plan" in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a "finance charge" from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. Thus, to have open-end credit under Regulation Z, there must be (1) consumer "credit;" (2) that is extended under a "plan;" (3) where the person extending the credit may impose a "finance charge" from time to time on an outstanding unpaid balance; (4) the person extending the credit is a "creditor;" (5) the person extending credit reasonably contemplates repeated transactions; and (6) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

With respect to a credit accessed by a prepaid card that would have been a credit card under the proposal, the proposal would have provided additional guidance on the meaning of the following three terms used in the definition of "open-end credit:" (1) "credit;" (2) "plan;" and (3) "finance charge." For a discussion of the proposal and the final rule related to the term "credit," see the section-by-section analysis of § 1026.2(a)(14) above. The term "plan" is discussed below. For a discussion of the proposal and the final rule related to the term "finance charge," see below and the section-by-section analysis of § 1026.4.

Definition of "Plan"

The Bureau's proposal. The term "plan" currently is discussed in current comment 2(a)(20)–2, which provides in relevant part that the term "plan" connotes a contractual arrangement between the creditor and the consumer. The proposal would have revised current comment 2(a)(20)–2 to provide additional guidance on what constitutes a plan with respect to credit extended through paying overdrafts in connection with prepaid accounts. Under the proposal, a new comment 2(a)(20)–2.ii would have provided that with respect to credit accessed by a prepaid card, a plan would mean a program where the consumer is obligated contractually to repay any credit extended by the creditor. The proposal would have provided that a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Under the proposal, such a program would have constituted a plan notwithstanding that the creditor retains discretion not to pay such transactions, the creditor does not pay transactions once the consumer has exceeded a certain amount of credit, or the creditor only pays transactions where there were sufficient or available funds to cover the amount of the transaction at the time the transaction was authorized but not sufficient or available funds to cover the amount of the transaction at the time the transaction is paid.

[611] As discussed in the section-by-section analysis of § 1026.2(a)(15)(ii) above, certain requirements in the Credit CARD Act, which are generally set forth in subpart G, only apply to card issuers offering a credit card account under an open-end (not home-secured) consumer credit plan.

[612] *See* 15 U.S.C. 1602(j).

To accommodate the proposed changes, the proposal also would have made several technical revisions to comment 2(a)(20)–2. Specifically, the first sentence of the existing language in comment 2(a)(20)–2 would have been moved to proposed comment 2(a)(20)–2.i, and the remaining language of the existing comment would have been moved to proposed comment 2(a)(20)–2.iv.

Comments received and the final rule. The Bureau did not receive specific comment on the proposed changes to comment 2(a)(20)–2. Consistent with the proposal, the Bureau is moving the first sentence of the existing language in comment 2(a)(20)–2 to new comment 20(a)(20)–2.i. The Bureau also is moving the remaining language of the existing comment to new comment 2(a)(20)–2.iii.

The Bureau also is modifying the proposed language in new comment 2(a)(20)–2.ii to be consistent with the provisions set forth in § 1026.61.[613] Specifically, the final rule does not adopt an example contained in proposed comment 2(a)(20)–2.ii where credit is accessed by a prepaid card where the credit is extended on the prepaid account as a negative balance. As discussed in the section-by-section analysis of § 1026.61(b) below, a negative balance feature accessible by a prepaid card triggers application of the credit card rules under the final rule for purposes of coverage except as provided in new § 1026.61(a)(4). However, new § 1026.61(b) requires that an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account (except as provided in new § 1026.61(a)(4)) must be structured as a separate subaccount or account, distinct from the prepaid asset account, in order to facilitate transparency and compliance with various elements of Regulation Z. Such a separate credit feature is defined as a ''covered separate credit feature'' under new § 1026.61(a)(2)(i). Accordingly, the Bureau is revising new comment 20(a)(2)–2.ii from the proposal to discuss a situation where a hybrid prepaid-credit card accesses a ''covered separate credit feature'' under new § 1026.61(a)(2)(i) rather than credit in the form of a negative balance on the asset account that would violate new § 1026.61(b).

Specifically, under the final rule, new comment 2(a)(20)–2.ii provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, a plan includes a program under which a creditor routinely extends credit where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. The comment also cross-references new § 1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

With respect to the programs described above, the Bureau believes these programs are plans notwithstanding that, for example, the person offering the program reserves the right not to extend credit on individual transactions. The Bureau believes that the person's reservation of such discretion in connection with covered separate credit features accessible by hybrid prepaid-credit cards does not connote the absence of an open-end credit plan. If consumers using covered separate credit features accessible by hybrid prepaid-credit cards must agree to repay the debt created by an overdraft or advance, a contractual arrangement between the creditor and the consumer exists. The Bureau notes that credit card issuers similarly reserve the right to reject individual transactions, and thus the Bureau believes that automated overdraft services are comparable.

Finance Charge Imposed From Time to Time on an Outstanding Unpaid Balance

The Bureau's proposal. In Regulation Z, credit will not meet the definition of ''open-end credit'' unless the person extending the credit may impose a ''finance charge'' from time to time on an outstanding unpaid balance. Existing comment 2(a)(20)–4 provides that the requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. This comment also provides that a plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance.

The term ''finance charge'' generally is defined in existing § 1026.4 to mean ''the cost of consumer credit as a dollar amount'' and it includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. The term does not include any charge of a type payable in a comparable cash transaction.

The proposal would have revised various components of the definition of finance charge in existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the proposal from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to credit plans accessed by prepaid cards that would have been credit cards under the proposal and to better reflect the full cost of credit. Consistent with this approach, the proposal also would have added proposed comment 2(a)(20)–4.ii to state that with respect to credit accessed by a prepaid card (including a prepaid card that is solely an account number), any service, transaction, activity, or carrying charges imposed on a credit account, and any such charges imposed on a prepaid account related to an extension of credit, carrying a credit balance, or credit availability, generally would be finance charges. Such charges would have included periodic participation fees for the credit plan and transaction charges imposed in connection with a credit extension. In addition, proposed comment 2(a)(20)–4.ii would have provided that with respect to that credit, such service, transaction, activity, or carrying charges would constitute finance charges imposed from time to time on an outstanding unpaid balance if there is no specific amount financed

[613] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(20)–2.iii would been added to provide guidance on when depositing credit proceeds into a prepaid account would be considered extending credit under a plan. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt proposed comment 2(a)(20)–2.iii related to these account numbers.

for the plan for which the finance charge, total of payments, and payment schedule can be calculated. The proposal also would have moved the existing language of comment 2(a)(20)–4 to proposed comment 2(a)(20)–4.i.

Comments received and the final rule. The Bureau did not receive specific comments on the proposed changes to existing comment 2(a)(20)–4. Consistent with the general approach in the proposal, the Bureau is revising various components of the definition of finance charge in existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adding a new § 1026.4(b)(11) and related commentary to provide guidance as to the application of Regulation Z to covered separate credit features accessible by hybrid prepaid-credit cards. In particular, § 1026.4(b)(11) and related commentary describe how to treat charges that may be imposed on the separate credit subaccount or account as compared to charges that may be imposed on the prepaid asset feature. The commentary to new § 1026.4(b)(11) also provides guidance as to the treatment of fees imposed on the prepaid account in relation to credit features accessible by prepaid cards that are not credit cards under the final rule.

The Bureau is adopting changes to the commentary concerning the prong of the open-end credit definition in existing § 1026.2(a)(20) concerning the creditor's ability to impose finance charges from time to time on an outstanding unpaid balance, consistent with the general approach adopted in final §§ 1026.4 and new 1026.61. Specifically, the Bureau is moving the existing language of comment 2(a)(20)–4 to new comment 2(a)(20)–4.i. The Bureau also is adding new comment 2(a)(20)–4.ii but revises this comment from the proposal to reflect changes from the proposal set forth in the final rule under final §§ 1026.4 and new 1026.61.[614] Specifically, new comment 2(a)(20)–4.ii provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, any service, transaction, activity, or carrying charges imposed on the separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit, generally are finance charges, as described in existing § 1026.4(a) and new § 1026.4(b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature, any service, transaction, activity, or carrying charges that are finance charges under final § 1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance, as described in existing § 1026.2(a)(20), if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated.

The Bureau does not anticipate that there will be a specific amount financed for covered separate credit features accessible by hybrid prepaid-credit cards. Instead, the Bureau anticipates that the credit lines on covered separate credit features generally will be replenishing. In such cases, an amount financed for the credit feature could not be calculated because the creditor will not know at the time the credit feature is established the amount of credit that will be extended. Thus, to the extent that any finance charge may be imposed on such a credit feature, the credit feature will meet this criterion.

The Bureau believes that it is appropriate to consider covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards to meet this criterion of open-end credit. Under the Bureau's interpretation, a finance charge may be imposed time to time on an outstanding unpaid balance when any finance charge (including transaction fees or participation fees that are finance charges) may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by the hybrid prepaid-credit card. In contrast, if the Bureau were to interpret narrowly the criterion of open-end credit that a finance charge may be imposed time to time on an outstanding unpaid balance and include only finance charges resulting from periodic rates, covered separate credit features accessible by hybrid prepaid-credit cards that are charge card accounts instead would constitute closed-end credit. Under existing § 1026.2(a)(17)(iv), a card issuer offering such a charge card account would be a ''creditor'' for purposes of, and would need to comply with, the closed-end disclosure provisions in subpart C as well as certain open-end (not home-secured) disclosures rules in subpart B.

The Bureau believes that receiving closed-end disclosures for these types of accounts would be confusing to consumers because the disclosures would be different from those disclosures received in connection with other open-end credit card accounts. Where the transactions otherwise would appear to be part of an open-end plan based on repeated transactions and replenishing credit, the Bureau believes that consumers would be better protected and better informed if such transactions were treated as open-end plans in the same way as their other credit card accounts. In addition, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card where that credit feature is a charge card account, the Bureau believes that complying with the closed-end credit rules would be difficult for card issuers (for example, at point of sale) because closed-end disclosures specific to each credit extension would need to be provided prior to each transaction. Thus, the Bureau is retaining the current interpretation in existing comment 2(a)(20)–4 that a finance charge is considered to be imposed from time to time on an outstanding unpaid balance, as

[614] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 2(a)(20)–4.ii would been added to provide guidance on when finance charges imposed on credit accounts accessed by those account numbers would have satisfied the requirement for ''open-end credit'' that the creditor may impose a ''finance charge'' from time to time on an outstanding unpaid balance. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 2(a)(20)–4.ii related to these account numbers.

described in existing § 1026.2(a)(20), if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated. This means that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''open-end credit'' if any finance charge may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card.

The Bureau also notes that persons that offer covered separate credit features accessible by hybrid prepaid-credit cards where no finance charge may be imposed on the covered separate credit feature or asset feature of the prepaid account that are both accessible by the hybrid prepaid-credit card still would be subject to certain Regulation Z provisions. See the section-by-section analysis of § 1026.2(a)(17) above.

Section 1026.4 Finance Charge

TILA section 106(a) provides generally that the term ''finance charge'' in connection with any consumer credit transaction is the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction.[615]

Regulation Z generally defines the term ''finance charge'' in existing § 1026.4(a) to mean ''the cost of consumer credit as a dollar amount.'' It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. However, certain fee or charges are specifically excluded from the current definition of ''finance charge,'' including as described in existing § 1026.4(c)(3) and (4) respectively: (1) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

As discussed in more detail below, the proposal would have revised various components of the definition of finance charge in existing § 1026.4 and its commentary as applied to credit offered in connection with a prepaid account to (1) distinguish credit provided in connection with prepaid accounts addressed by the proposal from overdraft services on checking accounts, which is subject to a different rulemaking; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to credit plans accessed by prepaid cards that would have been credit cards under the proposal and to better reflect the full cost of credit.

Specifically, the proposal would have provided that existing § 1026.4(c)(3)'s exclusion of fees imposed in connection with overdraft services on checking accounts from the definition of finance charge would not have applied to credit accessed by a prepaid card. It also would have exempted credit accessed by a prepaid card from the exclusion in existing § 1026.4(c)(4) for participation fees. As discussed in more detail in the section-by-section analyses of § 1026.4(a) and (b) below, the proposal also would have made other modifications to general finance charge precepts as applied to credit offered in connection with prepaid cards, to assure broad coverage of the credit card rules to such credit.

As discussed in more detail below, consistent with the goals of the proposal in relation to the definition of ''finance charge,'' the Bureau is revising the definition of ''finance charge'' with regard to the covered separate credit features accessible by hybrid prepaid-credit cards as defined under new § 1026.61 to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. The Bureau also is adding language to the definition of ''finance charge'' in existing § 1026.4 and related commentary to provide greater guidance regarding the treatment of fees that are charged to the separate credit subaccount or account accessible by a hybrid prepaid-credit card, as compared to fees charged to the prepaid asset feature. Finally, the Bureau has added commentary to § 1026.4 to provide guidance as to the application of the definition of ''finance charge'' to credit features accessible by prepaid cards that are not credit cards under the final rule.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to such a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' The hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as ''non-covered separate credit features,'' as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-

[615] 15 U.S.C. 1605(a).

credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in more detail below, the Bureau is amending existing § 1026.4 and its commentary to (1) distinguish credit provided in connection with prepaid accounts addressed by the final rule from the overdraft services on checking accounts, which is subject to a different rulemaking process; and (2) broaden the definition of ''finance charge,'' as applied in the prepaid context, to assure broad coverage of the credit card rules to covered separate credit features accessible by hybrid prepaid-credit cards and to better reflect the full cost of credit. Specifically, the final rule provides that the exclusion in existing § 1026.4(c)(3) for certain charges in connection with overdraft services on checking accounts does not apply to credit offered in connection with a prepaid account and that the exclusion in existing § 1026.4(c)(4) for participation fees does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

In addition, the Bureau is amending existing § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and charges constitute ''finance charges'' related to credit offered in connection with a prepaid account. For example, with regard to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau has added new § 1026.4(b)(11) and related commentary to address the classification of fees as finance charges depending on whether those fees are imposed on the covered separate credit feature or on the asset feature of the prepaid account. Specifically, new § 1026.4(b)(11) provides that the following fees generally are finance charges with respect to such covered separate credit features and asset features: (1) Any fee or charge, such as interest rates and service, transaction, activity, or carrying charges, imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account; and (2) any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

The commentary to new § 1026.4(b)(11) also provides guidance with regard to the treatment of fees imposed on the prepaid account in relation to credit features accessible by prepaid cards that are not hybrid prepaid-credit cards. For example, with regard to non-covered separate credit features, the final rule provides that new § 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the non-covered credit feature is evaluated in its own right under the general rules set forth in existing § 1026.4 to determine whether these fees or charges are finance charges. In addition, with respect to these non-covered separate credit features, fees or charges on the asset feature of the prepaid account are not finance charges under existing § 1026.4 with respect to the non-covered separate credit feature. The commentary also provides that with respect to incidental credit that is provided via a negative balance on the prepaid account under new § 1026.61(a)(4), fees that can be imposed on the prepaid account under § 1026.61(a)(4) are not finance charges under final § 1026.4.

4(a) Definition

Under Regulation Z, the term ''finance charge'' generally is defined in existing § 1026.4(a) to mean ''the cost of consumer credit as a dollar amount.'' It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

With regard to credit card accounts, generally all transaction fees imposed on the account are treated as finance charges, even if the creditor imposes comparable transaction fees on asset accounts. Existing comment 4(a)–4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under existing § 1026.4(a). (Transaction charges that are imposed on checking accounts or other transaction accounts are discussed in the section-by-section analyses of § 1026.4(b) and (b)(11) below.) Specifically, existing comment 4(a)–4 provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example, any charge imposed on a credit cardholder by a card issuer for the use of an ATM to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge, regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. In addition, any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States with a foreign merchant, or in a foreign currency, is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. This comment essentially provides that debit card transactions are not considered ''comparable cash transactions'' to credit card transactions with respect to transaction charges imposed by a card issuer on a credit cardholder when those fees are imposed on the credit card account.

The proposal would have added proposed comment 4(a)–4.iii to provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card is a finance charge regardless of whether the card issuer imposes the same, greater, or lesser charge on the withdrawal of funds from a prepaid account.

The Bureau received substantial comment on the circumstances in which fees imposed on a prepaid account should be considered finance charges under § 1026.4. These comments are discussed in the section-by-section analysis of § 1026.4(b)(11) below. As discussed in the section-by-section analysis of § 1026.4(b)(11), new § 1026.4(b)(11) and related commentary set forth guidance regarding the circumstances in which a fee is a finance charge for credit offered in connection with a prepaid account. Thus, the Bureau is not revising existing comment 4(a)–4 to include the proposed prepaid card example discussed above.[616] Instead, the final rule revises

[616] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 4(a)–4 would have been revised to provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by such an account number is a finance charge regardless of whether the card issuer imposes the same, greater, or lesser charge on the withdrawal of funds from a prepaid account. For the reasons set forth in the section-by-

Continued

existing comment 4(a)–4 to provide that comment does not apply to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61. The comment also is revised to cross-reference new §§ 1026.4(b)(11) and 1026.61 for guidance on the circumstances in which a fee is a finance charge in connection with a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card.

4(b) Examples of Finance Charges

4(b)(2)

Existing § 1026.4(b) provides examples of the types of charges that are finance charges, except if those charges are specifically excluded under existing § 1026.4(c) through (e). In particular, existing § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges. However, the Board added a partial exception to this example stating that any charge imposed on a checking or other transaction account, such a service or transaction account charge, is only a finance charge to the extent that the charge exceeds the charge for a similar account without a credit feature. Existing comment 4(b)(2)–1 similarly provides that a checking or transaction account charge imposed in connection with a credit feature is a finance charge under existing § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for a checking or transaction account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under existing § 1026.4(b)(2). For purposes of existing § 1026.4(b)(2), a per transaction fee imposed on a checking account with a credit feature (*i.e.,* overdraft line of credit where the financial institution has agreed in writing to pay an overdraft) can be compared with a fee imposed for paying or returning each item on a similar account without a credit feature. Thus, if a per transaction fee imposed on a checking account with a credit feature for accessing credit does not exceed the fee for paying an overdraft or NSF fee on the checking account with no credit feature, the per transaction fee imposed on the checking account with the credit feature is not a finance charge under existing § 1026.4(b)(2).

The proposal would have set forth a different rule for when fees imposed on prepaid accounts would have been finance charges than the standard set forth in existing § 1026.4(b)(2). Specifically, proposed § 1026.4(b)(2)(ii) would have provided that any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability would have been a finance charge where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card, regardless of whether the creditor imposes the same, greater, or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended. Proposed comment 4(b)(2)–1.ii through iv, would have clarified the rule set forth in proposed § 1026.4(b)(2)(ii). The existing language in § 1026.4(b)(2) would have been moved to proposed § 1026.4(b)(2)(i). The existing language in comment 4(b)(2)–1 would have been moved to proposed comment 4(b)(2)–1.i.

The Bureau received substantial comments on the circumstances in which fees imposed on prepaid accounts should be considered finance charges under § 1026.4. These comments are discussed in the section-by-section to § 1026.4(b)(11) below. As discussed in the section-by-section analysis of § 1026.4(b)(11), new § 1026.4(b)(11) and related commentary set forth guidance regarding the circumstances in which a fee is a finance charge for credit offered in connection with a prepaid account. Thus, the Bureau has not adopted proposed § 1026.4(b)(2)(ii) and the changes to comment 4(b)(2)–1 as proposed.[617] Instead, the Bureau is revising § 1026.4(b)(2) and comment 4(b)(2)–1 to provide that final § 1026.4(b)(2) does not apply to prepaid accounts as defined in § 1026.61. In addition, the Bureau is adding new comment 4(b)(2)–2 to state that fees or charges related to credit offered in connection with prepaid accounts as defined in § 1026.61 are discussed in new §§ 1026.4(b)(11) and 1026.61, and related commentary.

4(b)(11)

The Bureau's Proposal

As discussed in the section-by-section analyses of § 1026.4(a) and (b)(2) above, the Bureau proposed § 1026.4(b)(2) and comments 4(a)–4.iii and 4(b)(2)–1.ii through iv to provide guidance regarding when a fee imposed in relation to credit accessed by a prepaid card would have been a finance charge under § 1026.4.

Proposed comment 4(a)–4.iii would have set forth guidance on when transaction fees imposed on credit card accounts accessed by prepaid cards would have been considered finance charges under the proposal. Specifically, this comment would have provided that any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card is a finance charge regardless of whether the card issuer imposes the same, greater, or lesser charge on the withdrawal of funds from a prepaid account.

Proposed § 1026.4(b)(2)(ii) and proposed comment 4(b)(2)–1.ii through iv would have provided guidance on when service, transaction, activity, and carrying charges imposed on a prepaid account in connection with credit accessed by a prepaid card would have been a finance charge under the proposal. Specifically, proposed § 1026.4(b)(2)(ii) would have provided that any charge imposed on the prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability would have been a finance charge where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card, regardless of whether the creditor imposes the same, greater, or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended.

Under proposed comment 4(b)(2)–1.ii, transaction fees imposed on a prepaid account for credit extensions would have been finance charges, regardless of whether the creditor imposes the same, greater, or lesser per transaction fee to withdraw funds from the prepaid account. To illustrate, assume a $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the

section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 4(a)–4 related to these account numbers.

[617] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(b)(2)(ii) and comment 4(b)(2)–1.ii through iv would have set forth the rule for when a fee imposed on a prepaid account is a finance charge in connection with credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(b)(2)(ii) and comment 4(b)(2)–1.ii through iv related to these account numbers.

transaction is paid. Under the proposal, the $1.50 transaction charge would have been a finance charge when the prepaid card accesses credit, notwithstanding that a $1.50 transaction charge also is imposed on transactions that solely access funds in the prepaid account.

In addition, under proposed comment 4(b)(2)–1.ii, a fee imposed on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card would have been a finance charge regardless of whether the creditor imposes the same, greater, or lesser monthly service charge to hold the prepaid account. For example, assume a creditor imposes $5 monthly service charge on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card. Under the proposal, the $5 monthly service charge would have been a finance charge regardless of whether the creditor imposes the same, greater, or lesser monthly service charge to hold the prepaid account.

In the proposal, the Bureau recognized that if a prepaid account issuer imposes a per transaction fee on a prepaid account for any transactions authorized or settled on the prepaid account, the prepaid account issuer would need to waive that per transaction fee imposed on the prepaid account when the transaction accesses credit to take advantage of the exception for when a prepaid card would not be a credit card under the proposal.

Proposed comment 4(b)(2)–1.iii would have provided that examples of charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability include (1) transaction fees for credit extensions; (2) fees for transferring funds from a credit account to a prepaid account; (3) a daily, weekly, or monthly (or other periodic) fee assessed each period a prepaid account is in ''overdraft'' status, or would be in overdraft status but for funds supplied by a linked line of credit; (4) a daily, weekly, or monthly (or other periodic) fee assessed each period a line of credit accessed by a prepaid card has an outstanding balance; and (5) participation fees or other fees that the consumer is required to pay for the issuance or availability of credit.

Proposed comment 4(b)(2)–1.iv would have provided that proposed § 1026.4(b)(2)(ii) would not apply to: (1) Transaction fees imposed on the prepaid account that are imposed only on transactions that solely access funds in the prepaid account (and are not imposed on transactions that either are funded in whole or in part from credit); (2) fees for opening or holding the prepaid account; and (3) other fees, such as cash reload fees and balance inquiry fees, that are not imposed on the prepaid account because the consumer engaged in a transaction that is funded in whole or in part by credit, for holding a credit plan, or for carrying a credit balance. These fees would not have been considered charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability even if there were not sufficient funds in the prepaid account to pay the fees at the time they were imposed on the prepaid account. Nonetheless, under the proposal, any negative balance on the prepaid account, whether from fees or other transactions, would have been a credit extension, and if a fee were imposed for such credit extension, the fee would have been a finance charge under proposed § 1026.4(b)(2)(ii). For example, if a cash-reload fee were imposed on the prepaid account and an additional charge were imposed on the prepaid account for a credit extension because there were not sufficient funds in the prepaid account to pay the cash reload fee when it was imposed on the prepaid account, the additional charge would have been a transaction charge imposed on a prepaid account in connection with an extension of credit and would have been a finance charge under proposed § 1026.4(b)(2)(ii).

The Bureau received substantial comment on the circumstances in which fees imposed in connection with credit accessed by a prepaid card should be considered finance charges under § 1026.4. As discussed below, in response to comments received, the Bureau is revising substantially from the proposal the circumstances in which a fee or charge imposed with respect to credit extended in connection with a prepaid account is a finance charge under § 1026.4.

Comments Received

Many industry commenters raised concerns regarding the breadth of fees that would be considered finance charges under the proposal. Many industry commenters were concerned that even though they did not intend to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as forced pay-transactions as discussed in the section-by-section analysis of § 1026.61 below. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. These commenters were concerned that they could not charge certain fees on the prepaid account, or would have to waive certain fees, for the prepaid card not to be considered to be a credit card under the proposal. In particular, proposed comment 2(a)(15)–2.i.F would have provided that the term ''credit card'' includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except for when the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Under the proposal, for a prepaid card not to be a credit card when it accesses a credit plan, the credit accessed by the prepaid card could not be subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and any credit accessed could not be payable by written agreement in more than four installments.

Many industry commenters indicated that certain fees should not be considered finance charges in connection with credit accessed by a prepaid card, and thus, a prepaid account issuer could continue to charge these fees on the prepaid account without the prepaid card becoming a credit card under the proposal.

For example, several commenters, including an industry trade association, an issuing bank, a program manager, and a digital wallet provider, indicated that consistent with existing § 1026.4(b)(2), a fee that is imposed on a prepaid account in both credit and cash transactions should not be a finance charge when the fee is imposed on a prepaid account. They argued that these fees are exempt from the definition of finance charge under the ''comparable cash transaction'' exception. Existing § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges. However, existing § 1026.4(b)(2) contains a partial exception to this example stating that for any charge imposed on a checking or other transaction account, such a service or transaction account charge, is only a finance charge to the extent that the charge exceeds the charge for a similar account without a credit feature.

In addition, several commenters, including an industry trade association, an issuing bank, a program manager,

and a digital wallet provider, indicated that the term ''finance charge'' should not include per transaction fees charged on a prepaid account for an extension of credit that are the same amount as the fee that would be charged for transactions paid entirely with funds available in the prepaid account. These industry commenters were concerned that a prepaid account issuer would need to waive per transaction fees charged for credit extensions even if they were the same amount as the fee charged for transactions it paid entirely with funds available in the prepaid account to avoid charging a finance charge under the proposal. As discussed above, under the proposal, all per transaction fees for credit transactions were finance charges. Thus, under the proposal, a prepaid account issuer would need to waive per transaction fees imposed on the prepaid account for credit transactions for the prepaid card not to be a credit card under the proposal.

Two industry trade associations indicated that the term ''finance charge'' should only include fees or charges arising from the fact that the transaction is an overdraft and specifically exclude other fees or charges that are wholly unrelated to the fact that the transaction is an overdraft, such as a fee for a balance inquiry at an ATM. These two commenters argued that such unrelated fees or charges should not be ''finance charges'' even if they are imposed when the prepaid account balance is negative. Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a ''finance charge'' simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

Several consumer groups commented on this aspect of the proposal. One consumer group commenter indicated that per transaction fees for credit extensions imposed on prepaid accounts should be finance charges even if they are the same amount as the fee charged for transactions paid entirely with funds available in the prepaid account. This consumer group commenter indicated that if a prepaid account issuer wanted to avoid charging a finance charge on the prepaid account, the cleanest solution is the one the Bureau proposed: Simply waive the fee. Another consumer group commenter indicated that any fee or charge that occurs when credit is accessed should be considered a finance charge.

The Final Rule

The Bureau is amending existing § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and charges constitute ''finance charges'' related to credit offered in connection with a prepaid account. First, the Bureau provides guidance on the definition of finance charge in relation to covered separate credit features accessible by a hybrid prepaid-credit cards. Second, the Bureau also provides guidance on the definition of finance charge in relation to credit features accessible by prepaid cards that are not hybrid prepaid-credit cards. Starting with the first category, as described above, the Bureau generally intends the final rule to regulate prepaid cards as credit cards when they can access overdraft credit features offered by the prepaid account issuer, its affiliates, or its business partners (except as provided in new § 1026.61(a)(4)). Such credit features are generally required under new § 1026.61(b) to be structured as a separate subaccount or account, distinct from the prepaid asset account, to facilitate transparency and compliance with Regulation Z. To effectuate this decision and provide compliance guidance to industry, new § 1026.4(b)(11) and its related commentary specify rules for distinguishing when particular types of fees or charges that are imposed on the covered separate credit feature or on the asset feature on a prepaid account, which are both accessible by a hybrid prepaid-credit card, are finance charges under Regulation Z. Specifically, new § 1026.4(b)(11) provides that the following fees generally are finance charges with respect to such covered separate credit features and asset features: (1) Any fee or charge, such as interest rates and service, transaction, activity, or carrying charges, imposed on the covered separate credit feature, regardless of whether the credit feature is structured as a credit subaccount of the prepaid account or a separate credit account; and (2) any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. These provisions are discussed in more detail in the section-by-section analyses of § 1026.4(b)(11)(i) and (ii).

The commentary to new § 1026.4(b)(11) also provides guidance regarding credit features that are accessible by prepaid cards that are not credit cards under the final rule. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 4(b)(11)–1.i provides that the rules for classification of fees or charges as finance charges in connection with a covered separate credit feature and the asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card are specified in § 1026.4(b)(11) and related commentary. This guidance is discussed in more detail in the section-by-section analyses of § 1026.4(b)(11)(i) and (ii). As discussed in more detail below, new comment 4(b)(11)–1.ii and iii sets forth guidance on when fee or charges are finance charges under § 1026.4 when these fees or charges are imposed in connection with credit features that are accessible by prepaid cards that are not credit cards.[618]

[618] One industry commenter noted the proposed definition of ''finance charge'' in connection with prepaid accounts and raised questions about the impact these proposed changes would have in terms of obligations to notify consumers of adverse actions under the Equal Credit Opportunity Act and Regulation B. The Bureau believes that it has addressed these concerns in the final rule by providing additional guidance on the type of fees that are ''finance charges'' with respect to covered separate credit features accessible by hybrid prepaid-credit cards. In addition, the final rule also excludes prepaid cards from being covered as credit cards under Regulation Z when they access non-covered separate credit features as defined in new § 1026.61(a)(2)(ii), or access incidental credit as a

Non-covered separate credit features. With respect to separate credit features, as noted above, under § 1026.61(a)(2)(ii), there are two circumstances in which new § 1026.61 provides that a prepaid card is not a hybrid prepaid-credit card when it accesses a separate credit feature. The first is where the prepaid card cannot be used to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second is where the separate credit feature is offered by an unrelated third party, rather than the prepaid account issuer, its affiliate, or its business partner.

New § 1026.61(a)(2)(ii) defines a separate credit feature that does not meet these two conditions as a ''non-covered separate credit feature.'' As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z in its own right, depending on the terms and conditions of the product.

New comment 4(b)(11)–1.ii provides that new § 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in existing § 1026.4 determine whether these fees or charges are finance charges. In addition, fees or charges on the asset feature of the prepaid account are not finance charges under final § 1026.4 with respect to the non-covered separate credit feature.

Overdraft credit features excepted under § 1026.61(a)(4). As described in new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card (and is not a credit card under Regulation Z) where the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. Specifically, under this exception, the prepaid account issuer (1) must have a general policy and practice of declining to authorize transactions made with the card where there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transactions or to only authorize such negative balance transactions in circumstances related to payment cushions and delayed load cushions; and (2) must not charge any credit-related fees as defined in new § 1026.61(a)(4) for any credit extended through a negative balance on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, such credit features will not trigger coverage of the credit card rules.

With respect to what ''credit-related fees'' will cause such a credit feature to fall outside the scope of the new § 1026.61(a)(4) exclusion, new § 1026.61(a)(4)(ii)(B) provides that with respect to prepaid accounts that are accessible by the prepaid card, the prepaid account issuer may not charge the following fees or charges on the asset feature of the prepaid account: (1) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This would not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available; (2) any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or (3) any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

This language in new § 1026.61(a)(4)(ii)(B) allows a prepaid account issuer to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account. New § 1026.61(a)(4)(ii)(C) also makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in new § 1026.61(a)(4)(ii)(B) as discussed above.

Thus, in order to qualify for the exception in new § 1026.61(a)(4), a prepaid account issuer generally may not charge additional fees or higher fees when credit is extended on the asset feature of the prepaid account or there is a negative balance on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. Provided it meets this limitation and the other requirements of new § 1026.61(a)(4), the prepaid account issuer will not be a ''card issuer'' under final § 1026.2(a)(7) and thus the credit card rules in Regulation Z do not apply to such a credit feature.

In addition, new comment 4(b)(11)–1.iii provides that fees charged on the asset feature of the prepaid account in accordance with new § 1026.61(a)(4)(ii)(B) are not finance charges. This ensures that a prepaid account issuer is not a ''creditor'' under the general definition of ''creditor'' set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

The Bureau believes that many of the concerns raised by industry commenters as discussed above with respect to the definition of ''finance charge'' have been addressed by creating new § 1026.61(a)(4) and its treatment of credit-related charges in new § 1026.61(a)(4)(ii)(B) and new comment 4(b)(11)–1.iii. As discussed above, many industry commenters were concerned that even though they did not intend to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as force pay transactions as discussed in the section-by-section analysis of § 1026.61 below. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. Because of these concerns, many industry commenters urged that that the Bureau not consider certain fees to be finance charges, and thus, a prepaid account issuer could continue to charge these fees on the prepaid account without making the prepaid card also a credit card under the proposal.

For example, several commenters, including an industry trade association, an issuing bank, a program manager, and a digital wallet provider, indicated

negative balance on the prepaid account as set forth in new § 1026.61(a)(4).

that the term ''finance charge'' should not include per transaction fees charged on a prepaid account for an extension of credit that are the same amount as the fee that would be charged for transactions paid entirely with funds available in the prepaid account. These industry commenters also were concerned that if they generally charged the same per transaction fee for all transactions paid using a prepaid account, regardless of whether the transaction is paid entirely with funds available in the prepaid account or is paid in whole or in part with credit, a prepaid account issuer would need to waive those per transaction fees for transactions resulting in an overdraft for a prepaid card not to be a credit card under the proposal. Also, two industry trade associations indicated that the term ''finance charge'' should only include fees or charges arising from the fact that the transaction is an overdraft and specifically exclude other fees or charges that are wholly unrelated to the fact that the transaction is an overdraft, such as a fee for a balance inquiry at an ATM. These two commenters argued that such unrelated fees or charges should not be ''finance charges'' even if they are imposed when the prepaid account balance is negative. Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a ''finance charge'' simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

The final rule addresses these concerns in a number of ways, so long as the types of credit provided are limited to the narrow types addressed in new § 1026.61(a)(4). First, new § 1026.61(a)(4) does not require a prepaid account issuer to waive per transaction fees imposed on the asset feature of the prepaid account if the amount of the per transaction fee imposed for transactions involving credit is not higher than the amount of the fee that is imposed for transactions that only access funds in the asset feature of the prepaid account. Second, under the exception in new § 1026.61(a)(4), the final rule provides that if a fee is not a fee enumerated in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may still debit these fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed. Third, the final rule clarifies that under this exception, a prepaid account issuer may charge a fee to hold the prepaid account, so long as the amount of the fee or charge imposed on the asset feature of the prepaid account is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

In addition, as discussed above, new comment 4(b)(11)–1.iii provides that fees charged on the asset feature of the prepaid account in accordance with new § 1026.61(a)(4)(ii)(B) are not finance charges. This ensures that a prepaid account issuer is not a ''creditor'' under the general definition of ''creditor'' set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

4(b)(11)(i)

New § 1026.4(b)(11)(i) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, any fee or charge described in final § 1026.4(b)(1) through (10) imposed on the covered separate credit feature is a finance charge, regardless of whether the separate credit feature is structured as a credit subaccount of the prepaid account or a separate credit account. Fees would be excluded from the definition of finance charge if they are described in final § 1026.4(c) through (e), as applicable, although as discussed in more detail below, the Bureau is narrowing certain of these existing exclusions as they are applied to credit in connection with prepaid accounts. This approach is similar to the approach to the definition of ''finance charge'' that currently applies to credit card accounts generally, except the Bureau is narrowing certain exclusions contained in § 1026.4(c)(3) and (4) as discussed in the section-by-section analysis of § 1026.4(c) below.

Comment 4(b)(11)(i)–1 provides further guidance on this framework. Specifically, it provides that any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. This comment also provides that transaction charges that are imposed on the asset feature of a prepaid account are subject to new § 1026.4(b)(11)(ii) and related commentary, instead of new § 1026.4(b)(11)(i).

New comment 4(b)(11)(i)–1 also clarifies that the treatment of transaction fees on the separate covered credit feature is consistent with the treatment of transaction fees on a credit card account, as specified in existing comment 4(a)–4. As discussed in more detail in the section-by-section analysis of § 1026.4(a) above, existing comment 4(a)–4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under § 1026.4(a).[619] Specifically, existing comment 4(a)–4 provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account, such as a checking or savings account. For example, any charge imposed on a credit cardholder by a card issuer for the use of an ATM to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. In addition, any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States with a foreign merchant, or in a foreign currency, is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. This comment essentially provides that debit card transactions are not considered ''comparable cash transactions'' to credit card transactions with respect to transaction charges imposed by a card issuer on a credit cardholder when those fees are imposed on the credit card account.

In the supplemental information accompanying the rule that adopted this comment, the Board noted the inherent complexity of distinguishing transactions that are ''comparable cash transactions'' to credit card transactions from transactions that are not.[620] For example, the Board discussed the case where a card issuer imposes a transaction fee on the credit card account for a cash advance obtained through an ATM. The Board found that a transaction fee for a cash advance obtained through an ATM would not always be a finance charge if fees that are imposed on debit cards offered by the credit card issuer were considered in applying the ''comparable cash transaction'' exception. In particular,

[619] Transaction charges that are imposed on checking accounts or other transaction accounts (other than prepaid accounts) are discussed in the section-by-section analysis of § 1026.4(b) above, and transaction charges imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card are discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) below.

[620] 74 FR 5244, 5263 (Jan. 29, 2009).

whether the transaction fee for the cash advance is a finance charge would depend on whether the credit card issuer provided asset accounts and offered debit cards on those accounts and whether the fee exceeds the fee imposed for a cash advance transaction through an ATM on such asset accounts. The Board believed this type of distinction was not helpful for consumers in understanding transaction fees imposed on their credit card accounts. Thus, the Board adopted existing comment 4(a)–4, which provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account, such as a checking or savings account. The Board noted that it was not revising existing comment 4(b)(2)–1, which states that if a checking or transaction account charge imposed on an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge. The Board further noted that existing comment 4(b)(2)–1 addresses situations distinct from those addressed by comment 4(a)–4.

With respect to whether a per transaction charge imposed on the covered separate credit feature accessible by a hybrid prepaid-credit card should be a finance charge, the Bureau believes that it is appropriate to follow the same rules that generally apply to credit cards, as set forth in existing comment 4(a)–4. Thus, consistent with existing comment 4(a)–4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, transaction charges that are imposed on the asset feature of a prepaid account are subject to new § 1026.4(b)(11)(ii) and related commentary, instead of new § 1026.4(b)(11)(i).

4(b)(11)(ii)

In contrast to the rule for fees imposed on a covered separate credit feature accessible by a hybrid prepaid-credit card, new § 1026.4(b)(11)(ii) provides that any fee or charge imposed on the asset feature of a prepaid account is a finance charge only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. Fees described in final § 1026.4(c) through (e), as applicable, are excluded from the definition of finance charge, although, as discussed in more detail below, the Bureau is narrowing certain of these existing exclusions as they are applied to credit offered in connection with prepaid accounts.

The Bureau's approach with regard to fees charged on an asset feature accessible by a hybrid prepaid-credit card is consistent with the comparable cash exception to the definition of finance charge. This approach is similar to the existing approach that Regulation Z takes outside the credit card context in exempting fees from the definition of finance charge if they are comparable to fees charged on a checking or other asset account for transactions that do not involve a credit feature as discussed in final § 1026.4(b)(2), although there are important distinctions as discussed below.

Compared to the proposed approach, the Bureau believes that the approach adopted in the final rule with respect to the asset feature will make it easier for both prepaid account issuers and for consumers to track and understand how the separate credit feature and asset features operate in connection with a hybrid prepaid-credit card. The Bureau is concerned that excluding all fees charged on an asset feature from the definition of finance charge would invite prepaid account issuers to structure their programs in ways that make it very difficult for consumers to analyze the true cost of credit on a hybrid prepaid-credit card. At the same time, the Bureau recognizes that certain fees charged in conjunction with the operation of the prepaid asset feature are not driven by credit use, and that it is useful to both prepaid account issuers and consumers to differentiate those fees from other charges. The Bureau believes that new § 1026.4(b)(11)(ii) appropriately balances these considerations by providing that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, fees or charges imposed on the asset feature of the prepaid account are finance charges only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

Comparable Fees

While the Bureau's approach with regard to charges imposed on an asset feature accessible by a hybrid prepaid-credit card is somewhat similar to the rule provided in existing § 1026.4(b)(2) with regard to when transaction fees, service fees, and carrying fees imposed on checking and other transaction accounts are finance charges under Regulation Z, the final rule differs in one particularly important respect: It provides detailed guidance in new comment 4(b)(11)(ii)–1 regarding how fees on prepaid accounts without a covered separate credit feature should be compared to fees imposed on prepaid accounts with a covered separate credit feature accessible by a hybrid prepaid-credit card. This guidance is more detailed and more restrictive than the guidance provided under final § 1026.4(b)(2) with regard to checking and transaction accounts other than prepaid accounts.

In developing these rules, as set forth in new § 1026.61(a)(2)(i)(B) and new comment 61(a)(2)–4.ii, the Bureau was conscious that there were two potentially distinct types of credit extensions that could occur on a covered separate credit feature accessible by a hybrid prepaid-credit card. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's 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 P2P transfers. Because the two scenarios involve different sets of activities, the range of fees triggered is also likely to be different. As discussed in more detail below, new comment 4(b)(11)(ii)–1 therefore provides separate guidance on the comparable fees under new § 1026.4(b)(11)(ii) with respect to each of the two types of credit extensions.

New comment 4(b)(11)(ii)–1.i explains that new comment 4(b)(11)(ii)–1.ii and iii provides guidance with respect to comparable fees under § 1026.4(b)(11)(ii) for these two types of

credit extensions on a covered separate credit feature. New comment 4(b)(11)(ii)–1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In addition, new comment 4(b)(11)(ii)–1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 4(b)(11)(ii)–1.ii and iii are discussed in more detail below.

Credit extensions from the covered separate credit feature within the course of a transaction. New comment 4(b)(11)(ii)–1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Specifically, new comment 4(b)(11)(ii)–1.ii provides that where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing such a transaction, any per transaction fees imposed on the asset feature of the prepaid account, including load and transfer fees, for such credit from the credit feature should be compared to the per transaction fees for each transaction to access funds in the asset feature of a prepaid account that is in the same prepaid account program but does not have such a credit feature. Thus, per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of new § 1026.4(b)(11)(ii).

To illustrate these principles, new comment 4(b)(11)(ii)–1.ii sets forth several examples explaining when a finance charge is imposed on the asset feature of a prepaid account in situations in which credit is accessed from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New comment 4(b)(11)(ii)–1.ii.A provides the following example: Assume that a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of prepaid accounts. Also, assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge because it is a comparable fee to the $0.50 per transaction fee imposed on the prepaid account without a covered separate credit feature.

Nonetheless, as described in new comment 4(b)(11)(ii)–1.ii.B, in this example, if the prepaid account issuer instead charged $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the additional $0.75 is a finance charge.

As another example set forth in new comment 4(b)(11)(ii)–1.ii.C, assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of prepaid accounts. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the $1.25 excess is a finance charge.

New comment 4(b)(11)(ii)–1.ii.D provides another example. Under this example, assume a prepaid account issuer charges both a $0.50 fee for each transaction that accesses funds in the asset feature of prepaid accounts without a covered separate credit feature, and charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program when the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source (in this example, the $1.25 fee to load funds from another asset account) are not comparable for purposes of new § 1026.4(b)(11)(ii). Accordingly, the $1.25 excess is a finance charge.

The Bureau also notes that the per transaction fee for a credit extension in the course of a transaction from a covered separate credit feature cannot be compared to a fee for declining to pay a transaction that is imposed on a prepaid account without such a credit feature in the same prepaid account program.

The Bureau believes that the above standard for determining comparable fees with respect to fees or charges imposed on the asset feature of prepaid accounts accessible by hybrid prepaid-credit cards will help prevent evasion of the rules set forth in the final rule with respect to hybrid prepaid-credit cards. The Bureau believes that many prepaid cardholders who wish to use covered separate credit features may not have other deposit accounts or savings accounts from which they can transfer funds to prevent an overdraft on the prepaid account in the course of authorizing, settling, or otherwise completing a transaction to obtain goods or services, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that a per transaction fee for credit drawn or transferred from a covered separate credit feature accessible by a hybrid prepaid-credit card during the course of a transaction should be allowed to be compared with a per transaction fee for a service that many prepaid cardholders who wish to use covered separate credit features may not be able to use.

The Bureau is concerned that if it permitted such a comparison, card issuers could charge a substantial fee to transfer funds from the checking account or savings account during the course of a transaction using the prepaid account (which many prepaid cardholders who wish to use covered separate credit features may not be able to use as a practical matter) and then

charge that same substantial per transactions fees for credit drawn or transferred from the covered separate credit feature during the course of a transaction without such fees being considered a finance charge. This could allow the prepaid account issuer to avoid charging a finance charge and avoid the application of the Credit CARD Act provisions that are generally set forth in subpart G, such as the restriction on fees set forth in § 1026.52. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to per transaction fees imposed on prepaid accounts for transactions that access funds in the prepaid account in the same prepaid account program that does not have a covered separate credit feature. All prepaid accountholders can use prepaid accounts to make transactions that access available funds in the prepaid account, so these types of transactions will be available to all prepaid accountholders.

Credit extensions from a covered separate credit feature outside the course of a transaction. New comment 4(b)(11)(ii)–1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers, as discussed above.

New comment 4(b)(11)(ii)–1.iii provides that load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of new § 1026.4(b)(11)(ii).

New comment 4(b)(11)(ii)–1.iii provides examples to illustrate this guidance. New comment 4(b)(11)(ii)–1.iii.A provides the following example: Assume a prepaid account issuer charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature (in this example, the $1.25 fee to load funds from the non-covered separate credit feature) are not comparable for purposes of new § 1026.4(b)(11)(ii).

In a second example described in new comment 4(b)(11)(ii)–1.iii.B, assume that a prepaid account issuer charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (in this example, the $1.25 fee to load funds form the separate asset account) are not comparable for purposes of new § 1026.4(b)(11)(ii).

As an initial matter, the Bureau believes that it is appropriate to compare fees imposed to load or transfer credit from a covered separate credit feature outside the course of transactions conducted with the card to fees, if any, for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts with no covered separate credit feature because those direct deposits also occur outside the course of transactions conducted with the card that access funds in the prepaid account. Thus, the Bureau believes that these two types of situations are comparable because they both occur outside the course of transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers.

The Bureau recognizes that there may be other types of loads or transfers of asset funds or credit that can occur outside the course of a transaction, including loads or transfers of funds from other asset accounts, such as checking accounts or savings accounts, or loads or transfers of credit from other credit accounts that are not covered separate credit features. Nonetheless, the Bureau believes that many prepaid accountholders who wish to use covered separate credit features may not have other asset accounts, such as checking accounts or savings accounts, or other credit accounts, from which they can draw or transfer asset funds or credit for deposit into the prepaid account outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. As a result, the Bureau does not believe that load or transfer fees for credit from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction should be allowed to be compared with a load or transfer fees from an asset account, or non-covered separate credit feature, outside the course of a transaction.

The Bureau is concerned that if it did so, card issuers could charge a substantial fee to load or transfer funds from the checking account or savings account or a non-covered separate credit feature (which many prepaid cardholders who wish to use covered separate credit features may not be able to use as a practical matter) and then charge that same substantial fee for load or transfer fees for credit loaded or transferred from the covered separate credit feature outside the course of a transaction without that fee being a finance charge. This could allow the prepaid account issuer to avoid charging a finance charge and avoid the application of the Credit CARD Act provisions that are generally set forth in subpart G, such as the restriction on fees set forth in § 1026.52. For this reason, the Bureau believes that it is appropriate to limit the comparable fee in this case to fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. The Bureau believes that such direct deposit methods commonly are

offered on most types of prepaid accounts and that most prepaid accountholders who wish to use covered separate credit features are able to avail themselves of these methods.[621]

Relation to Regulation E § 1005.18(g)

New comment 4(b)(11)(ii)–2 provides a cross-reference to a related provision in final Regulation E § 1005.18(g). As discussed in more detail in the section-by-section analysis of Regulation E § 1005.18(g) above, this provision only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature that are in the same prepaid account program.

4(c) Charges Excluded From the Finance Charge

Existing § 1026.4(c) provides a list of charges that are excluded from the definition of finance charge under § 1026.4. The charges listed in existing § 1026.4(c) include: (1) Application fees charged to all applicants for credit, whether or not credit is actually extended; (2) charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence; (3) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (4) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

The proposal would have provided that the exclusion from the definition of finance charge in existing § 1026.4(c)(3) for overdraft services on checking accounts would not have applied to credit accessed by a prepaid card. It also would have provided that the exclusion for participation fees in existing § 1026.4(c)(4) would not apply to credit accessed by a prepaid card.

[621] The Bureau understands that prepaid account issuers currently offering overdraft services condition consumer eligibility on receipt of a regularly-occurring direct deposit in excess of a specified threshold.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, many industry commenters urged the Bureau to provide that the exception in § 1026.4(c)(3) applies to overdraft credit accessed in connection with prepaid accounts. One credit union service organization also indicated that the Bureau should provide that the exception in existing § 1026.4(c)(4) should apply to annual and other periodic fees to hold a credit plan in connection with a prepaid account.

Several consumer group commenters stated that the exception in § 1026.4(c)(1) for application fees for credit features should not apply to credit accessed by prepaid cards. One consumer group commenter urged that the exceptions in existing § 1026.4(c)(2) for late fees, over the limit fees, and returned payment fees should not apply to credit accessed by prepaid cards. This commenter expressed concern that prepaid account issuers might use such fees as a back-end method of credit pricing, and stated that the Bureau should either include these fees in definition of "finance charge" or make clear that they cannot be charged on prepaid accounts.

As discussed in more detail below, the Bureau is amending existing § 1026.4 and its commentary to provide that the exclusion in existing § 1026.4(c)(3) does not apply to credit offered in connection with a prepaid account and that the exclusion in existing § 1026.4(c)(4) does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

The Bureau has not adopted any changes to the exception in existing § 1026.4(c)(1) related to application fees, or to the exception in existing § 1026.4(c)(2) related to late fees, over the limit fees, returned check fees, and other fees for delinquency, default, or a similar occurrence. The Bureau believes these changes are outside the scope of the proposal and does not believe that these changes are warranted at this time. The Bureau will continue to monitor whether changes to these exceptions with respect to covered separate credit features accessible by hybrid prepaid-credit cards are needed.

4(c)(3)

Existing § 1026.4(c)(3) provides that the term "finance charge" does not include charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above, the Board developed this exception to the term "finance charge" to carve out fees imposed by financial institutions for checks or other items that overdraw an account so that ad hoc overdraft plans would not be subject to Regulation Z.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau intended generally that, under its proposal, Regulation Z would apply to credit accessed by prepaid cards that are credit cards. Thus, the Bureau proposed to revise existing § 1026.4(c)(3) and existing comment 4(c)(3)–1 to specify that this provision would not have applied to credit accessed by a prepaid card. As a result, under the proposal, charges imposed by a financial institution for paying items that overdraw a prepaid account would have been finance charges even if the payment of the item and the imposition of the charge were not previously agreed upon in writing, and the financial institution extending such an overdraft would have been a creditor.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, many industry commenters indicated that the Bureau should provide that the exception in existing § 1026.4(c)(3) applies to overdraft credit accessed in connection with prepaid accounts. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau is revising existing § 1026.4(c)(3) and existing comment 4(c)(3)–1 to provide that the exception in that paragraph does not apply to credit offered in connection with a prepaid account as defined in § 1026.61.[622] The Bureau also is adding new comment 4(c)(3)–2 to cross-reference new comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

[622] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(c)(3) and comment 4(c)(3)–1 would have provided that the exception set forth in § 1026.4(c)(3) would not have applied to credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(c)(3) and comment 4(c)(3)–1 related to these account numbers.

The Bureau notes that existing § 1026.4(c)(3) focuses on written agreements in determining whether charges imposed by a financial institution for paying items that overdraw an account are finance charges. As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that whether overdraft credit structured as a negative balance on a prepaid account is covered under Regulation Z should not turn on whether there is an agreement to extend such overdraft credit. Instead, new § 1026.61(a)(4) sets forth the circumstances in which overdraft credit structured as a negative balance on a prepaid account can be excluded from Regulation Z. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(4) below, the Bureau provides that a prepaid card is not a hybrid prepaid-credit card (and is not a credit card under Regulation Z) where the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. If the conditions of the exception in new § 1026.61(a)(4) are met, the prepaid account issuer will not be a ''card issuer'' under final § 1026.2(a)(7) and thus the credit card rules in Regulation Z do not apply to such overdraft credit features. In addition, new comment 4(b)(11)–1.iii provides that fees charged on the asset feature of the prepaid account in accordance with the exception in new § 1026.61(a)(4) are not finance charges. This ensures that the prepaid account issuer is not a ''creditor'' under the general definition of ''creditor'' set forth in existing § 1026.2(a)(17)(i) as a result of charging these fees on the prepaid account.

4(c)(4)

Existing § 1026.4(c)(4) provides that the term ''finance charge'' does not include fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. Existing comment 4(c)(4)–1 explains that the participation fees described in existing § 1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and such a fee may not be treated as a participation fee.

The Bureau proposed to amend existing § 1026.4(c)(4) and existing comment 4(c)(4)–1 to provide that this exception would not have applied to credit accessed by a prepaid card. One credit union service organization indicated that the Bureau should provide that the exception in existing § 1026.4(c)(4) should apply to annual and other periodic fees to hold a credit plan in connection with a prepaid account. This commenter argued that defining the maintenance fee as a finance charge is confusing to consumers, and it is not what consumers expect ''finance charges'' to be. One consumer group supported the Bureau's proposal to include participation fees within the definition of ''finance charge'' in Regulation Z when those fees are charged in connection with credit on prepaid cards. This commenter argued that participation fees have been used to disguise the cost of credit. This commenter suggested that including participation fees in the definition of ''finance charge'' would prevent these evasions.

The Bureau is adopting proposed § 1026.4(c)(4) with revisions to be consistent with new § 1026.61. Specifically, the Bureau is amending existing § 1026.4(c)(4) to provide that this exception does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.[623]

The Bureau believes that the exception in existing § 1026.4(c)(4) is not dictated by TILA's definition of ''finance charge.'' Rather, the Board added this exception to existing § 1026.4(c)(4) in 1981 based on an interpretation letter that the Board had previously issued.[624] In the interpretation letter, the Board excluded annual fees for membership in a credit plan from the definition of ''finance charge'' because these fees are not imposed incident to or as a condition of any specific extension of credit.[625] Nonetheless, the Bureau believes that the term ''finance charge'' in TILA is broad enough to reasonably include periodic fees for participation in a credit plan under which a consumer may obtain credit because those fees would be incident to the extension of credit. Without paying the periodic fees for access to the credit plan, the consumer could not use the credit plan to access credit.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau intends generally to cover covered separate credit features accessible by hybrid prepaid-credit cards as ''open-end credit'' under Regulation Z. The Bureau believes these credit features should be ''open-end credit'' even if the only fees charged for the plan are annual or other periodic fees for participation in the credit plan. See the section-by-section analysis of § 1026.2(a)(20) above for a discussion of the finance charge criterion for the definition of ''open-end credit.'' The Bureau believes that annual or other periodic fees that are charged for participation in covered separate credit features accessible by hybrid prepaid-credit cards could be significant costs to consumers, even if interest or transaction fees are not charged with respect to the credit features, and thus the protections in Regulation Z that apply to open-end credit, including those in subpart G, should apply to covered separate credit features that charge an annual or other periodic fee to access the plan and otherwise meet the definition of ''open-end credit.''

The Bureau especially believes that the protections in Regulation Z subpart G that generally apply to open-end credit that is accessible by a credit card will be beneficial to consumers using such credit features. For example, existing § 1026.51 prohibits credit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21. In addition, existing § 1026.52(a) restricts the amount of fees (including annual or other periodic fees to access the plan) that an issuer can charge during the first year after an account is opened, such that the fees generally cannot exceed 25 percent of the initial credit limit. These provisions will provide important protections to consumers to help ensure that consumers using covered separate credit features accessible by hybrid prepaid-credit cards where only annual or other periodic fees are imposed for

[623] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.4(c)(4) would have provided that the exception set forth in § 1026.4(c)(4) would not have applied to credit accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.4(c)(4) related to these account numbers.

[624] 46 FR 20848, 20855 (Apr. 7, 1981).

[625] 36 FR 16050 (Aug. 19, 1971).

participation in the credit feature do not become overextended in using credit, and that the periodic fees imposed during the first year generally do not exceed more than 25 percent of the initial credit line.

Thus, the Bureau is revising existing § 1026.4(c)(4) and existing comment 4(c)(4)–1 to provide that the exception for participation fees from the definition of "finance charge" does not apply in relation to a covered separate credit feature accessible by a hybrid prepaid-credit card, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. The Bureau also is adding new comment 4(c)(4)–3 to cross-reference new comment 4(b)(11)–1 for guidance on when fees imposed in connection with credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

As discussed above, the Bureau is amending existing § 1026.4(c)(4) to provide that the exclusion in that paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. This change to existing § 1026.4(c)(4) is limited to fees to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card, rather than covering all credit in connection with a prepaid account. The Bureau intends to preserve existing § 1026.4(c)(4) with respect to non-covered separate credit features for which a participation fee is charged. Thus, the exclusion of participation fees from the definition of finance charge in final § 1026.4(c)(4) would still apply with respect to participation fees imposed on non-covered separate credit features, as applicable.

When a prepaid account issuer offers incidental credit, new § 1026.61(a)(4) generally does not allow credit-related fees to be charged for the incidental credit, including fees or charges for holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. Thus, if a prepaid account issuer did charge these participation fees, it would fall outside the scope of new § 1026.61(a)(4) and would become subject to the general rules for hybrid prepaid-credit cards including new § 1026.4(c)(4). This prepaid account issuer would be subject to new § 1026.61(b) and thus must structure the credit feature as a covered separate credit feature, as well as being subject to new § 1026.4(c)(4).

Subpart B—Open-End Credit

The provisions in subpart B generally apply to a "creditor," as defined in existing § 1026.2(a)(17), that extends "open-end credit," as defined in existing § 1026.2(a)(20). As set forth in existing § 1026.2(a)(17)(iii) and (iv), the provisions of subpart B also generally apply to card issuers that extend credit. These card issuers generally would be "creditors" for purposes of subpart B. These provisions generally require that such creditors must provide account-opening disclosures and periodic statement disclosures. These provisions also set forth rules for the treatment of payments and credit balances as well as procedures for resolving credit billing errors. While most of the provisions in subpart B apply generally to open-end credit, as described below, some of the provisions only apply to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in existing § 1026.2(a)(15)(ii). In addition, subpart B also sets forth, in existing § 1026.12, provisions applicable to credit card transactions; those provisions generally apply to a "card issuer" as defined in existing § 1026.2(a)(7).

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a "covered separate credit feature." Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as "non-covered separate credit features," as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of "open-end credit" and that credit will not be home-secured. See the section-by-section analysis of the definition of "open-end-credit" in § 1026.2(a)(20), the definition of "finance charge" in § 1026.4, and the definition of "hybrid prepaid-credit card" in § 1026.61(a).

In addition, as discussed in the section-by-section analyses of §§ 1026.2(a)(7), (a)(15)(i) and (ii), and 1026.61(a), a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) credit plan is a "credit card account under an open-end (not home-secured) consumer credit plan" under final § 1026.2(a)(15)(ii) and the person issuing the hybrid prepaid-credit card (and the person offering the covered separate credit feature) are "card issuers" under final § 1026.2(a)(7). For a discussion of how card issuers would still be subject to certain

provisions in subpart B if they extend credit that is not "open-end credit," see the section-by-section analysis of § 1026.2(a)(17) above.

The Bureau is revising subpart B to provide guidance on how certain provisions in subpart B apply to covered separate credit features accessible by hybrid prepaid-credit cards. Specifically, the final rule provides additional guidance regarding: (1) Disclosure requirements applicable to account opening in final § 1026.6; (2) disclosure requirements applicable to periodic statements in final §§ 1026.5, 1026.7, and 1026.8; (3) treatment of payment requirements as set forth in final § 1026.10; and (4) billing error procedures in final § 1026.13.

The Bureau also is revising certain provisions that apply to credit card transactions in final § 1026.12 to provide guidance on how those provisions apply to credit card transactions that are made from a covered separate credit feature accessible by a hybrid prepaid-credit card. Specifically, the final rule provides additional guidance on: (1) Unsolicited issuance of a credit card in final § 1026.12(a); (2) the right of a cardholder to assert claims or defenses against a card issuer in final § 1026.12(c); and (3) the prohibition on offsets by a card issuer in final § 1026.12(d).

To facilitate compliance, the Bureau also is clarifying that with respect to a non-covered separate credit feature that is accessible by a prepaid card, as defined in new § 1026.61, fees or charges imposed on the asset feature of the prepaid account are not "charges imposed as part of the plan" under final § 1026.6(b)(3) with respect to the non-covered separate credit feature, and thus these fees or charges are not required to be disclosed under Regulation Z with respect to the non-covered separate credit feature. In addition, the Bureau is clarifying that fees or charges that are not charges imposed as part of the plan are not subject to the offset restrictions set forth in final § 1026.12(d). As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(4)(ii) and (f)(1) above, fees or charges imposed on the asset feature of the prepaid account are required to be disclosed under Regulation E.

Section 1026.5 General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

5(b)(2)(ii) Timing Requirements

TILA sections 127(b) and 163, which are implemented in existing § 1026.5(b)(2), set forth the timing requirements for providing periodic statements for open-end credit accounts and credit card accounts.[626] Existing § 1026.5(b)(2)(i) provides that a creditor that extends open-end credit or credit accessible by a credit card generally is required to provide a periodic statement, as required by existing § 1026.7, for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed.

Existing § 1026.5(b)(2)(ii)(A) provides that for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that: (1) Periodic statements for those accounts are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to existing § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment. See the section-by-section analysis of § 1026.2(a)(15)(ii) above for a discussion of the term "credit card account under an open-end (not home-secured) consumer credit plan."

TILA sections 127(b)(12) and (o), which are implemented in existing § 1026.7(b)(11)(i)(A), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan.[627] Existing § 1026.7(b)(11)(i)(A) provides that for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement the due date for a payment. In addition, the due date disclosed must be the same day of the month for each billing cycle.

Although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are open-end credit, the Board, in implementing these provisions, set forth in existing § 1026.7(b)(11)(ii)(A) that the payment due date requirement in existing § 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts. Thus, as explained in existing comment 5(b)(2)(ii)–4.i, the requirement in existing § 1026.5(b)(2)(ii)(A)(*1*) to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement does not apply to charge card accounts. In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.[628] Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to charge card account, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be appropriate to apply the payment due date disclosure in existing § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

The Bureau's Proposal

The proposal would have amended existing § 1026.7(b)(11)(ii)(A) to provide that the due date disclosure does apply to periodic statements provided solely for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card and the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under the proposal, the due date disclosure in proposed § 1026.7(b)(11)(i)(A) would have applied to periodic statements provided for a credit card account under an open-end (not home-secured) consumer credit plan, including a charge card account, where the account is accessed by a credit card that is a prepaid card. Thus, as a technical revision, the proposal would have revised existing comment 5(b)(2)(ii)–4.i to reflect the proposed changes to existing § 1026.7(b)(11) that the due date requirement would apply to a charge card account accessed by a prepaid card that is a charge card where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan.

[626] 15 U.S.C. 1637(b) and 1666b; *see also* 15 U.S.C. 1602(g).

[627] 15 U.S.C. 1637(b)(12), (o).

[628] 75 FR 7658 at 7672–7673, Feb. 22, 2010.

Comments Received

One industry trade association indicated that the Bureau should not subject prepaid cards that are charge cards to rules that do not apply to other types of charge cards but did not specify why this specific proposal was not necessary.

The Final Rule

The Bureau is modifying comment 5(b)(2)(ii)–4.i as proposed with technical revisions to clarify the intent of the comment and to be consistent with new § 1026.61. As discussed in the section-by-section analysis of § 1026.7(b)(11) below, the final rule provides that the due date disclosure set forth in final § 1026.7(b)(11)(i)(A) applies to periodic statements provided for a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card account where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, as a technical revision, the final rule revises comment 5(b)(2)(ii)–4.i to state that the exception from the disclosure requirements in final § 1026.7(b)(11) for charge card accounts does not apply to covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in new § 1026.61.[629] As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analyses of §§ 1026.7(b)(11) and 1026.12(d)(3) below, the Bureau believes that it is important to provide strong protections to prepaid accountholders to ensure that they can control when and if funds are swept from their accounts to repay credit extended through a covered separate credit feature. In particular, the Bureau believes that for all covered separate credit features—including charge card accounts—accessible by a hybrid prepaid-credit card, where these credit features are credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer should be required to adopt reasonable procedures designed to ensure that periodic statements for these credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement, pursuant to final § 1026.7(b)(11)(i)(A). As discussed in more detail in the section-by-section analyses of §§ 1026.7(b)(11) and 1026.12(d)(3), the Bureau believes that this requirement, along with changes to the offset prohibition in final § 1026.12(d)(3), will ensure that the due date of the covered separate credit feature accessible by a hybrid prepaid-credit card is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent TILA's offset prohibition.

As discussed in more detail in the section-by-section analysis of § 1026.12(d)(3) below, the Bureau is concerned that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, some card issuers may attempt to circumvent the prohibition on offsets by both specifying that each transaction on the covered separate credit feature is due on the date on which funds are subsequently deposited into the account and obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt from the prepaid account when deposits are received into the prepaid account. The Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may rely significantly on obtaining a consumer's written authorization of daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders who choose to rely on covered separate credit features. The Bureau also believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may be able to obtain a consumer's written authorization to debit the prepaid account more easily than for other types of credit card accounts because consumers may believe that, in order to obtain credit, they must provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

Section 1026.6 Account-Opening Disclosures

TILA section 127(a) requires creditors to provide consumers with information about key credit terms before opening an open-end account or a credit card account, such as rates and fees that may be assessed on the account.[630] This TILA provision is implemented in existing § 1026.6.

Existing § 1026.6(b) sets forth the account-opening disclosures that must be provided with respect to open-end credit or credit card accounts that are not home-secured. Under existing § 1026.6(b)(1) and (2), certain account-opening disclosures must be disclosed in a tabular format. These disclosures include: (1) The APRs applicable to the account for purchases, cash advances, and balance transfers; (2) any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit account, including any fee based on account activity or inactivity; (3) any non-periodic fees related to opening the account, such as one-time membership or participation fees; (4) any minimum or fixed finance charge that could be imposed during a billing cycle; (5) any transaction charge imposed on purchases, cash advances or balance transfers; (6) any late payment fees, over the limit fees, or returned payment fees; (7) whether a grace period on transactions applies; (8) the name of the balance computation method used to determine the balance for each feature on the credit account; (9) any fees for required insurance, debt cancellation, or debt suspension coverage; and (10) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the credit account, disclosures about the available credit that will remain after those fees are imposed.

Existing § 1026.6(b)(3) sets forth general disclosure requirements about costs imposed as part of the plan. Specifically, existing § 1026.6(b)(3) provides that a creditor must disclose, to the extent applicable: (1) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined; and (2) for finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists

[629] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 5(b)(2)(ii)–4.i would been revised to reflect the proposed changes to § 1026.7(b)(11) that the due date requirement does apply to charge card accounts accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 5(b)(2)(ii)–4.i related to these account numbers.

[630] 15 U.S.C. 1637(a); *see also* 15 U.S.C. 1602(g).

within which any credit that has been extended may be repaid without incurring the charge.

Existing § 1026.6(b)(3)(ii) provides that charges imposed as part of the plan are: (1) Finance charges identified under existing § 1026.4(a) and (b); (2) charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law; (3) taxes imposed on the credit transaction by a State or other governmental body, such as documentary stamp taxes on cash advances; (4) charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment; (5) charges imposed for terminating a plan; and (6) charges for voluntary credit insurance, debt cancellation, or debt suspension.

Existing § 1026.6(b)(3)(iii) provides that charges that are not imposed as part of the plan include: (1) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system; (2) a charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature; and (3) charges under § 1026.4(e) which are disclosed as specified.

Existing § 1026.5(b)(1) provides that charges imposed as part of the plan that must be disclosed in the account-opening table under existing § 1026.6(b)(2) must be provided before the first transaction is made under the plan. Charges that are imposed as part of the plan and are not required to be disclosed under existing § 1026.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them.

The proposal did not contain proposed changes to existing § 1026.6(b)(2) and (3). Nonetheless, the Bureau believes that additional guidance is needed with respect to these disclosure requirements given the changes that the final rule makes to the existing definition of "finance charge" in § 1026.4 with respect to credit offered in connection with prepaid accounts. As discussed in the section-by-section analysis of § 1026.4(b)(11) above, the final rule provides guidance on when fees or charges imposed on prepaid accounts are finance charges under final § 1026.4. Consistent with the changes to the definition of "finance charge" in the final rule, the final rule also provides guidance with respect to the disclosure requirements in § 1026.6(b)(2) and (3).

As discussed below, to ensure compliance with the disclosure requirements in final § 1026.6(b)(2) and (3), with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the final rule provides guidance on how the account-opening disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of the prepaid account. Specifically, the final rule provides that, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, fees or charges imposed on the asset feature of the prepaid account are not "charges imposed as part of the plan" with respect to the covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. Thus, these fees or charges are not required to be disclosed in the account-opening disclosures pursuant to final § 1026.6(b)(2) and (3) with respect to the covered separate credit feature. As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(4)(ii) and (f)(1) above, these fees or charges are required to be disclosed under Regulation E.

In addition, a non-covered separate credit feature may be subject to the provisions in § 1026.6(b)(2) and (3) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. To facilitate compliance, the Bureau also is clarifying that fees or charges imposed on the asset feature of the prepaid account are not "charges imposed as part of the plan" with respect to the non-covered separate credit feature. Thus, these fees or charges are not required to be disclosed under final § 1026.6(b)(2) and (3) with respect to that non-covered separate credit feature.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

With regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the Bureau is adding new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1 to provide guidance on when a fee or charge imposed on the asset feature of the prepaid account is considered a "charge imposed as part of the plan" under final § 1026.6(b)(3) with respect to the covered separate credit feature. Specifically, new § 1026.6(b)(3)(iii)(D) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, the term "charges imposed as part of the plan" does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

New comment 6(b)(3)(iii)(D)–1.i provides an example of the rule set forth in new § 1026.6(b)(3)(iii)(D). For example, assume a prepaid account issuer charges a $0.50 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the $0.50 fees are comparable. Thus, the $0.50 fee for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of a transaction conducted with the card is not a charge imposed as part of the plan.

However, in this example, if the prepaid account issuer imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, the $0.75 excess is a charge imposed as part of the plan with respect to the covered separate credit feature.

New comment 6(b)(3)(iii)(D)–1.i also states that this $0.75 excess also is a finance charge under new § 1026.4(b)(11)(ii). New comment 6(b)(3)(iii)(D)–1.ii cross-references new comment 4(b)(11)(ii)–1 for additional illustrations of when a prepaid account issuer is charging comparable per transaction fees or load or transfer fees on the asset feature of the prepaid account.

The Bureau believes that without this clarification, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, certain fees imposed on the asset feature of the prepaid account that are not finance charges still could be considered charges imposed as part of the plan under existing § 1026.6(b)(3)(ii) with respect to the covered separate credit feature. Specifically, existing § 1026.6(b)(3)(ii)(D) provides that the term ''charges imposed as part of the plan'' includes ''charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.'' Existing comment 6(b)(3)(ii)–2.i provides that charges for which the payment or nonpayment affect the consumer's access to the plan include ''fees for using a card at a creditor's ATM to obtain a cash advance.''

The Bureau is concerned that without the clarification in new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, existing § 1026.6(b)(3)(ii)(D) and existing comment 6(b)(3)(ii)–2.i could be read to include per transaction fees imposed on the asset feature of the prepaid account as ''charges imposed as part of the plan'' with respect to the covered separate credit feature when those fees are imposed for transactions that involve credit extensions from a covered separate credit feature, even if the fee is not a finance charge under new § 1026.4(b)(11)(ii). As a result, any per transaction fees for those transactions would be disclosed under both Regulations Z and E, even if the fee is not a finance charge under new § 1026.4(b)(11)(ii). For example, assume a prepaid account issuer charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset balance of the prepaid account without a covered separate credit feature accessible by a hybrid prepaid-credit card. Also, assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge under new § 1026.4(b)(11)(ii).

Nonetheless, if these per transaction fees were ''charges imposed as part of the plan'' under existing § 1026.6(b)(3)(ii) with respect to the covered separate credit feature, these per transaction fees would need to be disclosed in the Regulation Z account-opening table required by existing § 1026.6(b)(1) and (2) with respect to the covered separate credit feature. In addition, these per transaction fees would need to be disclosed on the Regulation Z periodic statement for the covered separate credit feature in any billing cycles in which they were imposed as set forth in existing § 1026.7(b)(6).

If disclosure of these per transaction fees were required under Regulation Z, these disclosures would duplicate Regulation E disclosures of the fees that are required under the Regulation E final rule. Pursuant to final Regulation E § 1005.18(b)(4) and (f)(1), these per transaction fees must be disclosed in the long form pre-acquisition disclosure and in the initial disclosures for the prepaid account, respectively, because they are imposed on the asset feature of the prepaid account. In addition, under existing Regulation E § 1005.9(b), these per transaction fees must also be disclosed on the Regulation E periodic statement or on the written and electronic transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1) because these fees are imposed on the asset feature of the prepaid account. *See also* final Regulation E § 1005.18(c)(4).

New § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1 make clear that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' for purposes of Regulation Z with respect to the covered separate credit feature if the fee or charge is not a finance charge under new § 1026.4(b)(11)(ii). As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii), the Bureau believes that to the extent that a prepaid account issuer is charging the same comparable fee on the asset balance of a prepaid account with a covered separate credit feature as the fee that it charges on a prepaid account in the same prepaid account program without such a credit feature, the fee is not being charged for credit and thus, is not a finance charge. As such, the Bureau believes that these fees are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the covered separate credit feature.

Consistent with new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card, the Bureau also is adding new commentary to § 1026.6(b)(2) regarding the disclosure of fees imposed on the asset feature of the prepaid account in the account-opening table. Specifically, new comment 6(b)(2)–1 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a creditor is required to disclose under existing § 1026.6(b)(2) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under final § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees required to be disclosed under existing § 1026.6(b)(2). For example, assume a creditor imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a ''charge imposed as part of the plan'' under § 1026.6(b)(3)

and must be disclosed as a transaction fee for purchases under § 1026.6(b)(2)(iv) in the account-opening table. New comment 6(b)(2)–2 clarifies that a creditor is not required to disclose in the account-opening table under final § 1026.6(b)(2) any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3).

To ease compliance risk and burden and for other reasons, with regard to a covered separate credit feature and an asset feature that are both accessible by a hybrid prepaid-credit card, the Bureau expects that prepaid account issuers will choose not to impose finance charges on the asset feature of the prepaid account. Instead, the Bureau expects that prepaid account issuers will choose to charge comparable fees on the asset feature of a prepaid account with a linked covered separate credit feature as those charged on prepaid accounts in the same prepaid account program that are not linked to a covered separate credit feature. The Bureau expects that prepaid account issuers will choose to impose finance charges on the credit feature itself, and not on the asset feature of the prepaid account.

As noted above, if a prepaid account issuer does impose finance charges on the asset feature of the prepaid account, as described in new § 1026.4(b)(11)(ii), these finance charges must be disclosed under both Regulations Z and E as applicable. In that case, the prepaid account issuer must coordinate the disclosures under Regulations Z and E and must provide these disclosures in a way that ensures that consumers understand the fees that could be imposed. Nonetheless, as discussed above, the Bureau believes that most prepaid account issuers will choose to avoid imposing finance charges on the asset feature of the prepaid account in order to avoid compliance issues and risks related to providing disclosures with respect to these fees under both Regulations E and Z.

Non-Covered Separate Credit Features

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

A non-covered separate credit feature may be subject to the provisions in § 1026.6(b)(2) and (3) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. With respect to non-covered separate credit features that are subject to § 1026.6, to facilitate compliance with the disclosure requirements in final § 1026.6(b)(2) and (3), the final rule provides guidance on how the disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of a prepaid account in relation to non-covered separate credit features accessible by prepaid cards. Specifically, new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1 provide that with regard to a non-covered separate credit feature accessible by a prepaid card as defined in new § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B that provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature. New comment 6(b)(2)–2 provides that a creditor is not required to disclose in the account-opening table under final § 1026.6(b)(2) any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3). Thus, none of the fees or charges imposed on the asset feature of the prepaid account would be required to be disclosed under final § 1026.6(b) with respect to the non-covered separate credit feature.

As discussed above in relation to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that without this clarification, certain fees or charges imposed on the asset feature of the prepaid account that are not finance charges with respect to the non-covered separate credit features still could be considered fees imposed as part of the plan under existing § 1026.6(b)(3)(ii). Specifically, existing § 1026.6(b)(3)(ii)(D) provides that the term ''charges imposed as part of the plan'' includes ''charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.'' The Bureau is concerned that without this clarification, existing § 1026.6(b)(3)(ii)(D) could be read to include a load or transfer fee imposed on the asset feature of the prepaid account as a ''charge imposed as part of the plan'' with respect to a non-covered separate credit feature when the fee is imposed for a transaction where credit is drawn or transferred from a non-covered separate credit feature, even if the fee is not a finance charge with respect to the non-covered separate credit feature. Without this clarification, the load or transfer fees for those transactions would need to be disclosed under both Regulations Z and E, even if the fee or charge is not a finance charge under § 1026.4.

New § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1 make clear that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are charges imposed as part of the plan with respect to the non-covered separate credit feature for purposes of Regulation Z. Under new comment 4(b)(11)–1.ii.B, these fees or charges are not finance charges with respect to the non-covered separate credit feature. The Bureau believes that because fees or charges that are imposed on the asset feature of the prepaid account are not finance charges under final § 1026.4 with regard to a non-covered separate credit feature, these fees or charges are more appropriately disclosed on the Regulation E disclosures, and they should not be disclosed as well on the Regulation Z disclosures with respect to non-covered separate credit features.

Section 1026.7 Periodic Statement

7(b) Rules Affecting Open-End (Not Home-Secured) Plans & 7(b)(13) Format Requirements

TILA section 127(b) identifies information about an open-end account or credit card account that must be disclosed when a creditor is required to provide periodic statements.[631] TILA section 127(b) is implemented in existing § 1026.7.

The periodic statement requirements in existing § 1026.7 generally apply to a "creditor" as defined in existing § 1026.2(a)(17) that extends "open-end credit" as defined in existing § 1026.2(a)(20). The periodic statement requirements in existing § 1026.7 also generally apply to card issuers that extend credit, as set forth in existing § 1026.2(a)(17)(iii) and (iv). These card issuers generally are considered "creditors" for purposes of the periodic statement requirements.

Existing § 1026.7(b) sets forth the content requirements for periodic statements given with respect to open-end plans or credit card accounts that are not home-secured. Generally, under existing § 1026.7(b), such periodic statements must include, among other things, information about: (1) The amount of the balance outstanding at the beginning of the billing cycle; (2) any credit to the account during the billing cycle, such as payments; (3) any credit transactions that occurred during a billing cycle, described in accordance with existing § 1026.8; (4) the APRs that may be used to compute interest charges during the billing cycle; (5) the amount of the balance to which an APR was applied and an explanation of how that balance was determined; (6) the amount of each "charge imposed as part of the plan" incurred during the billing cycle; (7) the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges; (8) the closing date of the billing cycle and the account balance outstanding on that date; and (9) the due date for a payment with respect to a credit card account under an open-end (not home-secured) consumer credit plan.

As discussed above, any "charge imposed as part of the plan," as that term is defined in existing § 1026.6(b)(3), must be disclosed on the Regulation Z periodic statement if it was incurred during the billing cycle. If the charges imposed as part of the plan are interest charges, these charges must be itemized by type of transaction, and the total interest charges that were imposed during the billing cycle and year to date must also be disclosed. If the charges imposed as part of the plan are fees other than interest charges, these fees must be itemized by type, and the total fee charges that were imposed during the billing cycle and year to date must be disclosed.

Existing § 1026.7(b)(13) requires that certain disclosures on the Regulation Z periodic statement must be disclosed on the front of the first page of the periodic statement. Existing comment 7(b)(13)–1 explains that some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. This existing comment provides that for purposes of providing disclosures on the front of the first page of the periodic statement pursuant to existing § 1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.

Existing § 1026.5(a)(1)(iii) also provides that certain disclosures required by subpart B, including periodic statements required under § 1026.7, may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

The periodic statement requirements in final § 1026.7(b) apply to covered separate credit features accessible by hybrid prepaid-credit cards because card issuers that extend credit under those credit features are "creditors" that are subject to the periodic statement requirements in final § 1026.7, pursuant to existing § 1026.2(a)(17)(iii) or (iv). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Periodic Statements Under Regulations E and Z

Under the proposal, under Regulation E, periodic statements would have been required under existing § 1005.9(b) to disclose non-credit transactions on the prepaid account, unless the financial institution complied with proposed § 1005.18(c). Specifically, in lieu of providing periodic statements required under § 1005.9(b), proposed § 1005.18(c)(1) would have permitted a financial institution to make available to the consumer: (1) The consumer's account balance through a readily available telephone line; (2) an electronic history of the consumer's account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account; and (3) a written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 18 months preceding the date the financial institution receives the consumer's request.

In addition, under the proposal, a creditor would have been required to provide a Regulation Z periodic statement with respect to credit features accessed by prepaid cards that are credit cards because card issuers that extend credit under those credit features would have been "creditors" that are subject to the periodic statement requirements in proposed § 1026.7(b), pursuant to existing § 1026.2(a)(17)(iii) or (iv).

One industry trade association urged the Bureau not to impose a Regulation Z periodic statement requirement in addition to the Regulation E statement requirement. This commenter believed that dual statements would add to consumer confusion. This commenter believed that the Regulation E statement requirements should be modified to disclose the finance charge and payment information that otherwise would be included in a Regulation Z statement.

One consumer group commenter indicated that a periodic statement under Regulation Z should be required, and supported allowing a financial institution to combine the Regulations E and Z periodic statements, so long as the combined periodic statement meets the requirements of both regulations.

Under the final rule, a creditor is required to provide a Regulation Z periodic statement under final § 1026.7(b) with respect to a covered separate credit feature that is accessible by a hybrid prepaid-credit card because card issuers that extend credit under those credit features are "creditors" that are subject to the periodic statement requirements in final § 1026.7(b), pursuant to existing § 1026.2(a)(17)(iii) or (iv).[632] The Bureau does not believe

[631] 15 U.S.C. 1637(b); *see also* 15 U.S.C. 1602(g).

[632] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Under the proposal, Regulation Z periodic statements would have been required with respect to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not

that modifying the Regulation E periodic statement requirement in existing § 1005.9(b) or the requirement to provide electronic and written account transaction histories pursuant to the periodic statement alternative in final § 1005.18(c)(1) to include disclosures pertaining to a covered separate credit feature accessible by a hybrid prepaid-credit card would benefit consumers. As discussed in the section-by-section analysis of § 1026.61(b) below, new § 1026.61(b) prohibits an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account from being structured as a negative balance to the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). Instead, a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

The Bureau believes that retaining the requirement to provide a Regulation Z periodic statement with respect to such an overdraft credit feature that is structured as a separate credit feature will reinforce for consumers that this credit feature is separate from the asset feature of the prepaid account.

As discussed above, existing § 1026.7(b)(13) requires that certain disclosures on the Regulation Z periodic statement must be disclosed on the front of the first page of the periodic statement. Existing comment 7(b)(13)–1 explains that some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. This existing comment provides that for purposes of providing disclosures on the front of the first page of the periodic statement pursuant to existing § 1026.7(b)(13), the first page of such a combined statement is the page on which credit transactions first appear. To facilitate compliance, the Bureau is amending comment 7(b)(13)–1 to provide that the guidance in this comment also applies to financial institutions that provide information about prepaid accounts and account activity in connection with covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61 on one periodic statement. This revision to final comment 7(b)(13)–1 clarifies that if a financial institution elects to provide a periodic statement under existing Regulation E § 1005.9(b) to a holder of the prepaid account, the financial institution is permitted to combine the Regulation E and Regulation Z periodic statements. In this case, the financial institution must satisfy the requirements of both Regulation E and Regulation Z in providing the combined statement. If a financial institution instead elects to follow the periodic statement alternative set forth in final Regulation E § 1005.18(c)(1), the financial institution still is required to provide Regulation Z periodic statements in writing pursuant to final § 1026.7. Under existing § 1026.5(a)(1)(iii), financial institutions are permitted to provide the Regulation Z periodic statements in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act.

Charges Imposed as Part of the Plan

Existing § 1026.7(b)(6) provides that a creditor must disclose on the Regulation Z periodic statement, among other things, information about the amount of each ''charges imposed as part of the plan,'' as that term is defined in existing § 1026.6(b)(3), if the charge was incurred during the billing cycle. If the charges imposed as part of the plan are interest charges, these charges must be itemized by type of transaction, and the total interest charges that were imposed during the billing cycle and year to date must also be disclosed. If the charges imposed as part of the plan are fees other than interest charges, these charges must be itemized by type, and the total fee charges that were imposed during the billing cycle and year to date must be disclosed.

Covered separate credit features accessible by hybrid prepaid-credit cards. As discussed in the section-by-section analysis of § 1026.6(b)(3) above, the Bureau is adding guidance in new § 1026.6(b)(3)(iii)(D) and new comment 61(b)(3)(iii)(D)–1 on whether fees or charges imposed on the asset feature of a prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to a covered separate credit feature where the credit feature and the asset feature are both accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Under the final rule, new § 1026.6(b)(3)(iii)(D) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, the term ''charges imposed as part of the plan'' with respect to the covered separate credit feature does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii) with respect to the covered separate credit feature. As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) above, the Bureau believes that to the extent that a prepaid account issuer charges the same comparable fee on the asset balance of a prepaid account with a covered separate credit feature as the fee that it charges on a prepaid account in the same prepaid account program without such a credit feature, the fee is not related to credit, and thus, is not a finance charge. As such, the Bureau believes that these fees are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the covered separate credit feature. Thus, as discussed in the section-by-section analysis of § 1026.6 above, the Bureau is excluding these fees or charges from the term ''charges imposed as part of the plan'' with respect to covered separate credit features under new § 1026.6(b)(3)(iii)(D). Because these fees or charges are not charges imposed as part of the plan, these fees or charges are not required to be disclosed on the Regulation Z periodic statement under existing § 1026.7(b)(6) with respect to the covered separate credit feature.

The fees or charges imposed on the asset feature of the prepaid account must be disclosed on the Regulation E periodic statement pursuant to existing

adopt the provisions related to the account numbers that would have made these account numbers into credit cards under Regulation Z.

§ 1005.9(b), or on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1). See the section-by-section analysis of Regulation E § 1005.18(c)(1) above.

Non-covered separate credit features. As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided not to regulate a prepaid card as a credit card under Regulation Z when it accesses credit from certain credit features. For example, under § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a "non-covered separate credit feature," which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

As discussed in the section-by-section analysis of § 1026.6 above, to facilitate compliance with the disclosure requirements in final § 1026.6(b)(2) through (3) for non-covered separate credit features that are subject to existing § 1026.6, the final rule provides guidance on how the disclosure requirements in final § 1026.6(b)(2) and (3) apply to fees and charges imposed on the asset feature of a prepaid account in relation to non-covered separate credit features accessible by prepaid cards. Specifically, new § 1026.6(b)(3)(iii)(E) and new comment 61(b)(3)(iii)(E)–1 provide that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in new § 1026.61, the term "charges imposed as part of the plan" does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature.

As discussed in the section-by-section analysis of § 1026.6 above, the Bureau believes that these fees or charges are more appropriately disclosed on the Regulation E disclosures for the asset feature of the prepaid account and should not be disclosed as well on the Regulation Z disclosures with respect to the non-covered separate credit feature. Thus, as discussed in the section-by-section analysis of § 1026.6 above, the Bureau is excluding these fees or charges from the term "charges imposed as part of the plan" with respect to non-covered separate credit features under new § 1026.6(b)(3)(iii)(E). Because these fees or charges are not charges imposed as part of the plan, these fees or charges are not required to be disclosed on the Regulation Z periodic statement under existing § 1026.7(b)(6) with respect to the non-covered separate credit feature that are subject to final § 1026.7. As discussed above, fees or charges imposed on the asset feature of the prepaid account must be disclosed on the Regulation E periodic statement under existing § 1005.9(b) or on the electronic and written account transaction histories provided to consumers pursuant to the periodic statement alternative set forth in final Regulation E § 1005.18(c)(1). *See also* final Regulation E § 1005.18(c)(4).

Paper Periodic Statements

One consumer group commenter indicated that the Bureau should prohibit creditors from making consumers consent to electronic communications a condition of a credit feature and from charging fees for providing paper periodic statements under Regulation Z. The consumer group commenter indicated that while it believes that this prohibition should apply to all credit cards and open-end credit, the commenter was particularly concerned that prepaid cardholders whose cards are linked to credit will be coerced into accepting electronic communications even if paper would serve them better.

The Bureau believes the change is beyond the scope of the proposal, and the change is not warranted at this time. Thus, the Bureau is not including changes to Regulation Z on these issues as part of the final rule. The Bureau will monitor this issue with respect to prepaid cardholders who link covered separate credit features accessible by hybrid prepaid-credit cards to their prepaid accounts.

7(b)(11) Due Date; Late Payment Costs

TILA sections 127(b)(12) and (o), which are implemented in existing § 1026.7(b)(11)(i), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan.[633] Under existing § 1026.7(b)(11)(i), for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer generally must provide on each periodic statement: (1) The due date for a payment, and the due date disclosed must be the same day of the month for each billing cycle; and (2) the amount of any late payment fee and any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of a late payment. Existing § 1026.7(b)(11)(ii) provides, however, that the requirements of existing § 1026.(b)(11)(i) do not apply to the following: (1) Periodic statements provided solely for charge card accounts; and (2) periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

As also noted in the section-by-section analysis of § 1026.5(b)(2)(ii) above, although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are open-end credit from the requirement to disclose the due date on each periodic statement, the Board in implementing these provisions set forth in existing § 1026.7(b)(11)(ii)(A) provided that the payment due date requirement and other disclosures set forth in existing § 1026.7(b)(11)(i) do not apply to periodic statements provided solely for charge card accounts. In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.[634] Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to charge card accounts, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be appropriate to apply the payment due date disclosure in existing § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

The proposal would have amended existing § 1026.7(b)(11)(ii)(A) to provide that the due date disclosure does apply to periodic statements provided solely

[633] 15 U.S.C. 1637(b)(12), (o).

[634] 75 FR 7658 at 7672–7673, Feb. 22, 2010.

for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card. Thus, under the proposal, the due date disclosure in proposed § 1026.7(b)(11)(i)(A) would have applied to periodic statements provided for a credit card account under an open-end (not home-secured) consumer credit plan, including a charge card account, where the account is accessed by a credit card that is a prepaid card.

One industry trade association indicated that the Bureau should not subject prepaid cards that are charge cards to rules that do not apply to other types of charge cards but did not specify why this specific proposal was not necessary.

The Bureau is adopting § 1026.7(b)(11)(ii)(A) as proposed, with revisions to be consistent with new § 1026.61. Specifically, final § 1026.7(b)(11)(ii)(A) provides that the due date disclosure does apply to periodic statements provided for covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards, as defined in § 1026.61, where the charge card account is a credit card account under an open-end (not home-secured) consumer credit plan.[635] Thus, under the final rule, the due date disclosure in final § 1026.7(b)(11)(i)(A) applies to periodic statements provided for covered separate credit features accessible by hybrid prepaid-credit cards, including charge card accounts, where the covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that this due date requirement, the requirement in final § 1026.5(b)(2)(ii)(A), and the changes to the offset prohibition in final § 1026.12(d)(3), will ensure that the due date of a covered separate credit feature accessible by a hybrid prepaid-credit card that is a credit card account under an open-end (not home-secured) consumer credit plan is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent the offset prohibition.

As discussed in more detail in the section-by-section analysis of § 1026.12(d)(3) below, the Bureau is concerned that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, including charge card accounts, that are credit card accounts under an open-end (not home-secured) consumer credit plan, some card issuers may attempt to circumvent the prohibition on offsets by specifying that each transaction on the covered separate credit feature is due on the date on which funds are subsequently deposited into the account, and obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt when deposits are received into the prepaid account to help ensure that the debt is repaid. The Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may rely significantly on obtaining a consumer's written authorization of daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders who choose to use covered separate credit features. The Bureau also believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may be able to obtain a consumer's written authorization to debit the prepaid account for the credit card debt more easily than for other types of credit card accounts because consumers may believe that, in order to obtain credit, they have no alternative but to provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

The revisions adopted in final § 1026.7(b)(11), along with the changes adopted in final § 1026.5(b)(2)(ii)(A), in the offset provisions in final § 1026.12(d)(3), and in the compulsory use provisions in final Regulation E § 1005.10(e)(1), would mean, respectively, that with respect to covered separate credit features that are accessible by hybrid prepaid-credit cards, including charge card accounts, that are credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers: (1) Would be required to adopt reasonable procedures designed to ensure that periodic statements for the covered separate credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the covered separate credit feature held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances on the covered separate credit feature other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site following a cash reload to the asset account).

Section 1026.8 Identifying Transactions on Periodic Statements

TILA section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle.[636] The statute calls for the Bureau to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished.

Existing § 1026.8 sets forth the requirements for how issuers must describe each credit transaction on the periodic statement. Existing § 1026.8 generally provides that a creditor must identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing certain information. Existing § 1026.8(a) sets forth the requirements for describing a "sale credit" transaction on the periodic statement. A "sale credit" generally means a credit transaction involving the sale of property or services. Existing § 1026.8(b) sets forth the requirements for describing a "nonsale credit" transaction on the periodic statement. A "nonsale credit" transaction generally means a credit transaction that does not involve the sale of property or services.

[635] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed § 1026.7(b)(11)(ii)(A)(*2*) would have provided that the due date disclosure set forth in § 1026.7(b)(11)(i)(A) does apply to periodic statements provided solely for charge card accounts where the charge card accounts are accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to § 1026.7(b)(11)(ii)(A)(*2*) related to these account numbers.

[636] 15 U.S.C. 1637(b)(2).

The final rule provides guidance on how creditors may comply with the requirements in final § 1026.8(a) and (b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

8(a) Sale Credit

Existing § 1026.8(a) provides that for each credit transaction involving the sale of property or services, the creditor generally must disclose the amount and date of the transaction, and either: (1) A brief identification of the property or services purchased, for creditors and sellers that are the same or related; or (2) the seller's name and the city and State or foreign country where the transaction took place. The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, internet, or telephone order. Existing comment 8(a)–1 provides that the term "sale credit" refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor.

The Bureau's Proposal

Under the proposal, sale credit would have included credit transactions where a prepaid card that is a credit card is used to obtain goods or services from a merchant. Thus, under the proposal, any time a prepaid card that was a credit card was used to obtain goods or services from a merchant and the transaction in whole or in part was funded with credit, the credit transaction would have been disclosed as "sale credit" under proposed § 1026.8(a) rather than as nonsale credit under proposed § 1026.8(b).

Existing comment 8(a)–2 provides guidance on how to disclose the amount of the credit transaction if sale transactions are not billed in full on any single statement. The proposal would have moved the existing language of comment 8(a)–2 to proposed comment 8(a)–2.i. The proposal also would have added comment 8(a)–2.ii to provide that the term "sale credit" includes a purchase in which the consumer uses a prepaid card that is a credit card to obtain goods or services from a merchant and the transaction is wholly or partially funded by credit, whether or not the merchant is the card issuer or creditor. Proposed comment 8(a)–2.ii also would have provided guidance on how to disclose the amount of the credit transaction for purposes of certain prepaid transactions. Proposed comment 8(a)–2.ii would have set forth guidance on how to disclose a transaction at point of sale where credit is accessed by a prepaid card that is a credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit, such as cash back given to the cardholder. In this situation, proposed comment 8(a)–2.ii would have provided that the creditor must disclose the amount of credit as "sale credit" under existing § 1026.8(a), including the portion of the transaction that involves credit that is not for a purchase of goods or services.

Proposed comment 8(a)–2.ii also would have provided that if a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account and partially funded by credit, the amount to be disclosed under existing § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction. For example, assume that a cardholder makes a $50 purchase with the prepaid card but only has $20 in funds in the prepaid account. The $30 of credit would have been disclosed on the Regulation Z periodic statement. Under the Regulation E proposal, the amount of the transaction that is funded from the prepaid account would have been disclosed either on the Regulation E periodic statement or on the electronic and written histories of account transactions pursuant to the periodic statement alternative set forth in proposed Regulation E § 1005.18(c)(1)(ii).

Comments Received

The Bureau solicited comment on whether the Bureau should consider a disclosure that would appear on the Regulation Z periodic statement that would notify consumers when a particular transaction is funded partially through the prepaid account and partially funded through credit so that consumers would know to look at the Regulation E periodic statement or account history for additional information related to that transaction.

One consumer group commenter indicated that the Bureau should require that the entire transaction be disclosed on both the Regulation Z periodic statement and the Regulation E periodic statement under § 1005.9(b) (or on the electronic and written account transaction histories pursuant to the periodic statement alternative under proposed § 1005.18(c)(1)), indicating on each statement that only part of the transaction came from each account. This commenter believed that consumers who are trying to identify transactions would be confused if the amount listed on each statement does not match the transaction amount.

The Final Rule

The final rule moves proposed comment 8(a)–2.ii to new comment 8(a)–9 and revises this guidance as discussed below. The Bureau also is revising existing comment 8(a)–1 to provide a cross-reference to new comment 8(a)–9 for guidance on when credit accessible by a hybrid prepaid-credit card from a covered separate credit feature must be disclosed on the Regulation Z periodic statement as sale credit or nonsale credit.

New comment 8(a)–9 provides guidance on when credit accessible by a hybrid prepaid-credit card from a covered separate credit feature must be disclosed on the Regulation Z periodic statement as sale credit or nonsale credit. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 8(a)–9 recognizes that a card issuer with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card may structure the overdraft credit feature in two ways to cover situations where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time of authorization or settlement to cover the amount of the transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. With respect to the first way, new comment 8(a)–9.i explains that the covered separate credit feature could be structured such that a consumer can use a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid

prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase.

New comment 8(a)–9.i provides that such a transaction is a ''sale credit'' under final § 1026.8(a). In this example, the $15 credit transaction will be treated as ''sale credit'' under final § 1026.8(a).

With respect to the second way, new comment 8(a)–9.ii explains that a covered separate credit feature accessible by a hybrid prepaid-credit card could be structured where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is transferred from the covered separate credit feature into the asset feature of the prepaid account to cover the amount of the purchase. For example, again, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, the $15 is transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account.

New comments 8(a)–9.ii provides that such a transaction is a ''nonsale credit'' under final § 1026.8(b). In this example, the $15 credit transaction is treated as ''nonsale credit'' under § 1026.8(b). The Bureau notes, however, that while this type of credit transaction is disclosed as ''nonsale credit'' under final § 1026.8(b) on the Regulation Z periodic statement, this transaction is still considered a transaction made with the card to purchase goods or services under final § 1026.12(c) and would be subject to final § 1026.12(c). See the section-by-section analysis of § 1026.12(c) below.

The Bureau believes that for disclosure purposes under final §§ 1026.7(b)(2) and 1026.8, it is appropriate to distinguish these two ways in which a creditor may structure a covered separate credit feature accessible by a hybrid prepaid-credit card. The Bureau believes that this distinction will help consumers better recognize and understand the credit transactions when they are disclosed on the Regulation Z periodic statement. The Bureau believes that this is particularly true when a transaction involves situations where the hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the consumer's prepaid account, and partially paid with credit from a covered separate credit feature.

As discussed above, a credit transaction will be disclosed as ''sale credit'' on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without transferring funds into the asset feature of the prepaid account. New comment 8(a)–9.iii provides for these types of transactions, if a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account and partially funded by credit from the covered separate credit feature, the amount to be disclosed under final § 1026.8(a) as a ''sale credit' is the amount of the credit extension, not the total amount of the purchase transaction.

For example, again, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without any transfer of funds into the asset feature of the prepaid account. The $15 credit transaction is disclosed as ''sale credit'' on the Regulation Z periodic statement, and the $10 part of the transaction is disclosed on the Regulation E periodic statement under existing Regulation E § 1005.9(b), or alternatively, on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1).

In this example, because the credit transaction is treated as ''sale credit'' under existing § 1026.8(a), the following information regarding the credit portion of the transaction (the $15 credit portion, in the example above) generally will be disclosed on the Regulation Z periodic statement: (1) The amount of the transaction; (2) the date of the transaction; (3) the merchant's name; and (4) the merchant's location. In this example, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), similar information will be disclosed on the Regulation E periodic statement, or alternatively, the electronic and written account transaction histories regarding the portion of the transaction that involves asset funds ($10 in the above example), namely: (1) The amount of the transaction; (2) the date of the transaction; (3) the merchant's name; and (4) the merchant's location. The Bureau believes that because both parts of the transaction are disclosed consistently on the Regulation Z and Regulation E periodic statements (or on the electronic and written account transaction histories provided to consumers pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1)), a consumer will be better able to match up the two parts of the transaction. Thus, the Bureau does not believe that it is necessary in this case to disclose both portions of the transaction on each periodic statement, as suggested by a consumer group commenter as discussed above.

The Bureau recognizes that for purchases of goods or services that involve overdrafts on asset accounts that are executed via debit cards, the credit transaction may be disclosed as nonsale credit. In particular, comment 8(b)–1.iii provides that nonsale credit includes the use of an overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services. In a 1981 rulemaking implementing the Truth in Lending Simplification and Reform Act, the Board indicated that several commenters requested clarification regarding whether a creditor should identify a transaction as sale or nonsale credit when a consumer uses a debit card with an overdraft feature to purchase goods, and in doing so, activates the overdraft. The Board expressed its belief that the credit portions of such transactions could be viewed as cash advances, and therefore permitted the credit portions to be disclosed as nonsale credit at the creditor's option even though a purchase is involved.[637] As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau is not intending to revise rules in Regulation Z that apply to overdraft plans accessed by debit cards. Nonetheless, for transactions discussed above with respect to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that disclosing the credit transaction as sale credit would be more helpful to consumers than disclosing the transaction as nonsale credit because consumers would receive the seller's name, and the city and State or

[637] 46 FR 20848, 20861 (Apr. 7, 1981).

foreign country where the transaction took place.

If the credit transaction were treated as nonsale credit, the consumer would not receive the information about the seller's name and address. As discussed above, the Bureau believes that the information about the seller's name and address may be useful to consumers in identifying the credit transactions where a hybrid prepaid-credit card is used to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature to cover the amount of the purchase without transferring funds into the asset feature of the prepaid account. As discussed above, the Bureau also notes that under Regulation E, on the periodic statement, or the electronic and written account transaction histories under the periodic statement alternative, a transaction that involves a withdrawal from the prepaid account at point of sale must include the merchant's name and location. Thus, as discussed above, with respect to a single transaction that involves both a withdrawal from the prepaid account and an extension of credit, disclosing such a credit transaction as sale credit could help consumers match up the part of the transaction that appears on the Regulation Z periodic statement with the part of the transaction that appears on the Regulation E periodic statement or account transaction history.

On the other hand, as set forth in new comments 8(a)–9.ii and 8(b)–1.vi a credit transaction is disclosed as "nonsale credit" under final § 1026.8(b) on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is transferred from the covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, again assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account.

In this example, the following information must be disclosed under § 1026.8(b) on the Regulation Z periodic statement with respect to the portion of the transaction that involves credit ($15 in this example): (1) A brief identification of the transaction; (2) the amount of the transaction; and (3) at least one of the following dates: The date of the transaction; the date the transaction was debited to the consumer's account; or if the consumer signed the credit document, the date appearing on the document.

Also, in this example, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), the following information will be given on the Regulation E periodic statement (or alternatively, the electronic and written account transaction histories) regarding the transfer of credit into the asset feature of the prepaid account (the $15 transfer from the covered separate credit feature): (1) The type of transfer and type of account from which funds were transferred; (2) the amount of the transfer; and (3) the date the transfer was credited to the consumer's account. In addition, as set forth in existing Regulation E § 1005.9(b)(1) and final § 1005.18(c)(3), the following information will be provided on the Regulation E periodic statement (or alternatively, the electronic and written account transaction histories) regarding the $25 debit to the asset feature: (1) The amount of the transaction; (2) the date of the transaction; and (3) the merchant's name and location.

The Bureau believes that this information on the Regulation Z and E periodic statements (or alternatively, on the electronic and written account transaction histories pursuant to the periodic statement alternative under final Regulation E § 1005.18(c)(1)) will allow consumers to understand better the connection between outgoing transfers from covered separate credit features that are shown on the Regulation Z periodic statements and the incoming transfers that are shown on the Regulation E periodic statements (or alternatively, the electronic and written account transaction histories). The Regulation E periodic statement or account transaction histories also will show information about the purchase transaction made with the card. In the example above, the entire amount of the transaction ($25 purchase transaction) will be shown on the Regulation E periodic statement or the account transaction histories.

Transactions that partially involve the purchase of goods or services and partially involves other credit. New comment 8(a)–9.iii also provides that if a transaction is "sale credit" as described above, for a transaction at point of sale conducted using a hybrid prepaid-credit card that accesses credit from a covered separate credit feature where the transaction partially involves the purchase of goods or services and partially involves other credit, such as cash back given to the cardholder, the creditor must disclose the entire amount of the credit as sale credit, including the part of the transaction that does not relate to the purchase of goods or services.

The Bureau understands that creditors may not be able to identify separately the amount of the credit transaction that relates to the purchase of goods or services at a merchant and the amount of the credit transaction that relates to other types of credit, such as cash back given to the cardholder. In this case, the card issuer may only be able to determine the total amount of credit extended for that transaction. To ensure that consumers are better able to recognize credit transactions disclosed on periodic statements, new comment 8(a)–9.iii requires that a creditor disclose the entire amount of the credit transaction as "sale credit" under final § 1026.8(a). Under this approach, a creditor must disclose the entire amount of the credit transaction, the date of the transaction, and the merchant's name and location on the Regulation Z periodic statement. The Bureau believes such information is sufficient to allow a consumer to identify a transaction, even where part of the amount of the transaction is for cash back or other forms of credit given to the cardholder at point of sale. For these types of transactions, the Bureau anticipates that the cardholder will associate the entire credit transaction, including the cash back portion of the credit, with the merchant's name.

8(b) Nonsale Credit

Existing § 1026.8(b) provides that for each credit transaction not involving the sale of property or services, the creditor generally must disclose a brief identification of the transaction; the amount of the transaction; and at least one of the following dates: (1) The date of the transaction; (2) the date the transaction was debited to the consumer's account; or (3) if the consumer signed the credit document, the date appearing on the document. Existing comment 8(b)–1 provides that the term "nonsale credit" refers to any form of loan credit, including, for example: (1) A cash advance; (2) an advance on a credit plan that is accessed by overdrafts on a checking account; (3) the use of a "supplemental credit device" in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services; and (4) miscellaneous debits to remedy mispostings, returned checks, and similar entries.

The proposal would have added an additional example to existing comment 8(b)–1 to provide guidance on when credit transactions are "nonsale credit" when credit is accessed by a prepaid card that is a credit card. First, proposed comment 8(b)–1.v would have explained that "nonsale credit" includes an advance at an ATM on a credit plan that is accessed by a prepaid card that is a credit card. This proposed comment also would have clarified that if a prepaid card that is a credit card is used to obtain an advance at an ATM and the transaction is partially funded by the consumer's prepaid account and partially funded by a credit extension, the amount to be disclosed under proposed § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

The proposal also would have made technical revisions to two comments—existing comment 8(b)–1.ii and existing comment 8(b)–2—which would have provided guidance regarding overdraft credit plans in order to make clear that these comments do not apply to overdraft credit plans related to prepaid accounts.

The Bureau did not receive any specific comments on this aspect of the proposal. The Bureau is adopting new comment 8(b)–1.v as proposed, with revisions to be consistent with new § 1026.61.[638] New comment 8(b)–1.v provides that an advance at an ATM on a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 is an example of nonsale credit under § 1026.8(b). This comment also provides that if a hybrid prepaid-credit card is used to obtain an advance at an ATM and the transaction is partially paid with funds from the asset feature of the prepaid account and partially paid with a credit extension from the covered separate credit feature, the amount to be disclosed under final § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

As discussed in more detail in the section-by-section analysis of § 1026.8(a), the Bureau also is adding new comment 8(b)–1.vi to provide that a credit transaction will be disclosed as "nonsale credit" under final § 1026.8(b) on the Regulation Z periodic statement where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase, as described in new comment 8(a)–9.ii. In this scenario, the amount to be disclosed under final § 1026.8(b) is the amount of the credit extension, not the total amount of the purchase transaction.

Consistent with the proposal, the final rule also adopts final comments 8(b)–1.ii and comment 8(b)–2 as proposed with revisions to specify that the term "prepaid account" is defined in new § 1026.61.

Section 1026.10 Payments

10(a) General Rule

TILA section 164(a), which is implemented in existing § 1026.10(a), provides that payments received from an obligor under an open-end consumer credit plan or a credit card account by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Bureau.[639] Existing § 1026.10(a) generally provides that a creditor for open-end credit or a credit card account shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in § 1026.10(b). Existing comment 10(a)–2 provides guidance on the term "date of receipt" as used in existing § 1026.10(a). Specifically, existing comment 10(a)–2 provides that the "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. Existing comment 10(a)–2.ii provides an example illustrating the date of receipt for payments related to payroll deduction plans. Specifically, existing comment 10(a)–2.ii provides that in a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

The proposal would have amended this comment to reference proposed changes that would have been added to proposed § 1026.12(d)(3) related to the prohibition on offsets. As discussed in more detail in the section-by-section analysis of § 1026.12(d) below, existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Nonetheless, existing § 1026.12(d)(3) provides that the prohibition on offsets does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in existing § 1026.13(d)(1)). With respect to credit cards that are also prepaid cards, the proposal would have added proposed § 1026.12(d)(3)(ii) to define "periodically" to mean no more frequently than once per calendar month. Thus, under proposed § 1026.12(d)(3), with respect to such credit card accounts that would have been accessed by a prepaid card that is a credit card, a card issuer would have been permitted to deduct automatically all or a part of the cardholder's credit card debt from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so.

The proposal would have revised existing comment 10(a)–2.ii to explain that proposed § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by prepaid cards that are credit cards, from automatically deducting credit card account payments from a prepaid account or other deposit account held by the card issuer more frequently than once per calendar month. In a payroll deduction plan in which funds are deposited to a prepaid account held by the creditor, and from which payments are made on a monthly basis to a credit card account accessed by a prepaid card that is a credit card, payment would have been considered to be received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

The Bureau did not receive comment on this aspect of the proposal. The

[638] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 8(b)–1.vi would have explained that "nonsale credit' includes an advance on a credit plan accessed by such an account number. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed comment 8(b)–1.vi related to these account numbers.

[639] 15 U.S.C. 1666c; *see also* 15 U.S.C. 1602(g).

Bureau is adopting revisions to existing comment 10(a)–2.ii as proposed, with technical revisions to clarify the intent of the provision and to be consistent with new § 1026.61.[640] Final comment 10(a)–2.ii explains that in a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. The comment also explains that final § 1026.12(d)(3)(ii) defines ''periodically'' to mean no more frequently than once per calendar month for payments made periodically from a deposit account, such as prepaid account, held by a card issuer to pay credit card debt incurred with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 that is held by the card issuer. In a payroll deduction plan in which funds are deposited to a prepaid account held by the card issuer, and from which payments are made on a monthly basis to a covered separate credit feature accessible by a hybrid prepaid-credit card that is held by the card issuer, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

10(b) Specific Requirements for Payments

Existing § 1026.10(b) generally sets forth certain rules related to how creditor must handle payments received from consumers. Existing § 1026.10(b)(1) generally provides that a creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments. Nonetheless, existing comment 10(b)–1 explains that a creditor may be prohibited from specifying payment by preauthorized EFT and cross-references EFTA section 913.

As a technical revision, the proposal would have amended this comment to cross-reference Regulation E § 1005.10(e), which implements EFTA section 913. The Bureau did not receive any comments on this proposed revision. Consistent with the proposal, the final rule adopts final comment 10(b)–1 to explain that a creditor may be prohibited from specifying payment by preauthorized EFT and to cross-reference both EFTA section 913 and Regulation E § 1005.10(e).

Section 1026.12 Special Credit Card Provisions

Existing § 1026.12 contains special rules applicable to credit cards and credit card accounts, including conditions under which a credit card may be issued, liability of cardholders for unauthorized use, cardholder rights to assert merchant claims and defenses against the card issuer, and the prohibition on offsets by issuers.

12(a) Issuance of Credit Cards

TILA section 132, which is implemented by existing § 1026.12(a), generally prohibits a person from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards.[641]

Existing § 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card. As discussed in more detail below, the final rule provides guidance on how the prohibition on issuing unsolicited credit cards applies to hybrid prepaid-credit cards that can access covered separate credit features.

12(a)(1) Addition of a Credit Feature

Under the proposal, a prepaid card could not have accessed automatically a credit feature that would make the prepaid card into a credit card at the time the card is purchased by the consumer at point of sale. A card issuer could have added a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

The proposal would have modified existing comment 12(a)(1)–2 specifically to explain that the addition of a credit card feature to an existing prepaid card constitutes ''issuance'' for purposes of unsolicited issuance under existing § 1026.12(a). Specifically, the existing comment 12(a)(1)–2 provides that if the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card. The proposal would have revised existing comment 12(a)(1)–2 to provide guidance relating to prepaid cards. Specifically, proposed comment 12(a)(1)–2 would have provided that if the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. The proposal also would have added an example related to prepaid cards. Specifically, the proposal would have added proposed comment 12(a)(1)–2.ii to provide that allowing a prepaid card to access a credit plan that would make the card into a credit card under § 1026.2(a)(15)(i) would constitute issuance of a credit card. The existing example relating to check guarantee cards would have been moved to proposed comment 12(a)(1)–2.i.

The Bureau did not receive any specific comments on the proposed revisions to existing comment 12(a)(1)–2. The Bureau is adopting comment 12(a)(1)–2 as proposed, with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule revises existing comment 12(a)(1)–2 to provide that if the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. The final rule also moves the existing example related

[640] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have revised comment 10(a)–2.ii to explain that § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by such account numbers, from automatically deducting credit card account payments from a prepaid account or other deposit account held by the card issuer more frequently than once per calendar month. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i)above, the final rule does not adopt the proposed changes to comment 10(a)–2.ii related to these account numbers.

[641] 15 U.S.C. 1642.

to check guarantee cards to final comment 12(a)(1)–2.i. The final rule also adds a new example in final comment 12(a)(1)–2.ii to provide that issuance of a credit card includes allowing a prepaid card to access a covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in new § 1026.61 with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Issuance of a Non-Credit Card

Existing comment 12(a)(1)–7.i explains that a non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan.[642] The comment states that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Existing comment 12(a)(1)–7.ii provides as an example, that a purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. The comment further explains that an issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The comment also states that the issuer violates the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

Under the proposal, the current language of existing comment 12(a)(1)–7.i and ii would have been moved to proposed comment 12(a)(1)–7.i.A and B respectively and would have been limited to the issuance of non-credit cards that are not prepaid cards. The proposal also would have added comment 12(a)(1)–7.ii to provide guidance on when the issuance of a prepaid card would be viewed as the issuance of a credit card. Specifically, proposed comment 12(a)(1)–7.ii would have provided that existing § 1026.12(a)(1) would not apply to the issuance of a prepaid card where an issuer does not connect the card to any credit plan that would make the prepaid card into a credit card at the time the card is issued and only opens a credit card account, or provides an application or solicitation, to open a credit or charge card account, that would be accessed by that card in compliance with proposed § 1026.12(h) (which has been moved to new § 1026.61(c) in the final rule). As discussed in more detail in the section-by-section analysis of § 1026.61(c) below, the Bureau proposed to add § 1026.12(h) to require a card issuer to wait at least 30 days after the prepaid account has been registered before opening a credit card account for the holder of the prepaid account that will be accessed by the prepaid card, or providing a solicitation or an application to the holder of the prepaid account to open a credit or charge card account that will be accessed by the prepaid card. Proposed comment 12(a)(1)–7.ii also would have explained that a credit feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h).

Proposed comment 12(a)(1)–7.ii further would have explained, however, that an issuer does not make a prepaid card into a credit card simply by providing the disclosures required by proposed Regulation E § 1005.18(b)(2)(i)(B)(*9*) and (ii)(B) with the prepaid card. As discussed in the section-by-section analyses of Regulation E § 1005.18(b)(2)(x) and (4)(vii) above, under the proposal, a financial institution would have been required to provide certain disclosures about credit card accounts that may be offered in connection with prepaid accounts. Under the proposal, a financial institution would have been required to disclose in the short form and long form disclosures provided in connection with the prepaid account certain information about any credit plan that may be offered at any point to the holder of the prepaid account where the credit plan would be accessed by a credit card that also is a prepaid card. These disclosures would have enabled consumers to shop more effectively for prepaid accounts by informing them of both whether a credit card account may be offered in connection with the prepaid account and some of the terms of such a credit card account. Proposed comment 12(a)(1)–7.ii would have provided guidance that providing these disclosures would not have violated the rule against unsolicited issuance of a credit card because, otherwise, selling such cards in retail locations or otherwise providing them on an unsolicited basis to consumers would violate Regulation Z if these required disclosures were included with the prepaid card.

The Bureau did not receive any specific comments on proposed comment 12(a)(1)–7.ii. As technical revisions, consistent with the proposal, the final rule moves the current language of existing comment 12(a)(1)–7.i and ii to final comment 12(a)(1)–7.i.A and B respectively and limits this language to the issuance of non-credit cards that are not prepaid cards.

The Bureau also is adopting new comment 12(a)(1)–7.ii as proposed, with revisions to be consistent with new § 1026.61. New comment 12(a)(1)–7.ii provides that existing § 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any covered separate credit feature that would make the prepaid card into a hybrid prepaid-credit card as defined in § 1026.61 at the time the card is issued and only opens a covered separate credit feature, provides an application or solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61 in compliance with new § 1026.61(c). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New comment 12(a)(1)–7.ii also clarifies that a covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with new § 1026.61(c). This comment clarifies that an issuer does not make a prepaid card into a hybrid prepaid-credit card simply by providing the disclosures required by Regulation E

[642] The Bureau notes that a prepaid card is an access device under Regulation E, as that term is defined in existing Regulation E § 1005.2(a)(1), and is subject to the issuance rules set forth in existing Regulation E § 1005.5. See also the commentary to final § 1005.18(a).

§ 1005.18(b)(2)(x), (4)(iv), and (vii) with the prepaid card. In addition, the comment provides a cross-reference to existing § 1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in § 1026.61 may be issued as a replacement or substitute for another hybrid prepaid-credit card. The comment also provides a cross-reference to existing Regulation E § 1005.5 and final § 1005.18(a), and related commentary, that govern the issuance of access devices under Regulation E.

12(a)(2)

Existing § 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card. Existing comments 12(a)(2)–5 and –6 provide guidance on the exception to the unsolicited issuance rule when a card is issued as a renewal of, or substitute for, an accepted credit card.

Specifically, existing comment 12(a)(2)–5 (the so-called ''one for one'' rule) provides that an accepted card generally may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances. Existing comment 12(a)(2)–6 provides, however, two exceptions to this general ''one for one'' rule. First, existing comment 12(a)(2)–6.i provides that the unsolicited issuance rule in existing § 1026.12(a) does not prohibit the card issuer from replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability) because the latter card could be issued on an unsolicited basis under Regulation E. Existing comment 12(a)(2)–6.ii also provides that existing § 1026.12(a) does not prohibit a card issuer from replacing an accepted card with more than one renewal or substitute card, provided that: (1) No replacement card accesses any account not accessed by the accepted card; (2) for terms and conditions required to be disclosed in account-opening disclosures under existing § 1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change-in-terms notice is required under existing § 1026.9(c); and (3) under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

Under the proposal, the example in existing comment 12(a)(2)–6.ii would have been moved to proposed comment 12(a)(2)–6.iii. The proposal also would have added comment 12(a)(2)–6.ii to explain that the one-for-one rule would not prevent an issuer from replacing a single card that is both a prepaid card and a credit card with two cards—one card that is a credit card and another card that is a separate prepaid card, where the latter card is not a credit card. In addition, under the proposal, the example in comment 12(a)(2)–6.i related to debit cards would have been revised for clarity; no substantive changes would have been intended.

The Bureau did not receive comments on the proposed revision to existing comment 12(a)(2)–6. The Bureau is adopting this comment as proposed, with revisions as discussed below. First, the Bureau is revising the example in existing comment 12(a)(2)–6.i related to debit cards for clarity; no substantive changes are intended. Second, the Bureau is moving existing comment 12(a)(2)–6.ii to final comment 12(a)(2)–6.iii.

Third, the Bureau is adopting comment 12(a)(2)–6.ii as proposed with revisions to use consistent terminology with new § 1026.61. Specifically, the Bureau is adding new comment 12(a)(2)–6.ii to provide that the one-for-one rule does not prevent an issuer from replacing a single card that is both a prepaid card and a credit card with two cards—one card that is a credit card and one card that is a separate prepaid card where the latter card is not a hybrid prepaid-credit card as defined in new § 1026.61. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

Under TILA section 170, as implemented in existing § 1026.12(c), a cardholder may assert against the card issuer a claim or defense for disputes as to goods or services purchased in a consumer credit transaction with a credit card. The claim or defense applies only as to unpaid balances for the goods or services and any finance or other charges imposed on that amount if the merchant honoring the card fails to resolve the dispute. The right is further limited generally to disputes exceeding $50 for purchases made in the consumer's home State or within 100 miles of the cardholder's address.[643]

Existing comment 12(c)–3 and existing comment 12(c)(1)–1 provides guidance on the types of transactions that are covered by existing § 1026.12(c) and the types of transactions that are not covered. Existing comment 12(c)(1)–1 provides that the consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This could include mail, internet, or telephone orders, if the purchase is charged to the credit card account.

The Bureau's Proposal

The proposal would have amended existing comment 12(c)(1)–1 and added proposed comment 12(c)–5 to explain that existing § 1026.12(c) would apply when goods or services are purchased using a credit card that also is a prepaid card. Proposed comment 12(c)–5 also would have provided guidance on how existing § 1026.12(c) applies to transactions at point of sale where a prepaid card that is a credit card is used to obtain goods or services from a merchant, and the transaction is partially funded by the consumer's prepaid account and partially funded by credit. For these types of transactions, proposed comment 12(c)–5 would have provided that the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of existing § 1026.12(c), and it also would have provided that the amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

Existing comments 12(c)–3 and 12(c)(1)–1.iv provide that the provisions in existing § 1026.12(c) generally do not apply to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. Existing comment 12(c)(1)–1.ii also provides that the provisions in existing § 1026.12(c) do not apply to the purchase of goods or services using a check accessing an overdraft account and a credit card used solely for identification of the consumer. On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit

[643] *See* 15 U.S.C. 1666i.

card, although not to the credit extended on the overdraft line. The Board adopted these exceptions in 1981 as part of implementing the Truth in Lending Simplification and Reform Act.[644] In the supplemental information provided with that rulemaking, the Board indicated that it had decided to exempt check guarantee cards and debit cards when used to draw on an overdraft line because of serious operational problems cited by commenters as arising from applying the claims and defenses provisions to check guarantee and debit card transactions. The proposal would not have revised these provisions, except to revise existing comment 12(c)(1)–1.ii to specify that the comment does not apply to an overdraft line in connection with a prepaid account.

Comments Received

The Bureau did not receive comments from industry on proposed comments 12(c)(1)–1 and 12(c)–5. With respect to split-tender transactions discussed above, two consumer group commenters urged the Bureau to use its authority under TILA section 105 to extend the claim and defenses provision to the amount of the transaction that is funded from the prepaid account. They believed that doing so would help reduce consumer confusion.

The Final Rule

The Bureau is adopting proposed comments 12(c)(1)–1 and 12(c)–5 with revisions.[645] Consistent with the proposal, final comment 12(c)(1)–1 provides that the provisions in existing § 1026.12(c) apply to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature, as defined in new § 1026.61. In addition, new comment 12(c)–5 is revised from the proposal to clarify that existing § 1026.12(c) applies to purchases made with a hybrid prepaid-credit card that accesses a covered separate credit feature, regardless of whether the covered separate credit feature is structured such that credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the purchase transaction made with the hybrid prepaid-credit card, or whether the covered separate credit feature is structured such that credit is directly drawn from the covered separate credit feature to cover the amount of the purchase transaction made with the hybrid prepaid-credit card.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analysis of § 1026.8(a) above, the Bureau recognizes that a card issuer with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card may structure the credit feature in two ways to cover situations where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time of authorization or settlement to cover the amount of the transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. First, the covered separate credit feature could be structured such that a consumer can use a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase.

Second, the covered separate credit feature accessible by a hybrid prepaid-credit card could be structured such that when a consumer uses a hybrid prepaid-credit card to make a purchase to obtain goods or services from a merchant, credit is transferred from the covered separate credit feature into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 is transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account.

The Bureau is adding new comment 12(c)–5.i to provide that both of these situations would be examples of a consumer using a hybrid prepaid-credit card to access a covered separate credit feature to purchase property or services. This is true even though the latter situation (where credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the purchase transaction) is disclosed as nonsale credit under final § 1026.8(b).

Consistent with the proposal, the Bureau has not exempted from the provisions of existing § 1026.12(c) credit extended for purchases made with hybrid prepaid-credit cards. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that covered separate credit features that are accessible by hybrid prepaid-credit cards generally should be subject to the provisions in Regulation Z that apply to credit features accessible by credit cards.

Consistent with the proposal, the Bureau also is adding new comment 12(c)–5.ii to provide that for a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account and partially paid with credit from the covered separate credit feature, the amount of the purchase transaction that is funded by credit is subject to the requirements of existing § 1026.12(c). The amount of the transaction funded from the prepaid account is not subject to the requirements of existing § 1026.12(c).

With respect to split-tender transactions where a purchase with the hybrid prepaid-credit card is partially paid with funds from the asset feature of the prepaid account and partially paid with credit from the covered separate credit feature, the Bureau is not using its adjustment authority under TILA section 105 to extend the claims and defenses provision in existing § 1026.12(c) to the amount of the transaction that is funded from the asset feature of the prepaid account. In split-tender transactions, the Bureau believes that the provision in existing § 1026.12(c) should only apply to the

[644] 46 FR 20848, 20865 (Apr. 7, 1981); *see also* 46 FR 50288, 50313 (Oct. 9, 1981).

[645] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed 12(c)(1)–1.i would have provided that the provision in § 1026.12(c) would not apply to an advance on a credit plan accessed by such an account number. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 12(c)(1)–1.i related to these account numbers.

amount of the transaction that is paid with credit and is accessed by the hybrid prepaid-credit card when it is acting as a credit card to access the covered separate credit feature.

For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau also is retaining the existing exemptions contained in existing comments 12(c)–3 and 12(c)(1)–1.ii and iv related to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. Existing comments 12(c)–3 and 12(c)(1)–1.iv provide that the provisions in existing § 1026.12(c) generally do not apply to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. In addition, existing comment 12(c)(1)–1.ii also provides that the provisions in existing § 1026.12(c) do not apply to the purchase of goods or services by using a check accessing an overdraft account and a credit card used solely for identification of the consumer. Consistent with the proposal, the Bureau is revising the example in existing comment 12(c)(1)–1.ii to specify that the comment does not apply to covered separate credit features accessible by hybrid prepaid-credit cards.

12(d) Offsets by Card Issuer Prohibited

TILA section 169 generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer. Nonetheless, a card issuer would not violate this provision if the card issuer periodically deducts all or a portion of a consumer's credit card debt from the consumer's deposit account, if the periodic deductions are in accordance with a preauthorized written authorization by the consumer and the card issuer does not deduct payment for any portion of the outstanding balance that is in dispute.[646] This TILA section also provides that the prohibition described above does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.[647] TILA section 169 is implemented by § 1026.12(d).

Existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Existing § 1026.12(d)(2) provides that the prohibition on offsets in existing § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under State or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: (1) Obtain or enforce a consensual security interest in the funds; (2) attach or otherwise levy upon the funds; or (3) obtain or enforce a court order relating to the funds. Existing § 1026.12(d)(3) provides that the prohibition on offsets set forth in existing § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in existing § 1026.13(d)(1)).

Congress added the offset provision in TILA section 169 as part of the Fair Credit Billing Act.[648] In adding this offset provision, Congress was concerned that

> Funds in these accounts can be attached without any recourse to the courts and in spite of any valid legal defense the cardholder may have against the bank. Banks which issue cards and also have the cardholder's funds on deposit may thus obtain a unique leverage over the consumer. Other creditors would have to apply to a court before being permitted to attach funds in a borrowers' deposit account.[649]

12(d)(1) General Rule

Existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

The Bureau's Proposal

The proposal would have provided that the term "credit card" includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Thus, under the proposal, the offset provision in existing § 1026.12(d) would have applied to credit plans that are accessed by prepaid cards that are credit cards under the proposal. The proposal also would have added proposed comment 12(d)–1 to make clear that for purposes of the prohibition on offsets in existing § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer's prepaid account and the term deposit account includes a prepaid account.

Existing comment 12(d)(1)–2 provides that if the consumer tenders funds as a deposit (to a checking account, for example) held by the card issuer, the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account. The proposal would have amended this comment to provide guidance on the tender of funds as a deposit to a prepaid account. Specifically, this comment would have been revised to specify that if the card issuer receives funds designated for the consumer's prepaid account with the issuer, such as by means of an ACH deposit or cash reload, the card issuer may not automatically apply the funds to repay indebtedness on the consumer's credit card account. As a technical revision, the proposal also would have added the title "General rule" to existing § 1026.12(d)(1); no substantive change would have been intended by this addition.

Comments Received

Several commenters, including industry trade associations and issuing banks, opposed applying the offset provision to overdrafts on prepaid accounts. One of these commenters indicated that applying the offset provision to overdraft credit features accessed by prepaid cards would deny consumers the ability to access short-term credit in connection with prepaid accounts. Another of these industry commenters believed that when a prepaid account user overdraws his account, the consumer likely intends funds subsequently deposited into the prepaid account to satisfy the overdraft. This industry commenter believed that the offset provision would prevent a consumer from achieving that expected outcome and could mislead prepaid account users into thinking they have more funds available than they actually do. Another of these industry commenters indicated that the offset prohibition would increase the cost of credit to consumers. This commenter indicated that the offset prohibition would make it more difficult for

[646] 15 U.S.C. 1666h(a).

[647] 15 U.S.C. 1666h(b).

[648] Public Law 93–495, 88 Stat. 1500 (Oct. 28, 1974).

[649] S. Rep. No. 93–278, at 9 (June 28, 1973).

creditors to recover debts owed to them. This commenter indicated the longer and more difficult it is for creditors to recover debts, the more costly it is for consumers to access credit.

Several consumer groups supported application of the offset provision to prepaid cards that would have been credit cards under the proposal. One consumer group commenter urged the Bureau to make clear that payroll deduction plans are covered by the offset prohibition.

The Final Rule

Consistent with the proposal, the final rule adds the title "General rule" to existing § 1026.12(d)(1); no substantive change is intended. The Bureau also is adopting comments 12(d)–1 and 12(d)(1)–2 as proposed with revisions to refer to § 1026.61 for the definition of "prepaid account."

Pursuant to the final rule, the offset prohibition in existing § 1026.12(d) applies to covered separate credit features accessible by hybrid prepaid-credit cards because these credit features are credit card accounts under the final rule.[650] As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed above, several commenters, including industry trade associations and issuing banks, opposed applying the offset provision to overdrafts on prepaid accounts. One of these commenters indicated that applying the offset provision to overdraft credit features accessed by prepaid cards would deny consumers the ability to access short-term credit in connection with prepaid accounts. One industry commenter indicated that the offset prohibition would increase the cost of credit to consumers by making it more difficult for creditors to recover debts owed to them. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that covered separate credit features accessible by hybrid prepaid-credit cards should receive the important protections that apply to credit card accounts generally under Regulation Z, including the offset prohibitions in final § 1026.12(d). The Bureau also believes that additional protections with respect to the offset provision in final § 1026.12(d) are needed with respect to covered separate credit features accessible by hybrid prepaid-credit cards, as discussed in the section-by-section discussion of § 1026.12(d)(2) and (3). The Bureau believes that the requirements in final § 1026.12(d), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), are important protections that will allow consumers to retain control over the funds in their prepaid accounts if a covered separate credit feature becomes associated with those accounts because they will be able to control when and how debts are repaid.

As discussed above, one industry commenter believed that when a prepaid account user overdraws his account, the consumer likely intends funds subsequently deposited into the prepaid account to satisfy the overdraft. This industry commenter believed that the offset provision would prevent a consumer from achieving that expected outcome and could mislead prepaid account users into thinking they have more funds available than they actually do. The Bureau believes that the Regulation Z account-opening disclosures and periodic statement disclosures, as well as explanations of contractual terms that card issuers typically provide to consumers, will help ensure that consumers understand the terms of their covered separate credit features, including how to make payments on the credit card accounts.

As discussed above, one consumer group commenter urged the Bureau to make clear that payroll deduction plans are covered by the offset prohibition. The Bureau has not added any additional guidance in final § 1026.12(d) or its related commentary regarding the applicability of the offset provision to payroll deduction plans. The Bureau does not believe that special guidance related to payroll deduction plans is necessary. The Bureau believes that under the current offset provision (and the final rule), the offset provision would apply to payroll deductions that are deposited into a consumer's asset account that is held by the credit card issuer. Nonetheless, the offset provision does not apply if the payroll deductions are deposited into a consumer's asset account that is held with the employer or with a person other than the credit card issuer. The offset provision also would not apply to payroll deductions that are used directly to pay a covered separate credit feature that is accessible by a hybrid prepaid-credit card where payroll deduction funds are never deposited into a consumer's asset account with the credit card issuer.

12(d)(2) Rights of the Card Issuer

TILA section 169(a) generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer.[651] TILA section 169(b) provides, however, that the prohibition on offset does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.[652]

Implementing TILA section 169, existing § 1026.12(d)(2) provides that that the prohibition on offsets in existing § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under State or Federal law to attach or otherwise levy upon the funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally. Existing § 1026.12(d)(2) also provides two additional methods for obtaining funds that the Board found were not prohibited by the prohibition on offsets in TILA section 169. Specifically, existing § 1026.12(d)(2) provides that the prohibition on offsets in existing § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under State or Federal law to use either of the following two methods if the same method is constitutionally available to creditors generally: (1) Obtain or enforce a consensual security interest in the funds; or (2) obtain or enforce a court order relating to the funds.

The Board adopted these additional two methods in 1981 as part of its rulemaking to implement the Truth in Lending Simplification and Reform Act.[653] In the supplemental information

[650] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card where that account number accesses a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The proposal would have applied the offset prohibition in § 1026.12(d) to credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the offset prohibition does not apply to accounts simply because they are accessed by these account numbers because under the final rule, these account numbers are not credit cards.

[651] 15 U.S.C. 1666h(a).

[652] 15 U.S.C. 1666h(b).

[653] 46 FR 20848 (Apr. 7, 1981).

to that rulemaking, with respect to the method related to security interests, the Board stated its belief that TILA section 169 was not intended to apply to the granting of security interests in cardholders' deposit accounts. In addition, the Board imposed certain limitations on the use of security interests that it believed would prevent circumvention of the offset prohibition because: (1) Only consensual security interests are permitted, and thus the cardholder must affirmatively agree to grant the security interest; (2) the security interest can be enforced only through procedures by which other creditors could enforce their security interests in the same funds; and (3) any security interest granted to secure credit card indebtedness will be disclosed in the card issuer's initial disclosures to the cardholder. The Board considered but rejected limiting the amount of the security interest to a specified amount, reasoning that other third-party creditors are not required to do so. The Board believed that these requirements should eliminate the possibility of unfair surprise to consumers and of unfair advantage for depository institutions over other creditors that Congress sought to avoid in enacting TILA section 169.[654]

Existing comment 12(d)(2)–1 is intended to ensure that the security interest is consensual. Specifically, existing comment 12(d)(2)–1 provides that in order to qualify for the exception stated in § 1026.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under § 1026.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in existing § 1026.12(d)(2).

For a security interest to qualify for the exception under existing § 1026.12(d)(2), as discussed in existing comment 12(d)(2)–1.i and ii, the following conditions must be met: (1) the consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account; and (2) the security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by existing § 1026.12(d)(2).

Current comment 12(d)(2)–1.i provides that indicia of the consumer's awareness and intent to provide a security interest include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent): (1) Separate signature or initials on the separate agreement indicating that a security interest is being given; (2) placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions; or (3) reference to a specific amount of deposited funds or to a specific deposit account number.

The Bureau's Proposal

The proposal would have retained current guidance in comment 12(d)(2)–1.i requiring that the consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. The proposal would have moved the current guidance in comment 12(d)(2)–1.i discussing indicia of the consumer's awareness and intent to grant a security interest to proposed comment 12(d)(2)–1.ii and would have amended that comment to indicate that guidance only applies to deposit accounts that are not prepaid accounts. The proposal would have added new comment 12(d)(2)–1.iii discussing indicia of the consumer's awareness and intent to grant a security interest with respect to prepaid accounts. The proposal also would have moved guidance in existing comment 12(d)(2)–1.ii to new proposed comment 12(d)(2)–1.iv; no substantive change would have been intended.

With respect to proposed comment 12(d)(2)–1.iii, the Bureau believed that additional protections may be needed to ensure that consumers understand that they are giving a security interest with respect to credit features that are accessed by prepaid cards that are credit cards. To prevent the security interest from becoming the functional equivalent to an offset, the proposal would have set forth in proposed comment 12(d)(2)–1.iii the steps that card issuers must take to demonstrate a consumer's awareness of and intent to grant a security interest in a prepaid account. Specifically, a card issuer would have been required to meet all the following conditions: (1) In addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the prepaid account agreement and the credit card account agreement; (2) the separate document setting forth the security agreement must be signed by the consumer; (3) the separate document setting forth the security agreement must refer to the prepaid account number and to a specific amount of funds in the prepaid account in which the card issuer is taking a security interest, and these two elements of the document must be separately signed or initialed by the consumer; and (4) the separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest, and each of those conditions must be separately signed or initialed by the consumer.

In addition, as a technical revision, the proposal would have added the title "Rights of the card issuer" to § 1026.12(d)(2); no substantive change was intended.

Comments Received

The Bureau solicited comment on the approach discussed above. The Bureau also solicited comment on whether these additional protections are sufficient to ensure that security interests do not become the functional equivalent to an offset when a credit card account is directly linked to a prepaid account through an overdraft feature. If these additional protections were not sufficient, the Bureau sought comment on what additional protections would be sufficient to ensure that the security interests taken in prepaid accounts are consensual. Alternatively, the Bureau sought comment on whether it should prohibit a card issuer from obtaining or enforcing any consensual security interest in the funds of a cardholder held in a prepaid account with the card issuer, to ensure that card issuers cannot circumvent the prohibition on offsets by taking routinely a security interest in the prepaid account funds without consumer awareness of the security interest.

The Bureau did not receive specific comments from industry commenters on proposed comment 12(d)(2)–1.iii. One consumer group commenter indicated that the Bureau should ban card issuers from taking a security interest in prepaid accounts or require they be established only using a separate account. This commenter believed that even with the proposed safeguards, it would be too easy for a card issuer to obtain the consumer's signature on a

[654] 46 FR 20848, 20866 (Apr. 7, 1981).

document. This commenter indicated that at a minimum, the Bureau should require funds from a prepaid card that would be the security interest to be segregated into a different, separate account that is not a transaction account, such as a savings account. In addition, this commenter indicated that the security interest should be limited to the initial deposit.

The Final Rule

The Bureau is adopting comment 12(d)(2)–1 as proposed with technical revisions to clarify the intent of the provision and with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule retains current guidance in 12(d)(2)–1.i requiring that the consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. The final rule also moves the current guidance 1.ii and revises this current guidance to clarify the intent of the provision and to provide that it only applies in relation to credit card accounts other than covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61. As discussed in more detail below, the final rule also adds new comment 12(d)(2)–1.iii discussing indicia of the consumer's awareness and intent to provide a security interest in relation to covered separate credit features accessible by hybrid prepaid in comment 12(d)(2)–1.i discussing indicia of the consumer's awareness and intent to provide a security interest to final comment 12(d)(2)—credit cards. The final rule also moves guidance in existing comment 12(d)(2)–1.ii to final comment 12(d)(2)–1.iv; no substantive change is intended. As technical revisions, the final rule adds the title ''Rights of the card issuer'' to § 1026.12(d)(2) and revises the existing language of § 1026.12(d)(2) to use the phrase ''this paragraph (d)'' instead of ''this paragraph''; no substantive change is intended.

As discussed above, the Bureau is adopting new comment 12(d)(2)–1.iii as proposed, with technical revisions to clarify the intent of the provision and with revisions to be consistent with new § 1026.61. Specifically, new comment 12(d)(2)–1.iii provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, for a consumer to show awareness and intent to grant a security interest in a deposit account, including a prepaid account, all of the following conditions must be met: (1) In addition to being disclosed in the issuer's account-opening disclosures under existing § 1026.6, the security agreement must be provided to the consumer in a document separate from the deposit account agreement and the credit card account agreement; (2) the separate document setting forth the security agreement must be signed by the consumer; (3) the separate document setting forth the security agreement must refer to the deposit account number, and to a specific amount of funds in the deposit account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer; and (4) the separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest, and each of those conditions must be separately signed or initialed by the consumer.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that prepaid account issuers may have significant interest in securing credit card debt on a covered separate credit feature accessible by a hybrid prepaid-credit card by means of the prepaid account. These credit features will always be associated with this linked asset account, and the Bureau believes that prepaid card users who use the cards to obtain consumer credit from a covered separate credit feature are likely to have lower credit scores than credit card users overall. Unlike traditional secured credit cards, these prepaid cards likely would not be marketed as secured credit cards and would not require consumers to establish a new separate account or to set aside specific funds. As a result, prepaid consumers are less likely than secured credit card users to understand that they are required to provide a security interest in the prepaid account in order to receive the covered separate credit feature. In addition, these prepaid consumers may have a need to be able to manage their prepaid accounts very carefully to cover both daily expenses and any credit repayments.

With regard to security interests in connection with covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau believes that all of the indicia in new comment 12(d)(2)–2.iii, including delineating a specific dollar amount as being subject to the security interest, will help to ensure that such security interest arrangements do not circumvent the offset provision in TILA section 169 by ensuring that consumers focus careful attention on the consequences of granting security interests so that consumers are better prepared to manage their accounts to both cover daily expenses and repay any credit extensions.

At this time, the Bureau does not believe that it is necessary to ban security interests in prepaid accounts or to provide that a covered separate credit feature accessible by a hybrid prepaid-credit card only can be secured by a separate asset account that is not the prepaid account. The Bureau believes that the protections adopted in the final rule are sufficient to protect consumers from security interests taken in prepaid account with respect to a covered separate credit feature from becoming functional equivalents of offsets, but the Bureau will continue to monitor how providers in the prepaid market use consensual security interests.

12(d)(3) Periodic Deductions

Implementing TILA section 169, existing § 1026.12(d)(3) provides that the prohibition on offsets set forth in § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in existing § 1026.13(d)(1)).

The Bureau's Proposal

Neither TILA section 169 nor existing § 1026.12(d)(3) defines ''periodically'' for purposes of existing § 1026.12(d)(3). The proposal would have added proposed § 1026.12(d)(3)(ii) to provide that with respect to prepaid cards that are credit cards, for purposes of existing § 1026.12(d)(3), ''periodically'' means no more frequently than once per calendar month. For example, a deduction could be scheduled for each monthly due date disclosed on the applicable periodic statement in accordance with the requirements of proposed § 1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer. Thus, under proposed § 1026.12(d)(3), with respect to such credit plans accessed by prepaid

card that is a credit card, a card issuer would have been permitted to deduct all or a part of the cardholder's credit card debt automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. Proposed comment 12(d)(3)–3 would have provided an example to illustrate when card issuers could deduct automatically all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under proposed § 1026.12(d)(3) with respect to credit cards that are also prepaid cards. Proposed comment 12(d)(3)–3 would have provided that with respect to those credit cards, a card issuer would not be prohibited under proposed § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of existing § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. The proposed comment would have provided the following example: With respect to credit cards that are also prepaid cards, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25th day of each month. In this case, the card issuer would not have been prohibited under proposed § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25th of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer if the deductions were pursuant to a plan that was authorized in writing by the cardholder (as discussed in existing comment 12(d)(3)–1) and complied with the limitations in existing § 1026.13(d)(1). Proposed comment 12(d)(3)–3 also would have explained that the card issuer would be prohibited under proposed § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account.

As technical revisions, the proposal also would have: (1) Added the title "Periodic deductions" to § 1026.12(d)(3); and (2) moved existing § 1026.12(d)(3) to proposed § 1026.12(d)(3)(i). No substantive changes would have been intended.

Comments Received

One credit union service organization indicated that the Bureau should not adopt the proposed definition of "periodically." This commenter indicated that consumers should have the choice to allow for automatic multiple payments within the same month, like consumers have with other financial products such as traditional credit card programs. This commenter indicated that some consumers may prefer to pay smaller amounts more frequently instead of paying a larger amount once a month.

One consumer group commenter indicated that the preauthorized payment plan exception set forth in existing § 1026.12(d)(3) should not apply to credit features accessed by prepaid cards that are credit cards. Thus, card issuers of those credit features should not be permitted to deduct credit card balances on those credit features from prepaid accounts pursuant to existing § 1026.12(d)(3). Another consumer group commenter indicated that with respect to credit features accessed by prepaid cards that are credit cards, a card issuer should be permitted under proposed § 1026.12(d)(3) to deduct no more than 4 percent of the outstanding balance on a monthly basis from the prepaid account pursuant to the preauthorized payment plan.

One consumer group commenter indicated that the Bureau should make clear that consumers have the right to revoke authorization for a payment plan described in proposed § 1026.12(d)(3). This commenter indicated that consumers should be able to exercise the right to revoke authorization under existing § 1026.12(d)(3) easily, such as in writing, electronically or orally. One consumer group commenter indicated that the Bureau should monitor the process that card issuers use to gain automatic payment authorization to ensure that it is not coercive or misleading so that consumers understand that they have signed up for it.

The Final Rule

As discussed in more detail below, the Bureau is adopting § 1026.12(d)(3) as proposed, with revisions to be consistent with new § 1026.61. Consistent with the proposal, the final rule moves the current language in existing § 1026.12(d)(3) to new § 1026.12(d)(3)(i). The final rule also adds new § 1026.12(d)(3)(ii) and new comment 12(d)(3)–3 as proposed, with revisions to be consistent with new § 1026.61. New § 1026.12(d)(3)(ii) provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, for purposes of § 1026.12(d)(3), "periodically" means no more frequently than once per calendar month. Thus, under new § 1026.12(d)(3)(ii), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, a card issuer may deduct all or a part of the cardholder's credit card debt on the covered separate credit feature automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail below, the Bureau also is amending existing comment 12(d)(3)–2 to provide that a card issuer is not prohibited under final § 1026.12(d) from automatically deducting from the consumer's deposit account any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3).

The Bureau also is making three technical revisions to final § 1026.12(d)(3) and related commentary. First, the final rule adds the title "Periodic deductions" to § 1026.12(d)(3). Second, the final rule revises the language of existing § 1026.12(d)(3) (renumbered as final § 1026.12(d)(3)(i)) to use the phrase "this paragraph (d)" rather than "this paragraph." Third, the final rule revises existing comment 12(d)(3)–1.iii, which references EFTA section 913, to also reference final Regulation E § 1005.10(e), which implements that section of EFTA.

Definition of "periodically." New § 1026.12(d)(3)(ii) provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, for purposes of final § 1026.12(d)(3), "periodically" means

no more frequently than once per calendar month. For example, a deduction could be scheduled for each monthly due date disclosed on the applicable periodic statement in accordance with the requirements of final § 1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer. Thus, under final § 1026.12(d)(3), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, a card issuer may deduct all or a part of the cardholder's credit card debt on the covered separate credit feature automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so.[655]

The Bureau also is adopting comment 12(d)(3)–3 as proposed, with revisions to be consistent with new § 1026.61. New comment 12(d)(3)–3 provides that with respect to covered separate credit features accessible by hybrid prepaid-credit cards, a card issuer would not be prohibited under final § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt on the covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of existing § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account more frequently than once per calendar month pursuant to such a plan.

This comment provides the following example: With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25th day of each month. In this case, the card issuer is not prohibited under final § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25th of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in final comment 12(d)(3)–1) and comply with the limitations in existing § 1026.13(d)(1). New comment 12(d)(3)–3 also explains that the card issuer is prohibited under final § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt on the covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made or expected to be made to the deposit account.

The Bureau believes that allowing a card issuer to execute a preauthorized transfer once per calendar month to repay all or some of a consumer's credit card balance on a covered separate credit feature accessible by a hybrid prepaid-credit card is appropriate because card issuers of covered separate credit features linked to prepaid accounts generally are restricted from providing periodic statements more frequently than on a monthly basis, and the due date must be the same day of the month for each billing cycle. As discussed in the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above, for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan, the card issuer must adopt reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement, and the due date must be the same day of the month for each billing cycle.

The Bureau is concerned that, with respect to covered separate credit features that are accessible by hybrid prepaid-credit cards, some card issuers may attempt to circumvent the prohibition on offsets by obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt on the covered separate credit feature on a daily or weekly basis from the prepaid account to help ensure that the debt is repaid. If "periodically" is not defined for purposes of final § 1026.12(d)(3), the Bureau believes that card issuers that offer covered separate credit features accessible by hybrid prepaid-credit cards may obtain a consumer's written authorization to daily or weekly debits to the prepaid account to repay the credit card debt on the covered separate credit feature given the overall creditworthiness of prepaid accountholders who rely on covered separate credit features. In addition, the Bureau believes prepaid consumers may grant the authorization more readily than other credit cardholders because these consumers may believe that providing such authorization is required.

An appropriate interval for "periodic[]" deduction plans may depend on the facts and circumstances of the particular credit feature, but because of the above reasons, the Bureau believes that an appropriate interval for covered separate credit features accessible by hybrid prepaid-credit cards is no more frequently than once per calendar month.

The Bureau believes that the requirement in final § 1026.12(d)(3), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), are necessary to fully effectuate the intent of the provisions and would allow consumers to retain control over the funds in their prepaid accounts even when a covered separate credit feature accessible by a hybrid prepaid-credit card becomes associated with that account, which is consistent with the prohibition on offsets. In particular, with these changes, such card issuers (1) are required to adopt reasonable procedures designed to ensure that periodic statements for covered separate credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement, and the due date disclosed must be the same day of the month for each billing cycle; (2) can move funds automatically from the asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt on covered separate credit features no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so); and (3) are required to offer consumers a means to repay their outstanding credit balances on covered separate credit features other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking Web site).

[655] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. With respect to these account numbers, the proposal would have set forth a new proposed § 1026.12(d)(3)(ii) and comment 12(d)(3)–3 that would have provided that for purposes of the exception for automatic payment plans as discussed in § 1026.12(d)(3), "periodically" would have meant no more frequently than once per calendar month. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i)above, the final rule does not adopt the proposed revisions to § 1026.12(d)(3)(ii) and comment 12(d)(3)–3 related to these account numbers.

As discussed above, one credit union service organization indicated that the Bureau should not adopt the proposed definition of ''periodically.'' This commenter indicated that consumers should have the choice to allow for automatic multiple payments within the same month, like consumers have with other financial products such as traditional credit card programs. This commenter indicated that some consumers may prefer to pay smaller amounts more frequently instead of paying a larger amount once a month. The Bureau notes that under existing comment 12(d)(3)–2.ii, a card issuer is not prohibited under the offset provision in § 1026.12(d)(1) from debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill). Thus, under the final rule, a consumer may still provide specific requests for payment more frequently than once per month as described in existing comment 12(d)(3)–2.ii (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill), so long as those payments are not on an automatic periodic basis more frequently than once per month.

In addition, as discussed above, one consumer group commenter indicated that the preauthorized payment plan exception set forth in existing § 1026.12(d)(3) should not apply to credit features accessed by prepaid cards that are credit cards. Thus, card issuers of those credit features should not be permitted to deduct credit card balances on those credit features from prepaid accounts pursuant to existing § 1026.12(d)(3). Another consumer group commenter indicated that with respect to credit features accessed by prepaid cards that are credit cards, a card issuer should be permitted under proposed § 1026.12(d)(3) to deduct no more than 4 percent of the outstanding balance on a monthly basis from the prepaid account pursuant to the preauthorized payment plan. The Bureau does not adopt these additional protections suggested by these commenters at this time. The Bureau believes that the requirement in final § 1026.12(d)(3), along with changes to the timing requirement for a periodic statement in final § 1026.5(b)(2)(ii)(A) and the compulsory use provision in Regulation E (final § 1005.10(e)(1)), provide sufficient protections to consumers to help ensure that consumers retain control over the funds in their prepaid accounts even when a covered separate credit feature accessible by a hybrid prepaid-credit card becomes associated with that account, which is consistent with the prohibition on offsets. The Bureau will continue to monitor the use of automatic payment plans.

Also, as discussed above, one consumer group commenter indicated that the Bureau should make clear that consumers have the right to revoke authorization for a payment plan, described in proposed § 1026.12(d)(3). This commenter indicated that consumers should be able to exercise the right to revoke authorization under existing § 1026.12(d)(3) easily, such as in writing, electronically or orally. Another consumer group commenter indicated that the Bureau should monitor the process that card issuers use to gain automatic payment authorization to ensure that it is not coercive or misleading so that consumers understand that they have signed up for it.

The final rule does not provide specific guidance on how consumers may revoke the authorization provided pursuant to final § 1026.12(d)(3). The Bureau notes that under final § 1026.12(d)(3), the exception from the offset provision for automatic payments only applies to automatic payment plans that are ''authorized'' in writing by the cardholder. At this time, the Bureau believes that State or other applicable law, including UDAAP law, should determine whether an automatic payment plan has been ''authorized'' and when an authorization has been revoked for purposes of final § 1026.12(d)(3). The Bureau will continue to monitor the processes that card issuers use to gain automatic payment authorization and the processes by which consumers can revoke authorization, to ensure that processes provided by card issuers for obtaining authorization are understandable to consumers and that consumers have reasonable methods available to revoke the authorization.

Fees or charges imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan. Existing § 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Existing comment 12(d)(1)–3 provides that the offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. Existing comment 12(d)(3)–2 provides that § 1026.12(d)(1) does not prohibit a card issuer from automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

The Bureau did not propose revisions to existing comments 12(d)(1)–3 or 12(d)(3)–2. Nonetheless, as discussed in more detail below, the Bureau is adopting revisions to comment 12(d)(3)–2 to be consistent with new § 1026.61, changes in the final rule to the definition of ''finance charge'' in final § 1026.4, and the definition of ''charges imposed as part of the plan'' in final § 1026.6(b)(3). To reflect these changes and to facilitate compliance with § 1026.12(d), the Bureau is adding comment 12(d)(3)–2.iii to provide that the offset prohibition in final § 1026.12(d) does not prohibit a card issuer from automatically deducting any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under final § 1026.6(b)(3) from a consumer's deposit account, such a prepaid account, held by the card issuer. This clarification applies to both covered separate credit features accessible by a hybrid prepaid-credit card and non-covered separate credit features that are subject to final § 1026.12(d).[656]

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer,

[656] With respect to incidental credit that meets the conditions set forth in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(C) makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not credit-related fees enumerated in new § 1026.61(a)(4)(ii)(B). New comment 61(a)(4)–1.iv.A states that for this type of credit, the prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card.

its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a ''covered separate credit feature.'' Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

Nonetheless, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.12(d) in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account.

As discussed in the section-by-section analysis of § 1026.6(b)(3) above, the Bureau is adding new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1 which provide that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). With respect to a covered separate credit feature, new comment 12(d)(3)–2.iii makes clear that final § 1026.12(d) does not prevent a card issuer from automatically deducting from a consumer's deposit account, such as a prepaid account, held with the card issuer any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges, and thus are not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D), are more appropriately regulated under Regulation E than under Regulation Z with respect to the covered separate credit feature.

The Bureau also is adding new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, which provide that with regard to a non-covered separate credit feature accessible by a prepaid card, as defined in § 1026.61, the term ''charges imposed as part of the plan'' does not include any fee or charge imposed on the asset feature of the prepaid account. New comment 61(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that fees or charges imposed on the asset feature of the prepaid account are not finance charges with respect to the non-covered separate credit feature. With respect to a non-covered separate credit feature, new comment 12(d)(3)–2.iii makes clear that final § 1026.12(d) does not prevent a card issuer from automatically deducting from a consumer's deposit account, such as a prepaid account, held with the card issuer any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Because none of the fees or charges imposed on the asset feature of the prepaid account are charges imposed as part of the plan with respect to a non-covered separate credit feature under new § 1026.6(b)(3)(iii)(E), final § 1026.12(d) does not prevent a card issuer from automatically deducting any of these fees or charges from a consumer's deposit account, such as a prepaid account, held with the card issuer. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E rather than Regulation Z with respect to the non-covered separate credit feature.

Section 1026.13 Billing Error Resolution

TILA section 161, as implemented in existing § 1026.13, sets forth error resolution procedures for billing errors that relate to any extension of credit that is made in connection with an open-end account or credit card account. Specifically, it requires a consumer to provide written notice of an error within 60 days after the first periodic statement reflecting the alleged error is sent.[657] The written notice triggers a creditor's duty to investigate the claim within prescribed time limits.

13(a) Definition of Billing Error

13(a)(3)

Existing § 1026.13(a) defines a ''billing error'' for purposes of the error resolution procedures. Under existing § 1026.13(a)(3), the term ''billing error'' includes disputes about an extension of credit for property or services not accepted by the consumer or not delivered to the consumer as agreed. Existing comment 13(a)(3)–2 explains that, in certain circumstances, a consumer may assert a billing error under existing § 1026.13(a)(3) with respect to property or services obtained through any extension of credit made in connection with a consumer's use of a third-party payment service.

Proposed § 1026.2(a)(15)(vii) would have provided a definition for ''account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.'' As used in the proposal, this term would have meant an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. Proposed comment 2(a)(15)–2.i.G would have provided that these account numbers were credit cards under the proposal.

Similar to the provision relating to third-party intermediaries, the proposal would have added proposed comment 13(a)(3)–2.ii to address situations where goods or services are purchased using funds deposited into a prepaid account and those funds are credit drawn from a credit plan that is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid

[657] 15 U.S.C. 1666; *see also* 15 U.S.C. 1602(g).

accounts specified by the creditor. The proposal would have moved the existing guidance in comment 13(a)(3)–2 to proposed 13(a)(3)–2.i.

The Bureau did not receive specific comments on proposed comment 13(a)(3)–2.ii. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i), the Bureau has not adopted proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G that would have made these account numbers into credit cards under Regulation Z. Thus, Bureau has not adopted proposed comment 13(a)(3)–2.ii related to these account numbers.

13(i) Relation to Electronic Fund Transfer Act and Regulation E

Existing § 1026.13(i) provides guidance on whether billing error provisions under Regulation E or Regulation Z apply in certain overdraft-related transactions. Specifically, existing § 1026.13(i) provides that if an extension of credit is incident to an EFT and is under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor must comply with the requirements of Regulation E § 1005.11 governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of existing § 1026.13 (d) and (g) would still apply to the credit portion of these transactions.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, currently under Regulation Z, overdraft credit is subject to Regulation Z only if there is an agreement to extend credit, which is typically described as an overdraft line of credit. In those cases, existing § 1026.13(i) applies when a transaction is partially funded through an EFT from an asset account and partially funded through an overdraft credit line. Such transactions will be subject to both Regulation Z and E. Under existing § 1026.13(i), for those transactions, the creditor must comply with the requirements of Regulation E § 1005.11 governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of existing § 1026.13(d) and (g) would still apply to the credit portion of these transactions. Currently under Regulation Z, with respect to an asset account with a linked overdraft line of credit: (1) if a transaction only accesses the overdraft line of credit and does not access funds in the asset account, the error resolution provisions in Regulation Z apply, and the error resolution provisions in Regulation E do not apply; and (2) if a transaction only accesses the funds in the asset account and does not access the overdraft line of credit, the error resolution provisions in Regulation E apply, and the error resolution provisions in Regulation Z do not apply. In addition, current Regulation Z does not apply to overdraft credit where there is not an agreement to extend credit. As discussed in existing comment 13(i)–2, overdraft transactions made under those overdraft credit programs are governed solely by the error resolution provisions in Regulation E. Existing comment 13(i)–3 provides an example of the application of existing § 1026.13(i) to transactions where a consumer withdraws money at an ATM machine and activates an overdraft line of credit on the checking account.

As discussed in existing comment 13(i)–1, credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

The Bureau's Proposal

First, the proposal would have moved the existing language of current § 1026.13(i) to proposed § 1026.13(i)(1) and would have revised that language to specify that this provision would apply to asset accounts that are not prepaid accounts. Second, existing comment 13(i)–2 would have been revised to specify that the comment only apply to asset accounts that are not prepaid accounts. Third, existing comment 13(i)–3 would have been revised to specify that the example set forth in that comment only applies to debit cards. Proposed § 1026.2(a)(15)(iv) would have defined "debit card" to mean "any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account." The proposed definition of "debit card" also would have specified that it does not include a prepaid card.

The proposal would have added proposed § 1026.13(i)(2) to provide that with respect to a credit plan in connection with a prepaid account, a creditor must comply with the requirements of existing Regulation E § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the consumer's prepaid account is overdrawn if the credit plan is subject to subpart B of this regulation. The provisions of existing § 1026.13(d) and (g) would still apply to the credit portion of these transactions.

The proposal also would have added proposed comment 13(i)–4 to provide guidance on how proposed § 1026.13(i)(2) would have applied to credit plans in connection with prepaid accounts. Specifically, proposed comment 13(i)–4 would have provided that for a credit extension involving a credit plan in connection with a prepaid account that is subject to subpart B, when the credit extension is incident to an EFT and occurs when the prepaid account is overdrawn, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit under an overdraft plan and does not include a debit to the prepaid account, the error resolution requirements of Regulation Z would have applied. If the transaction debited a prepaid account only (with no credit extended under the overdraft plan), the provisions of Regulation E would have applied. Nonetheless, under the proposal, if the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B, a creditor would have been required to comply with the requirements of existing Regulation E § 1005.11 and proposed § 1005.18(e) governing error resolution, rather than those of § 1026.13 (a), (b), (c), (e), (f), and (h).

Proposed comment 13(i)–5 would have explained that an overdraft credit plan would not be subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. Under proposed comment 2(a)(15)–2.i.F, a prepaid card would not have been a credit card if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. For these types of credit plans, under the proposal, only the error resolution provisions in Regulation E would have applied.

Comments Received and Final Rule

The Bureau did not receive comment on this aspect of the proposal. Consistent with the proposal, the Bureau is adopting § 1026.13(i) as proposed, with several technical revisions to clarify the intent of the provision and to be consistent with new § 1026.61.[658] Consistent with the

[658] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Existing comment 13(i)–1 would have been revised to explain that with respect to a credit account accessed by such an account number, proposed § 1026.13(i) would

proposal, the Bureau is moving existing § 1026.13(i) to new § 1026.13(i)(1) and is revising this language to specify that this provision does not apply to transactions involving prepaid accounts as defined in § 1026.61. In addition, the Bureau is revising existing comment 13(i)–2 to make clear that the comment do not apply to transactions involving prepaid accounts defined in § 1026.61. Consistent with the proposal, the final rule also amends final comment 13(i)–3 to make clear that the example set forth in the comment only applies to debit cards. New § 1026.2(a)(5)(iv) defines ''debit card'' to mean ''any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.'' The definition of ''debit card'' also specifies that it does not include a prepaid card.

As discussed in more detail below, the Bureau also is adding new § 1026.13(i)(2) to provide guidance on how the error resolution provision in Regulations E and Z apply to transactions with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. As a technical revision, the Bureau also is revising final § 1026.13(i) to reference the error resolution provisions in both final Regulation E §§ 1005.11 and 1005.18(e) as applicable because the Regulation E error resolution rules that apply to prepaid accounts are set forth in both final §§ 1005.11 and 1005.18(e). Specifically, with respect to covered separate credit features, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. The provisions of existing § 1026.13(d) and (g) still apply to the credit portions of these transactions. The final rule also is adopting comment 13(i)–4 as proposed with revisions to be consistent with new § 1026.61. The Bureau has revised the guidance in new comment 13(i)–5 to be consistent with new § 1026.61.

not have applied to transfers from that plan to a prepaid account. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed revision to existing comment 13(i)–1 related to these account numbers.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau is adding new § 1026.13(i)(2) to provide guidance on how the error resolution provisions in Regulations E and Z apply to transactions with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in new § 1026.61. Specifically, with respect to these credit features, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of existing § 1026.13(a), (b), (c), (e), (f), and (h) with respect to an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction. The provisions of existing § 1026.13(d) and (g) still apply to the credit portion of these transactions.

In addition, the Bureau is adopting proposed comment 13(i)–4 with revisions to be consistent with new § 1026.61. New comment 13(i)–4 provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, whether Regulation E or Regulation Z applies depends on the nature of the transaction. If the transaction solely involves an extension of credit under a covered separate credit feature and does not access funds from the asset feature of the prepaid account, the error resolution requirements of Regulation Z apply. New comment 13(i)–4.i provides the following example: Assume that there is $0 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulation Z apply to the transaction. New comment 13(i)–4.i provides that this is true regardless of whether the $25 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether the $25 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the transaction.

New comment 13(i)–4.ii provides that if the transaction accesses funds from the asset feature of a prepaid account only (with no credit extended under the covered separate credit feature), the provisions of Regulation E apply.

New comment 13(i)–4.iii provides that if the transaction accesses funds from the asset feature of a prepaid account but also involves an extension of credit under the covered separate credit feature, a creditor must comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). New comment 13(i)–4.iii provides the following illustration: Assume that there is $10 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulations E and Z apply as described above to the transaction. New comment 13(i)–4.iii also provides that this is true regardless of whether $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether $15 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account and a $25 transaction is debited from the asset feature to cover the amount of the transaction.

Except with respect to prepaid accounts as defined in § 1026.61, new § 1026.13(i)(1) focuses on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, consistent with current § 1026.13(i). On the other hand, for covered separate credit features accessible by a hybrid prepaid-credit card, new § 1026.13(i)(2) applies if credit is extended under a covered separate credit feature that is accessible by hybrid prepaid-credit card and the transaction involves an extension of credit incident to an EFT when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature. As described in new comment 61(a)(1)–1, a prepaid card can be a hybrid prepaid-credit card under Regulation Z even if, for example, the person that can extend credit does not

agree in writing to extend the credit, the person retains discretion not to extend the credit, or the person does not extend the credit once the consumer has exceeded a certain amount of credit.

The Bureau believes that it is appropriate to apply the error resolution procedures in Regulation E generally to transactions that debit a prepaid account but also draw on a covered separate credit feature accessible by the hybrid prepaid-credit card. The Bureau believes that this approach is consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized EFT and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn.[659]

An unauthorized EFT on a prepaid account generally would be subject to the limits on liability in existing Regulation E § 1005.6 and final § 1005.18(e); an unauthorized EFT on a prepaid account also is an error for purposes of the error resolution procedures set forth in existing Regulation E § 1005.11(a)(1) and final § 1005.18(e). Although billing errors under existing § 1026.13(a) include a broader category than only unauthorized use, the Bureau believes it is necessary and proper to exercise its adjustment and exception authority under TILA section 105(a) to apply Regulation E's error resolution provisions and limited Regulation Z error resolution provisions to these transactions, to facilitate compliance with EFTA section 908 and TILA section 161 on error resolution. The Bureau is concerned that conflicting provisions could apply to transactions that debit a prepaid account but also draw on a covered separate credit feature accessible by a hybrid prepaid-credit card if Regulation E's provisions applied to limits on liability for unauthorized use, and Regulation Z's provisions generally apply to investigation of billing errors, including transactions involving unauthorized use. To avoid these potential conflicts and to facilitate compliance, new § 1026.13(i)(2) requires a creditor to comply with the requirements of final Regulation E §§ 1005.11 and 1005.18(e) governing error resolution, rather than those of § 1026.13(a), (b), (c), (e), (f), and (h), if the transaction debits a prepaid account but also draws on a covered separate credit feature accessible by a hybrid prepaid-credit card. This approach is also consistent with the existing provisions in Regulation E § 1005.12(a)(1)(iv) and Regulation Z § 1026.13(i), which apply Regulation E's liability limitation and error resolution procedures to an extension of credit that is incident to an EFT for overdraft lines of credit accessed by debit cards.

[659] 15 U.S.C. 1693g(c).

Credit Features That Are Not Accessible by a Hybrid Prepaid-Credit Card

As discussed above, proposed comment 13(i)–5 would have explained that an overdraft credit plan would not be subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. Under proposed comment 2(a)(15)–2.i.F, a prepaid card would not have been a credit card if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. For these types of credit plans, under the proposal, only the error resolution provisions in Regulation E would have applied.

The Bureau did not receive any specific comment on proposed comment 13(i)–5. The Bureau has revised the guidance in new comment 13(i)–5 to be consistent with new § 1026.61 and with revisions to Regulation E § 1005.12(a).

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a "non-covered separate credit feature," which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 13(i)–5 explains that Regulation E § 1005.12(a)(1)(iv)(C) and (D), and (2)(iii) provide guidance on whether error resolution procedures in Regulations E or Z apply to transactions involving credit features that are accessed by prepaid cards that are not hybrid prepaid-credit cards as defined in § 1026.61. New Regulation E § 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in § 1026.61(a)(4), these transactions are governed solely by error resolution procedures in Regulation E, and Regulation Z does not apply. New Regulation E § 1005.12(a)(1)(iv)(D) and (2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in § 1026.61, a financial institution must comply with Regulation E's error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

The Bureau notes that overdraft credit features that are exempt under new § 1026.61(a)(4) would not be subject to final § 1026.13(i) because these credit features are not accessible by hybrid prepaid-credit cards and are not subject to Regulation Z generally (including § 1026.13).

A non-covered separate credit feature may be subject to the provisions in § 1026.13 generally in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. Nonetheless, even if § 1026.13 generally is applicable to a non-covered separate credit feature, final § 1026.13(i) will not be applicable to the credit feature. Instead, the prepaid account issuer must comply with Regulation E with respect to the transactions on the prepaid account, and the creditor must comply with Regulation Z with respect to the non-covered separate credit feature. The Bureau believes that it is appropriate that a non-related third-party creditor must comply only with Regulation Z error resolution procedures with respect to the non-covered separate credit feature even if the credit feature functions as an overdraft credit feature

because this creditor may not know that its credit feature is being used as an overdraft credit feature in relation to the prepaid account.

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

Except for existing § 1026.60, which concerns certain credit card disclosures, all of the provisions in subpart G implement the Credit CARD Act. The provisions in subpart G that implement the Credit CARD Act generally apply to a "card issuer," as defined in existing § 1026.2(a)(7), that extends credit under a "credit card account under an open-end (not home-secured) consumer credit plan," as defined in existing § 1026.2(a)(15)(ii).[660] Among other things, subpart G contains provisions to implement the Credit CARD Act that:

- Prohibit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21.[661]
- Restrict the amount of required fees that an issuer can charge during the first year after an account is opened.[662]
- Limit the amount card issuers can charge for "back-end" penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit.[663]
- Ban "declined transaction fees" and other penalty fees where there is no cost to the card issuer associated with the violation of the account agreement.[664]
- Restrict the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts and establish procedures for doing so.[665]
- Restrict fees for over-the-limit transactions to one per billing cycle and require that the consumer opt-in to payment of such transactions in order for the fee to be charged.[666]
- Require institutions of higher education to publicly disclose agreements with card issuers and limit the marketing of credit cards on or near college campuses.[667]

In addition, subpart G also contains existing § 1026.60, which sets forth disclosures that card issuers generally must provide on or with a solicitation or an application to open a credit or charge card account.

The Bureau is adding a new § 1026.61 which defines when a prepaid card is a credit card under Regulation Z (using the term "hybrid prepaid-credit card"). As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail in the section-by-section analysis of § 1026.61 below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a "covered separate credit feature." Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(c) (moved from § 1026.12(h) in the proposal) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a "non-covered separate credit feature," which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under new § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of "open-end credit" and that credit will not be home-secured. See the section-by-section analysis of the definition of "credit" in final § 1026.2(a)(14), the definition of "open-end-credit" in final § 1026.2(a)(20), and the definition of "finance charge" in final § 1026.4. In addition, as discussed in the section-by-section analyses of § 1026.2(a)(7), (15)(i), and (ii) above, a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) credit plan is a "credit card account under an open-end (not home-secured) consumer credit plan," and the person issuing the hybrid prepaid-credit card (and its affiliate or business partner if that entity is offering the covered separate credit feature accessible by the hybrid prepaid-credit card) are "card issuers." As a result, pursuant to the final rule, provisions in subpart G generally will apply to covered separate credit features accessible by hybrid

[660] Section 1026.57(c) applies to all open-end credit. That section prohibits a card issuer or creditor from offering a tangible item to a college student on or near a college campus or at an event sponsored by the college to induce the student to apply for or open an open-end credit plan.

[661] § 1026.51.

[662] § 1026.52(a)(1).

[663] § 1026.52(b)(1).

[664] § 1026.52(b)(2).

[665] §§ 1026.55 and 1026.59.

[666] § 1026.56.

[667] § 1026.57.

prepaid-credit cards that are open-end (not home-secured) credit plans.[668]

As discussed in more detail below, the Bureau is amending commentary to the following provisions to provide guidance on how certain provisions in subpart G would apply to covered separate credit features accessible by hybrid prepaid-credit cards that are open-end (not home-secured) credit plans: [669]

(1) Section 1026.52(a), which restricts required fees charged during the first year the account is opened;

(2) Section 1026.52(b), which restricts the imposition of penalty fees, including the ban on declined transaction fees;

(3) Section 1026.55(a), which restricts the circumstances under which card issuers can increase interest rates and certain fees on credit card accounts; and

(4) Section 1026.57, which limits the marketing of credit cards to college students.[670]

The final rule also provides guidance on how § 1026.60, which requires disclosures to be provided on or with a solicitation or application to open a credit or charge card account, applies to covered separate credit features accessible by hybrid prepaid-credit cards.

The final rule also provides guidance on how provisions in existing § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, apply to non-covered separate credit features that are accessible by prepaid cards as defined by new § 1026.61. A non-covered separate credit feature may be subject to the provisions in § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, in its own right based on the terms and conditions of the non-covered separate credit feature, independent of the connection to the prepaid account. The final rule provides that with respect to such non-covered separate credit features, the provisions in existing § 1026.52(a) and (b), and in existing §§ 1026.55 and 1026.60, do not apply to fees or charges imposed on a prepaid account in relation to non-covered separate credit features.

Section 1026.52 Limitations on Fees

52(a) Limitations During First Year After Account Opening

52(a)(1) General Rule

TILA section 127(n)(1) restricts the imposition of certain fees during the first year after opening a credit card account under an open-end consumer credit plan in order to restrict certain "fee harvester" or subprime credit cards that charged a large amount of fees early in the account relationship to the credit line, which significantly reduced the credit available to a consumer during the first year. Specifically, the statute provides that no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account where the account terms would require consumers to pay an aggregate amount of non-exempt fees in excess of 25 percent of the total amount of credit authorized under the account when the account is opened.

This provision is implemented in existing § 1026.52(a). Specifically, existing § 1026.52(a)(1) provides that generally the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. Under existing § 1026.52(a)(2), fees not subject to the 25 percent restriction are late payment fees, over-the-limit fees, returned-payment fees, or fees that the consumer is not required to pay with respect to the account. Existing comment 52(a)(1)–1 provides that the 25 percent limit in existing § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account to the card issuer or from another credit account provided by the card issuer).

The proposal would have amended existing comment 52(a)(1)–1 to add a prepaid account as an example of a consumer's asset account. Thus, under the proposal, for a credit card account under an open-end (not home-secured) consumer credit plan that is accessed by a prepaid card that is a credit card, the 25 percent limit in existing § 1026.52(a)(1) would have applied to fees that the card issuer charges to the credit card account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment to the card issuer from the consumer's prepaid account or other asset account or from another credit account provided by the card issuer). Proposed comment 52(a)(1)–1.iii and iv would have added two new examples to existing comment 52(a)(1)–1 to illustrate how the prohibition in existing § 1026.52(a) would have applied to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards.

One industry trade association indicated that the Bureau should not apply the 25 percent cap to fees imposed for overdrafts on prepaid accounts or should include broader exemptions for fees (such as for cash advance fees) that are more appropriately tailored for prepaid account usage. This commenter believed that the 25 percent cap on fees imposed during the first year the credit card account is opened will likely make it cost-prohibitive for issuers to provide overdraft and other credit features.

Several consumer group commenters indicated that the restriction in existing § 1026.52(a) should be expanded to apply beyond the first year after a credit feature accessed by a prepaid card that is a credit card is opened. One of the consumer groups indicated that in the alternative, the rule could state that any increase in the credit limit under a credit feature accessed by a prepaid card that is a credit card constitutes a new credit agreement and results in another year where fees cannot exceed 25 percent of the credit limit. This commenter indicated that without this safeguard, a card issuer could offer a very small amount of credit free of charge for a year, and then increase the credit limit after the first year while charging any fees it wishes, potentially causing cardholders serious harm.

Several consumer group commenters also indicated that the restriction in existing § 1026.52(a) should apply to fees that are charged by the card issuer

[668] A person would not be extending open-end credit where the covered separate credit feature accessed by the hybrid prepaid-credit card does not meet the definition of "open-end credit," such as when a finance charge is not imposed in connection with the credit feature. See the section-by-section analysis of § 1026.2(a)(20) above.

[669] One commenter asked the Bureau to provide specific guidance in the commentary to § 1026.51 that modeled income may be used with respect to credit card accounts accessed by prepaid cards that are credit cards to meet the requirements set forth in § 1026.51. The Bureau notes that existing comment 51(a)(1)(i)–5.iv provides that for purposes of § 1026.51(a), a card issuer may consider the consumer's current or reasonably expected income and assets based on information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets, including any income or assets to which the consumer has a reasonable expectation of access. The Bureau notes that this existing guidance in comment 51(a)(1)(i)–5.iv applies to covered separate credit features accessible by hybrid prepaid-credit cards that are subject to § 1026.51. The Bureau does not believe that additional guidance is needed with respect to these credit features.

[670] The *Overview of the Final Rule's Amendments to Regulation Z* section above describes some of the benefits from these regulations for prepaid account consumers.

for the credit feature prior to the credit feature being opened.

The Bureau sought comment on whether additional amendments to the regulation or commentary would be helpful to effectuate its interpretation of the statute or to facilitate compliance. For example, the Bureau sought comment on whether it would be helpful to mandate the disclosure to consumers of the initial credit line that is made available under the terms of the account, including any linked credit accounts. One consumer group commenter also indicated that with respect to a credit feature accessed by prepaid cards that are credit cards, card issuers should be required to disclose to consumers the credit limit that will apply to the credit feature. This commenter indicated that consumers should not have to guess at their credit limits. This commenter indicated that the restrictions in existing § 1026.52(a) cannot fully protect consumers unless they know what their credit limit is and can check to see if fees exceed 25 percent of that limit.

As discussed below, consistent with the proposal, existing § 1026.52(a) applies to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a ''credit card account under an open-end (not home-secured) consumer credit plan,'' as that term is defined in final § 1026.2(a)(15)(ii). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

In addition, the Bureau is adopting revisions to existing comment 52(a)(1)–1 consistent with the proposal with a technical revision to refer to § 1026.61 for the definition of ''prepaid account.'' Also, the Bureau is adopting the examples in proposed comment 52(a)(1)–1.iii and iv as proposed, with several technical revisions to clarify the intent of the examples and to be consistent with new § 1026.61.

With respect to covered separate credit features accessible by hybrid prepaid-credit cards, the Bureau has not expanded the scope of the restriction in existing § 1026.52(a) to apply this restriction beyond the first year the credit feature is opened, or to apply to fees that are charged prior to account opening. In addition, the Bureau has not provided that that any increase in the credit limit under a credit feature accessible by a hybrid prepaid-credit card constitutes a new credit agreement and results in another year where fees cannot exceed 25 percent of the credit limit. Also, the Bureau has not exempted additional credit-related fees (such as for cash advance fees) from the restriction in existing § 1026.52(a), as requested by one industry commenter as discussed above. The Bureau believes that existing § 1026.52(a) should apply to covered separate credit features accessible by hybrid prepaid-credit cards in similar circumstances in which it applies to other credit card accounts that are subject to that restriction.

The Bureau also has not required card issuers to disclose credit limits on covered separate credit features accessible by hybrid prepaid-credit cards. For customer-service reasons and other reasons, credit card issuers typically disclose the credit limits applicable to credit card accounts to consumers even though that disclosure is not specifically required by TILA and Regulation Z. For similar reasons, the Bureau believes that card issuers that are providing covered separate credit features accessible by hybrid prepaid-credit cards will have an incentive to disclose the credit limits on these credit features as well. For these reasons, the Bureau at this time does not believe that it is necessary under Regulation Z to require that card issuers providing covered separate credit features accessible by hybrid prepaid-credit cards must disclose a credit limit with respect to these credit features.

52(a)(2) Fees Not Subject to Limitations

Existing § 1026.52(a)(2) provides that the 25 percent restriction does not apply to late payment fees, over-the-limit fees, returned-payment fees, or fees that the consumer is not required to pay with respect to the account. Existing comment 52(a)(2)–1 provides guidance on the types of fees that are included in the 25 percent threshold. Specifically, existing comment 52(a)(2)–1 provides that except as provided in existing § 1026.52(a)(2), existing § 1026.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening, other than charges attributable to periodic interest rates. The existing comment further clarifies that for example, § 1026.52(a) applies to: (1) Fees that the consumer is required to pay for the issuance or availability of credit described in § 1026.60(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit; (2) fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account; (3) fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); (4) fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by existing § 1026.52(a)(2)(i)); (5) fixed finance charges; and (6) minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

The Bureau's Proposal

The proposal would have moved current comments 52(a)(2)–2 and –3 to proposed comments 52(a)(2)–4 and –5, respectively with no intended substantive change. The Bureau proposed to add new comment 52(a)(2)–2 that would have provided additional examples of the types of fees that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards. Specifically, proposed comment 52(a)(2)–2 would have provided that except as provided in existing § 1026.52(a)(2), existing § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by a prepaid card that is a credit card, including fees that are assessed on the prepaid account in connection with credit accessed by the prepaid card. Under proposed comment 52(a)(2)–2, these fees would have included, but would not have been limited to: (1) Per transaction fees for ''shortages'' or ''overdrafts;'' (2) fees for transferring funds from a credit account to a prepaid account that are both accessed by the prepaid card; (3) a daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a prepaid account is in ''overdraft'' status, or would be in overdraft status but for funds supplied by a linked line of credit accessed by the prepaid card; or (4) a daily, weekly, or

monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a line of credit accessed by the prepaid card has an outstanding balance.

The proposal also would have revised the section heading to § 1026.52(a) to delete the reference to limitations prior to account opening to be consistent with the scope of the limitations set forth in § 1026.52(a); no substantive change would have been intended.

Comments Received

One consumer group commenter indicated that the Bureau should clarify that ''load'' fees are included for purposes of the 25 percent restriction, even if they are charged to the prepaid account. This commenter indicated that transfer fees and a load fees are essentially the same thing and the card issuer should not be allowed to evade the restriction in existing § 1026.52(a) by charging the fees to the prepaid account.

The Final Rule

In the final rule, the Bureau is moving existing comments 52(a)(2)–2 and –3 to final comments 52(a)(2)–4 and –5 respectively; no substantive change is intended. In addition, the section heading to § 1026.52(a) is revised to delete the reference to limitations prior to account opening to be consistent with the scope of the limitations set forth in § 1026.52(a); no substantive change is intended. As discussed in more detail below, the Bureau is adding new comments 52(a)(2)–2 and –3 to provide guidance on how § 1026.52(a) applies to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as defined in § 1026.61 that are subject to § 1026.52(a).[671]

Covered separate credit features accessible by hybrid prepaid-credit cards. The Bureau is revising proposed comment 52(a)(2)–2 from the proposal to be consistent with new § 1026.61. New comment 52(a)(2)–2 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.52(a) applies to the following fees: (1) Except as provided in § 1026.52(a)(2), any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature; and (2) except as provided in existing § 1026.52(a)(2), any fee or charge imposed on the asset feature of the prepaid account (other than a charge attributable to a periodic interest rate) during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is a charge imposed as part of the plan under final § 1026.6(b)(3). As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

As discussed in more detail in the section-by-section analysis of § 1026.6 above, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a ''charge imposed as part of the plan'' under final § 1026.6(b)(3) to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

The Bureau believes that the restriction on fees set forth in TILA section 127(n)(1), as implemented in existing § 1026.52(a), provides important protections for consumers, particularly in the context of covered separate credit features accessible by hybrid prepaid-credit cards. As discussed above, a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(ii) includes an overdraft credit feature offered by prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account. In this case, the covered separate credit feature accessible by a hybrid prepaid-credit card is designed to provide liquidity to the prepaid account. As discussed above, except as provided in existing § 1026.52(a)(2), with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, the restriction in final § 1026.52(a) applies to fees or charges imposed on the covered separate credit feature accessible by a hybrid prepaid-credit card, as well as fees or charges imposed on the asset feature of the prepaid account when those fees are ''charges imposed as part of the plan'' under final § 1026.6(b)(3).

Although the Bureau believes that issuers will generally assess credit-related fees on the covered separate credit feature, TILA section 127(n)(1) applies to ''any fees,'' with some exceptions, that the consumer is required to pay under the terms of a credit card account under an open-end consumer credit plan. That term readily encompasses credit-related fees that are imposed on the asset feature of the prepaid account because it speaks to what the fees relate to, not where they are placed. Even if the term were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit card markets—that interpreting it to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. The Bureau believes that from the consumer's perspective, there is no practical difference between a fee charged against the covered separate credit feature and a credit-related fee charged to the asset feature of the prepaid account in order to access credit because both functionally reduce the total amount of credit available to the consumer through the covered separate credit feature accessible by the hybrid prepaid-credit card until such fees are paid. If TILA section 127(n)(1) were not interpreted to include credit-related fees charged across any linked accounts, the Bureau is concerned that card issuers could hide non-exempt fees by imposing them on the asset feature of the prepaid account or by creating separate artificially distinct credit accounts and attempting to collect the non-exempt fees from those linked credit accounts.

The Bureau also is adding new comment 52(a)(2)–3 to provide that final § 1026.52(a) does not apply to any fee or

[671] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 52(a)(2)–3 would have provided an additional example of the types of fees that that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i), the final rule does not adopt proposed comment 52(a)(2)–3 related to these account numbers.

charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. The Bureau notes that under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' with respect to the covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii), these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

As discussed above, one consumer group commenter indicated that the Bureau should clarify that ''load'' fees are included for purposes of the 25 percent restriction, even if they are charged to the prepaid account. As discussed in the section-by-section analysis of § 1026.4(b)(11)(ii) above, new comment 4(b)(11)(ii)–1 sets forth the circumstances in which load or transfer fees imposed on the asset feature of the prepaid account are finance charges under new § 1026.4(b)(11)(ii). To the extent that a load fee or transfer fee that is imposed on the asset feature of a prepaid account is a finance charge under new § 1026.4(b)(11)(ii), that load or transfer fee is subject to the 25 percent restriction under § 1026.52(a) because those fees would be ''charges imposed as part of the plan'' under final § 1026.6(b)(3).

Non-covered separate credit features. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.52(a) in its own right.

With respect to such non-covered separate credit features that are subject to § 1026.52(a), new comment 52(a)(2)–3 also provides that final § 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature that is accessible by a prepaid card as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.52(a) does not apply to any fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

52(b) Limitations on Penalty Fees

TILA section 149(a) provides that the amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open-end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.[672] TILA section 149(e) provides that the Bureau, in consultation with certain agencies, may issue rules to provide an amount for any penalty fee or charge described in TILA section 149(a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.[673]

Implementing TILA section 149, existing § 1026.52(b) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee: (1) Is consistent with either the cost analysis in existing § 1026.52(b)(1)(i) or the safe harbors in existing § 1026.52(b)(1)(ii); and (2) does not exceed the dollar amount associated with the violation in accordance with existing § 1026.52(b)(2)(i). Under existing § 1026.52(b)(2)(ii), a card issuer also must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction.

As discussed in the section-by-section analysis of § 1026.52(b)(2)(i)(B) below, the Bureau proposed guidance on declined transaction fees in relation to credit card accounts under an open-end (not home-secured) consumer credit plan accessed by prepaid cards that would have been credit cards under the proposal. These declined transaction fees are discussed in more detail in the section-by-section analysis of § 1026.52(b)(2)(i)(B) below.

The Bureau did not propose any other additional guidance in relation to § 1026.52(b) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan accessed by prepaid cards that would have been credit cards under the proposal. Nonetheless, the Bureau believes that additional guidance is needed with respect to the restrictions on penalty fees contained in final § 1026.52(b) given the changes in the final rule to the definition of ''finance charge'' in final § 1026.4, and the definition of ''charges imposed as part of the plan'' in final § 1026.6(b)(3), and the addition of new § 1026.61.

[672] 15 U.S.C. 1665d(a).

[673] 15 U.S.C. 1665d(e).

As discussed in more detail below, the final rule adds new comment 52(b)–3 to provide guidance on how the restrictions in final § 1026.52(b) generally apply to fees or charges imposed in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. The final rule also adds new comment 52(b)–4 to provide that the restrictions in final § 1026.52(b) do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not "charges imposed as part of the plan" under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. Comment 52(b)–4 also provides that the restrictions in final § 1026.52(b) do not apply to fees or charges imposed on the asset feature of a prepaid account with respect to non-covered separate credit features.

In addition, in the proposal, the Bureau solicited comment on issues related to fees imposed by card issuers when preauthorized payments are returned unpaid. Specifically, the Bureau solicited comment on situations where at the time a preauthorized payment is set to occur, the prepaid account does not have sufficient funds to cover the amount of the credit card payment. The Bureau solicited comment on: (1) How credit card issuers anticipate handling this situation, including cases where the prepaid account contains funds sufficient to pay some but not all of the credit card payment due; (2) whether issuers anticipate charging a specific fee because the preauthorized payment could not be completed, in addition to any late fee that might be charged if the credit card balance were not paid by the due date; and (3) whether the Bureau should adopt any specific rules to address these issues, and if so, what rules should the Bureau adopt.

The proposal included this request for comment in the discussion of the offset prohibition in proposed § 1026.12(d). With respect to credit card accounts accessed by prepaid cards that would have been credit cards under the proposal, proposed § 1026.12(d)(3) would have allowed an exception for certain preauthorized payment plans to the offset prohibition in proposed § 1026.12(d)(1). In response to this request for comment, several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) related to the circumstances in which card issuers can charge fees when preauthorized payments are returned unpaid and/or related to the amount of the fees. As discussed in more detail below, one consumer group commenter indicated that the Bureau should prohibit these fees under § 1026.52(b). Several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) limiting the circumstances in which these fees can be charged and limiting the amount of the fees.

As discussed in the section-by-section analysis of § 1026.12(d)(3) above, respect to covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, final § 1026.12(d)(3) sets forth an exception for certain preauthorized payment plans with respect to the offset prohibition in final § 1026.12(d). As discussed in more detail below, the restrictions in existing § 1026.52(b) related to returned payment fees apply to fees that are imposed by card issuers when preauthorized payments are returned unpaid. The Bureau does not believe that additional restrictions are needed at this time under final § 1026.52(b) with respect to the circumstances in which these fees can be charged or the amount of the fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.

General Guidance

Covered separate credit features accessible by hybrid prepaid-credit cards. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. To reflect this change and to ensure compliance with the restrictions in § 1026.52(b), new comment 52(b)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to final § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the covered separate credit feature.

The Bureau believes that the restriction on penalty fees set forth in TILA section 149(a), and implemented in existing § 1026.52(b), provides important protections for consumers, particularly in the context of covered separate credit features accessible by hybrid prepaid-credit cards. Covered separate credit features accessible by hybrid prepaid-credit cards are designed to provide liquidity to the prepaid account.

As described above, new comment 52(b)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. TILA section 149(a) applies to any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open-end consumer credit plan. Those terms readily encompass credit-related fees that are imposed on the asset feature of the prepaid account. Even if the terms were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit markets—that interpreting them to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. From the consumer's perspective, there is no practical difference when a penalty fee for a violation of the covered separate credit feature is charged against the covered separate credit feature and when it is charged to the asset feature of the prepaid account. If TILA section 149(a)

were not interpreted to include penalty fees for violations of the covered separate credit feature charged to the asset feature, the Bureau is concerned that card issuers could avoid the restrictions set forth in TILA section 149(a) and final § 1026.52(b) with respect to these fees simply by imposing them on the asset feature of the prepaid account.

In addition, to facilitate compliance with final § 1026.52(b), new comment 52(b)–4 provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to a covered separate credit feature. As discussed above, the Bureau believes this additional guidance is needed given the changes in the final rule to the definition of ''finance charge'' in final § 1026.4, the definition of ''charges imposed as part of the plan'' in final § 1026.6(b)(3), and the addition of new § 1026.61.

As discussed in more detail in the section-by-section analysis of § 1026.6 above, with respect to a fee or charge imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a ''charge imposed as part of the plan'' under final § 1026.6(b)(3) to the extent that the amount of the fee or charges exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

Nonetheless, under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' with respect to the covered separate credit feature to the extent that the amount of the fee or charges does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii).

As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature. Thus, new comment 52(b)–4 provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature.

Non-covered separate credit features. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.52(b) in its own right.

With respect to non-covered separate credit features that are subject to final § 1026.52(b), new comment 52(b)–4 also provides that final § 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to a non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B, which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.52(b) does not apply to fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

Fees for Preauthorized Payments That Are Returned Unpaid

As discussed above, in the proposal, the Bureau solicited comment on situations where at the time a preauthorized payment is set to occur, the prepaid account does not have sufficient funds to cover the amount of the credit card payment. The Bureau solicited comment on: (1) How credit card issuers anticipate handling this situation, including cases where the prepaid account contains funds sufficient to pay some, but not all, of the credit card payment due; (2) whether issuers anticipate charging a specific fee because the preauthorized payment could not be completed, in addition to any late fee that might be charged if the credit card balance was not paid by the due date; and (3) whether the Bureau should adopt any specific rules to address these issues, and if so, what rules should the Bureau adopt.

The proposal included this request for comment in the discussion of the offset prohibition in proposed § 1026.12(d). With respect to credit card accounts accessed by prepaid cards that would have been credit cards under the proposal, proposed § 1026.12(d)(3) would have allowed an exception for certain preauthorized payment plans to the offset prohibition in proposed § 1026.12(d)(1). In response to this request for comment, several consumer group commenters indicated that the Bureau should adopt additional restrictions in § 1026.52(b) related to the circumstances in which card issuers can charge fees when preauthorized payments are returned unpaid and/or related to the amount of the fees. One consumer group commenter indicated that the Bureau should adopt rules to cover the situation where the consumer authorizes periodic deductions, but there is not enough money to cover a payment when due. In particular, this commenter indicated the Bureau should

prohibit fees that are imposed by card issuers when preauthorized payments are returned unpaid under existing § 1026.52(b)(2)(i)(B)(*1*) as a ''declined transaction fee.'' Existing § 1026.52(b)(2)(i)(B) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. Existing § 1026.52(b)(2)(i)(B)(*1*) provides that there is no dollar amount associated with transactions that the card issuer declines to authorize, and thus fees charged for those declined transactions are prohibited under existing § 1026.52(b)(2)(i)(B).

In the alternative, this commenter indicated that the Bureau should use its authority to establish ''additional requirements'' to provide for a ''right to cure'' period for the limited circumstance of prepaid consumers who have authorized automatic deductions to repay credit associated with their prepaid card. This commenter indicated that the Bureau should require the card issuer to provide a limited time period, such as one week, to add funds to the prepaid account before a penalty fee under § 1026.52(b) could be imposed. In that case, any penalty fees would be subject to the limitations of existing § 1026.52(b), namely, that the fee amount (1) must be consistent with either the cost analysis in existing § 1026.52(b)(1)(i) or the safe harbors in existing § 1026.52(b)(1)(ii); and (2) does not exceed the dollar amount associated with the violation under existing § 1026.52(b)(2)(i). In addition, under existing § 1026.52(b)(2)(ii), a card issuer could not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction.

Another consumer group commenter indicated that if the prepaid account does not have enough funds to satisfy a requested transfer or a preauthorized payment, the Bureau should provide some kind of cushion where consumers could avoid a fee if the debt obligation falls below a certain threshold—*i.e.,* less than $20—and that no fee should be greater than the minimum 4 percent repayment amount and/or the overdraft service charge.

As discussed in the section-by-section analysis of § 1026.12(d)(3) above, with respect to covered separate credit features accessible by hybrid prepaid-credit cards, as defined in § 1026.61, final § 1026.12(d)(3) sets forth an exception for certain preauthorized payment plans with respect to the offset prohibition in final § 1026.12(d). The Bureau does not believe that fees imposed by card issuers when preauthorized payments are returned unpaid are fees for declined transactions under § 1026.52(b)(2)(i)(B)(*1*). The Bureau believes that it is clear under existing comment 52(b)–1.i.B that fees imposed by card issuers when preauthorized payments are returned unpaid constitute fees for returned payments and are regulated as returned payment fees under § 1026.52(b)(1), (2)(i)(A), and (2)(ii). Specifically, existing comment 52(b)(1)–i.B provides that the limitations in § 1026.52(b) apply to returned payment fees and any other fees imposed by a card issuer if a payment initiated via check, ACH, or other payment method is returned. Existing commentary to § 1026.52(b)(1), (2)(i)(A), and (2)(ii) provide guidance on how the restrictions in existing § 1026.52(b)(1), (2)(i)(A) and (2)(ii) apply to returned payment fees. *See, e.g.,* comments 52(b)(1)(i)–7, 52(b)(1)(ii)–1.i.B, 52(b)(1)(ii)–1.iii.C, 52(b)(2)(i)–2, and 52(b)(2)(ii)–1.ii, iii and v through vii. For example, § 1026.52(b)(1), and (b)(2)(i)(A) and related commentary restrict the amount of the fee that a card issuer can impose for a returned payment. In addition, if a payment has been returned and is submitted again for payment by the card issuer, comment 52(b)(2)(i)–2 provides that there is no additional dollar amount associated with a subsequent return of that payment and a card issuer is prohibited from imposing an additional returned payment fee. Also, comment 52(b)(2)(ii)–1.ii.A and B provide that a card issuer is prohibited from assessing both a late payment fee and a returned payment fee based on a single event or transaction. The existing restrictions in § 1026.52(b)(1), (2)(i)(A), and (2)(ii), and related commentary regarding returned payment fees apply to fees imposed by card issuers when preauthorized payments are returned unpaid in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in § 1026.61, that are subject to § 1026.52(b).

The Bureau has not established additional requirements beyond those contained in § 1026.52(b)(1), (2)(i)(A), and (2)(ii) and related commentary regarding returned payment fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards, such as a right to cure period for prepaid consumers where preauthorized payments have been returned unpaid. At this time, the Bureau believes that the fee restrictions that apply generally to credit card accounts in existing § 1026.52(b)(1), (2)(i)(A), and (2)(ii) and related commentary with respect to returned payments are sufficient to protect consumers with respect to the circumstances in which card issuer can impose fees for preauthorized payments that are returned unpaid in connection with covered separate credit features accessible by hybrid prepaid-credit cards. The Bureau will continue to monitor whether additional safeguards are needed.

52(b)(2) Prohibited Fees

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

52(b)(2)(i)(B) No Dollar Amount Associated With Violation

Existing § 1026.52(b)(2)(i)(B) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. Existing § 1026.52(b)(2)(i)(B)(*1*) through (*3*), respectively, prohibit the following fees because there is no dollar amount associated with the following violations: (1) Transactions that the card issuer declines to authorize; (2) account inactivity; and (3) the closure or termination of an account.

The Bureau's Proposal

The Bureau proposed to add comment 52(b)(2)(i)–7, which would have provided guidance on when the ban on declined transaction fees in existing § 1026.52(b)(2)(i)(B)(*1*) would apply in the context of prepaid accounts. Specifically, this proposed comment would have provided that existing § 1026.52(b)(2)(i)(B)(*1*) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. Finally, the proposed comment would have provided that fees imposed for declining a transaction that would have only accessed the prepaid account and would not have accessed the consumer's credit card account would not be covered by existing § 1026.52(b)(2)(i)(B)(*1*).

Comments Received

The Bureau requested comment on whether once a credit card account has been added to a prepaid card, it should prohibit a card issuer from thereafter assessing a fee for declining to authorize a prepaid card transaction,

notwithstanding that a given transaction would not have accessed the credit card account even had it been authorized. Several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction.

Also, as discussed in more detail below, several consumer groups requested that the Bureau adopt additional protections under § 1026.52(b) with respect to credit card accounts that are accessed by prepaid cards that are credit cards. For example, one consumer group commenter indicated that the Bureau should clarify that the following two types of fees are penalty fees prohibited under existing § 1026.52(b)(2)(i)(B) because no dollar amount is associated with the violation: (1) Fees for placing a stop payment on preauthorized transfers; and (2) legal process fees. Another consumer group commenter indicated that any expenditure not associated with a purchase transaction should not be able to trigger an overdraft fee.

The Final Rule

As discussed in more detail below, the final rule adopts new comment 52(b)(2)(i)–7 as proposed with revisions to be consistent with new § 1026.61. New comment 52(b)(2)(i)–7 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, § 1026.52(b)(2)(i)(B)(*1*) prohibits declined transaction fees from being imposed in connection with the covered separate credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account.

Also, as discussed above and in more detail below, several consumer groups requested that the Bureau adopt additional protections under § 1026.52(b) with respect to credit card accounts that are accessed by prepaid cards that are credit cards. As discussed in more detail below, the Bureau has not adopted such restrictions in final § 1026.52(b) or related commentary in relation to covered separate credit features accessible by hybrid prepaid-credit cards.

Declined transaction fees. As discussed above, the Bureau proposed to add comment 52(b)(2)(i)–7, which would have provided guidance on when the ban on declined transaction fees in existing § 1026.52(b)(2)(i)(B)(*1*) would apply in the context of prepaid accounts. Specifically, this proposed comment would have provided that existing § 1026.52(b)(2)(i)(B)(*1*) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. Finally, the proposed comment would have provided that fees imposed for declining a transaction that would have only accessed the prepaid account and would not have accessed the consumer's credit card account would not be covered by existing § 1026.52(b)(2)(i)(B)(*1*).

The Bureau requested comment on whether, once a credit card account has been added to a prepaid card, the Bureau should prohibit a card issuer from thereafter assessing a fee for declining to authorize a prepaid card transaction, notwithstanding that a given transaction would not have accessed the credit card account even had it been authorized. Several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction.

The Bureau is adopting proposed comment 52(b)(2)(i)–7 with revisions to reflect terminology consistent with new § 1026.61.[674] New comment 52(b)(2)(i)–7 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b)(2)(i)(B)(*1*) prohibits card issuers from imposing declined transaction fees in connection with the covered separate credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the asset feature of the prepaid account. For example, if the hybrid prepaid-credit card attempts to access credit from the covered separate credit feature and the transaction is declined, existing § 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 card are not covered by existing § 1026.52(b)(2)(i)(B)(*1*).

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that a fee for declining a transaction where the prepaid account issuer attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is declined is no different than a fee for declining a credit card transaction, which is prohibited by current § 1026.52(b)(2)(i)(B)(*1*). Thus, such a declined transaction fee is prohibited by final § 1026.52(b)(2)(i)(B)(*1*), regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account.

As discussed above, several consumer group commenters indicated that the Bureau should prohibit declined transaction fees on prepaid accounts generally. One of these consumer group commenters indicated that it could be confusing to determine whether a declined transaction would have accessed the prepaid account or a credit feature. This commenter believed that these fees are unfair penalty fees, especially if they exceed the cost (if any) to the prepaid account issuer of the declined transaction. Consistent with

[674] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 52(b)(2)(i)–7 would have provided that the prohibition in § 1026.52(b)(2)(i)(B)(*1*) applies to declined transaction fees imposed on credit card accounts accessed by such account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 52(b)(2)(i)–7 related to these account numbers.

the proposal, new comment 52(b)(2)(i)–7 makes clear that fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card are not covered by final § 1026.52(b)(2)(i)(B)(*1*). The Bureau does not believe that it is appropriate to apply final § 1026.52(b)(2)(i)(B)(*1*) to fees for declined transactions that would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit card because fees for those declined transactions are not directly related to credit.[675]

Stop payment fees and legal process fees. As discussed above, one consumer group commenter indicated that the Bureau should clarify that the following two types of fees are penalty fees prohibited under existing § 1026.52(b)(2)(i)(B) because no dollar amount is associated with the violation: (1) Fees for placing a stop payment on preauthorized transfers; and (2) legal process fees. The Bureau does not believe it is appropriate at this time to include these clarifications because these requirements are beyond the scope of the proposal, and the Bureau has not collected information about whether there are costs for prepaid account issuers related to the circumstances in which these fees are charged.

Restriction on overdraft fees. As indicated above, one consumer group commenter indicated that any expenditure not associated with a purchase transaction should not be able to trigger an overdraft fee. This commenter indicated that a consumer should never be charged an overdraft fee because the consumer incurred another fee that caused the overdraft. The commenter suggested that the general principle should be that prepaid account issuers should never be able to charge an overdraft fee of any kind if the issuer has not extended a payment to a third party.

[675] As discussed above, certain commenters indicated that declined transaction fees should be prohibited on prepaid accounts generally or should be deemed unfair penalty fees, irrespective of when there is a credit feature in connection with the prepaid account. The Bureau believes such changes are outside the scope of the proposal, and does not make the change at this time. However, the Bureau continues to monitor such fees generally and whether any practices raise concerns. The Bureau further notes, however, that although the Board did not address declined transaction fees in its 2009 rulemaking addressing overdraft services, the Board noted in response to comments received that such fees could raise significant fairness issues under the FTC Act, because the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction. *See* 74 FR 59033, 59041 (Nov. 17, 2009).

The Bureau has not adopted a restriction on imposing credit-related fees on a credit extension from a covered separate credit feature unless the credit extension is for a purchase transaction. The requirement is beyond the scope of the proposal. In addition, as discussed above and in the section-by-section analysis of § 1026.52(a), the Bureau notes that the provisions in § 1026.52(a) and (b) apply to credit-related fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as applicable.

Section 1026.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges

TILA section 171(a) generally prohibits creditors from increasing any APR, fee, or finance charge applicable to any outstanding balance on a credit card account under an open-end consumer credit plan, with some exceptions.[676] TILA section 172 provides that a creditor generally cannot increase a rate, fee, or finance charge during the first year after account opening and that a promotional rate generally cannot expire earlier than six months.[677]

TILA sections 171 and 172 are implemented in existing § 1026.55. Existing § 1026.55(a) provides that except as provided in existing § 1026.55(b), a card issuer must not increase an APR or a fee or charge required to be disclosed under existing § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

The Bureau did not propose changes to § 1026.55 or related commentary. Nonetheless, the Bureau believes that additional guidance is needed with respect to the restrictions in final § 1026.55 given the changes in the final rule to the definition of "finance charge" in final § 1026.4, the definition of "charges imposed as part of the plan" in final § 1026.6(b)(3), and the addition of new § 1026.61.

As discussed in more detail below, the final rule adds new comment 55(a)–3 to provide guidance on how the restrictions in final § 1026.55 generally apply to fees or charges imposed in connection with covered separate credit features accessible by hybrid prepaid-credit cards, as defined in new § 1026.61, where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. The final rule also adds new comment 55(a)–4 to provide that the restrictions in final § 1026.55 do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not "charges imposed as part of the plan" under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. New comment 55(a)–4 also provides that final § 1026.55 does not apply to fees or charges imposed on the asset feature of a prepaid account with respect to a non-covered separate credit feature.

[676] *See* 15 U.S.C. 1666i–1.

[677] *See* 15 U.S.C. 1666i–2.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Given this change and to ensure compliance with § 1026.55, the Bureau is adding new comment 55(a)–3 to provide guidance on when fees or charges imposed in connection with covered separate credit features are subject to the restrictions in existing § 1026.55. New comment 55(a)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, final § 1026.55(a) prohibits card issuers from increasing an APR or any fee or charge required to be disclosed under existing § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in existing § 1026.55(b). This is true regardless of whether these fees or APRs are imposed on the asset feature of the prepaid account or on the credit feature.

TILA section 171 and 172 apply, respectively, to any APR, fee, or finance charge applicable to any outstanding balance and to any APR, fee, or finance charge on any credit card account under

an open-end consumer credit plan. Those terms readily encompass credit-related fees that are imposed on the asset feature of the prepaid account. Even if the terms were ambiguous, the Bureau believes—based on its expertise and experience with respect to credit markets—that interpreting them to encompass credit-related fees imposed on the asset feature would promote the purposes of TILA to protect the consumer against inaccurate and unfair credit billing and credit card practices. From the consumer's perspective, there is no practical difference when an APR or any fee or charge described in existing § 1026.55(a) imposed in connection with a covered separate credit feature is charged against the separate credit feature and when it is charged to the asset feature of the prepaid account. If TILA sections 171 and 172 were not interpreted to include APRs or fees or charges described in existing § 1026.55(a) in connection to the covered separate credit feature when those fees or charges are imposed on the asset feature, the Bureau is concerned that card issuers could avoid the restrictions set forth in TILA sections 171 and 172 and § 1026.55(a) with respect to these fees or charges simply by imposing them on the asset feature of the prepaid account.

New comment 55(a)–4 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, final § 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.6 above, with respect to a fee or charge imposed on the asset feature of a prepaid account accessible by a hybrid prepaid-credit card, a fee or charge imposed on the asset feature of the prepaid account is a "charge imposed as part of the plan" to the extent that the amount of the fee or charges exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. This fee or charge also is a finance charge under new § 1026.4(b)(11)(ii).

Under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, a fee or charge imposed on the asset feature of the prepaid account is not a "charge imposed as part of the plan" to the extent that the amount of the fee or charges does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. These fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii) in relation to the covered separate credit feature. The Bureau believes that this guidance facilitates compliance with final § 1026.55(a) by providing additional clarity to card issuers on how the restrictions in final § 1026.55(a) apply to fees or charges imposed on the asset feature of the prepaid account accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

Non-Covered Separate Credit Features

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a prepaid card is not a hybrid prepaid-credit card with respect to a "non-covered separate credit feature," which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. As described in new § 1026.61(a)(2)(ii), a non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the provisions in § 1026.55 in its own right.

With respect to non-covered separate credit features that are subject to § 1026.55, new comment 55(a)–4 provides that final § 1026.55 does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E). The Bureau notes that under new § 1026.6(b)(3)(iii)(E) and new comment 6(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are "charges imposed as part of the plan" under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references new comment 4(b)(11)–1.ii.B which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, final § 1026.55 does not apply to any fees or charges imposed on the asset feature of the prepaid account with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

Section 1026.57 Reporting and Marketing Rules for College Student Open-End Credit

57(a) Definitions

TILA section 127(r) requires creditors to submit an annual report to the Bureau containing the terms and conditions of all business, marketing, promotional agreements, and college affinity card agreements with an institution of higher education, or other related entities, with respect to any college student credit card issued to a college student at such institution.[678] This TILA section is implemented by existing § 1026.57(d), which requires card issuers that are a party to one or more "college credit card agreements" to submit annual reports to the Bureau regarding those agreements.

Existing § 1026.57(a)(5) defines "college credit card agreement" to mean any business, marketing, or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution. Existing § 1026.57(a)(1) defines "college student credit card" as used in the term "college credit card agreement" to mean a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

[678] 15 U.S.C. 1637(r).

The Bureau's Proposal

Existing comment 57(a)(1)–1 provides guidance on the definition of ''college student credit card'' which is used in the definition of ''college credit card agreement.'' The proposal would have amended this comment to include a prepaid card that is a credit card that is issued to any college student under a credit card account under an open-end (not home-secured) consumer credit plan. Proposed comment 57(a)(1)–1 also would have provided that the definition of college student credit card includes a prepaid account that is issued to any college student where an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account and the credit account may be accessed by a prepaid card that is a credit card.

Existing comment 57(a)(5)–1 provides guidance on the definition of ''college credit card agreement.'' The proposal would have amended this comment to include guidance on when an agreement related to a prepaid account would be considered a ''college credit card agreement.'' Proposed comment 57(a)(5)–1 would have provided that the definition of ''college credit card agreement'' includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement either provides for the addition of open-end (not home-secured) consumer credit plans to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card. Proposed comment 57(a)(5)–1 also would have provided that the definition of ''college credit card agreement'' includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) an agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card.

Comments Received and the Final Rule

The Bureau did not receive any comment on this aspect of the proposal. The Bureau is adopting proposed comments 57(a)(1)–1 and 57(a)(5)–1 with technical revisions to clarify the intent of the comments, and to be consistent with new § 1026.61.[679] Final comment 57(a)(1)–1 provides that the definition of ''college student credit card'' includes a hybrid prepaid-credit card as defined by new § 1026.61 that is issued to any college student where the card accesses a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan. The definition of ''college student credit card'' also includes a prepaid account as defined in § 1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may be added in the future to the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

Final comment 57(a)(5)–1 provides that the definition of ''college credit card agreement'' includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card to prepaid accounts previously issued to full-time or part-time students. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the agreement provides for the issuance of prepaid accounts as defined in § 1026.61 to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may be added in the future to the prepaid account.

Pursuant to the Bureau's amendments to commentary, final § 1026.57(d) requires a card issuer that is a party to one or more college credit card agreements in connection with covered separate credit features accessible by hybrid prepaid-credit cards to submit annual reports to the Bureau regarding those agreements. In addition, a card issuer is required to submit agreements that provide for the issuance of prepaid accounts to full-time or part-time students even if a covered separate credit feature is not linked to the prepaid account when the prepaid accounts are issued, so long as such credit features may be added in connection with the prepaid accounts.

As discussed in more detail in the section-by-section analysis of § 1026.61(c) below, new § 1026.61(c) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. Thus, a prepaid card in connection with a prepaid account cannot access a covered separate credit feature at the time the prepaid account is opened. Nonetheless, the Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, have an impact on whether consumers may request that a covered separate credit feature accessible by a hybrid prepaid-credit card be linked to the prepaid account when such covered separate credit features are offered to them. Thus, even though a prepaid account will not have a covered separate credit feature linked to it at the time the prepaid account is opened, if a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be linked to a prepaid account as described above in the future, the prepaid account at the time of issuance

[679] The proposal would have provided that the term ''credit card'' includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have provided in comments 57(a)(1)–1 and 57(a)(5)–1 guidance on the definitions of ''college student credit card'' and ''college credit card agreement'' related to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comments 57(a)(1)–1 and 57(a)(5)–1 related to these account numbers.

would be a "college student credit card" for purposes of final § 1026.57(a)(1) if the prepaid account is issued to a college student. As a result, under the final rule, a card issuer that is a party to one or more agreements between the card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) must submit annual reports to the Bureau regarding those agreements if: (1) An agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account.

The Bureau believes it is necessary and proper to exercise its adjustment authority under TILA section 105(a), to apply section 127(r)'s requirements for college card agreements to prepaid cards where covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may subsequently be added, to further the purposes of TILA. The provisions in TILA section 127(r) addressing college credit cards reflect Congress's particular concern with providing special protections for students to ensure that students can make informed credit decisions, and the Bureau believes that including such cards is consistent with such congressional concerns for college students and credit card debt. Further, these concerns might be heightened with respect to prepaid accounts to which covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may be linked because students might be prone to use such prepaid accounts as their primary transaction account.

57(b) Public Disclosure of Agreements

TILA section 140(f)(1) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.[680] This TILA provision is implemented by existing § 1026.57(b), which provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

The Bureau proposed comment 57(b)–3 to explain that existing § 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of open-end (not home-secured) consumer credit accounts to prepaid accounts previously issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card; or (2) prepaid accounts where a credit account may be added in connection with the prepaid account and that credit account may be accessed by a prepaid card that is a credit card. Thus, under proposed § 1026.57(b), an institution of higher education would have been required to publicly disclose such agreements.

One consumer group commenter indicated that it is not enough to require an institution of higher education to offer a disclosure on marketing agreements with card issuers. This commenter believed that the Bureau should specifically require that these disclosures be made available on the institution's Web site. This commenter believed that these disclosures should be available on the same screen as the application for the card and would disclose the dollar amount received by the institution and any terms associated with those fees. The commenter believed that these terms should be listed in English and Spanish.

The Bureau is adopting proposed comment 57(b)–3 as proposed with technical revisions to clarify the intent of the comment and to be consistent with new § 1026.61.[681] Under the final rule, new comment 57(b)–3 provides that existing § 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan to prepaid accounts as defined in § 1026.61 that were previously issued to full-time or part-time students; or (2) new prepaid accounts where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan may in the future be added to the prepaid account. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes it is necessary and proper to exercise its adjustment authority under TILA section 105(a) to effectuate the purposes of TILA by applying section 140(f)'s requirements for college card agreements to prepaid cards where covered separate credit features that are credit card accounts under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit cards may subsequently be added. The provisions in TILA section 140(f) addressing college card agreements reflect Congress's particular concern with providing special protections for students to ensure that students can make informed credit decisions, and the Bureau believes that including such cards is consistent with such congressional concerns for college students and credit card debt. The Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, may have an impact on whether consumers may request that a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by hybrid prepaid-credit card be linked to the prepaid account, as discussed above, when such covered separate credit features are offered to them. Thus, the Bureau believes that the marketing related to a prepaid account where a covered separate credit feature accessible by a hybrid prepaid-credit card may be added would constitute marketing of a credit card. Thus, under the final rule, an institution of higher education must publicly disclose agreements for the marketing of prepaid accounts where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit

[680] 15 U.S.C. 1650(f)(1).

[681] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have provided in comment 57(b)–3 that institutions of higher education must disclose marketing agreements related to credit card accounts accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 57(b)–3 related to these account numbers.

card may be added in connection with the prepaid account.

As discussed above, one consumer group commenter indicated that it is not enough to require an institution of higher education to offer a disclosure related to marketing agreements with card issuers. This commenter believed that the Bureau should specifically require that these disclosures be made available on the institution's Web site. This commenter believed that these disclosures should be available on the same screen as the application for the card and disclose the dollar amount received by the institution and any terms associated with those fees. The commenter believed that these terms should be listed in English and Spanish.

The final rule does not impose additional requirements on institutions of higher education to disclose marketing agreements. The Bureau believes such changes are outside the scope of the proposal and does not make the change at this time. The Bureau notes that existing comment 1026.57(b)–1 provides that institutions of higher education may comply with the requirement in existing § 1026.57(b) by publishing any relevant credit card agreement on their Web site or by making such agreements available free of charge upon request using reasonable procedures and in a reasonable timeframe. In addition, the Bureau sent a warning letter in December 2015 to several institutions of higher education because their agreements were not posted on their Web sites and could not be publicly obtained by the Bureau using reasonable procedures and in a reasonable timeframe.[682] In the letter, the Bureau noted that publishing the agreement on the Web site is proving to be the least burdensome and most straightforward means of complying with § 1026.57(b), and that any other approach may be less effective and creates compliance risk.

57(c) Prohibited Inducements

TILA section 140(f)(2) provides that no card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) near the campus of an institution of higher education, as determined by rule of the Bureau; or (3) at an event sponsored by or related to an institution of higher education.[683] This TILA provision is implemented in existing § 1026.57(c), which provides that no card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

The Bureau proposed to add comment 57(c)–7 to explain that existing § 1026.57(c) applies to (1) the application for or opening of a credit card account that is being added to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card; or (2) the application for or opening of a prepaid account where a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card.

The Bureau did not receive comments on this aspect of the proposal. The Bureau is adopting proposed comment 57(c)–7 with revisions to be consistent with new § 1026.61.[684] New comment 57(c)–7 provides that final § 1026.57(c) applies to (1) the application for or opening of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is being added to a prepaid account as defined as § 1026.61 previously issued to a full-time or part-time student as well as (2) the application for or opening of a prepaid account where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau believes that the marketing efforts related to a prepaid account, including the inducements given by a card issuer to open a prepaid account, may have an impact on whether consumers may request that a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card be linked to the prepaid account, as discussed above, when such covered separate credit features are offered to them. Thus, any tangible item given to induce college students to apply for or open a prepaid account where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account would also be interpreted as an inducement to encourage a college student to apply for or open such a covered separate credit feature in connection with the prepaid account. As a result, under final § 1026.57(c), a card issuer or creditor would be prohibited from offering a college student any tangible item to induce the student to apply for or open a prepaid account offered by the card issuer or creditor where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card may be added in connection with the prepaid account, if the offer is made: (1) On the campus of an institution of higher education; (2) near the campus of an institution of higher education; or (3) at an event sponsored by or related to an institution of higher education.

Section 1026.58 Internet Posting of Credit Card Agreements

TILA section 122(d), implemented by existing § 1026.58, generally requires card issuers to post their card agreements on the internet and to provide those agreements to the Bureau. Separately, as part of this final rule, the Bureau is adopting similar provisions

[682] *See* Press Release, CFPB, *CFPB Warns Colleges About Secret Campus Credit Card Contracts* (Dec. 16, 2015), *available at http://www.consumerfinance.gov/about-us/newsroom/cfpb-warns-colleges-about-secret-campus-credit-card-contracts/*.

[683] 15 U.S.C. 1650(f)(2).

[684] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal would have provided in comment 57(c)–7 guidance on how the prohibition in § 1026.57(c) applies to credit card accounts that are accessed by these account numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the proposed changes to comment 57(c)–7 related to these account numbers.

for prepaid accounts in final Regulation E § 1005.19. Although the Bureau is not revising § 1026.58, it notes that the requirements of § 1026.58 and those of Regulation E § 1005.19 are distinct and independent of one another. In other words, issuers must comply with both as appropriate. The Bureau notes, however, that it does not believe it is likely that any agreement will constitute both a credit card agreement and a prepaid account agreement and thus be required to be submitted under both § 1026.58 and Regulation E § 1005.19. Given the requirement in new § 1026.61(b) that credit features accessible by hybrid prepaid-credit cards generally must be structured as separate subaccounts or accounts distinct from the prepaid asset account, in conjunction with the account-opening disclosure requirements in existing § 1026.6 and the initial disclosure requirements in existing Regulation E § 1005.7(b) as well as final § 1005.18(f)(1), the Bureau believes it is unlikely that an issuer would use a single agreement to provide all such disclosures for both a prepaid account and for a covered separate credit feature.

The Bureau reminds credit card issuers that while final Regulation E § 1005.19(f) provides a delayed effective date of October 1, 2018 to submit prepaid account agreements to the Bureau, the requirement to submit credit card agreements for covered separate credit features accessible by hybrid prepaid-credit cards that are credit card accounts under an open-end (not home-secured) consumer credit plan becomes effective with the rest of this final rule on October 1, 2017.

Section 1026.60 Credit and Charge Card Applications and Solicitations

TILA section 127(c) generally requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[685] This TILA provision is implemented by § 1026.60.

Existing comment 60–1 provides that § 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. The existing comment also cross-references § 1026.60(a)(5) and (e)(2) for exceptions, § 1026.60(a)(1) and accompanying commentary for the definition of solicitation, and § 1026.2(a)(15) and accompanying commentary for the definition of charge card. The proposal would have amended existing comment 60–1 to cross-reference proposed § 1026.12(h) (renumbered as new § 1026.61(c) in the final rule) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.

The Bureau did not receive any specific comments on the proposed revisions to comment 60–1. Consistent with the proposal, the final rule adopts final comment 60–1 with revisions to be consistent with new § 1026.61. The final rule revises comment 60–1 to provide a cross-reference to new § 1026.61(c) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts. See the section-by-section analysis of § 1026.61(c) below for a discussion of these restrictions.

60(a) General Rules

60(a)(5) Exceptions

Existing § 1026.60(a)(5) provides several exceptions to the requirements in existing § 1026.60 to provide cost disclosures on or with credit or charge card applications or solicitations. Specifically, existing § 1026.60(a)(5) provides that existing § 1026.60 does not apply to: (1) Home-equity plans accessible by a credit or charge card that are subject to the requirements of existing § 1026.40; (2) overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; (3) lines of credit accessed by check-guarantee cards or by debit cards that can be used only at ATMs; (4) lines of credit accessed solely by account numbers; (5) additions of a credit or charge card to an existing open-end plan; (6) general purpose applications, unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (7) consumer-initiated requests for applications. These exemptions are not specifically listed in TILA section 127(c).

In 1989, to implement the disclosure provisions in TILA section 127(c) as amended by the Fair Credit and Charge Card Disclosure Act of 1988,[686] the Board exempted the following credit card accounts from the disclosure requirements set forth in its § 226.5a (which are contained in the Bureau's existing Regulation Z § 1026.60): (1) Home equity plans accessible by a credit or charge card that are subject to the Home Equity Loan Consumer Protection Act of 1988, Public Law 100–709; (2) overdraft lines of credit tied to asset accounts accessed by check guarantee cards or by debit cards; or (3) lines of credit accessed by check guarantee cards or by debit cards that can be used only at ATMs.[687] In the supplemental information to that rulemaking, the Board indicated that a number of commenters raised issues concerning coverage of the proposed rule given the broad definition of the term "credit card" in the regulation.[688] Among other things, the Board reported that commenters argued that congressional intent was to require disclosures only for "traditional" credit card accounts used primarily to purchase goods and services, and not for other types of accounts that do not fall within such a category or for which the use of a credit or charge card as an access device is merely incidental to the product being offered.[689]

In 1990, the Board added commentary to its Regulation Z § 226.5a (now existing § 1026.60) to provide that the disclosures set forth in its Regulation Z § 226.5a also did not apply to: (1) Lines of credit accessed solely by account numbers; (2) the addition of a credit or charge card to an existing open-end plan; (3) general purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (4) consumer-initiated requests for applications.[690] In the supplemental information to the 1990 rulemaking, the Board did not explain why it was including these exemptions.

As discussed above, existing § 1026.60(a)(5)(iv) currently provides that the disclosure requirements in existing § 1026.60 do not apply to lines of credit accessed solely by account numbers. The proposal would have amended existing § 1026.60(a)(5)(iv) to provide that this exception does not apply where the account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Under the proposal, these account numbers would have been credit cards. Thus, under the proposal, a card issuer would have been required to provide the disclosures required by existing § 1026.60 on or with a solicitation or application to open a credit or charge card account that would have been accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau did not receive any comments on proposed

[685] 15 U.S.C. 1637(c).

[686] Public Law 100–583, 102 Stat. 2960.

[687] 54 FR 13855, 13857 (Apr. 6, 1989).

[688] *Id.*

[689] *Id.*

[690] *See* 55 FR 13103, 13107 (Apr. 9, 1990).

§ 1026.60(a)(5)(iv). As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, the Bureau is not adopting proposed § 1026.2(a)(15)(vii) and proposed comment 2(a)(15)–2.i.G, which would have made these account numbers into credit cards under Regulation Z.

Nonetheless, the Bureau is revising the proposed changes to § 1026.60(a)(5)(iv) to refer to an account number that is a hybrid prepaid-credit card, rather than an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the Bureau is revising the exemption in existing § 1026.60(a)(5)(iv) that relates to lines of credit accessed solely by account numbers so that this exception would not apply to a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card, as defined in new § 1026.61.

The Bureau noted in the proposal that a card issuer generally would be required to provide the cost disclosures in existing § 1026.60 on or with solicitations or applications to open a credit or charge card account that is accessed by a prepaid card that is a credit card. Consistent with the intent of the proposal, the Bureau is revising the exemption in existing § 1026.60(a)(5)(iv) to make clear that the cost disclosures in existing § 1026.60 must be provided on or with solicitations or applications to open a covered separate credit feature accessible by a hybrid prepaid-credit card even when that hybrid prepaid-credit card is solely an account number.

As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

The Bureau does not believe that it is appropriate to except a covered separate credit feature accessible by a hybrid prepaid-credit card that is solely an account number from the disclosure requirements set forth in TILA section 127(c). The Bureau believes that the cost disclosures in final § 1026.60 would be helpful to consumers in deciding whether to open such a covered separate credit feature accessible by a hybrid prepaid-credit card.

60(b) Required Disclosures

TILA section 127(c), implemented by existing § 1026.60, generally requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account.[691] Under existing § 1026.60, card issuers generally are required to provide the following disclosures, among other cost disclosures, on or with the applications or solicitations for credit cards: (1) The APRs applicable to the account for purchases, cash advances, and balance transfers; (2) any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit card, including any fee based on account activity or inactivity; (3) any non-periodic fees related to opening the account, such as one-time membership or participation fees; (4) any minimum or fixed finance charge that could be imposed during a billing cycle; (5) any transaction charge imposed on purchases, cash advances, or balance transfers; (6) any late payment fees, over the limit fees, or returned payment fees; (7) whether a grace period on purchases applies; (8) the name of the balance computation method used to determine the balance for purchases; (9) any fees for required insurance, debt cancellation, or debt suspension coverage; (10) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed; and (11) a reference to the Bureau's Web site where consumers may obtain information about shopping for and using credit cards.

Under existing § 1026.60(b), charge card issuers generally are required to provide the above disclosure on or with the applications or solicitations for charge cards, except that a charge card issuer is not required to disclose: (1) The APRs applicable to the account for purchases, cash advances, and balance transfers; (2) any minimum or fixed finance charge that could be imposed during a billing cycle; (3) whether a grace period on purchases applies; (4) the name of the balance computation method used to determine the balance for purchases; (5) any fees for required insurance, debt cancellation, or debt suspension coverage; and (6) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed.

[691] 15 U.S.C. 1637(c).

The Bureau did not propose any changes to existing § 1026.60(b) or its related commentary. One consumer group commenter indicated that with respect to credit card accounts that will be accessed by a prepaid card that is a charge card, the Bureau should require disclosure of the following items in the table required to be provided on or with applications or solicitations: (1) Any minimum or fixed finance charge that could be imposed during a billing cycle; (2) any fees for required insurance, debt cancellation, or debt suspension coverage; and (3) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed. This commenter believed that unlike traditional charge cards, prepaid cards that are charge cards have a significant possibility of imposing fixed finance charges; offering credit insurance, debt cancellation, or debt suspension; or having fees in excess of the 15 percent threshold for the credit availability disclosure.

As discussed in more detail below, the Bureau is revising existing § 1026.60(b) to provide that with respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a charge card issuer must provide the above three disclosures.

In addition, as discussed in more detail below, new comment 60(b)–3 provides guidance on the application of the disclosure requirements in existing § 1026.60(b) to fees or charges imposed on a covered separate credit feature or an asset feature that are both accessible by a hybrid prepaid-credit card. The final rule also adds new comment 60(b)–4 to provide that the disclosures in final § 1026.60(b) do not apply to fees or charges imposed on the asset feature of the prepaid account with respect to covered separate credit features accessible by hybrid prepaid-credit cards when the fees or charges are not "charges imposed as part of the plan" under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. New comment 60(b)–4 also provides that the disclosures in final § 1026.60(b) do not apply to fees or charges imposed on the asset feature of a prepaid account with respect to a non-covered separate credit feature. The Bureau believes this additional guidance in new comments 60(b)–3 and –4 is needed given the changes in the final rule to the definition of "finance charge" in final § 1026.4, the definition of "charges imposed as part of the plan"

in final § 1026.6(b)(3), and the addition of new § 1026.61.

Covered Separate Credit Features Accessible by Hybrid Prepaid-Credit Cards That Are Charge Cards

As discussed above, one consumer group commenter indicated that with respect to a credit card account that will be accessed by a prepaid card that is a charge card, the Bureau should require disclosure of the following items in the table required to be provided on or with applications or solicitations: (1) Any minimum or fixed finance charge that could be imposed during a billing cycle; (2) any fees for required insurance, debt cancellation, or debt suspension coverage; and (3) if the fees imposed at account opening are 15 percent or more of the minimum credit limit for the card, disclosures about the available credit that will remain after those fees are imposed. This commenter believed that unlike traditional charge cards, prepaid cards that are charge cards have a significant possibility of imposing fixed finance charges; offering credit insurance, debt cancellation, or debt suspension; or having fees in excess of the 15 percent threshold for the credit availability disclosure.

In response to the comment, the Bureau is revising existing § 1026.60(b) to provide that with respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in new § 1026.61, a charge card issuer also must provide the above three disclosures. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under § 1026.61 and a credit card under § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

TILA section 127(c)(5) states that the Bureau may, by regulation, require the disclosure of information in addition to that otherwise required by 127(c), and modify any disclosure of information required by 127(c), in any application or solicitation to open a charge card account for any person, if the Bureau determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection. The Bureau believes that use of its authority under TILA section 105(a) and 127(c)(5) to amend § 1026.60(b) to require such charge card issuers to provide these three disclosures is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards. Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.[692] In addition, the Bureau believes that requiring these three disclosures for covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards will, consistent with Dodd-Frank Act section 1032(a), ensure that the terms of these charge card accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the charge card account.

The Bureau believes that these disclosures may be more helpful for covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards than they would be for traditional charge card accounts. Traditional charge card accounts typically require charge cardholders to repay the charge card balance in full each month. Thus, the required credit insurance, debt cancellation, or debt suspension disclosures typically would not apply to these accounts because the cardholders are not allowed to revolve charge card balances. In addition, traditional charge card accounts are generally targeted to more creditworthy individuals. Thus, these charge cards typically have a higher credit limit and typically do not charge fees for credit availability that exceed 15 percent of the initial credit line. Traditional charge card issuers also typically do not impose fixed finance charges.

Nonetheless, the Bureau believes that covered separate credit features accessible by hybrid prepaid-credit cards that are charge cards may more likely be targeted to consumers with lower credit scores than credit card users overall and the card issuer may not require that charge card balances be repaid in full each month. Thus, in these cases, charge card issuers may be more likely to charge fixed finance charges; require credit insurance, debt cancellation, or debt suspension products; or charge fees for credit availability that might exceed the 15 percent threshold. Thus, the Bureau believes that it is appropriate to apply these disclosures when a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card is opened.

[692] 15 U.S.C. 1601.

Fee Imposed on the Asset Feature of the Prepaid Account

Covered separate credit features accessible by hybrid prepaid-credit cards. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

New § 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Nonetheless, the final rule characterizes certain fees or charges that are imposed on the asset feature of the prepaid account as finance charges in connection with a covered separate credit feature where both the asset feature and the credit feature are accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.4(b)(11)(ii) above, new § 1026.4(b)(11)(ii) provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, fees or charges imposed on the asset feature of the prepaid account generally are finance charges only to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analysis of § 1026.6 above, the final rule also clarifies that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in new § 1026.61, fees or charges imposed on the asset feature that are not finance charges also are not ''charges imposed as part of the plan'' with respect to the covered separate credit feature.

Given this guidance in the final rule related to fees or charges imposed on the asset feature of the prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card, new comment 60(b)–3 provides that with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a card issuer is required to disclose under final § 1026.60(b) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under final § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under final § 1026.60(b). For example, assume that a card issuer imposes a $1.25 per transaction fee on the asset feature of a prepaid account for purchases when a hybrid prepaid-credit card accesses a separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and the card issuer charges $0.50 per transaction for purchases to access funds in prepaid accounts in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under final § 1026.6(b)(3) and must be disclosed under final § 1026.60(b)(4).

To facilitate compliance with the disclosure requirements in § 1026.60, new comment 60(b)–4 provides that a card issuer is not required under final § 1026.60(b) to disclose any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(D) with respect to the covered separate credit feature. As discussed in more detail in the section-by-section analysis of § 1026.6 above, under new § 1026.6(b)(3)(iii)(D) and new comment 6(b)(3)(iii)(D)–1, a fee or charge imposed on the asset feature of the prepaid account is not a ''charge imposed as part of the plan'' to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a credit feature accessible by a hybrid prepaid-credit card. As described in the section-by-section analysis of § 1026.4(b)(11)(ii) above, these fees or charges imposed on the asset feature of the prepaid account are not finance charges under new § 1026.4(b)(11)(ii). The Bureau believes that the guidance in new comment 60(b)–3 aids compliance with final § 1026.60 by providing additional clarity to card issuers on how the disclosure requirements in final § 1026.60(b) apply to fees or charges imposed on the asset feature of the prepaid account accessible by a hybrid prepaid-credit card. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account that are not finance charges (and thus, not charges imposed as part of the plan under new § 1026.6(b)(3)(iii)(D)) with respect to the covered separate credit feature are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the covered separate credit feature.

Non-covered separate credit features. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a ''non-covered separate credit feature,'' which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account. Thus, a non-covered separate credit feature may be subject to the disclosure requirements in § 1026.60 in its own right.

With respect to non-covered separate credit features that are subject to § 1026.60, new comment 60(b)–4 provides that the disclosure requirements in final § 1026.60 do not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under new § 1026.6(b)(3)(iii)(E) with respect to the non-covered separate credit feature. Under new § 1026.6(b)(3)(iii)(E) and new comment 60(b)(3)(iii)(E)–1, with respect to a non-covered separate credit feature as defined in new § 1026.61, none of the fees or charges imposed on the asset feature of the prepaid account are ''charges imposed as part of the plan'' under final § 1026.6(b)(3) with respect to the non-covered separate credit feature. New comment 6(b)(3)(iii)(E)–1 also cross-references comment 4(b)(11)–1.ii.B which provides that none of the fees or charges imposed on the asset feature of the prepaid account are finance charges under final § 1026.4 with respect to the non-covered separate credit feature. Thus, a card issuer of a non-covered separate credit feature would not be required to disclose any fees or charges imposed on the asset feature of the prepaid account under final § 1026.60(b) with respect to the non-covered separate credit feature. As discussed in more detail in the section-by-section analyses of §§ 1026.4 and 1026.6 above, the Bureau believes that fees or charges imposed on the asset feature of a prepaid account are more appropriately regulated under Regulation E, rather than regulated under Regulation Z, with respect to the non-covered separate credit feature.

60(b)(4) Transaction Charges

Existing § 1026.60(b)(4), which implements TILA section 127(c)(1)(A)(ii)(III), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any transaction charge imposed on purchases.[693] The proposal would have added proposed comment 60(b)(4)–3 to provide guidance on when fees would be considered transaction fees for purchases under existing § 1026.60(b)(4) for prepaid cards that are credit cards. Specifically, proposed comment 60(b)(4)–3 would have provided that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for credit accessed by a credit card that is a prepaid card to make a purchase, that fee is a transaction charge as described in existing § 1026.60(b)(4). Proposed comment 60(b)(4)–3 also would have provided that such fees must be disclosed as transaction charges under existing § 1026.6(b)(4) whether the fee is a flat per transaction fee to make a purchase, a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions, or a one-time fee for transferring funds from the consumer's credit account to the consumer's prepaid account to cover the shortfall in the prepaid account as a result of a purchase with the prepaid card.

The Bureau did not receive specific comments on this aspect of the proposal. The Bureau is adopting proposed comment 60(b)(4)–3 with revisions to be consistent with §§ 1026.8 and 1026.61. New comment 60(b)(4)–3.i provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by

[693] 15 U.S.C. 1637(c)(1)(A)(ii)(III).

new § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) to make a purchase where this fee is imposed as part of the plan as described in final § 1026.6(b)(3), that fee is a transaction charge described in final § 1026.60(b)(4). This is true whether the fee is a per transaction fee to make a purchase or a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, new comment 60(b)(4)–3.ii provides guidance on whether a fee must be disclosed as a fee for a purchase transaction under final § 1026.60(b)(4) or a cash advance transaction under final § 1026.60(b)(8). New comment 60(b)(4)–3.ii provides that a fee for a transaction will be treated as a fee to make a purchase under final § 1026.60(b)(4) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. A per transaction fee imposed for the $15 credit transaction must be disclosed under final § 1026.60(b)(4).

As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(4)–3.ii is consistent with guidance for disclosing those credit transactions as "sale credit" on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(a) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

In contrast, new comment 60(b)(4)–3.iii provides that a fee for a transaction will be treated as a cash advance fee under final § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, a per transaction fee for the $15 credit transaction must be disclosed under final § 1026.60(b)(8).

As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(4)–3.iii is consistent with guidance for disclosing those credit transactions as "nonsale credit" on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

60(b)(8) Cash Advance Fee

Existing § 1026.60(b)(8), which implements TILA section 127(c)(1)(B)(i), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any fee imposed for an extension of credit in the form of cash or its equivalent.[694]

The proposal would have added proposed comment 60(b)(8)–4 to provide guidance on when fees would be considered cash advance fees that must be disclosed under existing § 1026.60(b)(8) for credit card accounts that are accessed by prepaid cards. In addition, proposed comment 60(b)(8)–4 would provide guidance on how cash advance fees must be disclosed. Specifically, proposed comment 60(b)(8)–4 would have provided that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance accessed by a credit card that is a prepaid card, such as a cash withdrawal at an ATM, that fee is a cash advance fee. Under proposed comment 60(b)(8)–4, if the cash advance fee is the same dollar amount as the transaction charge for purchases described in existing § 1026.60(b)(4), the card issuer could have disclosed the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Proposed comment 60(b)(8)–4 would have provided the following three examples of how cash advance fees must be disclosed.

Under proposed comment 60(b)(8)–4.i, the first example would have provided that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer assesses a $25 fee for credit accessed by a prepaid card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer could have disclosed separately a purchase transaction charge of $15 and a cash advance fee of $25.

Under proposed comment 60(b)(8)–4.ii, the second example would have provided that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer also assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer could have disclosed the $15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, under the proposal, the card issuer could have disclosed the $15 fee on two separate rows, with one row indicating that a $15 fee applies to purchase transactions, and a second row indicating that a $15 fee applies to ATM cash advances.

Under proposed comment 60(b)(8)–4.iii, the third example would have provided that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of $1.50 for out-of-network ATM cash withdrawals and $1.00 fee for in-network ATM cash withdrawals. The card issuer must

[694] 15 U.S.C. 1637(c)(1)(B)(i).

disclose the cash advance fee as $16.50 for out-of-network ATM cash withdrawals, indicating that $1.50 is for the out-of-network ATM withdrawal fee, such as "$16.50 (including a $1.50 out-of-network ATM withdrawal fee)." The card issuer also could have disclosed the cash advance fee as $16.00 for in-network ATM cash withdrawals, indicating that $1.00 is for the in-network ATM withdrawal fee, such as "$16 (including a $1.00 in-network ATM cash withdrawal fee)."

The Bureau did not receive specific comments on this aspect of the proposal. The Bureau is adopting proposed comment 60(b)(8)–4 as proposed with technical revisions to clarify the intent of the comment and to be consistent with final § 1026.8 and new § 1026.61.[695] New comment 60(b)(8)–4.i provides that with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by new § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance, such as a cash withdrawal at an ATM, where this fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a cash advance fee. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner that can be accessed by a prepaid card (except as provided in new § 1026.61(a)(4)). The prepaid card is a hybrid prepaid-credit card under new § 1026.61 and a credit card under final § 1026.2(a)(15)(i) with respect to the covered separate credit feature.

For the reasons discussed in the section-by-section analyses of §§ 1026.8 and 1026.60(a)(4), new comment 60(b)(8)–4.i also provides that a fee for a transaction will be treated as a cash advance fee under final § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in new § 1026.61 to make a purchase to obtain goods or services from a merchant, and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. *See also* new comment 60(b)(4)–3.iii. As discussed in the section-by-section analysis of § 1026.8(a) above, this guidance in new comment 60(b)(8)–4.i is consistent with guidance for disclosing those credit transactions as "nonsale credit" on Regulation Z periodic statements under final §§ 1026.7(b)(2) and 1026.8(b) with respect to covered separate credit features accessible by hybrid prepaid-credit cards.

New comment 60(b)(8)–4.ii also provides that if the cash advance fee is the same dollar amount as the transaction charge for purchases described in final § 1026.60(b)(4), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Consistent with proposed comment 60(a)(8)–4, new comment 60(a)(8)–4.ii provides examples of how fees for purchase transactions described in final § 1026.60(b)(4) and fees for cash advances described in final § 1026.60(b)(8) that are charged on the covered separate credit feature must be disclosed.

Section 1026.61 Hybrid Prepaid-Credit Cards

The Bureau is adding new § 1026.61 which defines when a prepaid card is a credit card under Regulation Z (using the term "hybrid prepaid-credit card"). As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section above and in more detail below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. Section 1026.61(b) generally requires that such credit features be structured as separate subaccounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61(a)(2)(i) provides that a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a "covered separate credit feature." Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(c) (moved from § 1026.12(h) in the proposal) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

As discussed in the section-by-section analysis of § 1026.61 below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card with respect to a separate credit feature that does not meet both of the conditions above, for example, where the credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate or its business partner. Such credit features are defined as "non-covered separate credit features," as discussed in the section-by-section analysis of § 1026.61(a)(2) below. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see

[695] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. Proposed comment 60(b)(8)–5 would have provided guidance on when fees will be considered cash advance fees under § 1026.60(b)(8) with respect to credit card accounts accessed by such accounts numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt proposed comment 60(b)(8)–5 related to these account numbers.

the section-by-section analyses of § 1026.61(a)(2) and (4) below.

New comment 61(a)–1 explains that in addition to the rules set forth in new § 1026.61, hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards are also subject to other rules in Regulation Z, and some of those rules and related commentary contain specific guidance related to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. For example, as discussed in the section-by-section analyses of §§ 1026.2(a)(15)(i) and 1026.61(a), a hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to a covered separate credit feature. A covered separate credit feature accessible by a hybrid prepaid-credit card also will be a credit card account under an open-end (not home-secured) consumer credit plan, as defined in final § 1026.2(a)(15)(ii), if the covered separate credit feature is an open-end (not home-secured) credit plan. Thus, the provisions of Regulation Z that apply to credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan generally will apply to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards as applicable (*see generally* subparts B and G). Some of those rules and related commentary contain specific guidance with respect to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. *See* the section-by-section analyses of subparts A, B and G in this final rule.

61(a) Hybrid Prepaid-Credit Card

TILA section 103(*l*) defines the term "credit card" to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.[696] Under Regulation Z, the term "credit card" is defined in existing § 1026.2(a)(15)(i) to mean "any card, plate, or other single credit device that may be used from time to time to obtain credit."

The Bureau's Proposal

The proposal would have provided guidance on when the following devices related to prepaid accounts are "credit cards": (1) Prepaid cards, as defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a "prepaid account" as defined in proposed § 1026.2(a)(15)(vi) consistent with proposed Regulation E; and (2) account numbers that are not prepaid cards that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor but does not allow consumers to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor, as defined in proposed § 1026.2(a)(15)(vii).

Prepaid cards. The proposal would have covered a broad range of credit plans as credit card accounts under Regulation Z when they were accessed by a prepaid card. First, under the proposal, credit plans, including overdraft services and overdraft lines of credit, directly accessed by prepaid cards generally would have been credit card accounts under Regulation Z. Under the proposal, this would have applied where credit is "pulled" by a prepaid card, such as when the consumer uses the prepaid card at point of sale to access an overdraft plan to fund a purchase. In particular, proposed comment 2(a)(15)–2.i.F would have provided that the term "credit card" generally includes a prepaid card that is a single device that may be used from time to time to access a credit plan.

The proposal intended broadly to capture a prepaid card as a credit card when it directly accessed a credit plan, regardless of whether that credit plan was structured as a separate credit plan or as negative balance to the prepaid account. The Bureau recognized that under the proposal, credit would have included: (1) Transactions that are authorized where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization; and (2) transactions on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Such transactions would have been credit accessed by a prepaid card that is a credit card under the proposal regardless of whether the person established a separate credit account to extend the credit or whether the credit was simply reflected as a negative balance on the prepaid account.

The proposal would not have applied the credit card rules in situations in which a prepaid card only assessed credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and was not payable by written agreement in more than four installments. Specifically, the proposal provided that the prepaid card in such situations would not have been a credit card. As discussed in the section-by-section analysis of § 1026.4 above, the proposal also included revisions to the definition of "finance charge" in § 1026.4(a) and (b)(2) and their related commentary to delineate when a fee imposed in relation to credit accessed by a prepaid card that is a credit card would have been a finance charge under § 1026.4. In general, the proposal would have treated any transaction charges imposed on a cardholder by a card issuer on a prepaid account in connection with credit accessed by a prepaid card as a finance charge, regardless of how the amount of the fees compared to fees the issuer charged on non-credit transactions or accounts that did not involve credit access. The Bureau recognized that, under the proposal, if a prepaid account issuer would have imposed a per transaction fee on a prepaid account for any transactions authorized or settled on the prepaid account, the prepaid account issuer would have needed to waive that per transaction fee imposed on the prepaid account when the transaction accessed credit in order to take advantage of the proposed exception for when a prepaid card would not be a credit card under the proposal.

Account numbers that are not prepaid cards. As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, proposed § 1026.2(a)(15)(vii) would have included within the definition of credit card "an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor." As used in the proposal, this term would have meant an account number that was not a prepaid card that may be used from time to time to access a credit plan that allowed deposits directly into particular prepaid accounts specified by the creditor but did not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. Proposed comment 2(a)(15)–2.i.G would have provided that these account numbers were credit cards under the proposal.

This proposal language would have covered credit plans that are not accessed directly by prepaid cards but instead are structured as "push" accounts. Under such a credit plan, a person would provide credit accessed by an account number where such extensions of credit may only be deposited directly into particular prepaid accounts specified by the person and cannot be deposited directly

[696] 15 U.S.C. 1602(*l*).

into another asset account, such as a deposit account. For example, such a credit plan may allow a consumer to use an account number to request that an extension of credit be deposited directly into a particular prepaid account specified by the creditor when the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card. In the proposal, the Bureau expressed concern that these types of credit plans could act as substitutes for credit plans directly accessed by a prepaid card. The Bureau did not, however, propose to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

Comments Received on Prepaid Cards Accessing Credit From Separate Credit Features

In response to the proposal, several commenters expressed concern about the way the proposal would have applied the credit card rules to credit products that were structured as standalone plans or products, rather than as negative balances on the prepaid account. An issuing credit union requested clarification that the proposal would have applied the credit card rules to situations in which a prepaid card could be used to initiate the load or transfer of credit to a prepaid account, but this load or transfer could not occur in course of processing transactions conducted with the card when there were insufficient funds in the prepaid account to cover the amount of the transaction. This commenter noted that consumers can consciously load value to their prepaid account using their debit card or credit card, where this load is not occurring as part of an overdraft feature in connection with the prepaid account. When using the debit card, the consumer may consciously load funds from an overdraft or line of credit product that is linked to a traditional checking account. When using a credit card, the consumer is loading credit from an available credit card balance to fund the prepaid account. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

On the other hand, as discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These commenters urged the Bureau to apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter suggested that the Bureau should apply the credit card rules to all open-end lines of credit where credit is deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

Two industry trade associations said the Bureau should not consider a prepaid card to be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third party rather than the prepaid account issuer or an associated company. These commenters indicated that such unrelated third-party creditors are not in a position to know that they have additional obligations under Regulation Z at the point in time that a prepaid account issuer or a consumer chooses to use a credit feature offered by the unrelated third-party creditor as a form of overdraft credit feature in relation to a prepaid account. Several other commenters, including an industry trade association, a program manager, and several issuing banks, requested clarification that a prepaid card would not be a credit card under the proposal where it accesses credit deposited into the prepaid account from a separate credit feature offered by an unrelated third-party creditor. These commenters argued that prepaid account issuer may not know that the deposited funds are credit.

On the other hand, several consumer groups supported the proposed rule's approach in considering a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z. They believed the proposed rule would deter evasion by third-party creditors that allow their credit features to be used as an overdraft credit feature accessed by prepaid cards.

Comments Received on Prepaid Cards Accessing Credit Through a Negative Balance on the Asset Feature of a Prepaid Account

The Bureau also received comments on the proposal regarding when a prepaid card is a credit card when it accesses credit extended through a negative balance on the asset feature of the prepaid account. As discussed above, the proposal would have provided that a prepaid card would not have been a credit card under existing § 1026.2(a)(15)(i) if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments.

Many industry commenters argued that the Bureau should not regulate overdraft credit features in connection with prepaid accounts under Regulation Z except where there is an agreement to extend credit, consistent with how overdraft credit is treated currently with respect to checking accounts. These commenters said that the Bureau should instead subject overdraft credit programs where there is not an agreement to the opt-in regime in Regulation E § 1005.17, which currently applies to overdraft services provided for ATM and one-time debit card transactions. Several commenters, including industry trade associations, a credit union service organization, a credit reporting agency, and a program manager, also asserted that overdraft credit does not meet the definition of "credit" under TILA because with respect to overdraft credit, there is no right to defer payment and/or no right to incur debt. These comments are discussed in more detail in the *Overview of the Final Rule's Amendments to Regulation Z* section and in the section-by-section analysis of § 1026.2(a)(14) above.

In commenting on the specifics of the Regulation Z proposal, many industry commenters were concerned that because of the breadth of the fees that would be considered finance charges under the proposal, a prepaid account issuer either could not charge general transactional fees on the prepaid account or would have to waive certain fees on any transaction that happened to have involved credit, as defined under the proposal, in order to avoid triggering the credit card rules.

For example, one payment network indicated that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the *only* fees charged on the prepaid

account in connection with the extension of credit are the *very same* fees that would apply to the same transaction on the prepaid card without an extension of credit. Similarly, two industry trade associations urged that a prepaid card should be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account only if the prepaid account issuer charges fees directly correlated with the overdraft in question. These commenters argued that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the prepaid account issuer only imposes on the prepaid account fees or charges that are wholly unrelated to an overdraft, such as a fee to make a balance inquiry at an ATM. These commenters also indicated that a prepaid card should not be a credit card when the prepaid account issuer only imposes unrelated fees or charges on the prepaid account, even when these unrelated fees or charges are imposed when the prepaid account balance is negative.

Another industry trade association indicated that a monthly fee to hold the prepaid account should not be a "finance charge" simply because it may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

A program manager indicated that the Bureau should clarify that a prepaid card is not a credit card simply because the prepaid account issuer charges reasonable debt collection costs (including attorney's fees) related to collecting the overdraft credit from a consumer.

Many industry commenters were particularly concerned that under the proposal, a prepaid account issuer would need to waive per transaction fees in certain circumstances to avoid triggering the credit card rules. The circumstances raised by industry commenters centered on: (1) Force pay transactions; (2) payment cushions; and (3) transactions that take the account negative when a load of funds from an asset account is pending. These comments are discussed below and in further detail in the section-by-section analysis of § 1026.61(a)(4).

Force pay transactions. "Force pay" transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, where a transaction is either not authorized in advance, or where there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid. Because the proposal's definition of finance charge was broad, a force pay transaction would have triggered application of the credit card rules unless the prepaid account issuer would have waived transaction fees. Industry commenters were nearly universally concerned about this outcome, arguing that the credit card rules should not apply so long as the same fee amount applies regardless of whether the transaction is paid entirely from funds in the prepaid account or is paid in whole or in part by credit. Industry commenters said requiring prepaid account issuers to waive per transaction fees to avoid triggering the credit card rules on all force pay transactions would be complicated and thus would impose substantial compliance costs. These commenters indicated that similar issues also may arise with other per transaction fees, such as currency conversion fees when assessed on force pay transactions.

One payment network predicted that if the proposal were finalized, rather than create complex waiver rules, a prepaid account issuer might instead impose much stricter authorization rules in order to prevent inadvertent overdrafts. This commenter indicated that this could make it more difficult for prepaid cardholders to use their cards at gas pumps, restaurants, hotels, or other locations where these overdrafts from force pay transactions are most likely to occur.

One program manager also indicated that while issuers of other prepaid products could possibly avoid being subject to the credit rules by changing their fee structure (*e.g.,* charging a monthly fee to hold the prepaid account instead of charging a per transaction fee), such an option is not available in the payroll card context because State wage and hour laws prohibit periodic fees on payroll card accounts.

With respect to force pay transactions, one consumer group commenter supported requiring a prepaid account issuer to waive the per transaction fee imposed on a credit transaction where credit is extended through a negative balance on the asset feature of the prepaid account in order to avoid triggering the credit card rules under the proposal. Nonetheless, this commenter indicated that if the Bureau decides to make any exceptions with respect to force pay transactions, these exceptions should be limited to prepaid account issuers who do everything possible to prevent overdrafts, have overdrafts in only very rare and unpreventable situations, and do not charge penalty fees related to declined transactions, overdrafts, or negative balances.

Another consumer group commenter similarly urged that if the Bureau decides to provide an exception for force pay transactions, the exception should only be allowed if the prepaid account issuer does not charge a fee to account holders who have a negative balance, and the exception should only be provided to those prepaid account issuers that take reasonable steps to minimize unpreventable overdrafts. In this case, the commenter said that the Bureau also should allow prepaid account issuers to recoup no more than 5 percent of funds deposited each month until all debts caused by unpreventable overdrafts are paid.

Payment cushions. One program manager also raised a concern about its de minimis purchase cushion, whereby it will authorize transactions for some consumers that result in a negative account balance so long as the shortfall is less than $10. For prepaid accounts where a per transaction fee is imposed on the prepaid account on all transactions regardless of whether the transaction is paid entirely with funds from the prepaid account or is paid with credit, a prepaid card would have been a credit card under the proposal unless the prepaid account issuer waived its per transaction fees on transactions that trigger the purchase cushion. This commenter said that it may not continue to offer its de minimis purchase cushion if it were required to waive these per transaction fees.

One consumer group commenter supported not triggering the credit card rules where a prepaid card can only access a de minimis amount of credit, using $10 as a safe harbor, if such credit is not promoted or disclosed.

Transactions that take the account negative when a load of funds from an asset account is pending. One digital wallet provider raised concerns that a prepaid card could be subjected to the credit card rules under the proposal where credit could be extended through a negative balance on the asset feature of the prepaid account for transactions that occur after a consumer has requested a load transaction from another asset account to pay for the transaction but the load transaction has not yet settled. In this case, transactions on the prepaid account may take the account balance negative until the load

transaction from the asset account has settled. This can occur, for example, when a consumer authorizes a remittance through a mobile wallet which is linked to a checking account, the consumer requests that funds be taken from the consumer's checking account to pay for the remittance, and the remittance is sent before the incoming transfer of funds from the checking account is complete. In this case, the prepaid account issuer is extending credit through a negative balance on the asset feature of the prepaid account until the incoming transfer of funds from the checking account is complete.

The commenter indicated that in all its multi-currency transactions, it charges a currency conversion fee for the transaction, including on transactions where credit is extended as described above. Nonetheless, this currency conversion fee for a credit transaction as described above is the same amount as the fee charged for transactions that are paid entirely with funds from the prepaid account. This commenter indicated that under the proposal, it would need to waive this currency conversion fee for transactions where credit is extended to prevent the prepaid card from becoming a credit card under the proposal, even though the currency conversion fee it charges for these transactions is the same amount as the current conversion fee it charges for transactions entirely paid from funds from the prepaid account. This commenter said that if a prepaid card would be a credit card in this scenario and it was required to waive these fees in order to avoid triggering the credit card rules, it would likely stop processing transactions that take the prepaid account negative (such as remittances discussed above) before the incoming transfer of funds from the checking account is complete.

Comments Received on Prepaid Cards That Access Credit When No Fees for Credit Are Imposed

One consumer group commenter expressed concern that the proposal to exclude prepaid cards from the definition of credit card if the prepaid card only accesses credit that is not subject to a finance charge, as defined in § 1026.4, or a fee described § 1026.4(c) would lead to evasions. For example, this commenter was concerned that a prepaid issuer could offer a "deluxe" prepaid card that comes with $100 in "free" overdraft protection, but the prepaid account issuer recovers the costs for the credit through other fees charged on the credit account that are not finance charges or fees described in § 1026.4(c), such as higher fees for "voluntary" credit insurance that is not a finance charge or fee described in § 1026.4(c). This commenter urged the Bureau to cover all prepaid cards as credit cards when the prepaid card accesses credit, regardless of whether a finance charge or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions as discussed above may be necessary.

Comments Received on Account Numbers That Are Not Prepaid Cards

As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, consumer group commenters indicated that the proposal with respect to push accounts was too limited. Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

One issuing bank and one law firm writing on behalf of a coalition of prepaid issuers did not support subjecting push accounts to credit card rules. One of these industry commenters indicated that attempting to cover push accounts as credit card accounts under the proposal created an overly complex regulatory regime to address the perceived risk of circumvention or evasion of the rules for overdraft plans set forth in the proposal.

One industry trade association commenter indicated that for arrangements where the consumer has the choice of whether to use the line of credit to cover specified overdrafts or to use the line of credit funds for other purposes, this commenter believes it would be inappropriate to treat the line of credit (or its associated account number) as a credit card. This commenter believed that consumer choice makes it clear that the line of credit is a general use line of credit and not a substitute for an overdraft line of credit.

The Final Rule

Based on the comments received as discussed above, the Bureau is making substantial changes from the proposal to narrow the circumstances in which a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card) under Regulation Z. A summary of these changes are discussed below. A more detailed description of the changes in the final rule based on the above comments is contained in the section-by-section analyses of § 1026.61(a)(1), (2) and (4).

Under the final rule, new § 1026.61(a) sets forth when a prepaid card is a credit card under the regulation. New § 1026.61(a)(1)(i) provides that credit offered in connection with a prepaid account is subject to new § 1026.61 and the regulation as specified in that section. New § 1026.61(a)(1)(ii) provides generally that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature, as described in new § 1026.61(a)(2)(i), or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in new § 1026.61(a)(3). New § 1026.61(a)(1)(ii) also provides that a hybrid prepaid-credit card is a credit card for purposes of Regulation Z with respect to those respective credit features. New § 1026.61(a)(1)(iii) specifies that a prepaid card is not a hybrid prepaid-credit card—and thus not a credit card for purposes of Regulation Z—if the only credit offered in connection with the prepaid account is incidental credit meeting the conditions set forth in new § 1026.61(a)(4).

Separate credit features. As discussed in more detail below in the section-by-section analysis of § 1026.61(a)(2), under new § 1026.61(a)(2)(i), the term "covered separate credit feature" means a separate credit feature that is accessible by a hybrid prepaid-credit card. Under new § 1026.61(a)(2)(i), a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature (and thus the separate credit feature is a covered separate credit feature) if the card meets the following two conditions: (1) The card can be used

from time to time to access credit from the credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. The hybrid prepaid-credit card can access both the covered credit feature and the asset feature of the prepaid account, and is a credit card under Regulation Z with respect to the covered separate credit feature.

New § 1026.61(a)(2)(i) also provides that a separate credit feature that meets the two conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

New § 1026.61(a)(2)(i) would capture overdraft credit features that are separate credit features offered by prepaid account issuers, their affiliates, or their business partners in connection with a prepaid account. For example, a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in cases where transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature in the prepaid account at the time the transaction is initiated, and credit can be drawn, transferred, or authorized to be drawn or transferred, from the credit feature at the time the transaction is authorized to complete the transaction. In addition, a prepaid card is a ''hybrid prepaid-credit card'' with respect to such a credit feature in cases related to settlement of transactions where credit can be automatically drawn, transferred, or authorized to be drawn or transferred, from the credit feature to settle transactions made with the card where there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled.

New § 1026.61(a)(2)(i) also captures situations where transactions can be initiated using a prepaid card where the card is a traditional ''dual purpose'' card. In this case, the card can be used both to access the asset feature of a prepaid account and to draw on the covered separate credit feature independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has $50 in available funds in her prepaid account. The consumer initiates a $25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the asset feature of the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the covered separate credit feature, the card will draw on credit from the covered separate credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds in the prepaid account to complete the transaction.

As discussed in more detail below in the section-by-section analysis of § 1026.61(a)(2), new § 1026.61(a)(2)(ii) defines the term ''non-covered separate credit feature'' to mean a separate credit feature that does not meet the two conditions set forth in new § 1026.61(a)(2)(i). A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in new § 1026.61(a)(2)(i). A non-covered separate credit feature is not subject to the rules in Regulation Z applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

First, a separate credit feature is a ''non-covered separate credit feature'' when the separate credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. This is true even if the separate credit feature functions as an overdraft credit feature with respect to the prepaid account. For example, if a consumer links her prepaid account to a credit card issued by a card issuer, where the card issuer is not the prepaid account issuer, its affiliate, or its business partner, and credit is drawn automatically into the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the prepaid account, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third party.

Second, a separate credit feature is a ''non-covered separate credit feature'' if a prepaid card cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. This is true even if the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations cannot occur in the course of authorizing, settling, or otherwise completing a transaction at the Web site to obtain goods or services, obtain cash, or conduct P2P transfers.

For this type of ''non-covered separate credit feature,'' the credit feature would not be functioning as an overdraft credit feature with respect to the prepaid account. In addition, the prepaid card also is not functioning as a traditional ''dual purpose'' card where the card can be used both to access the asset feature of a prepaid account and to draw on a credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers independent of whether there are sufficient or available funds in the asset feature to complete the transaction. Instead, the prepaid card can only be used to draw or transfer credit from a separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

As described above, under new § 1026.61(a)(1)(i) and final § 1026.2(a)(15)(i), a prepaid card is a credit card (*i.e.,* a hybrid prepaid-credit card) for purposes of this regulation with respect to a covered separate credit feature. The Bureau is using its interpretive authority under TILA section 105(a) to define such prepaid cards as credit cards under TILA section 103(*l*). The Bureau believes that defining such prepaid cards as credit cards under § 1026.2(a)(15)(i) is consistent with the definition of ''credit card'' in TILA section 103(*l*). TILA section 103(*l*) defines the term ''credit card'' to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.[697] The Bureau believes that such a prepaid card meets this TILA definition of

[697] 15 U.S.C. 1602(*l*).

"credit card" because it can be used from time to time to obtain credit from the separate credit feature in the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that most overdraft credit features offered in connection with prepaid accounts should be treated as credit card accounts under Regulation Z, except in limited circumstances as discussed below and in the section-by-section analysis of § 1026.61(a)(4). As discussed further below, however, the Bureau is concerned about covering prepaid cards as credit cards when the cards can access separate credit features offered by unrelated third parties that have no affiliation or business arrangement with the prepaid account issuer, even if the separate credit feature functions as an overdraft credit feature in relation to the prepaid account. In this case, the unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties were subject to the provisions applicable to hybrid prepaid-credit cards, these third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. The Bureau is concerned that such third parties might take steps to try to mitigate these kinds of risks, which would make prepaid accounts less widely usable by consumers. Thus, as discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the final rule does not cover a prepaid card as a credit card under Regulation Z when it accesses separate credit features offered by these unrelated third parties. In order to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a) to exclude such prepaid cards from the definition of "credit card" under TILA section 103(*l*) and final Regulation Z § 1026.2(a)(15)(i). The exception would facilitate compliance by allowing an unrelated third party to comply with the rules in Regulation Z that already apply to the separate credit feature without having to comply with additional Regulation Z provisions that would apply if the prepaid card were covered as a credit card with respect to the credit feature. Under this exception, third parties would not face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account, where the prepaid card may be linked to the separate credit feature without the knowledge of the unrelated third party.

As discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the Bureau also is clarifying that a prepaid card is not a credit card when the prepaid card accesses a separate credit feature that is not functioning as an overdraft credit feature, and the card is not a traditional "dual purpose" card as discussed above. In this case, the prepaid card only can access the separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Pursuant to its interpretive authority under TILA section 105(a), the Bureau is defining "credit card" in current TILA section 103(*l*) and final § 1026.2(a)(15)(i) to exclude a prepaid card from being covered as a credit card with respect to a separate credit feature when it only can access credit from the separate credit feature outside the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau does not interpret TILA section 103(*l*) to encompass an account number for a prepaid account to be a "credit card" under TILA section 103(*l*) when the prepaid account number can only be used as a destination for the transfer of money from a separate credit account, and cannot be used to obtain credit within the course of a transaction to obtain goods or service, obtain cash, or conduct P2P transfers. The Bureau believes that when credit is accessed outside of the course of a transaction on a prepaid account, it is somewhat less risky for consumers because consumers would be required to make a deliberate decision to access the credit outside the course of a transaction, and thus can separately evaluate the tradeoffs involved. In addition, as discussed further below, this approach is consistent with regard to how lines of credit that can be accessed by debit cards are treated under the credit card rules in Regulation Z. Thus, consistent with this current definition of "credit card," the Bureau is clarifying that a prepaid card is not a credit card with respect to a separate credit feature when it can only access the separate credit feature outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau also believes that this clarification is consistent with the proposal's general focus on covering overdraft credit features offered in connection with prepaid accounts as credit card accounts under Regulation Z.

Credit extended through a negative balance on the asset feature of the prepaid account. As discussed in more detail in the section-by-section analysis of § 1026.61(a)(3) below, under new § 1026.61(a)(3), a prepaid card that can access credit extended through a negative balance on the asset balance of the prepaid card is a hybrid prepaid-credit card unless the card can only access incidental credit as described in new § 1026.61(a)(4). This provision is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. Thus, for purposes of coverage, a person offering such an overdraft credit feature is a "card issuer" under final § 1026.2(a)(7) that is subject to Regulation Z, including § 1026.61(b).

In terms of triggering coverage under Regulation Z, under new § 1026.61(a)(1)(i) and (3)(i) and final § 1026.2(a)(15)(i), a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card) for purposes of this regulation when it is a single device that can be used from time to time to access credit extended through a negative balance on the asset feature of the prepaid account, unless the card can only access incidental credit as described in new § 1026.61(a)(4). The Bureau is using its interpretive authority under TILA section 105(a) to define such prepaid cards as credit cards under TILA section 103(*l*). The Bureau believes that classifying such prepaid cards as credit cards under § 1026.2(a)(15)(i) is consistent with the definition of "credit card" in TILA section 103(*l*). TILA section 103(*l*) defines the term "credit card" to mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.[698] The Bureau believes that such a prepaid card meets this TILA definition of "credit card" because it can be used from time to time to access credit that is extended as a negative balance on the prepaid account in the course of completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

However, as discussed further below, new § 1026.61(b) prohibits a card issuer from structuring an overdraft credit feature as a negative balance on the

[698] 15 U.S.C. 1602(*l*).

asset feature of the prepaid account, unless the program is structured to involve only incidental credit as provided in new § 1026.61(a)(4). The Bureau believes that this rule is necessary to promote transparency and compliance with the credit card requirements. Thus, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

As described in the section-by-section analysis of § 1026.61(a)(4) below, new § 1026.61(a)(4) provides that an overdraft credit feature structured as a negative balance on the asset feature of a prepaid account is not accessible by a hybrid prepaid-credit card where: (1) The prepaid card cannot access a covered separate credit feature as defined in new § 1026.61(a)(2)(i); (2) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer generally has a policy and practice of declining to authorize transactions made with the card when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the amount of the transactions, or the prepaid account issuer only authorizes those transactions in circumstances related to certain payment cushions and delayed load cushions; and (3) with respect to the prepaid account that is accessible by the prepaid card, the prepaid account issuer does not charge credit-related fees for any credit extended on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

Under this exception, a prepaid account issuer may extend credit through a negative balance on the asset feature of the prepaid account in certain situations, such as force pay transactions, without having to waive general transaction fees, as would have been required under the proposal to avoid triggering the credit card rules. As discussed above, force pay transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, where a transaction is either not authorized in advance, or where there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid.

The exception in new § 1026.61(a)(4) also would allow a prepaid account issuer to adopt a payment cushion where the issuer could authorize transactions that would take the account balance negative by no more than $10 at the time the transaction is authorized. In addition, the exception would allow a prepaid account issuer to adopt a delayed load cushion. Specifically, in cases where the prepaid account issuer has received an instruction or confirmation for an incoming EFT originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the final rule allows a prepaid account issuer to authorize transactions that take the prepaid account negative, so long as the transactions will not cause the account balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

Thus, the Bureau is intending to exempt overdraft credit features that are structured as a negative balance on the asset feature of the prepaid account under Regulation Z where the prepaid account issuer generally is not authorizing transactions that will take the asset feature of the prepaid account negative and the prepaid account issuer generally does not charge credit-related fees on credit extended on the asset feature of the prepaid account. As discussed in more detail below, the Bureau believes that this exception will address a substantial number of the concerns expressed by industry commenters about situations in which the proposal would have required them to waive general transaction fees on incidental credit to avoid triggering the credit card rules. In light of the very limited nature of the incidental credit at issue, the Bureau believes that it is appropriate to exclude this incidental credit from coverage under Regulation Z. Thus, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a), to exclude such prepaid cards that qualify for the exception under new § 1026.61(a)(4) from the definition of ''credit card'' under TILA section 103(*l*) and final Regulation Z § 1026.2(a)(15)(i).[699] The exception in new § 1026.61(a)(4) would facilitate compliance by allowing a prepaid account issuer to comply only with Regulation E with respect to the prepaid account and this incidental credit, instead of also complying with Regulation Z with respect to the incidental credit.

Given that a prepaid account issuer can only extend credit through a negative balance on the asset feature of the prepaid account in limited circumstances under the exception in new § 1026.61(a)(4), and credit-related fees generally may not be imposed for the credit extended, the Bureau anticipates that the credit extended through a negative balance on the asset feature of a prepaid account that qualifies for the exception would be limited. The Bureau believes that certain harms to consumers, such as becoming overextended in using this credit, would be limited. Thus, to facilitate compliance, the Bureau believes that this type of credit is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. For example, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.12(a) above, Regulation E's provisions in final §§ 1005.11 and 1005.18(e) regarding error resolution would apply to extensions of this credit. In addition, such credit extensions would be disclosed on Regulation E periodic statements under existing § 1005.9(b) or, if the financial institution follows the periodic statement alternative in final § 1005.18(c)(1), on the electronic and written histories of the consumer's prepaid account transactions.

Also, as discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, although this incidental credit generally is governed by Regulation E, the Bureau is exempting this incidental credit from the opt-in rule in final § 1005.17. Existing § 1005.17 sets forth requirements that financial institutions must follow in order to provide ''overdraft services'' to consumers related to consumers' accounts. Under existing § 1005.17, financial institutions must provide consumers with notice of their right to opt-in, or affirmatively consent, to the institution's overdraft service for ATM and one-time debit card transactions, and obtain the consumer's affirmative consent before fees or charges may be assessed on the

[699] 15 U.S.C. 1602(*l*).

consumer's account for paying such overdrafts. For the reasons discussed in more detail in the section-by-section analysis of Regulation E § 1005.17 above, the Bureau is adding new § 1005.17(a)(4) to provide that credit accessed from an overdraft credit feature that is exempt from Regulation Z under § 1026.61(a)(4) is not an overdraft service under final § 1005.17(a) and thus would not be subject to the opt-in requirements in final § 1005.17. This is true even though the prepaid account issuer may be charging per transaction fees that are permitted under new § 1026.61(a)(4)(ii)(B) with respect to credit accessed from the overdraft credit feature. The Bureau does not believe that the opt-in requirements in final § 1005.17 are appropriate for these types of overdraft credit features given that these overdraft credit features may not charge higher per transaction fees for credit extended through a negative balance on the asset feature of the prepaid account than the per transaction fees charged when the transaction only accesses funds in the asset feature of the prepaid account.

Account numbers that are not prepaid cards. As discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i) above, upon review of the comments and its own analysis, the Bureau has decided not to adopt the proposal to provide that an account number for a credit account would be a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In proposing these provisions, the Bureau was concerned that a prepaid account issuer and a creditor could design arrangements to circumvent the proposed rules in Regulation Z applicable to prepaid cards that are credit cards. In this case, a third-party creditor could have an arrangement with the prepaid account issuer such that credit from the credit account is pushed from the credit account to the prepaid account during the course of a particular prepaid account transaction to prevent the transaction from taking the prepaid account balance negative. These provisions related to account numbers of the credit account were designed to prevent this type of evasion of the rules applicable to prepaid cards that are credit cards.

The Bureau is addressing this type of evasion by generally covering a prepaid card as a credit card (*i.e.,* "hybrid prepaid-credit card") when the card can access a separate credit feature that is functioning as an overdraft credit feature and is offered by a prepaid account issuer, its affiliate, or its business partner.[700] Specifically, new § 1026.61(a)(2)(i) provides that a prepaid card is a "hybrid prepaid-credit card" with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. New § 1026.61(a)(2)(i) defines such a separate credit feature accessible by a hybrid prepaid-credit card as a "covered separate credit feature." Thus, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account, and the hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature. In this case, as discussed in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the final rule provides that a prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

In addition, the final rule also provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways than through the hybrid prepaid-credit card. For the reasons set forth in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that consumers will benefit from the application of the credit card rules generally to a credit account that functions as an overdraft credit feature in connection with a prepaid account when that overdraft feature is offered by a prepaid account issuer, its affiliate, or its business partner, regardless of whether the credit account can only be used as an overdraft credit feature. In addition, the Bureau is concerned about potential evasion if the provisions set forth in the final rule applicable to overdraft credit features described above could be avoided simply by providing other uses for the credit account.

The Bureau believes that the provisions in the final rule described above with respect to a covered separate credit feature adequately capture situations where a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner functions as an overdraft credit feature in relation to a prepaid account. Thus, the Bureau believes that it is no longer necessary to treat an account number of the credit account as a credit card to capture situations when the credit account may function as an overdraft credit feature in relation to the prepaid account.

As discussed above and in more detail in the section-by-section analysis of § 1026.61(a)(2) below, the Bureau generally intends to cover under Regulation Z overdraft credit features in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners. As discussed above and in more detail in the section-by-section analyses of § 1026.61(a)(2) and (4) below, the Bureau also has decided to exclude prepaid cards from being covered as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to a "non-covered separate credit feature," which means that the separate credit feature either (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers, or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when

[700] One consumer group commenter urged the Bureau to include an anti-evasion provision in the final rule. This commenter believed that the Bureau should be able to rely on an anti-evasion rule to prohibit conduct that clearly is against the spirt of the rules, even if the final rule does not specifically prohibit that activity. The Bureau is not adopting such an anti-evasion rule at this time. The Bureau in various ways has crafted the final rule to address potential areas of evasion that could arise with respect to the application of the rules in Regulation Z to overdraft credit features offered by prepaid account issuers, their affiliates, or their business partners in connection with prepaid accounts. *See, e.g.,* the section-by-section analyses of §§ 1026.2(a)(7) and (a)(15)(i) and 1026.4(b)(11)(ii) above, and 1026.61(a)(4) and (a)(5)(iii) below.

the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. A prepaid card is not a hybrid prepaid-credit card under new § 1026.61 or a credit card under final § 1026.2(a)(15)(i) when it accesses credit from these types of credit features. For more detailed explanations of when prepaid cards are not credit cards under Regulation Z, see the section-by-section analyses of § 1026.61(a)(2) and (4) below.

61(a)(1) In General

New § 1026.61(a)(1)(i) provides that credit offered in connection with a prepaid account is subject to new § 1026.61, as specified in that section. New § 1026.61(a)(1)(ii) provides generally that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in new § 1026.61(a)(2)(i), or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account, as described in new § 1026.61(a)(3). New § 1026.61(a)(1)(ii) also provides that a hybrid prepaid-credit card is a credit card for purposes of Regulation Z with respect to those respective credit features. New § 1026.61(a)(1)(iii) specifies that a prepaid card is not a hybrid prepaid-credit card—and thus not a credit card for purposes of Regulation Z—if the only credit offered in connection with the prepaid account is incidental credit meeting the conditions set forth in new § 1026.61(a)(4).

As described below, the commentary to new § 1026.61(a)(1) contains general guidance on the circumstances in which a prepaid card is a hybrid prepaid-credit card under § 1026.61(a).

Credit Accessible by a Hybrid Prepaid-Credit Card

New comment 61(a)(1)–1 makes clear that a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature described in new § 1026.61(a)(2)(i), or if the prepaid card can access credit through a negative balance on the asset feature of a prepaid account described in new § 1026.61(a)(3) (except as provided in new § 1026.61(a)(4)), even if, for example: (1) The person that can extend the credit does not agree in writing to extend the credit; (2) the person retains discretion not to extend the credit; or (3) the person does not extend the credit once the consumer has exceeded a certain amount of credit. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau does not believe that whether a prepaid card is a credit card under Regulation Z should turn on whether the person has agreed in writing to extend the credit or retains the discretion not to extend credit in certain circumstances.

Prepaid Card That Is Solely an Account Number

Proposed comment 2(a)(15)–2.i.F would have provided that the term "credit card" includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. Thus, under the proposal, a prepaid card that is solely an account number would have been a credit card under § 1026.2(a)(15)(i) if it met this standard.

For reasons discussed in more detail in the section-by-section analyses of § 1026.61(a)(2) and (4) below, the Bureau is revising from the proposal the circumstances in which a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card). Nonetheless, consistent with the proposal, new comment 61(a)(1)–2 provides that a prepaid card that is solely an account number is a hybrid prepaid-credit card (and thus is a credit card under Regulation Z) if it meets the conditions for being a hybrid prepaid-credit card set forth in new § 1026.61(a).

Usable From Time to Time

Current comment 2(a)(15)–1 provides that a credit card under Regulation Z must be usable from time to time. Because this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards. The proposal would have revised this comment to provide that with respect to a preauthorized check that is issued on a prepaid account for which the funds are withdrawn at the time of preauthorization using the prepaid account number, the credit is obtained using the prepaid account number and not the check. The proposal also would have revised this comment to cross-reference proposed comment 2(a)(15)–2.i.F for a discussion of when a prepaid account number is a credit card.

The Bureau did not receive specific comment on this aspect of the proposal. The final rule moves the proposed guidance in proposed comment 2(a)(15)–1 related to prepaid accounts to new comment 61(a)(1)–3 and revises it to be consistent with new § 1026.61. Consistent with current comment 2(a)(15)–1, new comment 61(a)(1)–3 provides that in order for a prepaid card to be a hybrid prepaid-credit card under new § 1026.61(a), the prepaid card must be capable of being used from time to time to access credit as described in new § 1026.61(a). Because this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not hybrid prepaid-credit cards. Consistent with the proposal, new comment 61(a)(1)–3 also provides that with respect to a preauthorized check that is issued on a prepaid account for which credit is extended through a negative balance on the asset feature of the prepaid account, or credit is drawn, transferred or authorized to be drawn or transferred from a separate credit feature, the credit is obtained using the prepaid account number and not the check at the time of preauthorization using the prepaid account number. The comment states that a prepaid account number is a hybrid prepaid-credit card if the account number meets the conditions set forth in new § 1026.61(a), as discussed above.

Prepaid Account That Is a Digital Wallet

One digital wallet provider indicated that the Bureau should clarify that the proposal's restrictions do not apply to a digital wallet's stored payment credentials. This commenter indicated that stored credentials do not present the same risks of consumer harm as overdraft protection for prepaid cards. New comment 61(a)(1)–4 provides guidance on the circumstances in which prepaid account number for a digital wallet that is a prepaid account is a hybrid prepaid-credit card under new § 1026.61(a).

Specifically, new comment 61(a)(1)–4 states that a digital wallet that is capable of being loaded with funds is a prepaid account under final Regulation E § 1005.2(b)(3). *See* final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6. The comment explains that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card if it meets the conditions set forth in new § 1026.61(a).

New comments 61(a)(1)–4.i.A and B provide illustrations of this rule. First, the comments explain that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card under new § 1026.61(a)(2)(i) where it can be used from time to time to: (1) Access a covered separate credit feature

offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers as described in new § 1026.61(a)(2)(i); or (2) access the stored credentials for a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers as described in new § 1026.61(a)(2)(i).

Second, new comments 61(a)(1)–4.i.C and D state that a prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to: (1) Credentials stored in the prepaid account that access a non-covered separate credit feature as described in new § 1026.61(a)(2)(ii) that is not offered by the prepaid account issuer, its affiliate, or its business partner, even if the prepaid account number can access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) credentials stored in the prepaid account that access a non-covered separate credit feature as described in new § 1026.61(a)(2)(ii), where the prepaid account number cannot access those credential in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct P2P transfers, even if such credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

Third, comment 61(a)(1)–4.ii states that a digital wallet is not a prepaid account under final Regulation E § 1005.2(b)(3) if the digital wallet can never be loaded with funds, such as a digital wallet that only stores payment credentials for other accounts. See final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6. The comment explains that an account number that can access such a digital wallet would not be a hybrid prepaid-credit card under new § 1026.61(a), even if the wallet stores a credential for a separate credit feature that is offered by the digital wallet provider, its affiliate, or its business partner and can be used in the course of a transaction involving the digital wallet.

Prepaid Account That Can Be Used for Bill Payment Services

To help ensure compliance with the final rule, the Bureau also is including guidance in the final rule on when a prepaid card that can be used for an online bill payment service offered by the prepaid account issuer is a hybrid prepaid-credit card under § 1026.61(a). New comment 61(a)(1)–5 provides that where a prepaid account can be used for online bill payment services offered by the prepaid account issuer, the prepaid card (including a prepaid account number) that can access that prepaid account is a hybrid prepaid-credit card if it meets the requirements set forth in § 1026.61(a). For example, if a prepaid account number can be used from time to time to initiate a transaction using the online bill payment service offered by the prepaid account issuer to pay a bill, and credit can be drawn, transferred, or authorized to be drawn or transferred to the prepaid account from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing that transaction as described in § 1026.61(a)(2)(i), the prepaid account number would be a hybrid prepaid-credit card under § 1026.61(a). In this case, the prepaid account number can be used to draw or transfer credit, or authorize the draw or transfer of credit, from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of completing a transaction to pay for goods or services through the online bill payment service.

Real-Time Notification or Opt-In for Overdrafts

In the proposal, the Bureau discussed the possibility of requiring additional real-time notifications of transactions triggering an overdraft or requiring real-time opt-in by consumers to approve each overdraft in addition to applying the credit card rules in Regulation Z to overdraft credit features in connection with prepaid accounts. The Bureau understood that there may be technological, operational, and procedural challenges to the timing and delivery of such a notice or compliance with such an opt-in requirement, particularly in the point of sale retail environment. The Bureau was unsure at the time whether such a procedure could be implemented given that notifications and/or opt-in might require multiple communications among financial institutions, card networks, and merchants. Accordingly, the Bureau did not propose any requirements related to real-time notification or opt-in, but it solicited comment on possible options and suggestions for what it might require in this regard for prepaid accounts.

Several commenters, including industry trade associations and an issuing bank, indicated that real-time notification and opt-in is not feasible with current technology. Two of these commenters were concerned that such notices are not feasible given existing technology and that such notices could thus never be reliable and therefore would be more likely to lead to consumer confusion. These commenters stated that current processing systems will not necessarily have real-time balances and cannot be depended upon for providing real-time notices with any reliability. Further, these commenters stated that current terminals are not capable of displaying the required messaging. Thus, these commenters stated that it is not clear that the requisite technology is in place to comply with the potential notification and opt-in requirements discussed above, and thus there is a likelihood that such a requirement could lead to consumer confusion. Moreover, even if the card issuer clearly discloses that real-time notifications will not always be provided, the fact that they could be provided for the majority of transactions will lead consumers over time to believe that the notices are more reliable than in fact they are.

One program manager that offers an overdraft feature in connection with some of its prepaid accounts indicated that consumers who use the overdraft feature consent to receive notifications electronically, and the program manager sends electronic messages notifying consumers when they have overdrafted. The program manager indicated that most of these consumers with the overdraft feature also choose to receive alert messages that provide balance information periodically and after every transaction. This program manager indicated that a point-of-sale opt-in may present challenges, but it may be feasible to create a program where the overdraft feature could be turned on for a time-period during which the consumer intends to use the feature.

One consumer group said that the Bureau should mandate clear and deliberate opt-in processes so the consumer knows exactly the moment when they can begin incurring overdraft charges. Another consumer group commenter stated that current technology exists that can notify a person that the account has insufficient funds, via text or email. After receiving this notification, consumers could

transfer funds if they wish to avoid credit. This commenter noted that its research has found that many people overdraft without knowing it and most would prefer to have transactions declined rather than paying a fee for overdrawing their accounts.

Based on these comments, the Bureau is not adopting real-time notification and opt-in requirements at this time. The Bureau will continue to monitor developments with respect to real-time notification and opt-in.

61(a)(2) Prepaid Card Can Access Credit From a Covered Separate Credit Feature

In General

As discussed above, the Bureau received industry comments stating that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third party. On the other hand, as discussed above, several consumer groups supported the proposed rule to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

In addition, the Bureau received an industry comment that the Bureau should clarify that a prepaid card should not be a credit card when the prepaid card could be used to initiate the load or transfer of credit to the prepaid account, but this load or transfer could not occur in order to process transactions conducted with the card when there were insufficient funds in the prepaid account to cover the amount of the transaction. On the other hand, as discussed above, several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

As discussed in more detail below, under the final rule, new § 1026.61(a)(2)(i)(A) defines a separate credit feature accessible by a hybrid prepaid-credit card as described in new § 1026.61(a)(2)(i) as a covered separate credit feature. Under new § 1026.61(a)(2)(i)(A), a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature (and the separate credit feature is a covered separate credit feature) when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied: (1) The card can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. As discussed in more detail below, new § 1026.61(a)(2)(i)(B) provides that a separate credit feature that meets the two conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

As discussed in more detail below, consistent with the proposal, under new § 1026.61(a)(2)(i), a prepaid card is a credit card under Regulation Z (*i.e.,* hybrid prepaid-credit card) with respect to a separate credit feature when the credit feature functions as an overdraft credit feature with respect to the prepaid account, and the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. Consistent with the proposal, new § 1026.61(a)(2)(i) also captures situations where transactions can be initiated using a prepaid card where the card is a traditional "dual purpose" card. In this case, the card can be used both to access the asset feature of a prepaid account and to draw on the covered separate credit feature independent of whether there are sufficient or available funds in the asset feature to complete the transaction.

Under the final rule, a prepaid card is a hybrid prepaid-credit card when it can access credit from a covered separate credit feature as described in new § 1026.61(a)(2)(i), even if finance charges are not charged in relation to this credit. As discussed above, under the proposal, a prepaid card would not have been a credit card under § 1026.2(a)(15)(i) if the prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or fee described in § 1026.4(c), and is not payable by written agreement in more than four installments. One consumer group commenter expressed concern that the exclusion of prepaid cards from the definition of credit card if the prepaid card only accesses credit that is not subject to a finance charge, as defined in § 1026.4, or a fee described § 1026.4(c) would lead to evasions. For example, this commenter was concerned that a prepaid issuer could offer a "deluxe" prepaid card that comes with $100 in "free" overdraft protection but recover the costs for the credit through other fees charged on the credit account that are not finance charges or fees described in § 1026.4(c), such as higher fees for purportedly "voluntary" credit insurance that is not a finance charge or fee described in § 1026.4(c). This commenter urged the Bureau to cover all prepaid cards as a credit card when the prepaid card accesses credit, regardless of whether a finance charge or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions may be necessary.

To address these concerns, the Bureau provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature when it meets the two conditions set forth in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed in connection with the credit from the covered separate credit feature. The Bureau believes that the final rule is consistent with the intent of the proposal and the definition of "credit card" under Regulation Z, which applies to "charge cards" and other credit products meeting the regulatory definitions even if they do not involve finance charges.[701] In proposing not to

[701] Specifically, Regulation Z defines the term "credit card" to mean "any card, plate, or other single credit device that may be used from time to time to obtain credit." *See* § 1026.2(a)(15)(i). In addition, under Regulation Z, a card issuer (or its agent) offering credit is a "creditor" under

Continued

apply the credit card rules in situations in which a prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments, the Bureau intended to provide this exception only with respect to credit extended through a negative balance on the asset feature of the prepaid account. In the proposal, the Bureau stated its belief that this type of credit, where no credit-related fees are imposed, is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. See the section-by-section analysis of § 1026.61(a)(4) below for a description of the exception that is contained in the final rule.

With regard to covered separate credit features, however, the same logic does not apply. Not all credit extensions accessing separate credit features via a prepaid card would be subject to Regulation E protections if Regulation Z did not apply. Rather, Regulation E would apply to credit extensions that are deposited in a prepaid account by use of an EFT, but it would not apply to extensions of credit where the transaction does not involve an EFT to or from the prepaid account. The final rule also is consistent with the definition of ''credit card'' under Regulation Z, which does not require that finance charges be charged for the credit in order for a device to meet the definition of ''credit card.''

The Bureau also believes that considering a prepaid card to be a hybrid prepaid-credit card with respect to a covered separate credit feature when it meets the two conditions set forth in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed in connection with the credit from the covered separate credit feature, also would help prevent card issuers from structuring their fees to recover the cost of credit through fees that are not finance charges to avoid triggering the credit card rules. The Bureau believes that this will help promote transparency and consumers understanding of the costs of credit.

Thus, the final rule provides that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, as defined in § 1026.61(a)(2)(i), regardless of whether finance charges are imposed for the credit from the covered separate credit feature.

§ 1026.2(a)(17)(iii) for purposes of the provisions in subpart B of the regulation, regardless of whether a finance charge is imposed for the credit.

Covered Separate Credit Features

New § 1026.61(a)(2)(i)(A) provides that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature and the following two conditions are both satisfied: (1) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. Under new § 1026.61(a)(2)(i)(A), a separate credit feature that is accessible by a hybrid prepaid-credit card is a covered separate credit feature.

New § 1026.61(a)(2)(i)(B) provides that a separate credit feature that meets the conditions set forth above is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In developing these rules, the Bureau was conscious that there were two distinct types of credit extensions that could occur with respect to a covered separate credit feature. The first type of credit extension is where the hybrid prepaid-credit card accesses credit in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The second type of credit extension is where a consumer makes a standalone draw or transfer of credit from the covered separate credit feature, outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's 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 P2P transfers. The Bureau believes that if the prepaid card is capable of accessing the separate credit feature in the two conditions set forth in § 1026.61(a)(2)(i), the covered separate credit feature is a credit card account under Regulation Z, even with respect to draws or transfers of credit from the covered separate credit feature that occur outside the course of any transactions conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. This is consistent with other provisions in Regulation Z that apply the credit card rules to the credit card account generally, even with respect to transactions that are not conducted with the credit card, such as convenience check transactions. *See, e.g.,* §§ 1026.52(a) and (b) and 1026.55 and related commentary, and § 1026.12(d)(1) and comment 12(d)(1)–3.

Under new § 1026.61(a)(2)(i), a hybrid prepaid-credit card that can access a covered separate credit feature, as defined in new § 1026.61(a)(2)(i), is a credit card under Regulation Z with respect to that covered separate credit feature. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. New comment 61(a)(2)–1.i provides that for a prepaid card to be a hybrid prepaid-credit card under new § 1026.61(a)(2)(i) with respect to a separate credit feature, the prepaid account must be structured such that the draw or transfer of credit, or authorizations of either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner is capable of occurring in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a P2P transfer. In this case, the separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

New comment 61(a)(2)–1.ii makes clear a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether (1) the credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) the credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. This provision prevents a prepaid account issuer from evading the credit card provisions of Regulation Z by structuring the transactions as a push of credit funds to the prepaid account (as opposed to a pull of credit funds from the separate credit feature) during the course of a particular prepaid

account transaction to prevent the transaction from taking the prepaid account balance negative.

New comment 61(a)(2)–1.iii makes clear that a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways.

New comment 61(a)(2)–2 provides guidance on when a draw, transfer, or authorization of a draw or transfer occurs within the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, as described in new § 1026.61(a)(2)(i). Specifically, new comment 61(a)(2)–2.i provides that a draw, transfer, or authorization from a separate credit feature is deemed to be in the ''course of authorizing, settling, or otherwise completing'' a transaction if it occurs during the authorization phase of the transaction or in later periods up to the settlement of the transaction. This comment makes clear that a covered separate credit feature accessible by a hybrid prepaid-credit card includes an overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner in connection with a prepaid account.

New comment 61(a)(2)–2.ii focuses on situations in which the credit is drawn, transferred, or authorized to be drawn or transferred in the course of authorizing a transaction. New comment 61(a)(2)–2.ii makes clear that under new § 1026.61(a)(2)(i), a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature offered by a prepaid account issuer, its affiliate, or its business partner in cases, for example, where (1) transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated, and credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction; and (2) transactions can be initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account.

New comment 61(a)(2)–2.iii provides illustrations of transactions in which credit is drawn, transferred, or authorized to be drawn or transferred in the course of settling a transaction. For example, under new § 1026.61(a)(2)(i), a prepaid card is a ''hybrid prepaid-credit card'' with respect to such a separate credit feature in cases where credit can be automatically drawn, transferred, or authorized to be drawn or transferred from the separate credit feature at the time of settlement where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the original transaction with the card.

New comment 61(a)(2)–3 clarifies that in addition to overdraft credit features, new § 1026.61(a)(2)(i) also covers a prepaid card as a hybrid prepaid-credit card (and thus a credit card under Regulation Z) where the card is a traditional ''dual purpose'' card. In this case, a prepaid card can be used from time to time both to access the asset feature of a prepaid account and to draw on the covered separate credit feature in the course of a transaction independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has $50 in funds in her prepaid account. The consumer initiates a $25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the covered separate credit feature, the card will draw on credit from the credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds the prepaid account to complete the transaction.

New comment 61(a)(2)–4.i clarifies that new § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards use the terms ''covered separate credit feature'' or ''covered separate credit feature accessible by a hybrid prepaid-credit card'' to refer to a separate credit feature that meets the conditions of new § 1026.61(a)(2)(i). *See, e.g.,* final §§ 1026.4(c)(4), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), 1026.60(a)(5)(iv), and 1026.60(b). In addition, new comment 61(a)(2)–4.i also states that several provisions in Regulation Z also describe this arrangement as one where a covered separate credit feature and an asset feature on a prepaid account are both accessible by a hybrid prepaid-credit card, as defined in new § 1026.61. *See, e.g.,* final §§ 1026.4(b)(11), 1026.6(b)(3)(iii)(D), and 1026.13(i)(2).

New comment 61(a)(2)–4.ii provides guidance on new § 1026.61(a)(2)(i)(B), which provides that a separate credit feature that meets the two conditions set forth in new § 1026.61(a)(2)(i)(A) is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct P2P transfers. New comment 61(a)(2)–4.ii clarifies that if a prepaid card is capable of drawing or transferring credit, or authorizing either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a P2P transfer, the credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card, even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, with respect to a covered separate credit feature, a consumer may use the prepaid card at the prepaid account issuer's 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 P2P transfers. This credit transaction is considered a credit transaction on a covered separate credit feature accessible by a hybrid prepaid-credit card, even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. As discussed above, the Bureau believes that if the prepaid card is capable of accessing the separate credit feature in the two conditions set forth in § 1026.61(a)(2)(i), the covered separate credit feature is a credit card account under Regulation Z, even with respect to draws or transfers of credit from the covered separate credit feature that occur outside the course of any transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

Non-Covered Separate Credit Features

As discussed above, in order for a separate credit feature to be a ''covered

separate credit feature'' accessible by a hybrid prepaid-credit card, the separate credit feature must meet the following two conditions set forth in new § 1026.61(a)(2)(i): (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

New § 1026.61(a)(2)(ii) defines the term ''non-covered separate credit feature'' to mean a separate credit feature that does not meet these two conditions. Under § 1026.61(a)(2)(ii), a prepaid card that accesses credit from a non-covered separate credit feature is not a hybrid prepaid-credit card with respect to this non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described above. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it typically will be subject to Regulation Z depending on its own terms and conditions, independent of the connection to the prepaid account.

New comment 61(a)(2)–5.i clarifies that a separate credit feature is a ''non-covered separate credit feature'' when the separate credit feature is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. This is true even if the separate credit feature functions as an overdraft credit feature with respect to the prepaid account. For example, assume a consumer links her prepaid account to a credit card issued by a card issuer that is not the prepaid account issuer, its affiliate, or its business partner so that credit is drawn automatically into the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the asset feature. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third-party card issuer.

New comment 61(a)(2)–5.ii clarifies that a separate credit feature is a ''non-covered separate credit feature'' if a prepaid card cannot access the separate credit feature during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. This is true even if the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2) with respect to this non-covered separate credit feature.

New comment 61(a)(2)–5.iii explains that a person offering a non-covered separate credit feature does not become a card issuer under final § 1026.2(a)(7), and thus does not become a creditor under final § 1026.2(a)(17)(iii) or (iv), because the prepaid card can be used to access credit from the non-covered separate credit feature. The person offering the non-covered separate credit feature, however, may already have obligations under Regulation Z with respect to that separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer under final § 1026.2(a)(7) and thus a creditor under final § 1026.2(a)(17)(iii). Nonetheless, in that case, the person does not need to comply with the provisions in Regulation Z applicable to hybrid prepaid-credit cards even though the prepaid card can access credit from the non-covered separate credit feature. The obligations under Regulation Z that apply to a non-covered separate credit feature are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature.

Each of the two types of non-covered separate credit features is discussed in more detail below.

Non-covered separate credit feature where a prepaid card can access a separate credit feature that is not offered by the prepaid account issuer, its affiliate, or its business partner. As discussed above, the Bureau received comments from industry stating that a prepaid card should not be a credit card with respect to a separate credit feature when the credit feature is offered by an unrelated third-party. These commenters were concerned that an unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties that offer separate credit features were subject to the provisions applicable to hybrid prepaid-credit cards, these third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This would have been true even if the third parties were already subject to the credit card rules in their own right because the proposal contained a number of provisions that would have applied only to prepaid cards that are credit cards and would not have applied to credit card accounts generally.

In contrast, several consumer groups supported the proposed rule to consider a third party that offers an open-end credit feature accessed by a prepaid card to be an agent of the prepaid account issuer and thus a credit card issuer with responsibilities under Regulation Z.

Based on the comments, the Bureau believes it is appropriate not to trigger status as a hybrid prepaid-credit card where a credit feature is not offered by the prepaid account issuer, its affiliate, or its business partner, even if an individual consumer decides to link the two accounts such that a draw or transfer of credit, or authorization of either, occurs during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers.

With respect to a third party offering a separate credit feature that is neither an affiliate nor a business partner of the prepaid account issuer, the Bureau recognizes that this unrelated third party may not be aware when its credit feature is used as an overdraft credit feature with respect to a prepaid account. If unrelated third parties were subject to the provisions applicable to hybrid prepaid-credit cards, such third parties would face additional compliance risk in connection with the prepaid card becoming a new access device for the credit account. This can occur when the prepaid account issuer uses the ACH network to execute an authorization from a consumer to pull credit for a consumer from a separate credit account offered by an unrelated third party. Financial institutions participating in the ACH network may have difficulty specifically identifying and blocking pulls of credit by a prepaid account (and, unlike with credit/debit

cards, the prepaid account issuer likely would have no way of knowing if the account and routing number a consumer provides for ACH purposes accesses a deposit account or a credit account). Moreover, because an ACH debit pull may be used to access credit from accounts that are not subject to the current credit card rules in their own right, the Bureau is concerned that unrelated third parties offering separate credit features would face even more challenges if the pull (or the ability to initiate pulls) triggered credit card compliance obligations.

The Bureau also is concerned that unrelated third parties that are already subject to the credit card rules in their own right also may be unwilling to assume that compliance risk due to the prepaid account issuer's actions in linking a separate credit feature offered by an unrelated third party to a prepaid account to be used as an overdraft credit feature. As a result, the Bureau is concerned that credit card networks could prevent prepaid account issuers from being merchants in the network for all purposes because credit card issuers would not want to be subject to the enhanced obligations in Regulation Z that would apply if a prepaid card were deemed to be a credit card with respect to a credit card account offered by an unrelated third party. The Bureau believes that this rule will reduce the risk that unrelated third parties offering separate credit features would take the steps described above, which could harm consumers by making prepaid accounts less widely usable by consumers.

Thus, the final rule does not consider a prepaid card to be a credit card under the regulation in relation to a separate credit feature where an unrelated third party that is not an affiliate or business partner of the prepaid account issuer offers the credit feature.

In contrast, the Bureau does believe that it is appropriate to consider a prepaid card to be a credit card when it can access an overdraft credit feature that is offered by a third party where the third party is the prepaid account issuer's affiliate or its business partner. As discussed further below in the section-by-section analysis of § 1026.61(a)(5), new § 1026.61(a)(5)(i) defines the term "affiliate" for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards to mean any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

As discussed further below in the section-by-section analysis of § 1026.61(a)(5), new § 1026.61(a)(5)(iii) defines the term "business partner" for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards generally to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where either (1) the person that can extend credit or its affiliate has an agreement with the prepaid account issuer or its affiliate that the prepaid card can access the separate credit feature in the course of a transaction; or (2) the person that can extend credit or its affiliate has a cross-marketing agreement or other similar arrangement with the prepaid account issuer or its affiliate and where, whether or not by agreement, the prepaid card can access the separate credit feature in the course of a transaction.

The Bureau believes that it is appropriate to consider such an unaffiliated third party that can extend credit to be the prepaid account issuer's business partner in the above circumstances because in those cases, there is a sufficient connection between the parties such that the unaffiliated third party should know that its credit feature is accessible by a prepaid card as a credit feature for the prepaid account. Also, the Bureau believes that these types of links between the prepaid account issuer and the unaffiliated third party are likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related. Thus, the Bureau believes that it is appropriate to consider these entities to be business partners in this context.

The Bureau believes that the approach described above of not covering a prepaid card as a credit card with respect to a separate credit feature when it is offered by a third party that is not an affiliate or business partner of the prepaid account issuer addresses the concerns discussed above about unintended consequences for consumers and third parties alike, while appropriately guarding against the risk that third parties offering separate credit features or their affiliates would cooperate with prepaid account issuers or their affiliates to attempt to evade the intended scope of the rules regarding overdraft credit features.

Non-covered separate credit feature where prepaid card can access separate credit feature only outside the course of a transaction. One issuing credit union expressed concerned that the proposal would have triggered the credit card rules in situations in which a prepaid card could be used only to complete standalone loads or transfers of credit from a separate credit feature to the prepaid account, but not to access credit in the course of a transaction conducted with the prepaid card. This commenter noted that consumers can consciously load value to their prepaid account using their debit card or credit card, where the load is not part of an overdraft feature offered in connection with the prepaid account. When using the debit card, the consumer may consciously load funds from an overdraft or line of credit product that is linked to a traditional checking account. When using a credit card, the consumer is loading from an available credit card balance to fund the prepaid account. This commenter urged the Bureau to clarify that such loads do not make the prepaid card into a credit card under Regulation Z.

Several consumer group commenters suggested that the credit card rules should apply to a credit account even if the credit account did not function as an overdraft credit feature with respect to a prepaid account, so long as credit from the credit account was deposited into the prepaid account. These consumer group commenters indicated that the Bureau should apply the credit card rules to all credit transferred to a prepaid account, even if there is another way to access the credit.

Another consumer group commenter indicated that the Bureau should apply the credit card rules to all open-end lines of credit where credit may be deposited or transferred to prepaid accounts if either (1) the creditor is the same institution as or has a business relationship with the prepaid issuer; or (2) the creditor reasonably anticipates that a prepaid card will be used as an access device for the line of credit. Nonetheless, this commenter said that the final rule should not impact a completely unrelated credit account that has no connection to prepaid issuers or consumers identified as prepaid card users, even though the creditor allows credit to be transferred from the credit account through the ACH system.

In the final rule, the Bureau is clarifying the circumstances in which a prepaid card is a credit card from the proposal to address circumstances in which credit can only be loaded or transferred from a separate credit feature to the prepaid account outside the course of completing a transaction conducted with the prepaid card. Under new § 1026.61(a)(2)(ii), even if a separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, a prepaid card is not a hybrid prepaid-credit card under

new § 1026.61(a)(2) with respect to that separate credit feature if the feature cannot be accessed within the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct P2P transfers. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, the separate credit feature is a non-covered separate credit feature under new § 1026.61(a)(2)(ii), and the prepaid card is not a hybrid prepaid-credit card under new § 1026.61(a)(2) with respect to this non-covered separate credit feature.

With respect to this type of non-covered separate credit feature, the separate credit feature cannot function as an overdraft credit feature with respect to the prepaid account. In addition, the prepaid card also cannot function as a traditional "dual purpose" card where the card can be used both to access the asset feature of a prepaid account and to draw on the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers independent of whether there are sufficient or available funds in the asset feature to complete the transaction. Instead, the prepaid card can only be used to draw or transfer credit from the separate credit feature on an occasional and intentional basis, outside the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The Bureau believes that this situation is somewhat less risky for consumers because consumers would be required to make a deliberate decision to access the credit outside the course of a transaction, and thus can separately evaluate the tradeoffs involved. The Bureau also believes that this clarification is consistent with the proposal's general focus on covering overdraft credit features offered in connection with prepaid accounts as credit card accounts under Regulation Z.

In addition, in adopting this approach, the Bureau is drawing on the same logic and maintaining consistency with the existing credit card rules' treatment of overdraft lines of credit that can be accessed by debit cards. Under the existing rules as set forth in existing comments 2(a)(15)–2.i.B and 2(a)(15)–2.ii.A., debit cards are generally treated as credit cards under existing § 1026.2(a)(15)(i) when they access overdraft lines of credit (where there is an agreement to extend credit). In addition, the term "credit card" also includes a deposit account number even when there is no physical debit card device when the account number can be used to access an open-end line of credit to purchase goods or services. Nonetheless, under the current definition of credit card as set forth in existing comment 2(a)(15)(i)–2.ii.C, a deposit account number is not a credit card if the account number can only be used as a destination for the transfer of money from a separate credit account.

Prepaid Card Can Access Multiple Separate Credit Features

The Bureau recognizes that a prepaid card may access multiple separate credit features in a variety of circumstances. New § 1026.61(a)(2)(ii) and new comment 61(a)(2)–6 clarify coverage under new § 1026.61(a)(2) when a prepaid card can access multiple separate credit features. New § 1026.61(a)(2)(ii) and new comment 61(a)(2)–6 provide that even if a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, it is not a hybrid prepaid-credit card with respect to any non-covered separate credit features. New comment 61(a)(2)–6 provides the following example to illustrate: Assume that a prepaid card can access "Separate Credit Feature A" where the card can be used from time to time to access credit from a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In addition, assume that the prepaid card also can access "Separate Credit Feature B," but that credit feature is offered by an unrelated third-party creditor that is not the prepaid account issuer, its affiliate, or its business partner. The prepaid card is a hybrid prepaid-credit card with respect to "Separate Credit Feature A" because it is a covered separate credit feature under new § 1026.61(a)(2)(i). The prepaid card, however, is not a hybrid prepaid-credit card with respect to "Separate Credit Feature B" because it is a non-covered separate credit feature under new § 1026.61(a)(2)(ii).

61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance On the Asset Feature of the Prepaid Account

Many industry commenters argued that the Bureau should not regulate overdraft credit features under Regulation Z except where there is an agreement to extend credit, consistent with how overdraft credit is treated with respect to checking accounts. These commenters said that the Bureau should instead subject overdraft credit programs where there is not an agreement to the opt-in regime in Regulation E § 1005.17, which currently applies to overdraft services provided for ATM and one-time debit card transactions. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau continues to believe that it is appropriate generally to cover overdraft credit features offered by prepaid account issuers that are structured as a negative balance on the prepaid account as credit card accounts under Regulation Z, except as provided in new § 1026.61(a)(4).

Accordingly, new § 1026.61(a)(3)(i) provides that a prepaid card that can access credit extended through a negative balance on the asset balance of the prepaid card is a hybrid prepaid-credit card unless the card can only access incidental credit as described in new § 1026.61(a)(4). Nonetheless, as discussed in more detail below, new § 1026.61(a)(3) is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. For purposes of coverage, a person offering such an overdraft credit feature is a "card issuer" under final § 1026.2(a)(7) that is subject to Regulation Z, including new § 1026.61(b). However, as discussed in more detail in the section-by-section analysis of § 1026.61(b) below, new § 1026.61(b) prohibits card issuers from structuring an overdraft credit feature as a negative balance on the asset feature of the prepaid account, unless the program is structured to involve only incidental credit as provided in new § 1026.61(a)(4). The Bureau believes that this rule is necessary to promote transparency and compliance with the credit card requirements. Thus, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This

separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i). Thus, new § 1026.61(a)(3)(ii) provides that notwithstanding that § 1026.61(c)(3)(i) triggers coverage under Regulation Z, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates new § 1026.61(b). A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card as described in new § 1026.61(a)(4).

In terms of providing guidance on the situations that trigger coverage under § 1026.61(a)(3)(i), new comment 61(a)(3)(i)–1.i provides a cross-reference to new comment 2(a)(14)–3 for examples of when transactions authorized or paid on the asset feature of a prepaid account meet the definition of credit under final § 1026.2(a)(14). New comment 61(a)(3)(i)–1.ii provides that except as provided in § 1026.61(a)(4), a prepaid card would trigger coverage as a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit that can be extended through a negative balance on the asset feature of the prepaid account. This comment clarifies, however, that unless the only credit offered meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b).

New comment 61(a)(3)(i)–1.ii also explains that a credit extension through a negative balance on the asset feature of a prepaid account can occur during the authorization phase of the transaction or in later periods up to the settlement of the transaction. New comment 61(a)(3)(i)–1.iii provides that, for example, credit is extended through a negative balance on the asset feature of a prepaid account where a transaction is initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated, and credit is extended on the asset feature of the prepaid account when the transaction is authorized. New comment 61(a)(3)(i)–1.iv also provides, for example, that credit is extended through a negative balance on the asset feature of a prepaid account where a transaction occurs when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. In this case, credit is extended on the asset feature at settlement to pay those transactions. Also, credit is extended through a negative balance on the asset feature of a prepaid account where a transaction settles even though it was not authorized in advance, and credit is extended through a negative balance on the asset feature at settlement to pay that transaction.

As discussed above, new § 1026.61(a)(3) is intended to trigger coverage under the credit card rules with respect to such overdraft credit features. New comment 61(a)(3)(ii)–1 explains that new § 1026.61(a)(3)(i) determines whether a prepaid card triggers coverage as a hybrid prepaid-credit card under new § 1026.61(a), and thus, whether a prepaid account issuer is a card issuer under final § 1026.2(a)(7) subject to this regulation, including new § 1026.61(b). However, new § 1026.61(b) requires that any credit feature accessible by a hybrid prepaid-credit card must be structured as a separate credit feature using either a credit subaccount of the prepaid account or a separate credit account. In that case, a card issuer would violate new § 1026.61(b) if it structures the credit feature as a negative balance on the asset feature of the prepaid account, unless the only credit offered in connection with the prepaid account satisfies new § 1026.61(a)(4). A prepaid account issuer can use a negative asset balance structure to extend credit on a prepaid account if the prepaid card is not a hybrid prepaid-credit card as described in new § 1026.61(a)(4).

61(a)(4) Exception

As discussed above, many industry commenters raised concerns regarding the breadth of fees that would be considered finance charges under the proposal. Many industry commenters were concerned that even though they were not intending to offer credit in connection with the prepaid account, credit could result in certain circumstances, such as forced pay-transactions as discussed in the section-by-section analysis of § 1026.61(a) above. Because this credit could be extended, many commenters were concerned that fees that generally applied to the prepaid account, but were not specific to the overdraft credit, could be finance charges under the proposal and thus would subject the prepaid account issuer to the credit card rules under Regulation Z. These commenters were concerned that they could not charge certain fees on the prepaid account, or would have to waive certain fees, for the prepaid card not to be a credit card under the proposal.

For example, one payment network indicated that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the *only* fees charged on the prepaid account in connection with the extension of credit are the *very same* fees that would apply to the same transaction on the prepaid card without an extension of credit. Similarly, two industry trade associations urged that a prepaid card should be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account only if the prepaid account issuer charges fees directly correlated with the overdraft in question. These commenters argued that a prepaid card should not be a credit card when it accesses credit extended through a negative balance on the asset balance of the prepaid account if the prepaid account issuer only imposes on the prepaid account fees or charges that are wholly unrelated to an overdraft, such as a fee to make a balance inquiry at an ATM. These commenters also indicated that a prepaid card should not be a credit card when the prepaid account issuer only imposes unrelated fees or charges on the prepaid account, even when these unrelated fees or charges are imposed when the prepaid account balance is negative.

Another industry trade association indicated that a monthly fee to hold the prepaid account should not cause a prepaid card to be a credit card simply because the fee may be imposed when the balance on the prepaid account is negative or because negative balances can occur on the prepaid account.

A program manager indicated that the Bureau should clarify that a prepaid card is not a credit card simply because the prepaid account issuer charges reasonable debt collection costs (including attorney's fees) related to collecting the overdraft credit from a consumer.

As discussed above, many industry commenters were particularly concerned that under the proposal, a prepaid account issuer would need to waive per transaction fees in certain circumstances to avoid triggering the credit card rules. The circumstances raised by industry commenters centered on (1) force pay transactions; (2) payment cushions; and (3) transactions that take the account negative when a load of funds from an asset account is pending, as discussed in more detail below and in the section-by-section analysis of § 1026.61(a).

One consumer group commenter urged the Bureau to cover all prepaid cards as credit cards when the prepaid card accesses credit, regardless of whether a finance charge, as defined in § 1026.4, or a fee described under § 1026.4(c) is imposed for the credit. This commenter recognized, however, that exceptions for force pay transactions and payment cushions may be necessary. With respect to payment cushions, this commenter supported not triggering the credit card rules where a prepaid card can only access a de minimis amount of credit, using $10 as a safe harbor, if such credit is not promoted or disclosed. With respect to force pay transactions, this commenter supported requiring a prepaid account issuer to waive the per transaction fee that is imposed on a credit transaction where credit is extended through a negative balance on the asset feature of the prepaid account in order to avoid triggering the credit card rules under the proposal. Nonetheless, this commenter indicated that if the Bureau decides to make any exceptions with respect to force pay transactions, these exceptions should be limited to prepaid account issuers who do everything possible to prevent overdrafts, have overdrafts in only very rare and unpreventable situations, and do not charge penalty fees related to declined transactions, overdrafts, or negative balances.

As discussed above, new § 1026.61(a)(4) creates an exception to the general rule that credit structured as a negative balance feature on an prepaid asset account is subject to the credit card rules, in order to provide flexibility for the kinds of incidental credit that commenters raised concerns about. Specifically as described in new § 1026.61(a)(4), an overdraft credit feature where credit is extended through a negative balance on the asset feature of the prepaid account is not accessible by a hybrid prepaid-credit card where: (1) The prepaid card cannot access a covered separate credit feature as defined in new § 1026.61(a)(2)(i); (2) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer generally has a policy and practice of declining to authorize transactions made with the card when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the amount of the transactions, or the prepaid account issuer only authorizes those transactions in circumstances related to payment cushions and delayed load cushions discussed below; and (3) with respect to the prepaid account accessible by the prepaid card, the prepaid account issuer does not charge credit-related fees for any credit extended on the asset feature of the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.[702] Each of the three prongs of the limited exception is discussed in more detail below.

The Bureau believes that the exception in new § 1026.61(a)(4) addresses many of the concerns raised by industry commenters and consumer group commenters. To address evasion risks and other concerns raised by consumer group commenters discussed above, the Bureau has carefully calibrated new § 1026.61(a)(4). Specifically, under the final rule, a prepaid card is not a credit card under the regulation when it accesses credit through a negative balance on the asset feature of the prepaid account only in circumstances where, with respect to a prepaid account accessible by the prepaid card: (1) The prepaid account issuer generally declines to authorize transactions on the prepaid account that will create negative balances on the asset feature of the prepaid account (or allows those authorizations in limited circumstances related to payment cushions and delayed load cushions); and (2) the prepaid account issuer generally does not charge credit-related fees for the credit extended on the asset feature of the prepaid account. Thus, for example, a prepaid card is a credit card under Regulation Z (*i.e.,* a hybrid prepaid-credit card) when credit is extended through a negative balance on the asset feature of a prepaid account where, with respect to the prepaid account accessible by the prepaid card: (1) The prepaid account issuer has a policy and practice of authorizing transactions (outside of the payment cushion and delayed load circumstances described above) where there are insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at authorization; or (2) a prepaid account issuer charges credit-related fees for credit extended through a negative balance on the asset feature of the prepaid account beyond fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

Thus, where new § 1026.61(a)(4) has not been satisfied, the final rule prohibits a prepaid account issuer from offering an overdraft credit feature as a negative balance to the asset feature of the prepaid account and requires the prepaid account issuer to offer the overdraft credit feature as a ''covered separate credit feature'' under new § 1026.61(a)(2)(i). Specifically, under new § 1026.61(a)(3), a prepaid card that can access credit extended through a negative balance on the asset feature of the prepaid card is a hybrid prepaid-credit card for purposes of coverage under the credit card rules unless the card can only access credit described in new § 1026.61(a)(4). A person offering such an overdraft credit feature is a ''card issuer'' under final § 1026.2(a)(7) and is subject to Regulation Z, including new § 1026.61(b). However, to facilitate transparency and compliance with Regulation Z, the Bureau is prohibiting card issuers under new § 1026.61(b) from structuring an overdraft credit feature as a negative balance on the asset feature of the prepaid account, except as provided in new § 1026.61(a)(4). Instead, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

The Bureau believes that new § 1026.61(a)(4) will allow prepaid account issuers who do not intend to offer substantive credit programs to provide incidental credit in circumstances that will benefit consumers, without opening the door to widespread evasion of the rule. First, with respect to force pay transactions, payment cushions, and delayed load cushions, under this exception, the final rule provides that credit card rules will not be triggered so long as the prepaid account issuer generally does not charge credit-related fees for the credit extended and has met the other requirements. Second, the final rule provides that a prepaid account issuer is not required under this exception to

[702] An industry trade association and an issuing bank were concerned that all prepaid cards (and associated account numbers) could be credit cards or otherwise subject to Regulation Z solely due to the fact that the cardholder can incur an overdraft that he or she is contractually obligated to repay. These commenters asked the Bureau to clarify that ''credit'' under Regulation Z would not include the amount of an overdraft if the consumer is not contractually obligated to reimburse the card issuer for that overdraft (*i.e.,* the consumer would not be incurring debt or deferring the payment of debt) and to clarify disclosure obligations if the consumer is not contractually obligated to repay the overdraft credit. The Bureau believes that it has addressed these concerns by providing the exception in § 1026.61(a)(4) for how prepaid account issuers may provide incidental credit as a negative balance on the prepaid account without being subject to Regulation Z, even if the consumer is contractually obligated to pay these overdrafts.

waive per transaction fees imposed on the asset feature of the prepaid account if the amount of the per transaction fee imposed for transactions involving credit is not higher than the amount of the fee that is imposed for transactions that only access funds in the asset feature of the prepaid account. Rather, the final rule provides that under this exception, if a fee is not a credit-related fee as enumerated in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may still debit these fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed. Third, the final rule provides that under this exception, a prepaid account issuer may charge a fee to hold the prepaid account, so long as the amount of the fee or charge to hold the prepaid account imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available. Fourth, the final rule provides that a prepaid account issuer may still qualify for the exception in new § 1026.61(a)(4) even if it charges fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law, so long as the other conditions of the exception have been met.

To the extent that a prepaid account issuer meets the conditions as described in new § 1026.61(a)(4) with respect to a prepaid card, the prepaid card is not a hybrid prepaid-credit card and thus is not a credit card under the regulation. As discussed in more detail below, the final rule provides that in the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in new § 1026.61(a)(4), the prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges as described in new comment 4(b)(11)–1.iii. As discussed in the section-by-section analysis of § 1026.61(a), in light of the very limited nature of the incidental credit, the Bureau believes that it is appropriate to exclude this incidental credit from coverage under Regulation Z.

Prepaid card cannot access a covered separate credit feature under § 1026.61(a)(2)(i). To qualify for the exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(i) provides that the prepaid card cannot access credit from a covered separate credit feature, as defined in new § 1026.61(a)(2)(i). The Bureau believes that allowing a prepaid account issuer to take advantage of the exception in new § 1026.61(a)(4) even though the card can access a covered separate credit feature, described in new § 1026.61(a)(2)(i), would allow the prepaid account issuer to circumvent the rules in new § 1026.61(a)(2)(i).

New comment 61(a)(4)–1.i and ii explain that § 1026.61(a)(4)(i) is designed to limit the exception for when a prepaid card is not a credit card to circumstances in which (1) the card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in new § 1026.61(a)(4)(ii)(A) and (B); and (2) the card can access credit from a non-covered separate credit feature, as defined in new § 1026.62(a)(2)(ii), but cannot access credit for a covered separate credit feature, as defined in new § 1026.62(a)(2)(i).

New comment 61(a)(4)–1.iii makes clear that a prepaid account issuer does not qualify for the exception in new § 1026.61(a)(4) if the prepaid account issuer structures the arrangement such that when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time a transaction is initiated, the card can draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account.

New comment 61(a)(4)–1.iv provides guidance on how the regulation applies in cases where the prepaid card is not a hybrid prepaid-credit card. Specifically, new comment 61(a)(4)–1.iv provides that in the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in new § 1026.61(a)(4), the prepaid account issuer is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.17(a)(iii) or (iv) because it is not a card issuer under final § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under final § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges, as described in new comment 4(b)(11)–1.iii.

General policy and practice of declining transactions that will create a negative balance. To qualify for the exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(A) provides that with respect to any prepaid account that is accessible by the prepaid card, a prepaid account issuer also must have established a policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized, or declining to authorize any such transactions except in two circumstances related to payment cushions and delayed load cushions as discussed below.

This prong is designed to limit the exception under new § 1026.61(a)(4) to situations where the prepaid account issuer generally is not authorizing transactions that will take the asset feature of the prepaid account negative. The Bureau believes that this prong will help ensure that consumers do not develop a substantial negative balance on their prepaid asset accounts that most do not intend to use as a credit account, which could pose risks to consumers by compromising their ability to manage and control their finances. This prong is intended to address concerns raised by industry commenters that the proposed circumstances in which a prepaid card would be a credit card captured (1) "force pay" transactions, (2) payment cushions; and (3) delayed load cushions, while also balancing consumer group concerns that any such limited exceptions be cabined in a way that does not undermine the broader rule. Thus, the final rule does not cover overdraft credit features under Regulation Z where these three types of credit are extended through a negative balance on the asset feature of the prepaid account, so long as the prepaid account issuer generally does not charge credit-related fees for the credit.

As discussed above, "force pay" transactions occur where the prepaid account issuer is required by card network rules to pay a transaction even though there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at settlement. This can occur, for example, when a transaction is either not authorized in advance, or there were sufficient or available funds in the asset feature of the prepaid account at the time the transaction is

authorized, but there are insufficient or unavailable funds in the asset feature at the time the transaction is settled, and a negative balance results on the asset feature when the transaction is paid.

New comment 61(a)(4)(ii)(A)–1 makes clear that a prepaid account issuer is not required to receive an authorization request for each transaction to comply with this requirement. Nonetheless, the prepaid account issuer generally must establish an authorization policy as described above and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. In that case, a prepaid account issuer is deemed to satisfy the requirement set forth in new § 1026.61(a)(4)(ii)(A) even if a negative balance results on the prepaid account when a transaction is settled.

New comment 61(a)(4)(ii)(A)–2 also makes clear that a prepaid account issuer may still satisfy the requirements set forth in § 1026.61(a)(4)(ii)(A) even if a negative balance results on the asset feature of the prepaid account because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account, as specified in final Regulation E § 1005.11, so long as the prepaid account issuer otherwise complies with the conditions set forth in new § 1026.61(a)(4). For example, under new § 1026.61(a)(4), a prepaid account issuer may not impose a fee or charge enumerated under new § 1026.61(a)(4)(ii)(B) with respect to such a negative balance.

This exception also allows a prepaid account issuer to adopt a payment cushion where the issuer would authorize transactions that would take the account balance negative by no more than $10 at the time the transaction is authorized. The Bureau believes that this $10 payment cushion will benefit consumers without allowing consumers to develop a substantial negative balance on their prepaid asset accounts, which could pose risks for consumers.

As discussed above, one consumer group commenter suggested that prepaid account issuer should be prevented from advertising or disclosing this payment cushion in order to take advantage of any exception of this credit from coverage under Regulation Z. The final rule does not prevent a prepaid account issuer from advertising or disclosing this payment cushion to consumers in order to take advantage of the exception in new § 1026.61(a)(4). The Bureau does not believe that it is necessary to restrict prepaid account issuers from advertising or disclosing this payment cushion to consumers, given the de minimis amount of credit ($10) that they may offer through the payment cushion. The Bureau believes that such a restriction may discourage prepaid account issuers from offering such a payment cushion, which could harm consumers.

In addition, the exception allows a prepaid account issuer to adopt a delayed load cushion. Specifically, in cases where the prepaid account issuer has received an instruction or confirmation for an incoming EFT originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, a prepaid account issuer may still qualify for the exception in new § 1026.61(a)(4) if the prepaid account authorizes transactions that take the prepaid account negative, so long as the transactions will not cause the account balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

The Bureau recognizes that, in some cases, a prepaid account issuer may receive instructions or confirmation with respect to incoming EFTs from a separate asset account to load funds to the prepaid account, such as in cases involving direct deposits of salaries or government benefits. In such cases, prepaid account issuers may provide access to these funds to prepaid cardholders based on the instructions or confirmations even though the prepaid account issuer's transfer of funds has not yet settled, and therefore the prepaid account issuer does not have the funds.

In addition, the Bureau also recognizes that, in some cases, prepaid account issuers may receive a request from the consumer to load funds to the prepaid account from a separate asset account, including where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction. This can occur, for example, when a consumer authorizes a remittance through a mobile wallet which is linked to a checking account, the consumer requests that funds be taken from the consumer's checking account to pay for the remittance, and the remittance is sent before the incoming transfer of funds from the checking account is complete. In this case, the prepaid account issuer is extending credit through a negative balance on the asset feature of the prepaid account until the incoming transfer of funds from the checking account is complete.

In these two situations, the Bureau believes that it would benefit consumers to receive access to the funds prior to settlement, so long as the consumer generally is not charged credit-related fees. The Bureau does not believe these situations raise the same concerns as overdraft credit features offered by prepaid account issuers in connection with prepaid accounts.

To facilitate compliance, new comment 61(a)(4)(ii)(A)–3.i provides examples of cases where the prepaid account issuer may receive an instruction or confirmation for an incoming EFT originating from a separate asset account to load funds to the prepaid account. This comment describes that such instructions or confirmations may occur in relation to a direct deposit of salary from an employer and a direct deposit of government benefits. New comment 61(a)(4)(ii)(A)–3.ii also provides an example of a case where the prepaid account issuer may receive a request from the consumer to load funds to the prepaid account from a separate asset account. This comment describes an example where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the asset feature of the prepaid account to pay for the transaction.

New comment 61(a)(4)(ii)(A)–4 also makes clear that the two circumstances described above in which a prepaid account issuer can authorize transactions that create a negative balance on the asset feature of the prepaid account, namely payment cushions and delayed load cushions, are not mutually exclusive. For example, assume a prepaid account issuer has adopted the $10 payment cushion and the delayed load cushion. Also, assume the prepaid account issuer has received an instruction or confirmation for an incoming EFT originating from a separate asset account to load funds to the prepaid account, but the prepaid account issuer has not received the funds from the separate asset account. In this case, a prepaid account issuer satisfies this requirement if the amount of a transaction at authorization will not cause the prepaid account balance to become negative at the time of the authorization by more than the requested load amount plus the $10 payment cushion.

No credit-related fees except for fees or charges for the actual costs of the collecting the credit if otherwise permitted by law. To qualify for the

exception in new § 1026.61(a)(4), new § 1026.61(a)(4)(ii)(B) provides that with respect to prepaid accounts that are accessible by the prepaid card, the prepaid account issuer may generally not charge credit-related fees on the asset feature of the prepaid account. Specifically, the exception would only apply where the prepaid account issuer does not charge the following fees: (1) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. These fees do not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available; (2) any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or (3) any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

Thus, this prong prevents a prepaid account issuer from charging credit-related fees for the credit extended through a negative balance on the prepaid account, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. Because the credit extended through the exception in new § 1026.61(a)(4) is intended to be limited to inadvertent or de minimis credit, the Bureau believes that it is appropriate to limit the exception to instances in which the prepaid account issuer does not charge credit-related fees for the credit, except for fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. In addition, the Bureau believes that preventing prepaid account issuers from generally charging credit-related fees to take advantage of this exception will provide greater incentive to prepaid account issuers to limit the circumstances resulting in ''forced pay'' transactions extended through this exception. For the reasons discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, the Bureau believes that it is appropriate to generally cover overdraft credit features offered by prepaid account issuers where, with respect to the prepaid account accessible by the prepaid card: (1) The prepaid account issuer has a policy and practice of authorizing transactions (outside of the payment cushion and delayed load circumstances described above) where there are insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at authorization; or (2) a prepaid account issuer charges credit-related fees for credit extended through a negative balance on the asset feature of the prepaid account beyond fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law.

To facilitate compliance, new comment 61(a)(4)(ii)(B)–1 clarifies that new § 1026.61(a)(4)(ii)(B) does not prohibit a prepaid account issuer from charging different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts. The Bureau recognizes that prepaid account issuer may offer prepaid programs for different purposes and offer different services on those prepaid account programs. Those service differences may impact the pricing on the prepaid programs. The Bureau believes that requiring prepaid account issuers to charge the same fees on all of its prepaid account programs to take advantage of this exception would make the exception generally unavailable for most prepaid account issuers.

New § 1026.61(a)(4)(ii)(B)(*1*) provides that to qualify for the exception in new § 1026.61(a)(4), a prepaid account issuer may not charge on the prepaid account any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. These fees do not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available. New comment 61(a)(4)(ii)(B)(*1*)–1 clarifies the types of fees or charges that are included and not included under new § 1026.61(a)(4)(ii)(B)(*1*). New comment 61(a)(4)(ii)(B)(*1*)–1.i.A clarifies that the types of fees or charges described in new § 1026.61(a)(4)(ii)(B)(*1*) include daily, weekly, monthly, or other periodic fees assessed each period that a prepaid account has a negative balance or is in ''overdraft'' status.

New comment 61(a)(4)(ii)(B)(*1*)–1.i.B also clarifies that the types of fees or charges described in new § 1026.61(a)(4)(ii)(B)(*1*) include daily, weekly, monthly, or other periodic fees where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion as described in new § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in new § 1026.61(a)(4)(ii)(A)(*2*) during that period. For example, assume that a consumer will pay a fee of $10 to hold the prepaid account if the consumer is not enrolled in a purchase cushion or a delayed load cushion during that month, or alternatively, the consumer will pay a fee of $15 to hold the prepaid account if the consumer is enrolled in a purchase cushion or delayed load cushion during that period. The $15 charge is a charge described in new § 1026.61(a)(4)(ii)(B)(*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.

New comment 61(a)(4)(ii)(B)(*1*)–1.ii clarifies that new § 1026.61(a)(4)(ii)(B)(*1*) does not prohibit a daily, weekly, monthly, or other periodic fee to hold the prepaid account so long as the amount of the fee is not higher based on whether the consumer is enrolled in a purchase cushion or a delayed load cushion during that period, whether or how much credit has been extended during that period, or the amount of credit that is available during that period.

New § 1026.61(a)(4)(ii)(B)(*2*) provides that to qualify for the exception in new § 1026.61(a)(4), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(*2*)–1 provides examples of fees that are and are not fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(*2*)–1.i provides that fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative

balance on the asset feature include: (1) A fee imposed because the balance on the prepaid account becomes negative; (2) interest charges attributable to a periodic rate that applies to the negative balance; (3) any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in "overdraft" status, except that the actual costs to collect the credit may be imposed if otherwise permitted by law; and (4) late payment fees.

Consistent with the proposal, a prepaid card is a credit card under the final rule if the prepaid account issuer charges a late fee with respect to the credit.[703] With regard to late payment fees in particular, the Bureau is concerned that such fees could be structured to take the place of a per transaction fee for a credit extension on the prepaid account. For example, if a late fee were not included as a enumerated fee under new § 1026.61(a)(4)(ii)(B), a prepaid account issuer could provide that payment of the overdraft is due immediately and charge a late fee each day that the overdraft balance remains outstanding. The Bureau believes such a late fee would function as a fee for a negative balance that is not permitted to be imposed on the prepaid account if the prepaid account issuer intends to qualify for the exception in new § 1026.61(a)(4). Thus, the final rule provides that a late fee may not be imposed on the asset feature of a prepaid account if the prepaid account issuer intends to qualify for the exception in new § 1026.61(a)(4). Nonetheless, new § 1026.61(a)(4)(ii)(B)(*2*) and new comment 61(a)(4)(ii)(B)(*2*)–1.ii.A provide that a prepaid account issuer may impose fees on the asset feature of the prepaid account for actual collection costs, including attorney's fees, and still qualify for the exception in new § 1026.61(a)(4) if those fees are otherwise permitted by law. The Bureau does not believe that allowing a prepaid account issuer to qualify for the exception in new § 1026.61(a)(4), even if the prepaid account issuer imposes actual collection costs to collect the credit, poses the same evasion risks discussed above in regard to late fees because these costs must be the actual costs incurred by the prepaid account issuer to collect the credit, and those fees must be otherwise permitted by law.

New § 1026.61(a)(4)(ii)(B)(*3*) provides that to qualify for the exception in new § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. New comment 61(a)(4)(ii)(B)(*3*)–1 provides examples of fees that are and are not fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

New comment 61(a)(4)(ii)(B)(*3*)–1.i.A provides that new § 1026.61(a)(4)(ii)(B)(*3*) includes transaction fees where the amount of the fee is higher based on whether the transaction accesses only asset funds in the asset feature or accesses credit. For example, a $15 transaction charge is imposed on the asset feature each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset feature at the time of the authorization or settlement. A $1.50 fee is imposed each time a transaction is paid entirely from funds in the asset feature. The $15 charge is a charge where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature because the transaction fee is higher when the transaction accesses credit than when the transaction accesses only asset funds in the asset feature.

New comment 61(a)(4)(ii)(B)(*3*)–1.i.B provides that new § 1026.61(a)(4)(ii)(B)(*3*) includes a fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges a higher fee for an ATM balance inquiry requested on the prepaid account if the balance inquiry is requested when there is a negative balance on the asset feature than the amount of fee imposed when there is a positive balance on the asset feature, the balance inquiry fee is a fee described in new § 1026.61(a)(4)(ii)(B)(*3*) because the amount of the fee is higher based on whether it is imposed when there is a negative balance on the asset feature.

Nonetheless, new comment 61(a)(4)(ii)(B)(*3*)–1.ii.A provides that new § 1026.61(a)(4)(ii)(B)(*3*) does not include transaction fees on the prepaid account where the amount of the fee imposed when the transaction accesses credit does not exceed the amount of the fee imposed when the transaction only accesses asset funds in the prepaid account. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. The $1.50 transaction charge imposed on the prepaid account is not prohibited under new § 1026.61(a)(4)(ii)(B) because the fee or charge is not higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. Thus, under the final rule, a prepaid account issuer would not need to waive per transaction fees for credit extensions where the per transaction fee is not higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

New comment 61(a)(4)(ii)(B)(*3*)–1.ii.B provides that new § 1026.61(a)(4)(ii)(B)(*3*) does not include a fee for a service on the prepaid account where the amount of the fee is not higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges the same amount of fee for an ATM balance inquiry regardless of whether there is a positive or negative balance on the asset feature, the balance inquiry fee is not a fee described in new § 1026.61(a)(4)(ii)(B).

New § 1026.61(a)(4)(ii)(C) also makes clear that a prepaid account issuer may still satisfy the exception in new § 1026.61(a)(4) even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in new § 1026.61(a)(4)(ii)(B), as discussed above. New comment 61(a)(4)(ii)(C)–1 explains that a fee or charge not otherwise covered by new § 1026.61(a)(4)(ii))(B) does not become covered by that provision simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. For example, assume that a prepaid account issuer imposes a fee for an ATM balance inquiry and the amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. Also assume that when

[703] Under the proposal, a prepaid card would have been a credit card if it is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. A late fee is a fee described in § 1026.4(c)(2) and thus under the proposal, a prepaid card would have been a credit card if a late fee was charged for the credit.

the fee is imposed, there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee does not become a fee covered by new § 1026.61(a)(4)(ii)(B) because the fee is debited from the prepaid account balance when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the fee at the time it is imposed.

61(a)(5) Definitions

New § 1026.61(a)(5) sets forth definitions of the following terms that are used in new § 1026.61 and throughout the regulation in relation to hybrid prepaid-credit cards: (1) Prepaid account; (2) prepaid card; (3) prepaid account issuer; (4) affiliate; (5) business partner; (6) asset feature; (7) credit feature; and (8) separate credit feature. Each of these definitions is discussed in more detail below.

Prepaid Account and Prepaid Card

Although Regulation Z and its commentary use the term ''debit card,'' that term is not defined. Generally, under the existing regulation, this term refers to a card that accesses an asset account. Specifically, existing comment 2(a)(15)–2.i.B provides as an example of a credit card: ''A card that accesses both a credit and an asset account (that is, a debit-credit card).'' In addition, existing comment 2(a)(15)–2.ii.A provides that the term credit card does not include a debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

Under the proposal, different rules generally would have applied in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account or a card or device that accesses another type of asset account. To assist compliance with the regulation, the proposal would have defined ''debit card'' for purposes of Regulation Z in proposed § 1026.2(a)(15)(iv) to mean ''any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.'' The proposed definition of ''debit card'' would have specified that it does not include a prepaid card. Proposed § 1026.2(a)(15)(v) would have defined ''prepaid card'' to mean ''any card, code, or other device that can be used to access a prepaid account.'' The proposal would have defined ''prepaid account'' in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in proposed Regulation E § 1005.2(b)(3). Proposed comment 2(a)(15)–6 would have provided that the term ''prepaid card'' in proposed § 1026.2(a)(15)(v) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code. That proposed comment also would have provided that the phrase ''credit accessed by a prepaid card'' means any credit that is accessed by any card, code, or other device that also can be used to access a prepaid account.

The term ''prepaid account'' as defined in proposed Regulation E § 1005.2(b)(3) would not have included gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards. Under current Regulation Z and the proposal, these cards would not been credit cards unless they were subject to an agreement to extend credit.

Nonetheless, the Bureau solicited comment on whether gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards should be included within the definition of ''prepaid accounts'' for purposes of Regulation Z, even if those accounts would not been considered prepaid accounts for purposes of error resolution, disclosure, and other purposes under Regulation E. The Bureau solicited comment on current and potential credit features that may be offered on these types of cards, the nature of potential risks to consumers if credit features were offered on these types of cards, and incentives for the industry to offer credit features on these types of cards. The Bureau also solicited comment on any implications of treating these products as prepaid accounts under Regulation Z but not Regulation E.

Several industry commenters, including programs managers and a payment network, indicated that these products should not be covered by Regulation Z if they are not prepaid accounts under Regulation E. One consumer group commenter indicated that these accounts should be covered by Regulation Z if they offer overdraft credit even if they are not prepaid accounts under Regulation E. This commenter indicated that while those types of accounts would rarely, if ever, have a credit or overdraft feature, the Bureau should to include prepaid cards in the Regulation Z definition of credit card if they access credit or overdraft features in connection with such accounts.

One program manager also indicated that the Bureau should exempt student cards and payroll cards from the overdraft provisions in the proposal under Regulation Z even if these cards access prepaid accounts as defined in Regulation E.

As discussed in the *Overview of the Final Rule's Amendments to Regulation Z* section, consistent with the proposal, the final rule generally applies different rules in Regulation Z depending on whether credit is accessible by a hybrid prepaid-credit card that can access both a covered separate credit feature and the asset feature of a prepaid account as defined in new § 1026.61(a), or credit is accessed by a card or device that accesses another type of asset account.

Consistent with the proposal, as discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(iv) above, the term ''debit card'' is defined in new § 1026.2(a)(15)(iv) to mean any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account, as defined in new § 1026.61. Under the final rule, the term ''debit card'' does not include a prepaid card, as defined in § 1026.61.

The final rule moves the definition of ''prepaid card'' from proposed § 1026.2(a)(15)(v) to new § 1026.61(a)(5)(vii) and adopts this definition as proposed. New § 1026.61(a)(5)(vii) defines ''prepaid card'' to mean any card, code, or other device that can be used to access a prepaid account. The final rule moves proposed comment 2(a)(15)–6 to new comment 61(a)(5)(vii)–1 and revises it. Consistent with proposed comment 2(a)(15)–6, new comment 61(a)(5)(vii)–1 clarifies that the term ''prepaid card'' in new § 1026.61(a)(5)(vii) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code. Proposed comment 2(a)(15)–6 also would have provided that the phrase ''credit accessed by a prepaid card'' means any credit that is accessed by any card, code, or other device that also can be used to access a prepaid account. The Bureau has not adopted this part of proposed comment 2(a)(15)–6 because the final rule does not use the term ''credit accessed by a prepaid card.'' Instead, the final rule uses the term ''hybrid prepaid-credit card'' as defined in § 1026.61(a).

The Bureau is not exempting categorically student cards and payroll cards from the provisions in the final rule under Regulation Z even if these cards access prepaid accounts as defined in Regulation E and meet the definition of ''hybrid prepaid-credit card'' under new § 1026.61(a). These cards would be ''prepaid cards'' under new § 1026.61(a)(15)(vii) to the extent

that they are cards, codes, or other devices that can be used to access a prepaid account, including a prepaid account number or other code. In addition, these cards would be hybrid prepaid-credit cards to the extent they meet the definition in new § 1026.61(a). The Bureau does not believe that it is appropriate to categorically exclude these cards from the provisions in the final rule under Regulation Z to the extent these cards are ''hybrid prepaid-credit cards'' as defined in new § 1026.61(a). The Bureau believes that consumers holding student prepaid cards and payroll cards would benefit from the protections provided by Regulation Z if those prepaid cards meet the definition of ''hybrid prepaid-credit cards'' under new § 1026.61(a). In addition, the Bureau believes that it is appropriate to maintain consistency between the definitions of ''prepaid account'' in Regulation E § 1005.2(b)(3) and Regulation Z § 1026.61(a)(5)(v).

The final rule moves the definition of ''prepaid account'' from proposed § 1026.2(a)(15)(vi) to new § 1026.61(a)(5)(v) and adopts this definition as proposed. As discussed in the section-by-section analysis of Regulation E § 1005.2(b)(3)(ii) above, the term ''prepaid account,'' as defined in final Regulation E § 1005.2(b)(3)(ii), does not include, among other things, products such as gift cards, accounts established for distributing certain needs-tested government benefits that are excluded under Regulation E § 1005.15(a)(2), and certain types of health care and employee benefit accounts. The provisions in the final rule that apply to covered separate credit features accessible by hybrid prepaid-credit cards do not apply to cards or access devices that access these types of accounts because they are not ''prepaid accounts'' under final Regulation E § 1005.2(b)(3) or new Regulation Z § 1026.61(a)(5)(v). At this time, the Bureau does not believe that it is appropriate to include these accounts in the definition of ''prepaid account'' for purposes of new § 1026.61(a)(5)(v), when these accounts are not ''prepaid accounts'' for purposes of final § 1005.2(b)(3). The Bureau is unaware of any credit features currently associated with cards that access these types of accounts. At this time, the Bureau believes that it is appropriate to maintain consistency between the definitions of ''prepaid account'' in Regulation E § 1005.2(b)(3) and Regulation Z § 1026.61(a)(5)(v).

Prepaid Account Issuer, Affiliate, and Business Partner

The proposal did not define the terms ''prepaid account issuer,'' ''affiliate,'' or ''business partner.'' For the reasons discussed in the section-by-section analysis of § 1026.61, the Bureau is revising the circumstances from the proposal for when a prepaid card is a credit card (*i.e.,* hybrid prepaid-credit card) under Regulation Z. Under the final rule, new § 1026.62(a)(2)(i) provides that a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are satisfied: (1) The card can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

Definition of ''prepaid account issuer.'' New § 1026.61(a)(5)(vi) defines ''prepaid account issuer'' to mean a financial institution as defined in Regulation E § 1005.2(i) with respect to a prepaid account.

Definition of ''affiliate.'' New § 1026.61(a)(5)(i) defines ''affiliate'' to mean any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956.[704] This definition is consistent with how affiliate is used in other provisions in Regulation Z.[705]

Definition of ''business partner.'' New § 1026.61(a)(5)(iii) defines the term ''business partner'' for purposes of new § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards to mean a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has ''an arrangement'' with a prepaid account issuer or its affiliate. As explained in new comment 61(a)(5)(iii)–1, a person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of new § 1026.61(a)(5)(iii) if the circumstances in either comment 61(a)(5)(iii)–1.i or comment 61(a)(5)(iii)–1.ii are met. First, new comment 61(a)(5)(iii)–1.i provides that an unaffiliated person that can extend credit is a business partner of the prepaid account issuer if the person that can extend credit or its affiliate has an agreement with the prepaid account issuer or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. New comment 61(a)(5)(iii)–1.i provides, however, that the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network together.

Second, new comment 61(a)(5)(iii)–1.ii provides that an unaffiliated person that can extend credit is a business partner of the prepaid account issuer if the person or its affiliate has a business, marketing, promotional agreement, or other arrangement with the prepaid account issuer or its affiliate where the agreement or arrangement provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or the credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and (2) at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. In this case, this requirement is satisfied even if there is no specific agreement between the parties that the card can access the separate credit feature, as described above under new comment 61(a)(5)(iii)–1.i. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer, from the separate credit feature is effectuated through a card network or payment network.

New comment 61(a)(5)(iii)–2 provides that a person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider such as a program manager, or the issuer's affiliates. In that

[704] 12 U.S.C. 1841 *et seq.*

[705] *See, e.g.,* existing § 1026.32(b)(5).

case, the person that can extend credit will be a business partner of the prepaid account issuer. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the business partner of the prepaid account issuer.

To prevent evasion of the protections provided in the final rule related to hybrid prepaid-credit cards, the Bureau believes that it is important to include an unaffiliated third party that can extend credit through a separate credit feature as a ''business partner'' of the prepaid account issuer where the person that can extend credit, or its affiliate, has a marketing agreement or arrangement with the prepaid account issuer, or its affiliate, and where, whether or not by agreement, the prepaid card can access the separate credit feature in the course of a transaction. Otherwise, the Bureau is concerned that without including such arrangements, prepaid account issuers or their affiliates could structure an arrangement with an unaffiliated third party that can extend credit, or its affiliate, to avoid forming an ''agreement,'' as discussed in new comment 61(a)(5)(iii)–1.i, that the card may be used to access the third party's credit feature as an overdraft credit feature when all the parties understand that this type of connection is occurring. Such a result could frustrate the operation of certain consumer protections provided in the final rule. The Bureau believes that when there is a marketing agreement or arrangement between the parties as described in new comment 61(a)(5)(iii)–1.ii.A, the parties have a sufficient connection such that the unaffiliated third party that can extend credit should understand when its credit feature is used as an overdraft credit feature with respect to a prepaid account, even if there is no specific agreement between the parties to that effect under new comment 61(a)(5)(iii)–1.i. Also, the Bureau believes that these types of links between the prepaid account issuer and the unaffiliated third party that can extend credit are likely to involve revenue sharing or payments between the two companies, and the pricing structure of the two accounts may be tied together. Thus, the Bureau believes that it is appropriate to consider these entities to be business partners in this context.

Asset Feature, Credit Feature, and Separate Credit Feature

As discussed in more detail in the section-by-section analysis of § 1026.61(b) below, the final rule requires that credit features that are accessible by a hybrid prepaid-credit card be structured as a separate credit feature—either a separate sub-account or account—rather than as a negative balance on the asset feature of a prepaid account. While a negative balance structure would be permissible where an issuer only offers incidental credit pursuant to new § 1026.61(a)(4),[706] an issuer that offers more extensive credit or charges credit-related fees using a negative balance structure would be subject to the credit card rules pursuant to new § 1026.61(a)(3), and would be in violation of the rule on account structure specified in new § 1026.61(b). Instead, under the final rule, a card issuer must structure the credit feature as a separate credit feature, either as a separate credit account or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

The Bureau defines the terms ''asset feature,'' ''credit feature,'' and ''separate credit feature'' to effectuate the provisions set forth in new § 1026.61(b), as well as other provisions set forth in new § 1026.61 and in Regulation Z generally that relate to hybrid prepaid-credit cards. These defined terms are discussed in more detail below.

Definition of ''asset feature.'' Under the final rule, the term ''asset feature'' in new § 1026.61(a)(5)(vii) is defined to mean an asset account that is a prepaid account, or an asset subaccount of a prepaid account. As described above and in more detail below in the section-by-section analysis of § 1026.61(b), a card issuer cannot structure a credit feature as a negative balance on the asset feature of a prepaid account, unless the conditions in new § 1026.61(a)(4) are met.

Definition of ''credit feature.'' The term ''credit feature'' is defined in new § 1026.61(a)(5)(iv) to mean either: (1) A separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or (2) a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card. As discussed above, under new § 1026.61(b), a card issuer may not structure a credit feature as a negative balance on the asset feature of the prepaid account, except as permitted under new § 1026.61(a)(4).

New comment 61(a)(5)(iv)–1 provides that the definition of ''credit feature'' set forth in new § 1026.61(a)(5)(iv) only defines that term for purposes of Regulation Z in relation to credit offered in connection with a prepaid account or prepaid card. This comment explains that this definition does not impact when an account, subaccount or negative balance is a credit feature under Regulation Z with respect to credit in relation to a checking account or other transaction account that is not a prepaid account, or a debit card. *See, e.g.,* existing comment 2(a)(15)–2.ii.A and existing comment 4(b)(2)–1 where the term credit feature is used in relation to a debit card or asset account other than a prepaid account.

One issuing credit union indicated that the Bureau should clarify that where a prepaid account is loaded with funds using a deposit account where an overdraft protection program or overdraft line of credit is activated, the prepaid card does not become a credit card under the proposal because the overdraft protection program or overdraft line of credit was activated. New comment 61(a)(5)(iv)–2 provides that a ''credit feature'' for purposes of § 1026.61(a)(5)(iv) does not include an asset account other than a prepaid account that has an attached overdraft feature. For example, assume that funds are loaded or transferred to a prepaid account from an asset account (other than a prepaid account) on which an overdraft feature is attached. The asset account is not a credit feature under new § 1026.61(a)(5)(iv) even if the load or transfer of funds to the prepaid account triggers the overdraft feature that is attached to the asset account.

Definition of ''separate credit feature.'' New § 1026.61(a)(5)(viii) defines ''separate credit feature'' to mean a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account. As discussed above, under new § 1026.61(b), a card issuer must structure an overdraft credit feature in connection with a prepaid account as a separate credit feature, such as a credit account or credit subaccount to the prepaid account that is separate from the asset feature of the prepaid account, except for overdraft credit features

[706] If a prepaid account issuer complies with the exception in § 1026.61(a)(4) with respect to a prepaid account that is accessed by a prepaid card, the prepaid card is not a hybrid prepaid-credit card under Regulation Z, and thus is not a credit card under Regulation Z. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) and thus § 1026.61(b) does not apply to the overdraft credit feature accessed by the prepaid card.

described in new § 1026.61(a)(4). This separate credit feature is a ''covered separate credit feature'' under new § 1026.61(a)(2)(i).

61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards

The Bureau's Proposal

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by certain prepaid cards would have been subject to the rules for credit cards under Regulation Z. In particular, proposed comment 2(a)(15)–2.i.F would have provided that the term ''credit card'' includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge, as defined in § 1026.4, or any fee described in § 1026.4(c), and is not payable by written agreement in more than four installments.

The proposal made clear that the Bureau intended that the credit card rules apply broadly to a range of product structures. In the proposal, for instance, the Bureau specifically stated that the proposal was intended to cover: (1) Transactions that are authorized where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization; and (2) transactions on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Such transactions would have been credit accessed by a prepaid card that is a credit card under the proposal, regardless of whether the person established a separate credit account to extend the credit or whether the credit was simply reflected as a negative balance on the prepaid account.

In addition to proposing a broad scope of coverage, the Bureau sought to explore practical considerations regarding product structure and operations for credit that would be subject to the credit card rules. Specifically, in the proposal, the Bureau stated its belief that creditors would tend to establish separate credit accounts to extend credit accessed by the prepaid card that is a credit card, instead of having the credit balance be reflected as a negative balance on the prepaid account, because creditors generally would find that separate credit accounts aid compliance with the periodic statement requirements in proposed §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) and the offset provisions in proposed § 1026.12(d)(3) that would apply to credit card accounts accessed by prepaid cards. The Bureau solicited comment on whether creditors would likely establish separate credit accounts, instead of reflecting the credit balance as a negative balance on the prepaid account. The Bureau also solicited comment on any implications for compliance depending on how the account is structured (*i.e.,* whether a separate credit account is created or whether the credit balance is reflected as a negative balance on the prepaid account) and whether any differentiation in regulation or guidance would be useful.

Comments Received

The commenters that responded to the Bureau's questions on this issue universally supported separate account structures. Specifically, one industry trade association stated that it believed a credit feature that is accessed by a prepaid card that is a credit card under the proposal should not be structured as a negative prepaid account balance. This commenter pointed out that, if an account is a ''dual'' account, the overdraft line of credit would only be accessed if a transaction amount were more than the amount in the prepaid account, and such a transaction would create two distinct balances. Similarly, one consumer group commenter stated with respect to credit accessed by a prepaid card that is a credit card, the Bureau should require the credit feature to be structured as a separate account, rather than reflected as a negative balance on the prepaid account. This commenter indicated that allowing credit to be reflected solely as a negative balance on the prepaid account would be confusing to consumers and would undercut the message that the consumer is being given credit, and being charged for credit.

The Final Rule

After consideration of these comments and additional internal analysis regarding transparency and compliance concerns, in the final rule, the Bureau requires that credit features that are accessible by a hybrid prepaid-credit card be structured as a separate credit feature—either a separate sub-account or account—rather than as a negative balance on the asset feature of a prepaid account. While a negative balance structure would be permissible where an issuer only offers incidental credit pursuant to new § 1026.61(a)(4),[707] an issuer that offers more extensive credit or charges credit-related fees using a negative balance structure would be subject to the credit card rules, pursuant to new § 1026.61(a)(3), and would be in violation of the rule on account structure specified in new § 1026.61(b). Instead, under the final rule, a card issuer must structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under new § 1026.61(a)(2)(i).

The Bureau believes that this structural requirement will make it substantially easier for creditors and consumers alike to implement and understand credit accessible via a hybrid prepaid-credit card under a credit card regime. Regulation Z's open-end rules are generally drafted with the assumption that the product in question is a pure credit product, without substantial positive funds. For example, existing § 1026.11(a) generally provides that creditors must refund any positive balances on the credit account to the consumer within six months. And, as discussed in more detail in the section-by-section analysis of § 1026.4(a) above, the rules for defining finance charges in the credit card context generally treat all transaction charges as finance charges, which makes sense when all transactions are generally assumed to involve use of credit.

But because hybrid prepaid-credit cards by their nature involve consumer assets as well as use of credit, bifurcating the asset feature from the credit feature makes application of the credit card rules more intuitive in a number of respects. For example, as discussed in more detail in the section-by-section analysis of § 1026.4(b)(11)(ii) above, it provides a structure by which general transaction fees that are imposed in the same amount for any transaction conducted on the prepaid account—regardless of whether there are sufficient positive funds in the account—to be excluded from the finance charge. This both makes the program easier for the prepaid account issuer to operate and easier for the

[707] If a prepaid account issuer complies with the exception in § 1026.61(a)(4) with respect to a prepaid account that is accessed by a prepaid card, the prepaid card is not a hybrid prepaid-credit card under Regulation Z, and thus is not a credit card under Regulation Z. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) and thus, § 1026.61(b) does not apply to the overdraft credit feature accessed by the prepaid card.

consumer to understand, so that the finance charge reflects the costs associated with the use of credit. As discussed above, this implementation is also more generally consistent with comments received in response to the proposed rule that urged the Bureau to include only differentiated and unique fees imposed when credit is extended in the definition of finance charge, rather than also including fees that are the same for purely positive balance transactions.

Bifurcating the two features also will make it easier to apply standard credit card requirements, such as periodic statements requirements and no-offset rules in the prepaid context. Specifically, the periodic statement requirements in § 1026.7(b)(1) and (10) (which implement TILA section 127(b)(1) and (8) respectively) require card issuers to disclose for each billing cycle both the outstanding balance in the account at the beginning of statement period and the outstanding balance in the account at the end of the period.[708] In addition, because of the offset restrictions in final § 1026.12(d) (which implements TILA section 169) [709] and the due date and 21-day timing requirements for periodic statements in final § 1026.7(b)(11)and in final § 1026.5(b)(2)(ii)(A) (which implement TILA sections 127(b)(12) and (o) and TILA section 163 respectively),[710] incoming deposits to the asset feature of the prepaid account could not be applied automatically to repay the negative balance on the asset balance of the prepaid account when those incoming deposits are received. Instead, with respect to a covered separate credit feature accessible by hybrid prepaid-credit card, a card issuer (1) is required to adopt reasonable procedures designed to ensure that periodic statements for the covered separate credit features are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement, and the due date disclosed must be the same day of the month for each billing cycle; and (2) can move funds automatically from the asset account held by the card issuer to the covered separate credit feature held by the card issuer to pay some or all of the credit card debt on the covered separate credit feature no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so). Even if card issuers were able to identify methods of satisfying those requirements that were technically compliant with the credit card rules using a negative balance account structure, the Bureau believes that consumers would have a harder time understanding the operation of their accounts and their rights under such a system.

Accordingly, the Bureau believes that use of its authority under TILA section 105(a) to add the provisions in new § 1026.61(b) is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of the credit or charge card account. Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.[711] The Bureau believes that requiring credit features accessible by hybrid prepaid-credit cards to be structured as separate credit features will promote the purposes of TILA by ensuring that Regulation Z's periodic statement disclosures are clear to consumers and that card issuers are complying with the offset restrictions and due date requirements in TILA in a manner that is transparent to consumers.

The Bureau recognizes under this requirement, card issuers will be required after the final rule becomes effective to structure any overdraft credit feature offered by a prepaid account issuer, its affiliate, or its business partner as a separate credit feature, except to the extent that overdraft credit feature meets the conditions set forth in new § 1026.61(a)(4). To the extent a prepaid account issuer has been offering overdraft credit as a negative balance on prepaid accounts prior to these rules becoming effective, the prepaid account issuer will need to restructure its overdraft credit feature as a separate credit feature if the overdraft credit feature does not meet the conditions set forth in new § 1026.61(a)(4). Nonetheless, as discussed above, the Bureau believes that bifurcating the two accounts is likely to make it easier for card issuers to comply with the Regulation Z requirements, such as the periodic statement and offset provisions discussed above, that will apply to the overdraft credit feature once the final rule becomes effective and facilitate consumers' understanding of the operation of their accounts and their rights with respect to each account.

To provide additional clarity on the provisions in new § 1026.61(b), new comment 61(b)–1 provides that if a credit feature that is accessible by a hybrid prepaid-credit card is structured as a subaccount of the prepaid account, the credit feature must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance.

New comment 61(b)–2 provides guidance on how a card issuer may comply with the requirement in new § 1026.61(b). New comment 61(b)–2.i provides that if at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred, or authorized to be drawn or transferred from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply with the applicable provisions of this regulation with respect to the credit extension from the time the prepaid card transaction is authorized. Because of the offset prohibition set forth in final § 1026.12(d) and the due date and 21-day timing requirements for periodic statements in final § 1026.7(b)(11) and in final § 1026.5(b)(2)(ii)(A) respectively, incoming deposits to the asset feature of the prepaid account could not be applied automatically to repay the negative balance on the asset balance of the prepaid account when those incoming deposits are received. Thus, new comment 61(b)–2.i makes clear that a card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day, to ensure that the card issuer is complying with these Regulation Z provisions in a manner that is clear to consumers.

New comment 61(b)–2.ii provides that for transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction at the time it settles, and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these

[708] 15 U.S.C. 1637(b)(1) and (8).

[709] 15 U.S.C. 1666h(a).

[710] 15 U.S.C. 1637(b)(12), and (o) and 1666b.

[711] 15 U.S.C. 1601.

transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of this regulation from the time the transaction is settled.

New comment 61(b)–2.iii provides that if a negative balance would result on the asset feature in circumstances other than those described in new comment 61(b)–2.i and ii, credit must be drawn from the covered separate credit feature to avoid the negative balance. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions in this regulation from the time credit is drawn from the covered separate credit feature. For example, assume that a fee for an ATM balance inquiry is imposed on the prepaid account when there are insufficient or unavailable funds to cover the amount of the fee when it is imposed. Credit must be drawn from the covered separate credit feature to avoid a negative balance. The Bureau expects that the card issuer will make it clear to consumers in the credit arrangement that credit will be drawn from the covered separate credit feature to avoid a negative balance on the asset feature of the prepaid account, including if applicable for fees imposed on the prepaid account where there are insufficient or unavailable funds to cover the amount of the fee when it is imposed.

61(c) Timing Requirement for Credit Card Solicitation or Application With Respect to Hybrid Prepaid-Credit Cards

As discussed in more detail in the section-by-section analysis of § 1026.12(a) above, credit cards generally may not be issued on an unsolicited basis. Thus, TILA section 132 and existing § 1026.12(a) prevent a card issuer from issuing on an unsolicited basis a prepaid card that also is a credit card at the time of issuance. For example, prepaid cards that are sold in retail locations could not access automatically an overdraft credit feature that would make the prepaid card into a credit card at the time the prepaid card is sold. Under TILA section 132 and existing § 1026.12(a), a card issuer could add a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

The Bureau's Proposal

The Bureau proposed to use its authority in TILA section 105(a) and Dodd-Frank Act section 1032(a) to add new proposed § 1026.12(h)(1) that would have required card issuers to wait at least 30 days after a prepaid account is registered before the card issuer may make a solicitation or provide an application to the holder of the prepaid account to open a credit or charge card account that would be accessed by a prepaid card. In addition, card issuers would have been required to wait until at least 30 days after registration to open a credit card account for the holder of a prepaid account that would be accessed by the prepaid card. Moreover, if a card issuer has established an existing credit or charge card account with a holder of a prepaid account that is accessed by a prepaid, the card issuer would have been prevented from allowing an additional prepaid card obtained by the consumer from the card issuer to access the credit or charge card account, until at least 30 days after the consumer has registered the additional prepaid account.

Proposed § 1026.12(h)(2) would have defined "solicitation" for purposes of § 1026.12(h)(1) to mean an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. This proposed definition of "solicitation" would have been the same as one used with respect to credit card disclosures set forth in existing § 1026.60(a)(1) that must be provided on or with credit card applications and solicitations. See the section-by-section analysis of § 1026.60 above. Consistent with existing § 1026.60, proposed § 1026.12(h)(2) also would have specified that a "firm offer of credit," as defined in section 603(l) of the Fair Credit Reporting Act [712] for a credit or charge card, would be a solicitation for purposes of proposed § 1026.12(h).

Proposed comment 12(h)–1 would have explained that a prepaid card or prepaid account is registered, such that the 30-day timing requirement required by proposed § 1026.12(h) begins, when the issuer of the prepaid card or prepaid account successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and State law. The beginning of the required 30-day timing requirement would have been triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card.

Proposed comment 12(h)–2 would have provided a cross-reference to existing § 1026.12(a)(1) and proposed comment 12(a)(1)–7 for additional rules that would apply to the addition of a credit or charge card account to a previously-issued prepaid account. As discussed in the section-by-section analysis of § 1026.12(a)(1) above, proposed comment 12(a)(1)–7 would have provided that a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h). Proposed comment 12(h)–2 also would have cross-referenced § 1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

Comments Received

Several consumer group commenters urged the Bureau to extend the 30-day waiting period to 90 days. They noted that in 30 days, the consumer will only have completed one monthly cycle and will not have time to explore all the card's features. They believed that more time would help the consumer see whether she can manage her finances without resorting to credit at the end of the month. They also believed that a 90 day waiting period would help creditors to determine whether the consumer has the ability to repay credit.

Several commenters, including industry trade associations, an issuing bank, and a payment network, indicated that the Bureau should not adopt a waiting period. For example, one payment network said that this approach may create burdens and frustration for consumers who are explicitly seeking a prepaid account that has credit features. This commenter believed that the risks identified by the Bureau are more appropriately mitigated by requiring an affirmative consumer opt-in for any prepaid card to be linked with a credit feature, and that this opt-in can be given only after disclosures about the credit have been provided.

One digital wallet provider suggested that the Bureau clarify that this restriction does not apply to a digital wallet's funding sources. This commenter was concerned that applying the 30-day waiting period to digital wallets would effectively ban new consumers from linking a credit card as a funding source for their digital wallet.

The Final Rule

After consideration of the comments, the Bureau is adopting the 30-day waiting period largely as proposed. Specifically, the Bureau is moving proposed § 1026.12(h) to new § 1026.61(c) and is revising it to clarify the intent of the provision and to be

[712] 15 U.S.C. 1681a(l).

consistent with new § 1026.61(a).[713] Specifically, new § 1026.61(c)(1) provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

New § 1026.61(c)(2) provides that for purposes of new § 1026.61(c), the term "solicitation" has the same meaning set forth in § 1026.60(a)(1). The term "solicitation" in existing § 1026.60(a)(1) means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. In addition, existing § 1026.60(a)(1) provides that a "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act [714] for a credit or charge card is a solicitation for purposes of existing § 1026.60(a)(1). The definition of "solicitation" in new § 1026.61(c)(2) is the same as the proposed definition of "solicitation" in proposed § 1026.12(h). The final rule cross-references the definition of "solicitation" in existing § 1026.60(a)(1) rather than repeating the same definition in new § 1026.61(c).

The Bureau is moving proposed comment 12(h)–1 to comment 61(c)–1 and is revising it to provide additional clarification. Consistent with the proposal, new comment 61(c)–1 provides that a prepaid card or prepaid account is registered, such that the 30-day timing requirement required by new § 1026.61(c) begins, when the issuer of the prepaid card or prepaid account successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and State law. The beginning of the required 30-day timing requirement is triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card. New comment 61(c)–1 is revised from the proposal to provide guidance on situations where customer identification and verification are completed on a prepaid account before the account is opened. In that case, new comment 61(c)(1)–1 provides that the 30-day timing requirement begins on the day the prepaid account is opened.

The Bureau is moving proposed comment 12(h)–2 to new comment 61(c)–2 and is adopting it as proposed. The Bureau also is adding new comment 61(c)–3 to address situations where a hybrid prepaid-credit card is replaced or substituted for another hybrid prepaid-credit card. Specifically, new comment 61(c)–3 provides that a card issuer is not required to comply with new § 1026.61(c) when a hybrid prepaid-credit card is permitted to be replaced, or substituted, for another hybrid prepaid-credit card without a request or application under final § 1026.12(a)(2) and related commentary. For example, new § 1026.61(c) does not apply to situations where a prepaid account or credit feature that is accessible by a hybrid prepaid-credit card is replaced because of security concerns, and a new hybrid prepaid-credit card is issued to access the new prepaid account or credit feature without a request or application under final § 1026.12(a)(2).

With regard to comments urging the Bureau to clarify that the 30-day restriction does not apply to a digital wallet's funding sources, the Bureau is adding new comment 61(a)(1)–4 to provide guidance on the circumstances in which a prepaid account number for a digital wallet that is a prepaid account is a hybrid prepaid-credit card under new § 1026.61(a).

Specifically, new comment 61(a)(1)–4.i states that a digital wallet that is capable of being loaded with funds is a prepaid account under final Regulation E § 1005.2(b)(3). *See* final Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6. The comment explains that a prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card if it meets the conditions set forth in new § 1026.61(a). See new comment 61(a)(1)–4 for illustrations of this rule.

Thus, new § 1026.61(c) applies to a digital wallet that is capable of being loaded with funds (and thus is a prepaid account under final Regulation E § 1005.2(b)(3)), where the prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card as defined in new § 1026.61(a). The Bureau believes that this additional guidance will help relieve any concerns that the 30-day period would effectively ban new consumers from linking a credit card as a funding source for their digital wallet, except where the linked credit feature is a covered separate credit feature as defined in new § 1026.61(a)(2)(i).

With regard to the two conflicting sets of comments urging the Bureau to drop the 30-day waiting period entirely and conversely to expand it to 90 days, the Bureau has concluded based on additional consideration to adopt the 30-day waiting period as proposed. The Bureau continues to believe the 30-day waiting period would benefit consumers by separating the decisions to obtain and register the prepaid account from the decision to obtain a covered separate credit feature accessible by the hybrid prepaid-credit card. Nonetheless, the Bureau believes that extending the waiting period to 90 days seems unnecessary to ensure that a consumer can make an informed decision regarding whether to link the account to a covered separate credit feature. The Bureau believes that a longer waiting period may restrict consumers who are seeking prepaid accounts with covered separate credit features accessible by hybrid prepaid-credit cards.

The Bureau notes that if the prepaid account issuer offers the covered separate credit feature accessible by the hybrid prepaid-credit card, the prepaid account issuer is the "card issuer" for purposes of Regulation Z, including new § 1026.61(c). This is because the hybrid prepaid-credit card accessing the covered separate credit feature is a credit card, and existing § 1026.2(a)(7) defines "card issuer" as a person that issues a credit card or that person's agent with respect to the card. If the prepaid account issuer's affiliate or business partner offers the covered separate credit feature accessible by a hybrid prepaid-credit card, both the person offering the covered separate credit feature and the prepaid account issuer are card issuers for purposes of new § 1026.61(c). In this case, under new comment 2(a)(7)–1.ii, the person offering the covered separate credit feature would be an agent of the prepaid account issuer.

The Bureau believes that use of its authority under TILA section 105(a) to add the provisions in new § 1026.61(c) is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of the credit or charge card

[713] The proposal would have provided that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor. The proposal also would have applied the provisions in proposed § 1026.12(h) to credit card accounts accessed by such accounts numbers. For the reasons set forth in the section-by-section analysis of § 1026.2(a)(15)(i) above, the final rule does not adopt the provisions in proposed § 1026.12(h) (renumbered as new § 1026.61(c)) related to these account numbers.

[714] 15 U.S.C. 1681a(l).

account when it is opened. Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available and avoid the uninformed use of credit.[715] Furthermore, TILA section 132 requires that no credit card shall be issued except in response to a request or application therefor.[716] In addition, the Bureau believes that the waiting period will, consistent with Dodd–Frank Act section 1032(a), ensure that the features of the covered separate credit feature offered in connection with the prepaid account are fully, accurately, and effectively disclosed to consumers in a manner that permits the consumers to understand the costs, benefits, and risks associated with the credit feature.

The Bureau believes that the requirement in new § 1026.61(c) of a 30-day waiting period for a prepaid card to access a covered separate credit feature will promote the informed and voluntary use of credit. Under new § 1026.12(c)(1), a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card. The Bureau believes that it would promote the informed use of the credit to separate the decision to purchase and register a prepaid account from the decision to accept an offer to add a covered separate credit feature accessible by a hybrid prepaid-credit card. The Bureau believes that consumers may be able to focus more effectively on the credit terms of the covered separate credit feature, and make a more informed decision whether to request such a credit feature, if the decision to accept the credit feature occurs apart from the process to register the card. Without these protections, card issuers may attempt to market the covered separate credit feature to prepaid cardholders at the time they purchase the prepaid card or at registration. The Bureau believes that without this provision, prepaid account issuers would be likely to provide solicitations or applications to the prepaid cardholder to open a covered separate credit feature accessible by a hybrid prepaid-credit card, or suggest that the prepaid cardholder allow an existing credit feature held by the prepaid cardholder to become a covered separate credit feature accessible by a hybrid prepaid-credit card, at the time the prepaid accounts are registered because prepaid account issuers will already be collecting information from the cardholders in order to register the prepaid accounts.

Without the waiting period, consumers may feel pressured to decide whether to add the covered separate credit feature without having the opportunity to fully consider the terms of the credit feature and the consequences of obtaining the credit feature. Therefore, the Bureau believes that a consumer's decision to add a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account should be distinct from the decision to obtain or register the prepaid card.

In addition, the Bureau believes that separating these decisions would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration, which may enable the consumer to better understand those terms and conditions. This is consistent with EFTA section 905(a), which requires financial institutions to disclose the terms and conditions of EFTs involving a consumer's account. The Bureau also believes that requiring at least 30 days to elapse between the registration of a prepaid account and any offer of a covered separate credit feature accessible by a hybrid prepaid-credit card would enhance consumer understanding of the terms of the prepaid account and would help consumers to make more informed decisions regarding linking a covered separate credit feature accessible by a hybrid prepaid-credit card to the prepaid account.

As discussed in the section-by-section analysis of Regulation E § 1005.18(e)(3) above, existing customer identification requirements limit the functionality of most prepaid accounts prior to registration. In addition, the registration process is critical for application of full Regulation E protections under this final rule. For example, Regulation E § 1005.18(e)(3) provides that for all prepaid accounts, other than payroll card accounts and government benefit accounts, with respect to which the financial institution has not completed its identification and verification process (or for which the financial institution has no process), the financial institution is not required to provisionally credit the consumer's account in the event the financial institution takes longer than 10 or 20 business days, as applicable, to investigate and determine whether an error occurred.[717] If a card issuer were allowed to market covered separate credit features to consumers at the time of prepaid account registration, the Bureau is concerned that that consumers could believe that they are required to request that the covered separate credit feature accessible by a hybrid prepaid-credit card be linked to the prepaid account in order to register or access the prepaid account. This could cause some consumers to not register their prepaid accounts and lose important protections under Regulation E.

VI. Effective Date

The Bureau is generally establishing that this rule take effect on October 1, 2017, which is approximately 12 months from the issuance of this final rule. However, the Bureau is adopting several specific accommodations related to the effective date as set forth in § 1005.18(h), and a delayed effective date for the requirement to submit prepaid account agreements to the Bureau as described in § 1005.19(f).

As discussed in the section-by-section analysis of § 1005.18(h) above, the 12-month implementation period is a change from the proposal, which would have required that the rule generally take effect nine months following the publication of the rule in the **Federal Register**, with three months' additional leeway for certain disclosure-related requirements. The Bureau received many comments from industry, including trade associations, issuing banks, credit unions, program managers, payment networks, a payment processor, and a law firm writing on behalf of a coalition of prepaid issuers, arguing that the proposed nine- and 12-month compliance periods would be insufficient to implement the changes that would be required under the proposal. Upon consideration of the comments received, the Bureau believes that it is appropriate to provide a longer implementation period and to make a number of modifications and accommodations in the final rule to address particular concerns raised by commenters.

[715] 15 U.S.C. 1601.

[716] 15 U.S.C. 1642.

[717] See also new Regulation E § 1005.18(c)(2), which provides a modified version of the periodic statement alternative for prepaid accounts that cannot be or have not been verified by the financial institution.

For instance, final § 1005.18(h)(2)(i) sets forth an exception to the October 1, 2017 effective date that states that the disclosure requirements of Regulation E subpart A as modified by final § 1005.18 shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account access devices and packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. Accordingly, unlike the proposed rule, the final rule does not require that financial institutions pull and replace existing access devices and packaging material after the rule takes effect. In return, final § 1005.18(h)(2)(ii) requires that financial institutions provide notices of certain changes and updated initial disclosures to consumers who acquire prepaid accounts on or after October 1, 2017 via non-compliant packaging materials printed prior to the effective date. Final § 1005.18(h)(2)(iii) clarifies the requirements for providing notice of changes to consumers who acquired prepaid accounts before October 1, 2017. Final § 1005.18(h)(2)(iv) facilitates the delivery of notices of certain changes and updated initial disclosures for prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii). Final § 1005.18(h)(3) provides an accommodation to financial institutions that do not have sufficient data in a readily accessible form in order to comply fully with the requirements for providing electronic and written account transaction history pursuant to final § 1005.18(c)(1)(ii) and (iii), respectively, and the summary totals of fees pursuant to final § 1005.18(c)(5) by October 1, 2017.

As discussed in the section-by-section analysis of § 1005.19(f) above, final § 1005.19(f)(2) sets forth a delayed effective date of October 1, 2018 for the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to final § 1005.19(b). The Bureau believes that the effective dates discussed herein strike the appropriate balance between providing consumers with necessary protections while giving financial institutions adequate time to comply with all aspects of this final rule.

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

A. Overview

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons (which in this case would be the providers subject to the proposed rule), including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The Bureau has consulted, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

As discussed above, the final rule amends both Regulation E, which implements EFTA, and Regulation Z, which implements TILA, as well as the official interpretation to those regulations. The final rule creates comprehensive consumer protections for prepaid financial products. It expressly brings such products within the ambit of Regulation E as prepaid accounts and creates new provisions specific to such accounts. It also modifies certain Regulation E provisions as they apply to prepaid accounts, including provisions that currently apply to government benefit accounts and payroll card accounts.[718] Additionally, the final rule contains amendments to Regulations E and Z to regulate covered separate credit features accessible by a hybrid prepaid-credit card.

In applying the consumer protections in Regulation E to a broader set of consumer accounts, the Bureau furthers the statutory purposes of EFTA, which include providing a basic framework establishing the rights, liabilities, and responsibilities of participants in EFT systems and providing individual consumer rights. In addition, the Bureau believes that applying the consumer protections articulated in Regulation Z to covered separate credit features accessible by a hybrid prepaid-credit card conforms to TILA's statutory purposes, which include assuring a meaningful disclosure of credit terms, avoiding the uninformed use of credit, and protecting consumers against inaccurate and unfair billing and credit card practices.

[718] The definition of prepaid account in § 1005.2(b)(3) includes government benefit accounts and payroll card accounts.

B. Major Provisions Discussed

Below, the Bureau considers the benefits, costs, and impacts of the following major provisions of the final rule:

1. The establishment of certain disclosures that financial institutions are required to provide to consumers (or, in certain circumstances, provide consumers access to) prior to the acquisition of a prepaid account and modifications of initial disclosures that are provided at account acquisition;
2. The application of Regulation E's periodic statement requirement to prepaid accounts and the establishment of an alternative that requires financial institutions to provide consumers access to certain types of account information;
3. The extension of Regulation E's limited liability and error resolution regime to all prepaid accounts, including provisional credit requirements in most circumstances;
4. The requirement that all issuers of prepaid accounts submit their prepaid account agreements to the Bureau on an ongoing basis, post publicly available prepaid account agreements on their own Web sites, and in limited circumstances, respond to consumers' requests for written copies of their account agreements; and
5. The modification and application of particular Regulation E and Regulation Z provisions to covered separate credit features accessible by a hybrid prepaid-credit card.

With respect to each major provision of the final rule, the Bureau considers the benefits, costs, and impacts to consumers and covered persons. In addition, the Bureau discusses certain alternative provisions that it considered, in addition to the major provisions ultimately adopted, and addresses comments received in response to the proposed rule's section 1022(b)(2)(A) treatment of these topics. Where comments discuss the benefits or costs of a provision of the proposed rule in the context of commenting on the merits of that provision, the Bureau has addressed those comments above in the relevant section-by-section analysis. In this respect, the Bureau's section 1022(b)(2)(A) discussion is not limited to the discussion in this part of the final rule.

In considering the relevant potential benefits, costs, and impacts, the Bureau

has consulted the available data discussed in this preamble and has applied its knowledge and expertise concerning consumer financial markets. Where available, the Bureau has used the economic analyses that it regards as most reliable and helpful to consider the relevant potential benefits, costs, and impacts of the final rule. However, the Bureau notes that, in some instances, there are limited data available to inform the quantification of the potential benefits, costs, and impacts. For example, financial institutions that currently apply Regulation E's limited liability and error resolution provisions, including provisional credit, do not generally publicize information regarding the incremental costs associated with these activities. Moreover, some potential benefits are difficult to quantify.

General economic principles, coupled with available quantitative information, provide insight into the potential benefits, costs, and impacts arising from the final rule. Where possible, the Bureau makes quantitative estimates based on these principles as well as available data. However, where data are limited, the Bureau generally provides a qualitative discussion of the final rule's benefits, costs, and impacts.

C. Baseline for Consideration of Benefits and Costs

The baseline for this discussion is the current market for prepaid accounts.[719] This baseline considers both the existing regulatory structure as well as the economic attributes of the relevant market.[720] Although the Bureau describes the current market in detail above, this section also describes certain features of the current market where particularly relevant. When informative, the Bureau also evaluates potential future impacts relative to how the market might have evolved absent the final rule. To ascertain the current state of the market, the Bureau performed industry outreach and conducted its Study of Prepaid Account Agreements in connection with the proposed rule. The Bureau also performed consumer testing to inform the proposed rule and conducted additional consumer testing in connection with the final rule.

The final rule both extends Regulation E to cover additional accounts and amends Regulation E to include new provisions for those accounts, such as the final rule's requirements relating to pre-acquisition disclosures. With respect to the provisions addressing consumer access to account information, limited liability, and error resolution protections, the Bureau generally extends existing provisions of Regulation E, as they apply to payroll card accounts, to all prepaid accounts. For some prepaid accounts, such as GPR cards that do not receive Federal payments, these protections are newly required. However, certain other prepaid accounts, such as payroll card accounts and GPR cards that receive Federal payments, are currently subject to Regulation E's requirements (as they apply to payroll card accounts) directly or indirectly.[721] Regulation E also contains provisions that currently apply to government benefit accounts, which the final rule amends to conform more closely to requirements for other types of prepaid accounts.[722]

Current industry practice is consistent with the final rule's requirements in some cases. In such cases, the benefits, costs, and impacts of the final rule on both financial institutions and consumers are more modest than those that would result if industry practice deviated from the final rule's requirements. As discussed above, the Bureau's Study of Prepaid Account Agreements, performed in connection with the proposed rule, suggested that many financial institutions subject to the final rule already implement many of the final rule's requirements pertaining to consumer access to account information, limited liability, and error resolution. In addition to existing Federal regulatory requirements, the need for issuing financial institutions to comply with payment card associations' network rules may explain why some financial institutions currently fully or partially implement the final rule's requirements with respect to limited liability and error resolution.[723]

The final rule also includes protections for consumers using prepaid cards to access covered separate credit features offered by prepaid account issuers, their affiliates, or their business partners (except as provided in new § 1026.61(a)(4)). The Bureau understands that few providers currently offer prepaid accounts with overdraft services.[724] However, one of the largest prepaid account program managers offers an overdraft service in connection with some of its prepaid account products (which include both GPR cards and payroll card accounts), so the number of prepaid accounts eligible for overdraft services is not negligible.[725]

The Bureau believes that those few prepaid account providers offering overdraft services do not presently comply with requirements set forth in the final rule's credit provisions. The Bureau understands that those prepaid account providers offering overdraft services condition consumer eligibility on receipt of a regularly occurring direct deposit and require consumers to opt-in to the service.[726] When funds are deposited into an overdraft-enabled prepaid account, the Bureau understands that these funds generally are applied automatically to any outstanding negative balance before the

[719] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and the most appropriate baseline for that particular rulemaking.

[720] As discussed above, several Federal regulatory regimes apply to some or all types of prepaid accounts or to transactions involving these accounts, including: Requirements set forth in current Regulation E; requirements regarding receipt of Federal payments onto prepaid cards and interchange fees; and requirements to prevent financial crimes such as money laundering and terrorist financing. Prudential regulators also have issued guidance pertaining to the application of their rules to prepaid cards, program managers, and issuing financial institutions. The benefits, costs, and impacts that arise from the final rule are attenuated if certain provisions are already required under State law.

[721] As discussed above, the FMS Rule extends Regulation E's payroll card account protections to prepaid accounts that receive Federal payments.

[722] Current provisions governing consumer access to government benefit account information differ somewhat from those applicable to payroll card accounts. Specifically, the alternative to the periodic statement requirement, described in existing § 1005.15(c), does not require that a financial institution make available an electronic history of account transactions to the consumer.

[723] In certain circumstances, payment card associations' network rules provide some form of zero liability protections for prepaid cardholders. *See, e.g.,* Visa Inc., *Zero Liability, available at https://www.visa.com/chip//security/zero-liability.jsp* (last visited Oct. 1, 2016); MasterCard Inc., *Zero Liability Protection, available at http://www.mastercard.us/zero-liability.html* (last visited Oct. 1, 2016).

[724] As discussed in more detail below, the Bureau sometimes uses the generic term "provider" in this discussion to describe covered entities responsible for compliance with the final rule's provisions.

[725] NetSpend is a significant provider of prepaid accounts. *See* Total Sys. Serv., Inc., Annual Report (Form 10–K), at 2, *available at http://www.sec.gov/Archives/edgar/data/721683/000119312516476239/d240097d10k.htm* (for the year ended Dec. 31, 2015) ("Through our NetSpend business, we believe that we are the largest prepaid program manager in the United States based on gross dollar volume."). A news article reported that 6 percent of NetSpend's customers regularly use overdraft services. Suzanne Kapner, *Prepaid Plastic is Creeping into Credit,* Wall St. J. (Sept. 5, 2012), *available at http://online.wsj.com/news/articles/SB10000872396390443686004577633 4* (2012 NetSpend WSJ Article). In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A recent financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015, and 49 percent of those active cards had direct deposit. Total Sys. Serv., Inc., Quarterly Report (Form 10–Q), at 27, *available at https://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d10q.htm* (for the quarterly period ended Sept. 30, 2015).

[726] *See, e.g.,* 2012 FRB Kansas City Study at 9.

consumer may access them.[727] The Bureau understands that providers currently offering such services have adopted program rules designed to aid the population using these features, such as discouraging persistent use of the overdraft service by capping the number of fees that a consumer may incur in a specified period.[728] However, there is currently no Federal regulatory requirement that providers offer such protections for all prepaid account products.

The Bureau believes that additional prepaid account providers may be considering offering products that would be covered separate credit features accessible by a hybrid prepaid-credit card, suggesting the potential for increased consumer access to these products in the future.[729] The final rule provides clarity regarding the terms on which a prepaid account issuer, its affiliate, or its business partner may offer covered separate credit features accessible by a hybrid prepaid-credit card to consumers. The final rule's credit provisions help ensure that prepaid account issuers, their affiliates, and their business partners offer covered separate credit features accessible by a hybrid prepaid-credit card to prepaid account consumers in a transparent manner and that consumers using these features receive certain important protections.

D. Coverage of the Final Rule

The final rule applies to any prepaid product that meets the definition of prepaid account set forth in § 1005.2(b)(3). With respect to the Regulation E provisions, covered persons include financial institutions that issue prepaid accounts. Financial institutions may work with program managers or other industry participants in marketing, establishing, or maintaining prepaid accounts.[730] Given the variety of organizational forms used to offer prepaid programs, the Bureau does not allocate burdens among issuers, program managers, and other participants in this discussion of the benefits, costs, and impacts arising from the final rule. In addition to financial institutions, card issuers and creditors offering covered separate credit features accessible by a hybrid prepaid-credit card are also subject to the final rule's credit provisions. Depending on the facts and circumstances, these persons may or may not be the prepaid account issuer or program manager. For clarity, the Bureau sometimes uses the generic term "provider" in this discussion to describe covered entities responsible for compliance with the final rule's provisions and does not allocate burdens arising from these provisions among market participants.

E. Potential Benefits and Costs to Consumers and Covered Persons

In applying the consumer protections in Regulations E and Z to a broader class of accounts, the Bureau intends to reduce consumer and industry uncertainty regarding responsibilities and liabilities among market participants. With the possible exception of the final rule's credit provisions, which apply to covered separate credit features accessible by a hybrid prepaid-credit card, the Bureau does not believe that the final rule will meaningfully reduce consumer access to consumer financial products and services. This is because, with the exception of the credit provisions, most financial institutions are already partially complying with many of the final rule's requirements (due to preexisting regulatory requirements or payment card association network rules), and the additional requirements of the final rule will result in relatively modest ongoing burden for these institutions.

By adopting the final rule, the Bureau aims to lessen consumer risk associated with using those prepaid account products that currently do not offer the protections required by the final rule. In addition, the final rule lessens the potential risk incurred by consumers who would use prepaid account products in the future that, absent the final rule's requirements, would lack these protections. In particular, the Bureau is concerned that some prepaid account consumers may be unaware that certain prepaid account products currently on the market offer fewer protections than comparable products currently subject to Regulation E, and consumers may be unaware of the diversity of protections currently offered in connection with prepaid account products. In addition, because both prepaid cards and debit cards linked to checking accounts enable consumers to access their own funds and have similar functionalities and appearances, prepaid accountholders may believe that the accounts associated with these cards offer similar consumer protections. By bringing prepaid accounts within the ambit of Regulation E, the final rule ensures that prepaid accountholders receive consistent protections, regardless of the prepaid account held, and have the opportunity to enjoy the protections afforded to consumers of similar products.

The final rule's disclosure requirements ensure that consumers generally have access to comparable, transparent, key, and comprehensive information prior to acquiring a prepaid account. Motivated by private incentives, financial institutions may choose to disclose a socially suboptimal amount of information to consumers.[731] For example, firms may engage in strategies to frustrate consumer efforts to compare products.[732] Consumers generally incur costs, in terms of time, money, or both, to determine the price and quality of a particular product before purchasing it. Consumers searching for a prepaid account have less incentive to compare various products when performing these comparisons is costly. When consumers are unwilling to incur these search costs, financial institutions may exercise market power. As a result, a sufficiently inexpensive reduction in these costs can benefit consumers and enhance

[727] The Treasury FMS rule, described above, prohibits prepaid cards from having an attached line of credit if the credit agreement allows for the automatic repayment of the loan from a card account triggered by the delivery of the Federal payment into the account. 31 CFR 210(b)(5)(i)(C). Certain State laws subject some government benefit accounts to similar provisions. *See, e.g.,* CA AB 1280; CA AB 2252.

[728] *See, e.g.,* 2012 NetSpend WSJ Article; *see also* NetSpend Corp., *Amended Terms for Your Cardholder Agreement, available at http://www.netspend.com/account/overdraftTerms.m* (last visited Oct. 1, 2016) (overdraft terms and conditions).

[729] The Bureau understands from industry comments regarding the proposed rule that other financial institutions offering prepaid accounts would consider offering overdraft services in connection with their prepaid account products if the Bureau were to adopt a Regulation E opt-in regime, described in greater detail above.

[730] Some financial institutions acting as prepaid account issuers choose to perform all of the functions required to manage a prepaid program, including marketing prepaid accounts directly to consumers. More commonly, however, prepaid account issuers leave program management to others. The scope of such roles may vary. However, the issuer typically enters into a contract with the program manager to provide the association bank identification number for the program and to monitor regulatory compliance in exchange for fee income and indemnification from risk. 2012 FRB Philadelphia Study at 10.

[731] The socially optimal amount of information about a prepaid account depends on the cost to financial institutions (or third parties) of acquiring and providing product information and the benefit to consumers from improved understanding and choice. In general, at the social optimum, the benefit to consumers from additional or more transparent information would exactly equal the additional cost to financial institutions (or third parties) of providing that information.

[732] *See, e.g.,* Glenn Ellison & Sara Fisher Ellison, *Search, Obfuscation, and Price Elasticities on the Internet,* 77 Econometrica, 427 (2009).

efficiency.[733] By standardizing the information that consumers receive, the final rule's short form disclosure requirements reduce the search costs associated with finding, understanding, and comparing critical information. Further, because all consumers of the product potentially benefit when prices decrease due to search by some consumers, the benefits of lower search costs extend beyond those consumers who actually engage in comparison shopping before making a purchasing decision.

In addition to reducing search costs by making information more comparable and transparent, the final rule's disclosure requirements ensure that consumers have access to comprehensive information regarding prepaid accounts. Financial institutions have strong incentives to make consumers aware of generally attractive product features, such as functionality offered without an additional fee. However, financial institutions have less incentive to identify and make transparent unattractive product features, such as high fees that may be associated with certain types of activities. In some cases, prepaid accountholders may utilize high-cost features frequently, and these consumers may have selected a different product were the fee information transparent when they acquired the account.[734]

One commenter suggested that the Bureau analyze more recent data describing prepaid card consumer spending and behavior but did not point to particular spending or behavior studies that it deemed more informative than those discussed in the proposal. Commenters noted that various third-party sources aggregate information regarding prepaid cards and offer consumers evaluations of prepaid card fees and terms, including tailored recommendations in some cases. However, not all consumers rely on these evaluations in their search. Consumers may not access these evaluations due to lack of awareness, difficulty in accessing the evaluations, or skepticism regarding their objectivity. The Bureau believes that the final rule's content and formatting requirements increase transparency by ensuring that financial institutions disclose certain terms to consumers before they acquire prepaid accounts.

In addition to depending on financial institutions to disclose information about account features to aid purchasing decisions, consumers rely on financial institutions to provide information regarding their account status, as well as other services such as error resolution, on an ongoing basis. Although the account terms and conditions may articulate the financial institution's commitments with respect to these features, many consumers may not review these documents or be able to anticipate their needs accurately before acquiring an account. Moreover, a financial institution's strength in performing these functions may be difficult to ascertain or impossible to observe in advance. While a financial institution's reputation would suffer if it consistently provided poor service, such long-term consequences may not protect all consumers sufficiently from the financial institution's incentives for short-term gain.[735] The switching costs incurred by a consumer in changing prepaid accounts may serve as an additional friction that decreases a financial institution's incentive to provide high quality services on an ongoing basis.

Although most prepaid account programs reviewed in the Bureau's Study of Prepaid Account Agreements offered many of the limited liability and error resolution protections set forth in the final rule, the Bureau is concerned that the total number of consumers at risk of an unexpected loss could increase in the future as more consumers adopt and use prepaid accounts. Prepaid accounts, which leverage the same large payment network rails as credit cards, are widely accepted by merchants and increasingly used by consumers. A survey conducted by the Board in 2013 (and published in 2014) found that 15 percent of respondents reported using a general purpose prepaid card in the past 12 months.[736] Among respondents to that survey who reported having a general purpose prepaid card or a payroll card, 38 percent reported that it was reloadable, and about half of those respondents who reported that they had a GPR or payroll card reported that they or someone else added money to their card in the past month.[737] Another survey conducted in May 2014 found that 16 percent of respondents had used a "prepaid card" that was not a gift card in the last 12 months.[738] The 2013 FDIC Survey found that 12 percent of households had ever used prepaid cards, 7.9 percent had used prepaid cards in the last 12 months, and 3.9 percent had used prepaid cards in the last 30 days; moreover, this survey found that prepaid card use was more

[733] *See, e.g.,* Dale O. Stahl II, *Oligopolistic Pricing with Sequential Consumer Search,* 79 a.m. Econ. Rev. 700 (1989). A commenter from a university regulatory studies center stated that this paper provides a poor model of the market for prepaid accounts because it assumes that consumers search for the best price for a homogeneous good while prepaid products vary in terms of both price and product features. The commenter recommended instead a paper by Bakos that similarly concludes that "reducing the cost of price and product information typically will improve market efficiency but will reduce seller profits." J. Yannis Bakos, *Reducing Buyer Search Costs: Implications for Electronic Marketplaces,* 43 Mgmt. Sci. 1676, 1677 (1997). *See also* Simon P. Anderson & Regis Renault, *Pricing, Product Diversity, and Search Costs: A Bertrand-Chamberlin-Diamond Model,* 30 Rand J. Econ. 719 (1999) (showing that product diversity does not change the conclusion in Stahl that lower search costs lead to lower equilibrium prices). These authors note that some (but not all) features of the market for credit cards can be explained by their framework. *Id.* at 731. This commenter also stated that the Bureau should consider ways to protect consumers who do not search. The Bureau notes that the final rule's general requirements with respect to limited liability and error resolution protect consumers regardless of whether they search.

[734] Research covering prepaid programs that represented approximately 90 percent of the GPR card market (in terms of number of cards) shows that the majority of the market sampled (70 percent) provides explicit tips regarding how to avoid fees and minimize the costs associated with using the card. However, the authors identify marketing and communication to promote positive consumer use as an area for improvement. 2014 CFSI Scorecard at 11.

[735] The relationship between reputation and quality is highly complex, even under competition. *See, e.g.,* Rachel Kranton, *Competition and the Incentive to Produce High Quality,* 70 Economica 385 (2003). For a general survey of reputation and quality, see Heski Bar-Isaac & Steve Tadelis, *Seller Reputation,* 4 Founds. and Trends Microeconomics 273 (2008).

[736] Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014,* at 8 (Mar. 2014), *available at http://www.federalreserve.gov/econresdata/mobile-devices/files/consumers-and-mobile-financial-services-report-201403.pdf* (2014 FRB Consumers and Mobile Financial Services Survey). General purpose prepaid cards are one type of product subsumed within the final rule's definition of prepaid account. As described above, payroll card accounts are already required to comply with Regulation E's limited liability and error resolution requirements. The subsequent wave of the survey found that 19.8 percent of respondents reported using a prepaid debit card in the past 12 months, suggesting that product use is proliferating. 2015 FRB Consumers and Mobile Financial Services Survey at 53 tbl.C.3.

[737] 2014 FRB Consumers and Mobile Financial Services Survey at 48 tbls.C.9 & C.10. This implies that roughly 3 percent of respondents had a general purpose prepaid card or payroll card that they or someone else had (re)loaded in the past month. The subsequent survey wave did not include these questions. 2015 FRB Consumers and Mobile Financial Services Survey. The most recent wave of the survey found that 16.2 percent of respondents used a GPR card in the past 12 months, but the survey did not inquire regarding how frequently respondents reloaded the cards. 2016 FRB Consumers and Mobile Financial Services Survey at 61 tbl.C.3.

[738] GFK, *GfK Prepaid Omnibus Research Findings,* at 6 (2014), *available at http://www.nbpca.org/~/media/2519B8BADB1B4388BA5F11C511B3ACAE.ashx.* The definition of prepaid card in this survey appears to have included products that are not included in the final rule's definition of prepaid account. *Id.* at 7.

common among households that were unbanked or underbanked.[739] Another survey found that 5 percent of adults had used prepaid cards at least once a month.[740]

Although consumers have different motivations for acquiring prepaid accounts, some financial institutions design and market these accounts to consumers as an alternative to traditional checking accounts. According to one survey, of the 5 percent of adults who reported using a prepaid card at least once a month, 41 percent did not simultaneously maintain a checking account.[741] This implies that roughly 2 percent of the adult population uses a prepaid card monthly and does not have a checking account.[742] According to a survey conducted by the Board in 2012 (and published in 2013), 1.6 percent of respondents reported that either they or their partner had a reloadable prepaid card and did not have a checking, savings, or money market account.[743] Prepaid accounts offer individuals who do not have access to traditional debit or credit card accounts a means to perform EFTs. These accounts also enable consumers, who may not otherwise have access to another electronic payment method, to make purchases from online merchants and others who do not accept cash. Additionally, prepaid accounts provide individuals lacking access to traditional checking accounts a means of storing funds that can be more secure than holding cash. Prepaid accounts also offer consumers the ability to accept payments of wages and benefits via direct deposit. For unbanked consumers, loading funds into a prepaid account may serve as an alternative to relying on a check-cashing provider.

Although consumers may hold funds in certain types of prepaid accounts that are currently subject to Regulation E, some consumers regularly deposit funds into prepaid accounts that are not currently subject to Regulation E's requirements.[744] Consumers may hold their prepaid accounts for extended periods and load significant portions of their available funds into such accounts. Consumers who store funds in prepaid accounts without liability limitations and error resolution protections (including provisional credit) may be at risk of an unexpected loss of or a delay in access to funds in the event of an error or unauthorized transfer. The final rule reduces the risk borne by these consumers by requiring that financial institutions limit liability for unauthorized transfers and offer error resolution protections for all prepaid accounts, including provisional credit on accounts that have completed the customer identification and verification processes.

In addition, the final rule helps consumers assess the risks and costs associated with using prepaid accounts by requiring more comprehensive disclosure of account transaction history than currently required. These new requirements may help consumers to understand the financial costs associated with using prepaid accounts, to recognize errors, and to exercise error resolution rights. As discussed below, many financial institutions currently implement several of the final rule's provisions relating to communication of account information to accountholders, including providing consumers with electronic access to their transaction history.

The final rule also modifies Regulations E and Z to impose new requirements in relation to covered separate credit features accessible by a hybrid prepaid-credit card. As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliate, or its business partner (except as described in new § 1026.61(a)(4)). New § 1026.61(b) generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. New § 1026.61 refers to these overdraft credit features as "covered separate credit features." In addition, under the final rule, a prepaid card that can access a covered separate credit feature is a "credit card" under Regulation Z with respect to that credit feature. The final rule defines such a prepaid card that is a credit card as a "hybrid prepaid-credit card" in new § 1026.61.

The Bureau anticipates that most covered separate credit features will meet the definition of "open-end credit." Persons offering covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) credit generally are required to comply with the disclosure provisions and credit card provisions in subparts B and G of Regulation Z, including certain fee and payment restrictions. Additionally, the final rule provides that card issuers must adhere to timing requirements regarding solicitation and application that generally prevent card issuers from doing any of the following within 30 days of prepaid account registration: (1) Opening a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) making a solicitation or providing an application for such a feature; or (3) allowing an existing credit feature to become such a covered separate credit feature accessible by a hybrid prepaid-credit card. Moreover, for those prepaid account programs where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card, the final rule requires that a financial institution generally provide to any prepaid account without an associated covered separate credit feature accessible by a hybrid prepaid-credit card the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature.[745]

[739] 2013 FDIC Survey at 29–30.

[740] 2014 Pew Survey at 1. Survey respondents were told not to include gift cards, rebate cards, credit cards, or phone cards. *Id.* at 24.

[741] 2014 Pew Survey at 1, 7.

[742] *See id.*

[743] Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2013,* at 5 (Mar. 2013), *available at http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201303.pdf.* The following information was used to derive this statistic: "In 2012, the share of unbanked consumers [meaning those who reported that neither they nor their spouse or partner had a checking, savings, or money market account] declined to 9.5 percent of the adult population. Adopting a more expansive definition of being banked that includes use of a reloadable prepaid card, the share of consumers who are unbanked declined . . . to 7.9 percent in 2012." The 2014 FRB Consumers and Mobile Financial Services Survey, which reported findings from a survey conducted in 2013, did not include information that enabled the Bureau to calculate a revised statistic.

[744] As discussed above, payroll card accounts and government benefit accounts are currently subject to Regulation E. The FMS Rule ensures that the protections that apply to payroll card accounts under Regulation E also apply to prepaid cards that receive Federal payments. Consistent with the Bureau's findings in its Study of Prepaid Account Agreements, one industry commenter stated that the FMS Rule has essentially forced any product accepting ACH credits to implement the protections that apply to payroll card accounts under Regulation E.

[745] The final rule permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. However, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature.

Although few providers currently offer overdraft services in connection with prepaid accounts, the Bureau believes that such offerings could become more prevalent in the future. Therefore, the Bureau believes that it is important to ensure that consumers using prepaid cards that access covered separate credit features receive appropriate protections. By adopting the requirements at this time, the Bureau hopes to mitigate harm to consumers arising from the absence of these protections and to lessen disruption that industry could experience if regulatory uncertainty were resolved after such products had become widespread.

To assess the potential impacts of the final rule on consumers and covered persons, the Bureau separately discusses the benefits and costs associated with each major provision. For clarity, costs arising from compliance burdens that are imposed on financial institutions, card issuers, and creditors are discussed under the subheading ''Benefits and Costs to Covered Persons'' for each major provision. The final rule's provisions may impose one-time implementation costs and may affect ongoing operational costs, both of which may be fixed or variable.[746] Economic theory predicts that providers will absorb fixed cost increases. However, such increases may restrict consumer choice if they cause current providers to exit the market or deter potential providers from entering the market. In some situations, a decrease in the number of market participants could facilitate the exercise of market power by remaining providers. This could result in higher prices for consumers, decreased product quality, or some combination thereof.

Providers' ability to recoup variable cost increases by raising prices depends on both the relative elasticities of supply and demand for the product and the extent of market competition.[747] Both providers and consumers ultimately will bear these burdens, and the party that is less responsive to a price change will bear a larger share.

[746] Fixed costs are those costs that do not depend on the number of prepaid accounts supplied by the financial institution or the number of credit card accounts supplied by the card issuer or creditor.

[747] The relative elasticities of supply and demand for a product measure how responsive the quantity supplied by providers is to a price change relative to how responsive the quantity demanded by consumers is to a price change. The relative elasticities of supply and demand can vary across covered products. The availability of information, which affects the perceived availability of substitute products, as well as the presence of substitute products may influence these relative elasticities.

1. Pre-Acquisition Disclosures and Initial Disclosures

The final rule requires new pre-acquisition disclosures for prepaid accounts, extends existing Regulation E disclosure requirements to prepaid accounts, and requires new disclosures to be made on prepaid account access devices. Under the final rule, newly printed disclosures will need to be compliant beginning October 1, 2017. The final rule also modifies the initial disclosures of fees required by Regulation E. The final rule extends § 1005.7 to prepaid accounts; and, in § 1005.18(f)(1), adds the requirement that the financial institution must disclose all fees imposed by the financial institution in connection with a prepaid account, not just fees related to EFTs. In addition, section § 1005.18(f)(3) requires that financial institutions disclose on prepaid account access devices the financial institution's name, and both the URL of a Web site and a telephone number that a consumer can use to contact the financial institution about the prepaid account.

Section 1005.18(b)(1) generally requires that a financial institution provide a short form disclosure and a long form disclosure before a consumer acquires a prepaid account.[748] Sections 1005.18(b)(2) through (5) establish the content of these disclosures. The long form disclosure includes all of the information required to be disclosed on the short form, with the exception of information related to fees or the availability of the long form. In addition, among other information, the long form sets forth *all* fees imposed in connection with a prepaid account and their qualifying conditions; contact information of the Consumer Financial Protection Bureau; and contact information for the financial institution.

The short form disclosure includes a ''static'' portion, an ''additional fee types'' portion, and a portion for additional information. The static portion includes the seven fees or fee types that the Bureau believes to be the most important to consumers when shopping for a prepaid account. The ''additional fee types'' portion states the total number of fees that the prepaid account charges (not including finance charges, purchase price, or activation fees)[749] but which are not disclosed in the static portion of the form, followed by a second statement explaining that what follows are examples of some of those additional fee types, followed by the two of these fee types that generated the most revenue for the prepaid product during the prior 24-month period. The final rule also introduces a 5 percent de minimis revenue threshold, whereby if a fee type resulted in less than 5 percent of total fee revenue from consumers for that 24-month period then that fee type would not be required to be disclosed. The short form includes additional disclosures regarding FDIC deposit or NCUA share insurance and other account protections; the Web site of the Consumer Financial Protection Bureau; a statement directing the consumer to the location of the long form disclosure; and a statement regarding whether the product offers overdraft credit features. In addition to the information required on the short form disclosure, financial institutions must disclose outside of, but in close proximity to, the short form disclosure, the name of the financial institution; the name of the prepaid program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any.

The final rule restricts the information that may be disclosed on, or with, the short form and long form disclosures. Section 1005.18(b)(7) requires that when a short form or long form disclosure is presented in writing or electronically, it must be segregated from other information and contain only the information required or permitted by the final rule. Section 1005.18(b)(3) requires that if the amount of a fee associated with a fee type listed in the short form disclosure could vary, a financial institution must disclose the highest fee associated with the fee type, along with a symbol, such as an asterisk, linked to a statement that explains the fee could be lower depending on how and where the prepaid account is used. With the exception of a periodic fee, a financial institution must use the same symbol and explanatory statement for all fees that could be lower. In addition, § 1005.18(b)(3) establishes, with the exception of cash reload fees, that short form disclosures must not include any third-party fees; and it allows financial institutions to disclose any of the two-tiered disclosures required under § 1005.18(b)(2) as a single fee disclosure, if the amount is the same for both fees.

The final rule establishes certain aspects of the timing, form, and formatting of the short form and long form disclosures. Section 1005.18(b)(6) requires financial institutions provide certain portions of these disclosures in

[748] For concision, in this section, the disclosure requirements of § 1005.18(b)(5) are considered as part of the short form disclosure requirements.

[749] For concision, in this section, the number of additional fee types disclosure is considered without further discussion of the fact that finance charges, purchase price, and activation fees are excluded from its determination.

a tabular format, excepting disclosures that are provided orally. In addition, § 1005.18(b)(7) provides specific formatting requirements on grouping, prominence, and size. It requires that all information must be presented in a single, easy-to-read typeface, in a single color against a contrasting background; specifies which information must be emphasized with bold typeface; and specifies minimum and relative type sizes. It establishes how fees and other information on the short form should be grouped, including a ''top-line'' component which presents the first four fee types at the top of the form in a relatively large, bold font. On the long form disclosure, it requires that fee information must generally be grouped together by the categories of function.

The final rule also sets forth requirements for how and when the short form and long form disclosures must be provided to consumers. Section 1005.18(b)(1) requires financial institutions to provide consumers with the short form disclosure prior to acquisition of the prepaid account. It similarly requires that the long form disclosure be provided prior to acquisition of a prepaid account; however, it also provides exceptions if the account is acquired in a retail location or orally by telephone, as discussed below. Section 1005.18(b)(6) requires that the disclosures must be in writing, sets forth special rules that apply if they are provided in electronic form or orally, and provides that these disclosures must be in a retainable form (excepting disclosures that are provided orally).

The final rule creates exceptions to the pre-acquisition disclosure regime if the prepaid account is acquired in a retail location or orally by telephone. In a retail location, financial institutions may provide the long form disclosure after the consumer acquires a prepaid account as long as the prepaid account access device is contained inside the product's packaging material, the short form disclosure is visible to consumers, and the short form includes information about how to access the long form disclosure by telephone and via a Web site, among other requirements.

Before a consumer acquires a prepaid account orally by telephone, a financial institution must orally disclose the information required in the short form disclosure. However, the final rule allows a financial institution to provide the long form disclosure after the consumer acquires the prepaid account, provided that certain conditions are met before the consumer acquires the prepaid account, including that the financial institution informs the consumer orally that the information required to be disclosed on the long form disclosure is available both by telephone and on a Web site.

Pursuant to § 1005.18(b)(9), financial institutions must provide the short form and long form disclosures in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) The financial institution principally uses a foreign language on prepaid account packaging material; (2) the financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or (3) the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. The financial institution must also provide the long form disclosure in English upon the consumer's request and on its Web site wherever it provides the long form disclosure in a foreign language.

A short form disclosure for a payroll card account or government benefit account must also contain a statement that consumers do not have to accept such an account and which directs the consumer to ask about other ways to receive wages, salary, or benefits; or a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and which directs the consumer to choose one.

The final rule sets forth disclosure requirements when a financial institution offers multiple service plans within a particular prepaid account program. The financial institution may provide the standard short form disclosure (as described above) for the service plan in which the consumer is enrolled by default upon acquisition. Alternatively, the financial institution may simultaneously disclose the required information for all of its service plans in a short from substantially similar to Model Form A–10(e). The long form disclosure for a prepaid account program with multiple service plans must present the required information for all service plans in the form of a table.

Finally, § 1005.18(h)(1) provides that, except in certain circumstances, the requirements of subpart A of Regulation E, as modified by final § 1005.18, apply to prepaid accounts, including government benefit accounts subject to § 1005.15, beginning October 1, 2017. If a financial institution has changed a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, the financial institution must provide certain disclosures to the consumer. Section 1005.18(h)(2)(iii) requires that financial institutions notify consumers with accounts acquired before the effective date of any change to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, at least 21 days in advance of the change becoming effective.[750] If a consumer acquires a prepaid account on or after the effective date, § 1005.18(h)(2)(ii)(A) requires that financial institutions notify that consumer of any change to the prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, within 30 days of acquiring the consumer's contact information. In addition, for accounts acquired after the effective date, § 1005.18(h)(2)(ii)(B) requires that financial institutions mail or deliver to the con initial disclosures pursuant to § 1005.7 and § 1005.18(f)(1) that have been updated as a result of § 1005.18(h)(1) taking effect, within 30 days of obtaining the consumer's contact information. Section 1005.18(h)(2)(iv) specifies the methods financial institutions may use to notify consumers of these changes and send updated initial disclosures.

a. Benefits and Costs to Consumers

The benefits and costs to consumers arising from the disclosure requirements for prepaid accounts are addressed in four parts: (i) A general discussion of the benefits to consumers of information; (ii) a discussion of the anticipated benefits of the disclosure requirements; (iii) a discussion of consumer engagement with disclosure; and (iv) a discussion of potential costs to consumers of the disclosure requirements.

i. Benefits of Information in General

According to standard models of consumer choice, when consumers face

[750] If a financial institution obtains a consumer's contact information fewer than 30 days in advance of that change becoming effective or after it has become effective, the financial institution is permitted to provide notice of the change in accordance with the timing requirements set forth in § 1005.18(h)(2)(ii)(A).

a choice among products in a given market, they consider the options available to them as well as the information they have about each of those options. In order for a consumer to make the best choice for her situation, her information must be accurate and descriptive of all available options.[751] In reality, however, consumers may not be perfectly informed. As discussed above, among other reasons, this could transpire because firms perceive an advantage to withholding information, or because consumers perceive gathering information as overly burdensome.

Information provision (*e.g.,* mandated disclosure) can therefore facilitate consumer decision-making in at least three ways. First, information provision can inform consumers about the choices that are available to them. This provides a direct benefit of improving the likelihood that consumers find products that fit their preferences.[752] In addition, as discussed above, informing consumers about their choices (or facilitating information gathering by consumers) may increase competition in the product market, which in turn could cause firms to offer consumers better terms. Second, information provision can inform consumers about the attributes of the products that are available to them. This provides the direct benefit of enabling consumers to consider the relative merits of each product and to select the best product from among their choices. In addition, revealing or highlighting certain attributes of a product type could induce firms to compete on those attributes, raising benefits to consumers or lowering costs. Third, information provision can inform consumers about the attributes of the products they have already chosen. This can both increase the benefits a consumer receives from a chosen product and reduce the costs associated with its use.

ii. Benefits

The Bureau believes that disclosures required by the final rule provide consumers with the additional information necessary to make informed choices regarding the prepaid account products available to them. The short form discloses key fees, key fee types, and other important information. So that the fees may be quickly located and compared, the fees and fee types that the Bureau believes are most important to consumers in shopping for prepaid accounts are listed at the top of the short form disclosure.[753] Consumers seeking information not found on the short form disclosure can use the long form disclosure, which also is required to be made available to consumers before consumers acquire a prepaid account.[754] As discussed in detail above, the long form disclosure lists all fees for a particular prepaid account program and the conditions, if any, under which they may be imposed, waived, or reduced. These disclosures will help consumers become more informed about the details of each prepaid account and could therefore improve consumer choice among available products.

The Bureau designed the short form disclosure in part to help consumers who are shopping for prepaid accounts to find the most important information. The Bureau limited the information that is displayed in order to make the information that is presented more salient and easier to locate.[755] As noted above, the fees that participants in the Bureau's testing identified as being most important to them are listed at the top of the short form disclosure, which the Bureau believes is a likely point for consumers' first engagement.[756] This effect is reinforced by the display of top-line information, which is presented in a relatively large, bold font printed on a background that provides clear contrast. Other disclosed fees and additional information are presented in clear, concise language and printed on a background that provides clear contrast for ease of reading.

One potential outcome of the Bureau's emphasis on a limited amount of information on the short form disclosure is that consumers could begin to rely on this information to guide their purchase decisions more heavily than they do currently. If so, then financial institutions may in turn increase their competitive efforts on disclosed fees and information, which could result in a benefit for consumers, for example, in the form of a reduction in disclosed fees. The requirement that financial institutions disclose only the highest possible fee for each required fee disclosure on the short form could encourage financial institutions with varying fees to simplify their fee structure. Such a reduction in complexity could improve consumers' comprehension of the products they are considering prior to acquisition.

Another benefit of the final rule will be to standardize prepaid account product disclosures. Currently, while providers generally disclose certain fees and information to consumers pre-acquisition, there is significant variation in the content and formatting of the disclosures offered to consumers before they acquire a prepaid account.[757] The form of these disclosures varies significantly across products, variously utilizing bulleted lists, tables, plain text, and combinations of these methods. In some cases, fee inclusion, fee descriptions, and fee prominence are seemingly selected to highlight the relative strengths or to diminish the relative weaknesses of the particular product. As described above, the Bureau believes that standardization will reduce the cost to consumers associated with finding and understanding critical information about prepaid accounts and therefore increase consumers' knowledge of their available choices and facilitate comparison shopping among prepaid account products. The short form disclosure will standardize the summary disclosure of key fees and other important information. Similarly,

[751] Here, "make the best choice" is intended to be descriptive of the consumer's process of choice; to consciously optimize over her choice set and, through that process, select the best option. This is distinct from the possible interpretation of obtaining the best outcome, which could be achieved without optimizing; through random selection among known options, for example.

[752] Increasing knowledge of the consumer's choice set may be particularly beneficial when products within a market are highly differentiated or in which consumers within a market have diverse tastes.

[753] The Bureau's beliefs about the fees most important to consumers were based on the results of consumer testing. *See* ICF Report II. In addition, examining payroll account usage data, Wilshusen el al. find that these same fees also constitute a large majority of the fees charged to consumers, both by incidence and total value. 2012 FRB Philadelphia Study at 59.

[754] In addition, § 1005.18(f)(1) requires that a prepaid account's account agreement include all of the information required to be provided in the long form disclosure.

[755] Reducing the size of the choice set for choices made under time pressure has been shown to increase both the percentage of the remaining items seen as well as the time of fixation on those items. *See* Elena Reutskaja et al., *Search Dynamics in Consumer Choice under Time Pressure: An Eye-Tracking Study,* 101 Am. Econ. Rev. 900 (2011).

[756] Andrew Caplin et al., *Search and Satisficing,* 101 a.m. Econ. Rev. 2899 (2011).

[757] This variation is pronounced in both retail and non-retail channels. For example, Pew documented wide disparity in disclosures available on prepaid card Web sites. *See* The Pew Charitable Trusts, *Loaded with Uncertainty: Are Prepaid Cards a Smart Alternative to Checking Accounts?* (Sept. 2012), *available at http://www.pewtrusts.org/en/and-analysis/reports/2012/09/06/loaded-with-uncertainty*; *see also* 2014 Pew Study. Relatedly, CFSI and Pew cited the lack of current standards, among other things, as motivation for developing their own model forms. *See* Ctr. for Fin. Serv. Innovation, *Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards* (Mar. 2012), *available at http://policylinkcontent.s3.amazonaws.com/Thinking Inside_CFSI_0.pdf*; *see also* The Pew Charitable Trusts, *The Need for Improved Disclosures for General Purpose Reloadable Prepaid Cards* (Feb. 2014), *available at http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/02/26/the-need-for-improved-disclosures-for-general-purpose-reloadable-prepaid-cards.*

the long form disclosure will standardize the grouping of fees and make standard the disclosure of fees' qualifying conditions, making fees easier for consumers to locate and compare across products.

Consumers will also benefit from disclosed fees, terms, and conditions that are accurate pre-acquisition. Under the final rule, prepaid accounts are being brought within the ambit of Regulation E, which, among other things, requires that financial institutions provide consumers with written notice at least 21 days before implementing, generally, a change that would result in increased fees or liability for the consumer, or fewer types of EFTs or stricter limitations on EFTs. Therefore consumers can have confidence that the fees and features of the products that they purchase are accurately disclosed, and that certain changes to those products are properly disclosed to the consumer with advance notice.

As discussed in detail above, under the final rule, financial institutions may offer consumers multiple service plans within a single prepaid account program. This provides consumers with the benefit of additional options from which to choose, which may therefore improve the quality of consumers' purchasing decisions or product use. However, multiple service plans may also present challenges to consumers. In particular, because financial institutions that disclose multiple plans on the short form will utilize a unique disclosure format, these disclosures may be relatively difficult to compare to other prepaid products. This could decrease the overall quality of consumers' purchasing decision. In addition, the multiple service plan option will result in a larger amount of information for consumers to process, somewhat lessening the above-discussed benefits of limited information on the short form disclosure.

Also as discussed above, in certain situations, if a financial institution principally uses a foreign language on retail packaging, to market a prepaid account, or to communicate with a consumer during account acquisition, then the short form and long form must be provided in that same foreign language. A financial institution must also provide the long form disclosure in English upon a consumer's request and on any part of the Web site where it provides the long form disclosure in a foreign language. The Bureau believes that if a consumer relies on a foreign language in the acquisition of a prepaid account, then it is likely that that foreign language is the consumer's language of greatest proficiency. Furthermore, the Bureau believes that the ability to obtain the long form disclosure information in English will be beneficial to consumers in various situations, such as when a family member who only reads English is assisting a non-English speaking consumer to manage his prepaid account.

The proposed rule would have required that if a financial institution primarily used a foreign language in-person with a consumer who was acquiring a prepaid account, then the financial institution would have to provide pre-acquisition disclosures in that foreign language. Two trade associations and one law firm commenting on behalf of a coalition of credit unions commented that the requirement that financial institutions provide disclosures in the foreign language that they use to converse to consumers in-person, as specified in the proposed rule, would be overly burdensome, create a potential compliance trap, and could result in a reduction in access to foreign language speakers. In response to these comments, the Bureau has removed this requirement for in-person interactions in this final rule. The Bureau has maintained the requirement that financial institutions provide disclosures in the foreign language if a financial institution principally uses a foreign language to market a prepaid account and provides a means there for a consumer to acquire the account by telephone or through a Web site; or provides a means for a consumer to acquire a prepaid account by telephone or through a Web site principally in a foreign language; or primarily uses a foreign language on packaging material. The Bureau believes that this approach ensures that the majority of consumers who acquire a prepaid account using a foreign language have the ability to receive disclosures in that language while not limiting the ability of financial institutions to interact with their customers in the language that the customer is most comfortable.

The final rule also requires disclosure on the short form of whether the prepaid account might offer the consumer an overdraft credit feature at some time in the future.[758] If an overdraft credit feature might be offered, then the financial institution must also disclose the time period after which it might be offered and that fees would apply. Because both the existence of, and the absence of, possible overdraft credit features are required to be similarly disclosed, consumers will be able to easily compare prepaid account products along this dimension. The Bureau's pre-proposal consumer testing, in addition to external studies,[759] suggests that many consumers choose prepaid products specifically to avoid overdraft services. Requiring financial institutions to disclose when a prepaid account program does or does not offer overdraft credit features will therefore help those consumers make informed purchasing decisions if they want to avoid such features. Conversely, consumers who are seeking a prepaid account with the possibility of accessing an overdraft credit feature will be able to more easily identify products that offer such a feature.

Additionally, as discussed above, the final rule requires the short form disclosure for payroll card accounts and government benefit accounts to contain either a statement that the consumer does not have to accept the account and which directs the consumer to ask about other ways to receive wages, salary, or benefits; or a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and which directs the consumer to choose one of the available options. The Bureau believes that these disclosures may prompt consumers to ask questions about alternative ways of receiving their wages or benefits and thereby facilitate consumer choice.

Section 1005.18(b)(2)(viii) requires disclosure of the total number of fee types charged by the financial institution other than those disclosed on the short form disclosure. In the Bureau's consumer testing, this number became a focal point for participants. If this number becomes a focal point for consumers, then financial institutions may choose to compete on this metric, which could potentially reduce the number of fee types imposed in connection with prepaid accounts. As a result, consumers may benefit from fewer fees and simpler products, generally.

Section 1005.18(b)(2)(ix) requires disclosure of up to two fee types, other than those disclosed on the static portion of the short form disclosure, that generated the highest total revenue from consumers of the prepaid account program over the prior 24-month period.[760] The disclosure of these fees will serve at least two purposes. First,

[758] *See* § 1005.18(b)(2)(x).

[759] *See, e.g.,* 2014 Pew Survey at 13.

[760] If a fee type resulted in less than 5 percent of total revenue from consumers for that 24-month period, then that fee type would not be required to be disclosed.

it will help to alert consumers to account features for which they may end up incurring a significant cost. Second, it will help ensure that the disclosure regime set forth in the final rule adapts to new and varied products as services that each firm offers or introduces that generate sufficient revenue will appear in the additional fee types portion of the disclosure.

As discussed in greater detail in the section-by-section analyses of § 1005.18(b)(2) and (b)(2)(ix) above, the Bureau proposed to require financial institutions to disclose up to three incidence-based fees on the short form. Incidence-based fees would have been fees that were incurred most frequently in the prior 12-month period by consumers of a particular prepaid account product. A number of industry commenters, including trade associations, issuing banks, program managers, payment network providers, and a law firm commenting on behalf of a coalition of prepaid issuers, suggested that the incidence-based fee disclosures should be eliminated because they would confuse consumers and restrict the ability of consumers to comparison shop.[761]

While the Bureau's pre-proposal and post-proposal consumer testing indicates that many individuals will understand the additional fee types portion of the short form disclosure, it is possible that some consumers will incorrectly interpret it. In Bureau's pre-proposal and post-proposal consumer testing, participants did not comprehend statements that were intended to explain what are now additional fee types in the final rule.[762] In addition, some participants incorrectly concluded that the absence of a fee type implied the absence of the service related to that fee type. In order make the connection for consumers that the additional fee types disclosed pursuant to final § 1005.18(b)(2)(ix) are a subset of the number of additional fee types disclosed pursuant to final § 1005.18(b)(2)(viii)(A), and that absence of any feature on the short form does not necessarily mean the prepaid account program does not offer that feature, the Bureau has added a new explanatory statement to precede the additional fee types that introduces the concept of additional fee types in a simple, succinct manner.

iii. Consumer Engagement With Disclosure

According to the standard social science models of consumer decision-making presented above, consumers must have relevant and accurate information in order to make good choices. However, recent research in social science, law, and design suggests that even if consumers were provided an unlimited amount of information, many consumers would not comprehend or utilize all of that information.[763] This result highlights the importance of an initial step: "engagement," [764] the immediate analysis of any new information encountered by a consumer in which the consumer assesses the costs and benefits of consumption of that information.[765] If this calculation yields a high enough net expected benefit, then the consumer engages, and begins to further consume the information. This calculation incorporates the consumer's automatic emotional response to the design as well as the consumer's expected reward from engagement. Without an affirmative decision at this first step, neither utilization nor comprehension can occur.[766]

The Bureau designed the model short form disclosure not only to provide relevant information to consumers, but also to increase consumer engagement. To appeal to consumers' emotional response, the Bureau designed the short form disclosure to be visually appealing. In addition, to reduce the perceived difficulty of learning about a prepaid product, the short form disclosure assigns terms a clear hierarchy through positioning, type-size, contrasting background, and bold-faced type; includes concise descriptions of fees and conditions; and limits the use of symbols and fine-print. Finally, as the perceived cost to a consumer of using a disclosure increases with the amount of information provided, the short form disclosure presents consumers with a reduced, manageable set of information about the product.[767]

A number of industry commenters, including a trade association and an issuing credit union, stated that consumers generally do not read disclosures or comparison shop. One issuing credit union asserted that only one in 30,000 consumers actually read the provided disclosures. The Bureau disagrees with the claim that a minute number of consumers read disclosures for prepaid products. A recent survey of prepaid consumers reported that approximately one in three prepaid consumers comparison shopped before purchase, and, of those that did not, nearly one third stated that they would be more likely to comparison shop if disclosures were standardized across prepaid products.[768] The disclosure regime designed by the Bureau is intended, in part, to engage consumers who may not otherwise read a disclosure of fees or comparison shop. Therefore the segment of consumers who are not currently reading prepaid disclosures is an opportunity for the Bureau to improve consumer engagement and promote a more active, competitive market in general. Further, if comparison shoppers drive the market

[761] Due in part to public comments to the proposed rule, the Bureau shifted from additional fee types based on fee incidence in the proposed rule to additional fee types based on fee revenue in the final rule. As a result, there is an inconsistency between the public comments, which address fee incidence, and the disclosure requirements of the final rule, which address fee revenue. Nonetheless, the two approaches are similar, and therefore, unless stated otherwise, the Bureau addresses comments related to incidence-based fees as if those comments were about the final rule's revenue-based fees.

[762] Pre-proposal testing of a statement intended to inform consumers that the fees listed were those that generated significant revenue for the financial institution resulted in minimal participant comprehension or notice. *See* ICF Report I at 35. (Certain prototype short form disclosures tested included the statement: "The fees below generate significant revenue for this company."). Post-proposal testing of a similar disclosure that, in addition to including an explanation of the criteria for disclosing such fees (*i.e.,* that the two fees listed were the most commonly charged), also directed consumers where to find detail about all fees, similarly did not increase participant comprehension. *See* ICF Report II at 22–23. (Certain prototype short form disclosures tested included the statement: "We charge [x] additional fees. Details on fees inside the package, at 800–234–5678 or at *bit.ly/XYZprepaids.* These are our most common:".)

[763] James Lacko & Janis Pappalardo, *The Failure and Promise of Mandated Consumer Mortgage Disclosures: Evidence from Qualitative Interviews and a Controlled Experiment with Mortgage Borrowers,* 100 Am. Econ. Rev. 516 (2010); *see also* Kleimann Commc'n Group, *Know Before You Owe: Evolution of the Integrated TILA RESPA Disclosures* (July 2012), *available at http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-testing.pdf;* Eric Johnson et al., *Can Consumers Make Affordable Care Affordable? The Value of Choice Architecture,* PLOS One (Dec. 2013), at 1, 2.

[764] *Id.* Throughout, this treatment describes the *first moment* of information consumption as "engaging" with the information provision. "Engaging," as it is used here, is therefore distinct from "reading" or "comprehending," both of which could imply sustained information consumption.

[765] A related decision-making framework is developed with accompanying case studies by Stephen Wendel. *See* Stephen Wendel, *Designing for Behavior Change: Applying Psychology and Behavioral Economics* (Mary Treseler ed., 2013).

[766] *See, e.g.,* Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law,* 66 Stan. L. Rev. 545 (2014).

[767] The idea that consumers may decrease their engagement with information when more information is provided is somewhat supported by research on "choice overload." This work demonstrates that when choice sets are large, some people opt to make no choice at all. *See, e.g.,* Sheena Iyengar et al., *How Much Choice is Too Much? Contributions to 401(k) Retirement Plans, in Pension Design and Structure: New Lessons from Behavioral Finance* 83 (Oxford: Oxford University Press 2004).

[768] 2015 Pew Survey at 8.

towards products with consumer-friendly features and costs, non-shoppers could benefit from a better selection of available products as well.

One academic institution questioned whether consumers would be able to make use of the disclosures because financial literacy is low in general and particularly low for the consumers whom the Bureau is attempting to assist. However, the fact that the majority of consumers who use prepaid products do so to avoid fees such as overdraft and check-cashing fees [769] suggests that many prepaid consumers have a strong understanding of the potential benefits of prepaid accounts and the features that are important to them. Even if it were true that prepaid users have low financial literacy on average the Bureau does not believe that this would rationalize abandoning standardized disclosures. For the reasons stated above, the Bureau believes it is to consumers' benefit that they be informed about the products they purchase. A well-designed disclosure regime can engage consumers, help to educate consumers, and simplify the process of product comparison. Therefore the Bureau believes that the short form and long form disclosures will act as a corrective to confusion caused by a lack of financial literacy, if it exists.

iv. Costs to Consumers

The Bureau's effort to simplify pre-acquisition disclosures may generate costs as well as benefits for consumers. As discussed above, the Bureau's emphasis of a limited number of fees in the short form disclosure could result in a reduction in the amounts of those particular fees through competitive pressure. However, to the extent they exist, fees that would be relatively *de*-emphasized by the short form disclosure could, as a result, experience an easing of competitive pressure and thereby increases in the amounts charged. Such costs should be mitigated to some extent by the additional fee types portion of the short form disclosure. Likewise, the number of fees that could be added to a product due to a lack of emphasis by the disclosure regime should be mitigated to some extent by the requirement for financial institutions to disclose the number of additional fees not disclosed explicitly on the short form disclosure.

Section 1005.18(b)(3)(i), which generally requires a financial institution to disclose the highest amount for any fee or fee type listed on the short form disclosure, may also generate costs for consumers. As discussed above, the Bureau believes that there is a clear benefit to consumers of providing a simple and concise short form disclosure, and the Bureau believes that this is achieved, in part, by limiting footnotes and fine print. However, in acquisition channels in which the short form disclosure is not necessarily provided with the long form disclosure, this provision could result in a consumer having less information about a particular prepaid product than they would have had in the current marketplace. In such circumstances, although the long form disclosure must always be made available (*e.g.,* through a telephone number or a Web site), some consumers may consider the search cost too high to justify seeking out the long form. Therefore, § 1005.18(b)(3)(i) may create a distinct new cost to consumers if it results in them not having all the information they want or need to make their purchasing decision.

One consumer advocacy group and a number of industry commenters, including trade associations, prepaid program managers, issuing banks, a law firm commenting on behalf of a coalition of prepaid issuers, and a payment network provider cautioned that requiring the disclosure of the highest potential fee could be misleading. One consumer advocacy group and a number of trade associations further cautioned that the disclosure of the highest potential fee could result in the elimination of useful fee waivers, such as a program that allows a number of free customer service calls per month before a fee is charged. Several industry commenters, including an issuing bank and a trade association specifically recommended permitting inclusion in the short form disclosure of the conditions under which the monthly fee could be waived, citing the importance of this fee and the prevalence of discounts and waivers applicable to this fee as crucial to consumer decisions in choosing a prepaid card. A consumer group said its research showed that 14 of 66 prepaid cards disclose that the monthly fee can be waived entirely if the consumer takes certain actions.

The Bureau is requiring disclosure of the highest possible fee both because doing so significantly reduces the complexity of the short form disclosure, and because doing so significantly reduces the chances that a consumer will be caught off guard by an unexpected fee or an unexpectedly large fee. Financial institutions can bring the existence of potentially lower fees to consumers' attention through the use of an asterisk, and these beneficial fee waivers can be marketed to consumers elsewhere on the retail packaging, the firm's Web site, or over the phone. In addition, based on the prevalence of monthly fee waivers and recommendations from both industry and consumer group comments, the Bureau has included in the final rule a provision enabling financial institutions to disclose details regarding waivers to the periodic fee using a second symbol, such as a dagger. The final rule also permits inclusion in the short form disclosure for payroll card accounts and government benefits accounts of a statement directing the consumers to a location outside the short form for information on ways to access funds and balance information for free or for a reduced fee.

One State government agency, and a number of industry commenters, including trade associations, prepaid program managers, issuing banks, a law firm commenting on behalf of a coalition of prepaid issuers, and a credit union service organization, questioned the benefit of requiring both short form and long form disclosures. These commenters essentially suggested that the Bureau is requiring redundant information and placing unnecessary burden on industry participants. Commenters further argued that multiple disclosures will add to consumer confusion. The Bureau used results from its consumer testing to design a tiered disclosure regime in order to provide consumers with a manageable amount of information when first engaging with a product, while not limiting consumers' ability to obtain additional information if they choose to do so. The information provided on the short form disclosure aligns with what the Bureau believes consumers value most in their shopping and decision-making processes. The long form disclosure guarantees that any consumer who wishes to search for additional fee information can do so easily. The combination of the short form and long form disclosures allows for an accurate depiction of a prepaid account's fee structure, enabling consumers to quickly comparison shop on key fees and terms, while ensuring that comprehensive information is available to them should they decide to use it.

A trade association and several industry commenters, including prepaid program managers and an issuing bank, noted that in order to compete on the number of additional fee types metric, financial institutions may reduce the number of optional features that are beneficial to consumers but which carry a fee, such as the option to purchase

[769] *See* 2014 Pew Survey at 13.

cashier's checks. The Bureau agrees that financial institutions will have to weigh the benefits of providing fee-based services with the potential costs of disclosing the existence of additional fees on the short form disclosure. However, the Bureau anticipates that the services that consumers care most about will remain marketable and therefore financially viable; and these services are therefore likely to remain available to consumers.

This final rule also differs from the proposed rule in that it requires that the number of fee types is disclosed as opposed the number of to individual fees. This change allows for fee variation within fee types, such that different fees for a similar service, such as standard and expedited delivery of a replacement card, are considered a single fee type. This enables financial institutions to maintain the flexibility to offer useful services to consumers without it reflecting negatively on their products.

b. Benefits and Costs to Covered Persons

This section primarily considers the benefits and costs to a covered person from developing, maintaining, and delivering the new pre-acquisition disclosures. Some of the content and the method of delivery (*e.g.,* web, phone, or retail) depend on how the consumer acquires the prepaid account, and some of the disclosures are also generally available outside of account acquisition (*e.g.,* on the web or by phone). To fully consider the costs of these disclosures, we address the costs that arise in four cases: (i) The development and maintenance of pre-acquisition disclosures, (ii) delivery of pre-acquisition disclosures outside of account acquisition; (iii) delivery of pre-acquisition disclosures for accounts acquired outside the retail channel;[770] and (iv) delivery of pre-acquisition disclosures for accounts acquired within the retail channel. We also consider (v) the benefits of these disclosures.

Regarding the modified initial disclosure requirements, § 1005.7(b) currently requires financial institutions to provide certain initial disclosures for accounts subject to Regulation E, and this final rule extends this provision to prepaid accounts. Generally, the Bureau believes that financial institutions already disclose full terms and conditions for prepaid accounts in their account agreements, which include most or all of what is required by § 1005.7(b). The disclosure requirements of § 1005.7(b) (not considering the modifications in § 1005.18(f)(1), which are considered below) will therefore entail very small cost to covered persons.

The Bureau also recognizes that certain financial benefits to consumers from the disclosures may have an associated financial cost to covered persons. Covered persons generate revenue through consumers' use of their products. Therefore, when a consumer experiences a financial benefit, a financial institution may experience a financial cost of the same magnitude. Such costs could stem from each of the primary consumer benefit channels identified above: Bolstered consumer knowledge of alternative products; improved acquisition choices from among available products; lower-cost, higher-benefit usage of acquired products; and increased competitive pressures.

i. The Development and Maintenance of Pre-Acquisition Disclosures

Sections 1005.18(b)(2) through (9) set forth the content and form requirements for the short form and long form disclosures. To satisfy these requirements, financial institutions will incur one-time costs of designing compliant disclosures. Based on pre-proposal industry outreach, the Bureau understands that the design process will require as many as 100 labor hours per prepaid account program, including time for design work and legal and financial institution review. However, the design costs should be offset somewhat by the Bureau's provision of model forms for the short form disclosure and a sample form for the long form disclosure.[771] The Bureau is also providing native design files for print and source code for web-based disclosures for all of the model and sample disclosures forms included in the final rule to aid in their development.[772]

Financial institutions will incur ongoing costs of maintaining the short form and long form disclosures pursuant to § 1005.18(b)(2) through (7). The magnitude of these costs will vary by financial institution and will depend on current practices and the acquisition channels used to sell prepaid accounts. Under the final rule, the long form and the static portion of the short form disclosure will require updating at most as often as a prepaid product's account agreement is updated; and based on industry outreach, the Bureau believes that financial institutions rarely change the prepaid account agreements of their prepaid products in a way that would require changes to the pre-acquisition disclosures. When a change to the disclosures is required, financial institutions that sell prepaid accounts online and over the phone will incur small costs to update their Web sites and interactive voice response (IVR) systems. Financial institutions that sell prepaid accounts in a branch setting will incur small costs to update and print new disclosures.[773] Financial institutions that sell prepaid accounts in retail stores may incur costs to update packaging. These acquisition channel-specific costs are discussed in detail in the sections below.

Financial institutions will incur one-time and ongoing costs to comply with the short form disclosure's required statement regarding the number of additional fee types charged pursuant to § 1005.18(b)(2)(viii)(A) and disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix). As discussed in greater detail above, the additional fee types portion of the short form requires disclosure of the two fee types that generated the most revenue from consumers over the prior 24-month period for that particular prepaid account program that are (1) not already disclosed in the static portion of the short form disclosure and (2) not less than 5 percent of total revenue from consumers for that 24-month period. These fee types could vary over time for a given account program due to changes in how consumers use the card or due to changes in the program itself. In either case, financial institutions are responsible for updating the disclosure of additional fee types portion of their short form disclosures. The reassessment must occur at a minimum frequency of every 24 months and financial institutions will have 90 days from the end of the 24 month period to reassess and update the disclosure of additional fee types on their short form.

Financial institutions are also required to reassess the statement regarding the number of additional fee types disclosure and the disclosure of additional fee types whenever a program's fee schedule is revised. In situations where a financial institution does not have data to calculate fee

[770] This treatment considers five significant acquisition channels for prepaid accounts: The retail channel (*i.e.,* in-person, in a retail location); in-person, in a non-retail location, such as a bank or place of employment; orally, over the telephone; electronically, via a Web site or mobile application; and via direct mail.

[771] One trade association representing credit unions commented that the design costs would be $300 per form.

[772] These files are available at *www.consumerfinance.gov/prepaid-disclosure-files.*

[773] Financial institutions that sell another financial institution's prepaid accounts in pre-printed packages are covered under the retail location exception and will incur costs similar to that of a typical retail store.

revenue, such as the addition of a new fee or at the start of a new prepaid program, the financial institution must reasonably anticipate the fees that generate the most revenue over the next 24 months and determine if any fees must be disclosed in the additional fee types portion of the short form. Newly printed card stock must be accurate at the time the fee schedule change goes into effect.[774]

Regarding one-time costs, financial institutions may need to update their accounting systems or practices to evaluate fee revenue from all sources on a 24-month basis. Based on comments received from industry participants, and for reasons explained in the Alternatives section below, the Bureau believes that most financial institutions are already capable of tabulating fees in this manner, and thus it expects this cost to be small.

Regarding ongoing costs, for a given prepaid account program, the burden of updating short form disclosures due to changes in the additional fee types portion will depend on the frequency with which the top two additional fee types change for that product and the channel through which that product is distributed. Similarly, if a financial institution changed its product, then it will be required to populate the additional fee types portion with a reasonable estimate of the fees that would match the additional fee types portion's criteria. The Bureau believes the costs of updating the additional fee types portion are very small for acquisition channels where disclosures are not printed on packaging material. As explained above, financial institutions would have 90 days to reassess and update the additional fee types portion on their short form disclosures.

A number of industry commenters, including trade associations, an issuing bank, an issuing credit union, program managers, and payment network providers, suggested that the ongoing cost of updating the proposed incidence-based portion of the short form disclosure would have been overly burdensome. Some commenters, including a trade association, a law firm commenting behalf of a coalition of prepaid issuers, and a payment network provider, suggested that the annual reassessment would have resulted in changes from year to year of the most commonly-charged fees and therefore create costs to update disclosures, despite the fact that the prepaid product itself had not changed. However, the Bureau learned in comments from industry participants that the fee types that generate the highest *revenue* from consumers, which replaces the proposal's requirement of disclosing fees with the highest incidence, do not change regularly on an annual basis. In addition, the final rule created a 5 percent de minimis revenue threshold, below which an additional fee types would not need to be disclosed.[775] This threshold eliminates the need to disclose low-revenue fee types and therefore may reduce the frequency with which short form disclosures will need to be updated.[776] In addition, final § 1005.18(b)(2)(ix)(A) allows financial institution to consolidate the calculation of additional fee types across all prepaid account programs that share the same fee schedule, potentially limiting burden for issuers with many programs. The final rule also increases the amount of time between reassessments from 12 months to 24 months, which should lessen the probability of disclosed additional fee types differing from period to period while also lessening the amount of time that must be spent on reassessment. The Bureau believes that while there may be costs to financial institutions to update systems in order to track revenue and how different fee types contribute to revenue, once those systems are updated the burden on financial institutions due to the reassessment of fee types that generate the highest revenue from consumers will be small.

ii. Delivery of Disclosures Outside of Account Acquisition

A number of the provisions detailed above require financial institutions to provide or make available pre-acquisition disclosures orally via a telephone. The Bureau expects that compliance with these provisions may require implementation costs of updating an IVR system, training live customer service agents, or both. To the extent that the provisions increase usage of financial institutions' telephone systems, financial institutions may incur additional ongoing costs of utilizing or operating these systems. Financial institutions will also bear small ongoing costs of monitoring and updating their telephone systems to ensure that they provide accurate information.

The Bureau learned in its pre-proposal industry outreach that utilizing an IVR system costs up to $0.12 per minute, while live agent customer service costs up to $0.90 per minute. The total burden of these costs for any single financial institution will depend on the financial institution's potential customers' demand for obtaining disclosures orally over the telephone, and may depend on the financial institution's negotiated rates for IVR, live agent customer service, or both. Based on a review of current prepaid account fee schedules and the long form disclosure requirements, the Bureau estimates that a long form disclosure could be provided orally, on average, in approximately 4.5 minutes. Therefore, if a consumer calls for more information and listens to the entire long form disclosure, via an IVR system, then this would cost the financial institution approximately $0.54 per call.[777] This estimate could increase if financial institutions offer consumers the option to speak to a live agent before or after the long form is disclosed by an IVR system. Based on pre-proposal outreach, the Bureau estimates that approximately 4.2 percent of callers to an IVR system with a live agent option get forwarded to a live agent, and the average service time for a live agent is approximately 5.1 minutes. Therefore, if all financial institutions offer a live agent option, then the cost to the industry would increase, on average, by $0.19 per call to approximately $0.73 per call.[778] However, financial institutions have an incentive to get consumers the information they value most in the shortest amount of time to minimize costs. Financial institutions also have the flexibility to order the information in the long form disclosure while maintaining the grouping of fees by

[774] In rare cases where a fee schedule change is necessary to maintain or restore the security of an account or an EFT system as described in § 1005.8(a)(2), the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the fee schedule change permanent.

[775] If a financial institution is required to disclose fewer than two additional fee types, it may still choose to disclose up to two fees in the space reserved for additional fee types. A financial institution could use this option to disclose fees that it believes may be required as additional fee types in future years due to fluctuations in consumers' use patterns. This would further reduce expected costs incurred due to updating the additional fee types portion of the short form disclosure.

[776] Some commenters claimed that while fees may not vary much in an absolute sense, very low incidence fees may be volatile relative to each other, and that the ranking of fees might therefore change relatively often. This provision ensures that low revenue fees are not considered for the additional fee types portion of the short form, and therefore, that this type of volatility will not create additional costs for financial institutions.

[777] The Bureau believes that financial institutions will use IVR systems to respond to customers who call for information that is on the long form. This belief is based on the cost of live agents relative to IVR systems and the repetition involved in disclosing the long form to customers.

[778] Here, $0.19 = 4.2% * 5.1 minutes * $0.90/minute; and $0.73 = $0.54 + $0.19.

categories of function. This will allow financial institutions to order the information presented orally in the long form disclosure by relative importance to consumers. Those consumers who call searching for a single piece, or small set, of information could shorten the length of time that they spend on the phone because they will acquire the information they need to make their decision before the entire long form is disclosed. Therefore the average call length of consumers in retail settings will likely be less than the Bureau's 4.5 minute estimate.[779]

A number of the provisions detailed above require financial institutions to provide, or may result in financial institutions providing, pre-acquisition disclosures electronically via a Web site. The Bureau believes that all current prepaid account providers already maintain a Web site, and therefore that implementation costs of complying with these provisions would not include the costs of obtaining and initializing a Web site. To the extent that the provisions increase usage of financial institutions' Web sites, financial institutions may bear additional ongoing costs of bandwidth usage. In addition, financial institutions will be required to design an electronic version of the relevant disclosures, and therefore will bear a one-time web-design cost. The Bureau believes this cost will be relatively small and also mitigated by the Bureau's provision of model forms, sample forms, and native design files for print and source code for web-based disclosures for all of the model and sample forms included in the final rule. The total burden of these costs for any single financial institution will depend on the financial institution's customers' demand for obtaining disclosures electronically, via a Web site, and may depend on the financial institution's negotiated web-hosting rates. Finally, financial institutions will bear small ongoing costs of monitoring and updating their Web sites to ensure that they provide accurate information.

In addition to providing pre-acquisition disclosures to consumers on an ongoing basis, financial institutions are required to provide notices of changes to consumers when certain changes are made to their accounts. Specifically, § 1005.18(f)(2) provides that the change-in-terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or § 1005.18(f)(1). The Bureau does not believe that these requirements introduce a significant cost. Based on pre-proposal industry outreach, the Bureau believes that financial institutions rarely alter their fee structures, and when such a change does occur, financial institutions are generally already providing these notices to consumers due to the FMS Rule, State laws, or as a best practice.

If a financial institution changes a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, a financial institution must notify consumers with accounts acquired before October 1, 2017 at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information fewer than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to provide notice of the change within 30 days of obtaining the consumer's contact information.

For prepaid accounts governed by § 1005.18(h)(2)(ii) or (iii), if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the E-Sign Act, or will not be mailing or delivering written account-related communications to the consumer within the time periods specified in § 1005.18(h)(2)(ii) or (iii), then the financial institution will be able to provide to the consumer a notice of a change in terms and conditions or required or voluntary updated initial disclosures as a result of this final rule taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

Financial institutions with prepaid accounts that offer overdraft credit features are likely to trigger this requirement. For any consumer who has not consented to electronic communications and who will be receiving other physical mailings from the financial institution in the specified time period, that financial institution will incur a cost of printing the notice, which can be included in the envelope or package which was already scheduled to be delivered. It is unlikely that the financial institution will incur additional mailing costs to send these notices. The remaining notices of change may be sent to consumers electronically. Therefore, the Bureau believes that the cost associated with providing these notices is minimal.

iii. Delivery of Pre-Acquisition Disclosures for Accounts Acquired Outside the Retail Channel

In-person (non-retail locations) and direct mail acquisitions will require the short form and long form disclosures to be provided on paper. The long form disclosure must be provided pre-acquisition, and all the fees and information required on the long form must also be included as part of the prepaid account agreement. For each prepaid account sold, this will entail additional costs of materials (*e.g.,* printing, paper) and personnel training (*e.g.,* training personnel to provide both forms in these settings).

Acquisitions that do not occur in person, such as those that occur over the telephone, via direct mail, or electronically, may result in financial institutions sending consumers an account access device via the mail. Section 1005.18(f)(1) requires financial institutions to include all of the information required to be disclosed in the long form as part of the initial disclosures given pursuant to § 1005.7. Accordingly, financial institutions that offer these methods of account acquisition may incur new ongoing costs in the form of increased shipping costs and increased materials costs. However, financial institutions typically include the prepaid account agreement with the access device they send to consumers. Therefore, the cost to include the long form disclosure in the mail will be minimal, likely at a cost of printing an additional sheet of paper.

As discussed above, § 1005.18(b)(1)(iii) requires a financial institution to orally disclose the short form disclosure before a consumer acquires a prepaid account orally by telephone. Financial institutions will be able to choose between disclosing the information required by the long form disclosure orally prior to acquisition, and communicating prior to acquisition that the information required by the long form is available both orally by telephone and electronically via a Web site. Both the costs of providing disclosures orally over the telephone and the costs of providing disclosures electronically via a Web site were considered in generality above. Because the labor and capital necessary to conduct business over the telephone may also be used to disclose the fees and other information required in the short form and long form disclosures, the Bureau believes that the costs of providing disclosures orally over the

[779] If, for example, the average call length were instead half of the 4.5 minute estimate, then each call would cost, on average, approximately $0.27. If a financial institution includes the option to speak to a live agent, then each call would cost, on average, approximately $0.46.

telephone will be substantially mitigated for financial institutions that already transact over the telephone. The Bureau estimates that the short form disclosure can be disclosed orally, on average, in approximately one minute. This requirement will add a cost of approximately $0.12 per call if the financial institution uses an automated system to disclose the short form disclosure, plus an additional $0.54 if the consumer asks to hear the long form disclosure. If the disclosure regime prompts the consumer to ask questions, the financial institution would also incur costs for additional live agent time. The Bureau estimates that the cost to the prepaid industry to disclose the required information during sales calls is approximately $324,300 to $346,300 per year.[780]

Pursuant to § 1005.18(b)(6), prepaid account acquisitions conducted electronically (for example, via a Web site or a mobile application) will necessitate electronic disclosure of both the short form and long form disclosure prior to acquisition. Financial institutions may choose the manner of electronic disclosure. However, electronic disclosures must be provided in a manner which is reasonably expected to be accessible to the consumer given how the consumer is acquiring the prepaid account. The cost of this provision will depend on the manner in which the financial institution complies; however, given that the financial institution can generally provide disclosures in the same format in which the acquisition occurs, the Bureau expects that this provision will result in very little additional cost. For example, the costs of providing disclosures electronically, via a Web site, were considered above; however, because financial institutions that transact via a Web site must successfully operate a Web site, they also already bear most costs associated with disclosing information via a Web site, such as the cost of updating and maintaining a Web site. Similarly, because financial institutions that transact via a mobile application must successfully operate a mobile application, they also already bear most costs associated with disclosing information via a mobile application. Moreover, the Bureau believes that such financial institutions generally already disclose fees and account agreements electronically, further reducing the marginal burden of this provision.

One industry commenter asserted that requiring the short form and long form disclosures during electronic acquisition will confuse consumers and increase the number of potential customers who abandon the sign-up process. The Bureau conducted multiple rounds of consumer testing to ensure that the disclosures that it designed were straightforward and provided consumers with useful information for their purchasing decisions. While the Bureau did not specifically test the disclosure regime in an electronic setting, the Bureau believes that a consumer who is shopping for a prepaid card online or through an app is likely familiar with electronic disclosures. Further, information and formatting requirements that the final rule imposes for disclosures provided electronically will ensure that those disclosures are comparable to the disclosures provided in the retail setting. Therefore, the Bureau disagrees with the assertion that electronic disclosure of the short form and long form will confuse consumers. If, instead, a consumer chooses not to purchase a prepaid product electronically because the disclosures make the consumer more informed, then there will be a cost to the financial institution but also a benefit to the consumer.

Financial institutions that offer payroll card accounts or government benefit accounts could potentially incur additional costs to disclose in the short form the statement required by § 1005.18(b)(2)(xiv)(A) or § 1005.15(c)(2)(i), as applicable, regarding alternate forms of accepting wages, salary, and benefits. Additional costs could accrue, for example, if the additional disclosure caused the short form disclosure to exceed the space constraints of current payroll card account packaging materials or government benefit account packaging materials. However, the Bureau believes that in these contexts, prepaid accounts are not usually distributed within space-constrained packaging, and that the short form disclosure requirements could be easily met if, for example, the financial institution provides the short form disclosure on an 8½ inch by 11 inch sheet of paper.[781] If it is the case that the statements regarding a consumer's payment options both informs consumers and motivates them to consider other payment options, then the costs to some financial institutions could increase. In particular, a financial institution could experience a cost if consumers decline to acquire its prepaid account as a result of this disclosure. However, EFTA and current Regulation E already prohibit financial institutions and other persons, including employers, from requiring a consumer to establish an account with a particular institution as a condition of employment or receipt of a government benefit,[782] and therefore it is possible that the cost of these provisions will be mitigated since some consumers may have already been informed that they had other options.

One member of Congress, several State government agencies, one county government agency, and a number of industry commenters, including trade associations, program managers, issuing banks, payment network providers, and employers, stated that the proposed notice regarding payment options would be seen as a warning and would dissuade consumers from accepting a payroll card account or government benefit account. The member of Congress and State government agencies further suggested that the proposed statement would impel consumers to ask to receive their government benefits through paper checks, which are more costly to government agencies than prepaid accounts. The member of Congress requested that the Bureau quantify the impact on taxpayers of requiring government agencies disclose the statement of payment options.

As discussed in greater detail above in the section-by-section analysis of § 1005.18(b)(2)(xiv)(A), the Bureau made changes to the statement of payment options in the final rule in response to comments that the proposed language would drive consumers away from prepaid accounts. Most participants in the Bureau's post-proposal consumer testing expressed essentially neutral feelings about both versions of the statement and appeared to be drawing on past experiences, rather than the language in the statement, to decide whether or not they would want to use the payroll card account or the

[780] See the discussion in the previous section for per call cost estimates. The Bureau estimates, using load amount and issuance forecasts from Mercator Advisory Group reports, that approximately 102 million prepaid cards will be acquired in 2016. Mercator Advisory Group, *Tenth Annual U.S. Prepaid Cards Market Forecasts, 2013–2016,* at 16–17 (Oct. 2013), and Mercator 12th Annual Market Forecasts. The Bureau estimates, using a share of 1 percent (2014 Pew Survey at 5) that approximately 1 million of the 102 million prepaid cards will be acquired by telephone. If approximately 1 to 5 percent of consumers ask to hear the long form disclosure when acquiring an account via telephone, then the cost to the prepaid industry to disclose the required information during sales calls is approximately $324,300 to $346,300 per year.

[781] The Bureau's industry outreach revealed that in some cases payroll card accounts and government benefit accounts are distributed in envelopes that also contain fee disclosures, the account agreement, and marketing materials. The model short form that includes this payroll card account notice easily fits within these constraints. *See* Model Form A–10(b).

[782] § 1005.10(e)(2).

government benefit account.[783] Under the final rule, financial institutions have the option to display a generic statement that consumers have options available to them to receive their payments, or to list the specific options that are available to the consumer. As discussed above, the Bureau believes that the required disclosure will impose a small impact on financial institutions that might experience a cost if a consumer declines to acquire a prepaid account. Further, for reasons discussed in the paragraphs that follow, the Bureau believes that the disclosure will impose a small impact on government agencies that might experience a cost if a consumer instead chooses to accept paper checks.

In the Board's annual report to Congress on government-administered prepaid cards, it reported that of the $148 billion in government benefits disbursed through prepaid cards in 2015, five program types accounted for 97 percent of disbursed funds.[784] The remaining program types each account for less than 1 percent of total funds disbursed. Two of the top five program types, SNAP and cash assistance programs, are needs-tested, State-administered programs and will therefore not be impacted by the final rule because they are excluded from coverage under EFTA and Regulation E. The remaining three program types, Social Security benefits, unemployment insurance payments, and child support payments, are subject to the disclosure requirements of the final rule and account for approximately 44 percent of all benefits disbursed through prepaid cards.

In 2010 the Treasury finalized a rule that requires that all recipients of Federal nontax benefits receive payment by EFT by May 1, 2013.[785] Only those born prior to May 1, 1921 who are already receiving paper checks may continue to receive paper checks without a waiver. Waivers can be issued for consumers for whom the EFT requirement creates a hardship due to a mental impairment, or due to a recipient living in a remote area without sufficient banking infrastructure. Social security payments are Federal nontax benefits and are therefore subject to this Treasury rule. The vast majority of Social Security recipients are therefore required to receive EFT payments and will not be given the option to receive paper checks. Therefore, this final rule will have virtually no impact on the cost to the Federal government of disbursing benefits.

The remaining two large government disbursement programs, unemployment insurance payments and child support payments, are State-administered. State laws determine the methods by which benefits recipients can receive payments.[786] If every benefits recipient under these two programs who is currently receiving payments to a prepaid card were instead to receive payments by paper check, the cost to States would be considerable. The Bureau estimates that each benefits recipient that chooses to receive paper checks instead of payments into a prepaid account or other electronic payment option would result in a cost to States of $11.10 to $24.05 per year.[787] However, a number of State agencies no longer offer recipients the option to receive paper checks,[788] and therefore, the number of consumers who would have the option to receive paper checks in lieu of payments to a prepaid card is a fraction of the total number of government benefit account recipients.

The Bureau believes that this final rule will not impose a significant cost on States that disburse benefits to prepaid accounts. The rule will have virtually no impact in States that restrict payment methods to EFT because consumers will not have the option to receive paper checks. In addition, the Bureau believes, based on the neutral reaction of consumers to the statement of payment options during the Bureau's post-proposal consumer testing, that it is unlikely that a large proportion of consumers will not opt to receive benefits to a prepaid account due to a negative reaction to the statement of payment options, and therefore, any impact in States that still allow for paper checks will be small. Moreover, the statement of payment options is provided to consumers pre-acquisition. Therefore, current government benefits recipients that hold prepaid accounts should be unaffected, and any change to the number of payments made using prepaid accounts will only come due to the choices of new recipients. Accordingly, any impact the disclosures do have will take place gradually. If, for example, the disclosure requirements prompt consumers to ask about their options and 1 percent of consumers who would have accepted a prepaid account now ask for paper checks, then the rule will result in costs to the States of approximately $555,000 annually.[789]

Under § 1005.18(b)(9), a financial institution must provide the short form and long form disclosures in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances: (1) It principally uses a foreign language on prepaid account packaging material, (2) it principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically, or (3) it provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. In addition, the financial institution is also required to provide the information required to be disclosed on the long

[783] ICF Report II at 16–17 and 27.

[784] 2015 FRB Government Prepaid Cards Report at 1 and 6.

[785] 75 FR 80315 (Dec. 22, 2010).

[786] State laws must not be inconsistent with Federal Regulation E requirements, including the requirement that consumers are given a choice among electronic methods of delivery.

[787] The increased cost for payments via paper check is determined by the difference in cost to the Treasury of a payment by paper check ($1.03) and an electronic payment ($0.105), for a cost increase of $0.925 per payment. Per payment cost increase is then multiplied by the expected number of payments per year based on the benefits program (assumed monthly for child support payments and biweekly for unemployment payments). See the Bureau of the Fiscal Service Web site, *available at https://www.fiscal.treasury.gov/fsservices/gov/pmt/eft/eft_home.htm.*

[788] Paper checks do not appear as an option for consumers to receive unemployment insurance on the Web sites of the five most populous States. This is also the case for child support recipient payments in in two of the five most populous States.

[789] The Bureau estimates that the cost of all prepaid benefits recipients switching to paper checks would total approximately $60 million per year. Therefore a 1 percent change from EFT options to paper checks would result in a cost of $555,000 nationwide. This estimate is based on the total number of parents receiving child support in 2013 (5,697,000), assumed to be paid monthly, and the total number of weeks of unemployment compensated in 2015 (100,692,869), assumed to be paid biweekly, resulting in 68,364,000 total child support payments and 50,346,435 total unemployment payments. The total number of payments to prepaid cards is determined by the percent of disbursements to prepaid accounts as a percentage of total disbursements for child support in 2013 (39.2 percent) and unemployment in 2014 (66 percent). The cost of switching to paper checks is determined by multiplying the total number of payments to prepaid cards by the cost increase of $0.925 per payment (*see* footnote 787).

See U.S. Census Bureau, *Custodial Mothers and Fathers and Their Child Support: 2013,* at 2 tbl.1 (April 2014), *available at http://www.census.gov/people/childsupport/data/files/chldsu13.pdf,* for parents due child support; U.S. Dept. of Labor, *Unemployment Insurance Data Summary, available at http://www.workforcesecurity.doleta.gov//content/data.asp,* 2015 Quarterly Reports Summary Benefits Data, for weeks of unemployment compensated; Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government-Administered General-Use Prepaid Cards,* at 6 (July 2014), *available at http://www.federalreserve.gov/publications/other-reports/files/government-prepaid-report-201407.pdf,* for child support prepaid disbursement share; and the 2015 FRB Government Prepaid Cards Report for unemployment prepaid disbursement share.

form in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language. If a financial institution does not already maintain the practice of disclosing its fee schedules in both languages, then this requirement may entail a small fixed cost to have its disclosures translated, as well as additional ongoing translation costs whenever the financial institution introduces a new fee or changes the wording of any part of its prepaid account agreement. Because, in such cases, the long form disclosure will be required to be provided in two languages, this requirement could also result in additional ongoing material costs and increased shipping costs. The total burden of costs related to this requirement will depend on the amount that these requirements diverge from current practices and the number of languages that financial institutions use to market prepaid accounts. Based on industry outreach, the Bureau believes that most financial institutions that transact in foreign languages also provide disclosures in those foreign languages, and therefore this requirement is unlikely to generate significant additional costs.

Final § 1005.18(b)(2)(x) requires disclosure on the short form of whether the prepaid account might offer the consumer an overdraft credit feature at some time in the future. If an overdraft credit feature might be offered, then the financial institution must also disclose the time period after which it might be offered and that fees would apply. If consumers choose prepaid products in order to avoid overdraft credit features (see discussion in the *Benefits and Costs to Consumers* section above), then this requirement will generate direct costs for financial institutions that offer such features. However, based on its Study of Prepaid Account Agreements of existing prepaid account products, the Bureau believes that very few financial institutions currently offer such features.

iv. Delivery of Pre-Acquisition Disclosures for Accounts Acquired Within the Retail Channel

Through industry outreach, the Bureau understands that the final rule could generate many costs unique to the retail acquisition channel. For this reason, the retail acquisition channel is considered separately here. Nonetheless, costs borne by financial institutions transacting in the retail acquisition channel are largely the same as those borne by the financial institutions described above. This treatment therefore takes the above treatment as a starting point and describes costs to covered persons only as they deviate from that treatment.

In a retail location, the final rule requires a financial institution to provide the short form disclosure before a consumer acquires a prepaid account. Through pre-proposal discussions with industry participants, the Bureau learned that some financial institutions would not have been able to accommodate the short form disclosure on the exterior of their current packaging materials without making significant changes, such as redesigning of packages. As discussed above, the one-time costs associated with a package redesign are relatively small. However, some financial institutions currently use the exterior of their prepaid account packaging materials to facilitate retail transactions or to incorporate fraud prevention mechanisms (*i.e.,* by providing bar codes or other information). In these cases, the Bureau has learned from pre-proposal discussions with industry participants that complying with the short form disclosure requirements in § 1005.18(b) as proposed, while maintaining their programs' previous levels of functionality and fraud prevention, could as much as double the per unit cost of printing packaging materials.[790]

As discussed in greater detail above, in a retail location, the financial institution is able to choose between two methods of providing the long form disclosure. As it is required to do in other acquisition channels, the financial institution could provide the long form disclosure before a consumer acquires a prepaid account. Alternatively, the financial institution could provide the long form disclosure after the consumer acquires a prepaid account, provided that, among other things, the short form disclosure includes both a telephone number and a URL of a Web site that the consumer could use to directly access the long form disclosure. Financial institutions that provide the long form disclosure prior to acquisition could potentially bear additional costs to train personnel to provide it in retail locations, as well as shipping and materials costs to provide physical copies of the long form to consumers. Financial institutions choosing to provide the long form after the consumer acquires a prepaid account may bear additional costs of shipping and materials. However, because the long form disclosure may be included with the product's terms and conditions in the prepaid account agreement, which is generally included in the prepaid account packaging, the Bureau believes these costs will be very small. These financial institutions will also bear the costs of making the long form available electronically via a Web site and orally over the telephone. These costs were considered in generality above. The Bureau estimates that if 1 percent to 5 percent of retail consumers call to access the long form then the cost to the prepaid industry of disclosing the long form disclosure orally by telephone would be approximately $148,600 to $1,532,700 per year.[791]

Financial institutions are tasked with maintaining accurate disclosures and account agreements. If a financial institution makes changes to a prepaid account's fees or other terms, then that financial institution will make changes to the account agreements and disclosures, as appropriate, for newly printed cards and packaging. However, the financial institution may continue to sell stock that has already been printed as long as the financial institution honors the disclosed fees and terms, or, in some circumstances, follows Regulation E's system for notifying consumers of changes in terms to existing accounts, set forth in § 1005.8(a).

It is the current practice of some financial institutions, when changing the terms or conditions of a prepaid account agreement, to sell old card stock at retail and inform consumers who purchase old stock that the terms of their account have changed when they register their prepaid account. This final rule subjects prepaid accounts to the protections of Regulation E, which, among other things, requires that a financial institution provide written notice to the consumer, at least 21 days before the effective date, of any change

[790] In pre-proposal discussions, the Bureau learned from industry participants that the per-package printing cost, including the card access device and the packaging materials, ranges from $0.75 to $2.00.

[791] The cost per call was considered above. The Bureau estimates that approximately 55 million to 66 million prepaid accounts will be acquired in retail locations in 2016. This estimate was derived by applying retail market shares of 54 percent (2014 Pew Survey at 5) and 65 percent (2013 Aite Group Report) to the estimate of total prepaid card acquisitions in 2016 (*see* footnote 780). The lower bound estimate is obtained by assuming the lower bound of retail acquisitions (55 million), the lower bound of consumers calling for additional information (1 percent), and the lower bound of the average cost per call ($0.27). The upper bound estimate is obtained by assuming the upper bound of retail acquisitions (66 million), the upper bound of consumers calling for additional information (5 percent), and the upper bound of the average cost per call ($0.46).

For 2013 Aite Group report, *see* Aite Group LLC, *Prepaid Debit Card Realities: Cardholder Demographics and Revenue Models,* at 22 (Nov. 2013).

in term or condition that would result in increased fees for the consumer, increased liability for the consumer, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of transfers. Moreover, as discussed in detail above, the final rule also requires pre-acquisition disclosures. Together, these two provisions implicitly prohibit the practice of making any change to disclosed terms, including changes made at the time of account registration, that would require prior notice to the consumer under § 1005.8(a) or § 1005.18(f)(2), without giving at least 21 days prior notice of the change.

The Bureau understands financial institutions do not change the fee schedules for most prepaid accounts often, especially for prepaid products distributed in person, such as GPR cards and similar products sold at retail. When financial institutions do decide to make changes to their accounts sold at retail,[792] they will generally have two options available to them: Remove old card stock from retail shelves and replace it with new card stock with accurate disclosures (commonly referred to as a ''pull and replace''); or honor the original terms for at least 21 days after providing written notice to consumers of the change in terms, as required under Regulation E, as amended. The Bureau believes that sending change-in-terms notices to consumers after they register their cards is generally more cost effective than conducting a pull and replace.[793] However, financial institutions must also consider compliance with legal requirements under operative State consumer protection and contract laws, difficulties that may arise in attempting to provide notice of changed terms to consumers, as well as financial institutions' concerns about being accused of deceptive advertising practices by selling products with inaccurate disclosures. Therefore, the method which financial institutions choose to maintain accurate pre-acquisition disclosures and the associated costs will vary greatly by program size, system capabilities, proportion of cards sold at retail, the frequency and type of changes to terms and conditions, and how financial institutions judge the risks associated with each option.[794]

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

The Bureau believes that the cost of monitoring and updating the additional fee types portion of the short form disclosure in the retail channel will be almost fully mitigated by two factors: First, because financial institutions will be able to phase out and replace old stock at the pace that it is sold (a strategy commonly referred to as ''sell-through'') there should be no costs of product destruction or resetting; and second, because financial institutions could choose their reassessment dates to coincide with their natural product refresh cycle, there will be few additional costs to printing or shipping new prepaid cards.[795]

Industry commenters, including one trade association and one issuing credit union, asserted that the potential adjustments to the proposed incidence-based portion of the short form disclosure would prevent financial institutions from purchasing card stock in bulk, which helps to keep the per unit cost low. However, in the final rule, the Bureau is only requiring that updates to the disclosure of additional fee types portion of the packaging material be made when new stock is printed. Moreover, as discussed above, financial institutions can sell stock printed prior to the reassessment date indefinitely. Accordingly, if smaller institutions purchase in bulk to minimize costs, those institutions would still be able to sell that stock until it is gone. Therefore, complying with the disclosure of additional fee types will not force institutions to alter their ongoing purchasing practices.

Lastly, the final rule requires that prepaid account packaging printed on or after the effective date of October 1, 2017 must be accurate. However, it will allow financial institutions to sell-through prepaid account packaging or other preprinted materials that are prepared in the ordinary course of business prior to the effective date but which do not comply with the final rule's disclosure requirements. This approach to stock manufactured before the effective date in the ordinary course of business will minimize the costs to financial institutions that sell products in the retail setting, and is discussed further in the Alternatives section below.

v. Benefits

Finally, the Bureau recognizes that when a consumer chooses one prepaid

[792] This discussion refers, specifically, to changes in terms or conditions that are required to be disclosed under §§ 1005.7 or 1005.18(f)(1).

[793] The Bureau estimates that pulling and replacing card stock will result in costs of $0.65 to $2.35 per card in retail. The Bureau estimates that sending change-in-terms notices will result in minimal costs for cardholders who can be contacted electronically and up to $0.50 per cardholder who cannot be contacted electronically and must receive a physical change-in-terms notice in the mail, plus the loss of any revenue which is lost while the financial institution must honor the original terms, and plus the cost of any system updates which must take place in order to track individual accounts in order to honor the original terms.

[794] If a financial institution chooses to remove a service from its accounts then it is possible that pulling and replacing product will be the only feasible way to comply with the disclosure requirements of the final rule. The Bureau believes that financial institutions removing services from accounts outside of the immediate situation described in existing § 1005.8(a)(2) occurs rarely, if ever. If this were to occur, financial institutions would incur costs to send change-in-terms notices to existing customers, print new card stock, and reset stock on store shelves.

[795] One prepaid issuer noted that the lead time required before a new production run can range between two and four months (not including the time taken by the production firm itself), and that the lead time grows as deviations from the previous production run increase (changing the packaging dimensions was given as an example of a change that might result in a longer lead time). The Bureau anticipates that changes in retail packaging due to changes in an account's additional fee types alone will constitute minor changes in the account's packaging, and therefore result in lead times at the lower end of this estimate. Given that financial institutions will experience short lead times and flexibility in the timing of additional fee types reassessment, it is likely that reassessments and updates can be scheduled to coincide with natural printing cycles.

product over another, one covered person incurs a cost but another receives a benefit. Because consumers use prepaid products in a variety of ways, it is currently unclear if the final rule will yield more such benefits for some financial institutions than for others. However, in line with the discussion of benefit to consumers above, the Bureau believes that the final rule may benefit financial institutions that offer products with low fees generally, low top-line fees (and other fees in the static portion of the short form disclosure) specifically, and fewer types of fees overall, the most.

c. Alternatives Considered

The Bureau considered a number of alternatives to key provisions in the development of the final rule. Industry outreach, consumer testing, and public comments from industry, consumer groups, and others, influenced the evolution of the rule from its proposed form to its current, final form. Modifications to the disclosure requirements for the final rule from those that were included in the proposed rule are discussed in this section as alternatives.

One such alternative would have been the exclusion of third-party fees from the short form, including the requirement to disclose the cash reload fee. This alternative would have required that financial institutions disclose the highest potential cash reload fee that a consumer could incur but without including any fee charged by a third party, such as by the retail location where funds are added. However, through industry comments, the Bureau learned that there is considerable variety in how financial institutions impose cash reload fees. Some firms charge cash reload fees to consumers directly, others do not charge consumers but allow third parties to charge consumers, and others implement some combination of the two methods. Therefore, this alternative could have resulted in poorer purchasing decisions by consumers because it would not have ensured that the cash reload fee disclosure is comparable across products. Moreover, if this alternative were adopted, consumers who purchase products that charge third-party fees might not fully understand that there is considerable variety in how financial institutions impose cash reload fees at the time of acquisition and thereby could have incurred unexpected, additional costs of use. Therefore, this alternative would have undermined the Bureau's stated goal of creating a disclosure regime that provides consumers with complete information so that they can make informed decisions.

The final rule requires that the short form and long form disclosures include a statement regarding account registration and FDIC deposit insurance or NCUA share insurance, as applicable, regardless of whether or not such insurance coverage is available for a prepaid account. An alternative, as would have been required under the proposed rule, is to only require a statement when FDIC deposit insurance or NCUA share insurance is *not* available. This proposed statement was meant to inform consumers, who may assume otherwise, that their prepaid account is not insured. However, the Bureau found through its post-proposal consumer testing that, while consumers understood there was insurance coverage when the disclosure included a statement to that effect, consumers were unsure about whether the prepaid account offered FDIC deposit insurance or NCUA share insurance when presented with disclosures where no statement was included.[796] The final rule requires a statement regarding eligibility for FDIC deposit insurance and NCUA share insurance as well as instructions to register the prepaid account for other protections in programs where registration takes place after the account is opened. This has the benefit of informing consumers about what protections they may have in all circumstances. Since this requires only a concise statement added to the short form and long form disclosures, the burden on financial institutions is negligible. In cases where FDIC deposit insurance or NCUA share insurance is available, the statement could potentially benefit financial institutions by signaling to consumers that their product is safer than non-insured alternatives.

The proposed rule would have required that any prepaid account program which could offer an overdraft credit feature accessed by a prepaid card that would have been a credit card under the proposal must include in its long form disclosure certain fees related to the credit account. One issuing bank recommended that credit features and fees not be included on the long form disclosure because of the proposed 30-day waiting period that prevents financial institutions from offering credit features at or soon after acquisition. The commenter stated that certain charges, such as APR, could vary depending on the creditor or could otherwise change in the 30 day waiting period, and could therefore be inaccurate by the time a consumer consults them. The Bureau has modified the long form disclosure's content requirement regarding the disclosure of credit or other overdraft features in the final rule. Financial institutions will not be required to include all fees applicable to a covered separate credit feature accessible by a hybrid prepaid-credit card on the long form disclosure. This information must still be disclosed to the consumer when credit is offered after the 30-day waiting period (further discussion of the final rule's Regulation Z requirements that are extended to prepaid accounts can be found in the *Requirements Applicable to Covered Separate Credit Features* section below). Instead, financial institution's contact information must be provided so that a consumer that is interested in overdraft credit features has the ability to search for more information. Only credit-related fees that may be assessed against the prepaid account itself must be disclosed. This modification will allow consumers to acquire more information about credit products tied to their prepaid card without requiring that financial institutions disclose information related to credit products before they are ever offered, lessening the burden on covered entities who might offer overdraft credit features. This will create added search costs for consumers who would have otherwise had access to potential credit-related fees and features in the long form disclosure. However, given that the information needed to assess a credit product could vary by consumer or change between the time of acquisition and the time that credit is offered, requiring that financial institutions provide all applicable information to consumers only when an offer of credit is made results in a more accurate disclosure regime overall.

As discussed above, the final rule provides a retail location exception to the requirement to provide the long form disclosure pre-acquisition. The proposed commentary would have stated that a retail store that offers one financial institution's prepaid account products exclusively would have been considered an agent of the financial institution and would therefore have been required to provide both the short form and long form disclosures pre-acquisition. In other words, such a retail store would not have been able to rely on the retail location exception. Several industry commenters, including trade associations, program managers, and an issuing bank, suggested that the proposed definition of agent would have made it difficult for retailers with

[796] ICF Report II at 15.

limited retail space, such as gas stations, to sell prepaid products, because they may only have space for a single product or line of products, and would therefore not be covered under the long form retail exception. This would have unnecessarily burdened small retailers that may be selling a single product due to space constraints and not due to an arrangement with a financial institution. Accordingly, in the commentary to the final rule, the Bureau has expanded the range of entities that would be considered retail locations, including retailers that sell one financial institution's prepaid account products exclusively.

The proposed rule would have required that financial institutions disclose on the short form disclosures, the three fees, not including those already disclosed in the static portion of the short form disclosures, that are incurred most often. As discussed above, the final rule replaces these incidence-based fee disclosures with the requirement that financial institutions disclose the two additional fee types that generate the highest revenue from consumers. The Bureau received comments from a number of industry participants, including trade associations, financial institutions, and program managers that cautioned that financial institutions would incur significant costs to update systems to calculate fee incidence. Industry commenters, including trade associations, an issuing bank, an issuing credit union, and a program manager stated that the data needed to calculate fee incidence is often housed with a third-party data processor, and therefore any calculation would require a transfer of data from the third party to the financial institution. Alternatively, the data processor could create a report for the financial institution (or its program manager, if any), but since the financial institution is ultimately responsible for the accuracy of its disclosures, any report or data provided would still need to be reviewed by the financial institution for accuracy. The commenters warned that these changes would increase costs for data processors and financial institutions, which would ultimately increase the cost of prepaid accounts for consumers.

The Bureau also received comments from consumer groups that suggested that basing additional fee disclosures on revenue was superior to basing additional disclosures on how frequently fees are incurred because a fee's revenue is a direct measure of the impact of that fee on consumers. Incidence-based fee disclosures would have guaranteed that the most commonly charged fees are disclosed, but could result in high impact fees being left off of the short form disclosure if their costs are high but the frequency with which they are incurred is low. Further, a disclosure based on incidence could incent financial institutions to alter their fee structure such that the disclosed incidence-based fees are purposefully low while the undisclosed fees are exceedingly high.

The Bureau believes that while many financial institutions would have incurred costs to calculate fee incidence, most financial institutions already maintain the ability to calculate fee revenue. The Bureau recognizes that some financial institutions will incur a one-time cost to update their agreements with program managers or with third-party data processors in order to obtain the information necessary to tabulate fee revenue by fee type. However, analytics and reporting tools are features that financial institutions value and on which data processors compete; [797] data processors are therefore likely to develop tools to fill this need and then compete to offer the best value to financial institutions, their customers. Moreover, since the requirement to calculate fee revenue is imposed industry-wide, costs passed through from data processors will be spread among all financial institutions, diminishing the cost of this requirement per financial institution. Therefore, while the Bureau recognizes that this requirement may generate new costs, the Bureau does not anticipate that the costs will be significantly burdensome over the long run, and the costs will be less burdensome than the costs would have been under the proposed rule's incidence-based disclosure requirement.

Lastly, the proposed rule would have required that all disclosures of prepaid accounts sold in retail locations comply with the rule's pre-acquisition disclosure requirements within 12 months of the rule's effective date. If a financial institution had not sold all of its prepaid account products in packaging printed prior to the end of the 12-month period, the proposed rule may have resulted in financial institutions destroying and replacing such stock (commonly referred to as a ''pull and replace''). The costs associated with a pull and replace includes the costs of creating new stock, removing and destroying old stock, confirming that no old stock remains in retailers' possession and/or is offered for sale, and replenishing retail inventory. Through pre-proposal industry outreach, post-proposal industry outreach during and after the comment period, and reviewing comments submitted by industry commenters, the Bureau has learned that the cost to a financial institution of conducting a pull and replace is high. In addition, coordinating with retailers adds a layer of complexity due to issues of timing with retailer product reset schedules, requirements of some retailers to source merchandising to third-party vendors, and general negotiations that must take place. Further, the cost of a pull and replace may have disproportionately affected small entities that might purchase card stock in bulk to keep the per-unit cost of printing low. As discussed in the proposal, based on pre-proposal industry outreach, the Bureau estimates that after 12 months, 40 percent of total prepaid account stock will remain in distribution. Thus, the cost to the prepaid industry to conduct a large-scale pull and replace might have been significant.

As discussed above, the final rule requires that newly printed retail prepaid account packaging materials must be accurate if printed on or after October 1, 2017, but allows financial institutions to sell through prepaid account packaging or other preprinted materials prepared in the ordinary course of business prior to October 1, 2017 that do not comply with the final rule's disclosure requirements. This will enable financial institutions to phase out and replace old stock at the pace that it is sold. A sell-through strategy should prove to be significantly less expensive than a pull and replace for many financial instructions. This modification will come at a cost to consumers who may not fully realize the benefits of the prepaid disclosure regime immediately at retail locations because old packaging remains in commerce. For example, a consumer who is contemplating the purchase of a prepaid account in the retail setting may be provided with old disclosures that do not incorporate important fee information required by the final rule during a transition period. For this limited period of time, a consumer may have difficulty comparing multiple products with older disclosures, and to compare multiple products with a mix of older disclosures and updated disclosures. Over time, however, the eventual replacement of old stock will result in consumers having the full benefits of a thoughtfully designed and tested disclosure regime.

[797] Javelin Strategy & Research, *Choosing a Prepaid Processor in an Evolving Market: A Study on Issuer and Program Manager Needs*, at 12 (Nov. 2008), *available at https://visadps.com/download/Visa-DPS-prepaid-processing.pdf.*

2. Applying Regulation E's Periodic Statement Requirement With Modification and Providing an Alternative Means of Compliance With the Requirement

While expressly defining prepaid accounts as accounts subject to Regulation E, the final rule also provides an alternative means of compliance with Regulation E's periodic statement requirement. The alternative means of compliance is a modified version of the alternative means of compliance offered to payroll card account providers under current § 1005.18(b)(1). Section 1005.15(d) of the final rule also modifies the alternative means of compliance with Regulation E's periodic statement requirement for government benefit accounts so that it is consistent with the alternative means of compliance for prepaid accounts.

Under current § 1005.18(b), a financial institution offering payroll card accounts need not furnish periodic statements if the financial institution makes available to the consumer his or her account balance through a readily available telephone line, an electronic history of the consumer's account transactions that covers at least 60 days preceding the date that the consumer electronically accesses the account, and, upon oral or written request, a written transaction history that covers at least 60 days. Similarly, under current § 1005.15(c), government agencies offering government benefit accounts need not comply with the periodic statement requirement if they make available to the consumer the account balance, through a readily available telephone line and at a terminal, and promptly provide at least 60 days of written history of the consumer's account transactions in response to an oral or written request.

The final rule requires that financial institutions wishing to avail themselves of this alternative means of complying with the Regulation E periodic statement requirement make available to the consumer at no charge his or her account balance through a readily available telephone line, provide the consumer with access to at least 12 months of transaction history electronically, and, if requested by the consumer, provide at least 24 months of transaction history in writing. For those payroll card account providers and providers of prepaid accounts that receive Federal payments that are currently required to comply with the Regulation E periodic statement requirement and are meeting their compliance obligations by relying on the alternative means of compliance, this provision extends the present requirement to provide 60 days of transaction history to 12 months when provided electronically and 24 months when provided in writing. For government agencies that are currently required to comply with the Regulation E periodic statement requirement, this provision additionally requires electronic access to government benefit account history information as part of the alternative means of compliance, which current Regulation E does not require.

Regardless of how a financial institution chooses to comply, the final rule also requires that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account for both the prior month as well as the calendar year to date. This information must be disclosed on any periodic statement and any electronic or written history of account transactions provided.[798] Finally, for financial institutions following the alternative means of complying with the periodic statement requirement, the final rule extends to prepaid accounts modified requirements for initial disclosures regarding access to account information and error resolution, as well as annual error resolution notices.[799]

a. Benefits and Costs to Consumers

Extending Regulation E's periodic statement requirement to all prepaid accounts will help to ensure that consumers receive the benefits associated with increased information regarding their prepaid accounts. These benefits include having the ability to monitor account transactions for both budgeting and the identification of errors.

The final rule requires that financial institutions disclose to the consumer summary totals of the amount of all fees assessed against the consumer's prepaid account on any periodic statement, any written history of account transactions, and any electronic history of account transactions.[800] This disclosure will make the cumulative costs associated with the use of the prepaid account accessible and transparent to consumers.

The final rule also requires that those financial institutions relying on the alternative means of complying with the periodic statement requirement make accessible at least 12 months of transaction history electronically and, if requested, at least 24 months of transaction history in writing. Consumers, especially those who rely on a prepaid account as their primary transaction account, may need to consult more extensive account history in connection with, for example, housing and employment applications or tax filings; in these situations, they may benefit from having up to 24 months of account history available. Additionally, transaction histories may help consumers to discover unauthorized transfers or other errors. For instance, in certain circumstances, consumers have up to 120 days from the date of the unauthorized transfer to assert an error. In order to fully exercise these protections, consumers must be able to access at least 120 days of transaction history.

The final rule requires that at least 12 months of transaction history provided as part of the alternative means of compliance with the periodic statement requirement be provided electronically. As discussed further below, the Bureau's understanding is that, while prepaid accounts generally are not subject to this requirement at present, most financial institutions offer electronic access to prepaid accounts' transaction histories and a substantial number of them maintain 12 months of transaction data in some electronic format.

In developing the proposed rule, the Bureau considered how consumers prefer to obtain information about their transaction history. In focus group research, the Bureau generally found that consumers were satisfied with the amount of information they receive regarding their transaction history (either online, through text message, or over the telephone) under existing industry practice, and they generally did not express a desire to receive a paper statement.[801] Several industry participants the Bureau spoke with during its pre-proposal outreach, as well as several participants in the Bureau's consumer testing, noted that the time lag between receipt of a paper statement and the transactions covered by the statement decreased its utility for tracking account balance information relative to other means, such as real-

[798] For periodic statements, the monthly summary may be for the statement period or for the prior calendar month; for other transaction histories, it must be for the prior calendar month.

[799] Current § 1005.18(c)(1) and (2) for payroll card accounts, § 1005.18(d) for prepaid accounts, and current § 1005.15(d)(1) and (2) for government benefit accounts, revised as § 1005.15(d)(1) and (2).

[800] § 1005.18(c)(5). With respect to government benefit accounts, § 1005.15(d)(2) provides that for government benefit accounts, a government agency must comply with the account information requirements applicable to prepaid accounts as set forth in § 1005.18(c)(3) through (5).

[801] ICF Report I at 10.

time text message alerts, which provide consumers with more timely access. According to one program manager, when it provided electronic periodic statements to all of its customers, its customers only infrequently accessed those statements.[802]

Many consumers participating in the Bureau's focus groups also stated that they monitor their account balance using the internet and mobile devices.[803] This is consistent with the findings of various industry surveys, which suggest that many consumers currently have multiple methods through which they can access information regarding their prepaid accounts. One survey of consumers with prepaid accounts asked consumers how they check their balances, and found that more than half sometimes use a phone call, more than half sometimes check online, and text message alerts, email alerts, and smartphone apps were each used by more than a third of respondents.[804] According to one survey of 66 GPR card programs, almost three-quarters offer text alerts and more than half offer email alerts regarding account balances and transactions.[805] Another organization reviewed the terms and conditions associated with 18 GPR card programs that they estimated collectively represented 90 percent of the total GPR card marketplace (based on number of active cards in circulation). It found that all of the reviewed cards allowed cardholders to check balances online, via text message, by calling customer service, or on a mobile app or a mobile-enabled Web site.[806]

Although consumers generally have access to written transaction history information at present, many financial institutions currently charge fees for written account information, and in these cases the final rule will lower the cost to consumers of accessing account information in this way. Of the 66 GPR card programs reviewed by one organization, 68 percent disclosed a fee for paper account statements ranging from 99 cents to $10 (median $2.95).[807] As discussed below, the Bureau's discussions with industry participants suggest that few consumers currently request paper transaction histories or statements. It is worth noting, however, that if financial institutions are unwilling to comply with the new rule by providing paper transaction histories or statements to consumers for free, they may decide to require all consumers to provide E-Sign consent in order to have access to the product so that they could provide statements electronically. This could mean that consumers who cannot or choose not to provide E-Sign consent will have access to a more limited range of prepaid accounts.

b. Benefits and Costs to Covered Persons

The benefits and costs to covered persons arising from the application of Regulation E's periodic statement requirement to all prepaid accounts will depend on the financial institution's current business practices and whether the financial institution chooses to avail itself of the alternative means of complying with the periodic statement requirement. Specifically, financial institutions may comply with the requirement by providing periodic statements, either in paper form or in electronic form having obtained E-Sign consent from the consumer, or they may choose to implement the alternative means of complying with the periodic statement requirement.

As discussed above, financial institutions are already required to comply with the Regulation E periodic statement requirement, or the specified alternative, for payroll card accounts and for accounts that receive Federal payments (pursuant to the FMS Rule). Government agencies that offer government benefit accounts are similarly required to comply with this requirement (without the requirement to provide electronic access to account history under the periodic statement alternative). Based on pre-proposal outreach to industry participants, the Study of Prepaid Account Agreements, and review of various industry studies, the Bureau understands that financial institutions generally provide consumers with electronic access to transaction histories or electronic periodic statements and generally provide telephone access to account information similar to what is required by the final rule.[808] In many instances, electronic transaction histories currently provided extend well beyond the 60 days currently required for certain prepaid accounts.[809] The Bureau's understanding based on outreach to industry is that few, if any, financial institutions provide paper periodic statements or paper transaction histories to consumers with prepaid accounts other than on an ad hoc basis.

The Bureau expects that most financial institutions will continue to offer account history information to consumers electronically (except for those cases where a written transaction history is required in response to an ad hoc consumer request) and will continue to use an automated telephone line to provide 24-hour access to account balance information. Therefore, the Bureau believes that the majority of costs to covered persons of the final rule will arise from two sources.

First, periodic statements or transaction histories must display a summary total of the amount of all fees assessed against the consumer's prepaid account for the prior month and for the calendar year to date. Financial institutions will need to modify existing statements or electronic transaction histories to include these totals. Second, those financial institutions that do not currently make at least 12 months of transaction history available to consumers electronically or do not maintain access to at least 24 months of transaction history would potentially incur additional data storage costs and may need to implement system changes if they choose to avail themselves of the alternative means of complying with

[802] The program manager reported that consumers viewed the statements for just over 1 percent of active accounts, and consumers downloaded the statements for slightly less than 1 percent of active accounts.

[803] According to a survey conducted by the Board, roughly 87 percent of respondents owned or had regular access to a mobile phone, and roughly 77 percent of those with a mobile phone had a smartphone as of November 2015. Additionally, 89 percent had regular access to the internet, either at home or outside of the home. 2016 FRB Consumers and Mobile Financial Services Survey at 8, 64 tbls.C.21 & C.22. A survey of prepaid card users found that 88 percent use the internet. 2014 Pew Survey at 5 ex.2.

[804] 2015 Pew Survey at 13.

[805] 2014 Pew Study at 17.

[806] Additionally, it found that all of the cards reviewed provided consumers with accessible customer service assistance and IVR systems. 2014 CFSI Scorecard at 12 (Mar. 2014).

[807] Of the GPR card programs reviewed by that organization, 21 percent of programs did not disclose a paper statement fee, and 11 percent disclosed that paper statements are free. The study did not distinguish between periodic statements and other forms of written account history. 2014 Pew Study at 19.

[808] One review of 66 GPR card programs found that almost every card provided free online access to account information. It also found that most card programs offered email and text alerts free of charge and that most programs provided the customer with at least a limited number of free interactive voice-recognition customer service calls through which consumers could access account information. 2014 Pew Study at 36. Another review of 18 GPR card programs, comprising an estimated 90 percent of active GPR cards in circulation, found that all of the cards reviewed allowed cardholders "to check their balance online, via text message, by calling customer service, or on a mobile app or a mobile-enabled Web site." 2014 CFSI Report at 12.

[809] One survey found that "[e]leven of the fifteen cards for which information is available . . . allow cardholders to access at least two years of transactional data online, which can be important for tax-filing and budgeting purposes. Three of the four cards that offer less than two years of transactional data provide one year of data, while one card offers six months of data." 2014 CFSI Report at 12.

Regulation E's periodic statement requirement.[810]

The structure of the costs associated with these changes depends on whether the financial institution relies on vendors to format or host online periodic statements or transaction histories or whether it performs these functions in-house. Those financial institutions that format their own periodic statements or transaction histories will incur a one-time implementation cost to capture and summarize fee information and modify their disclosures to display this information.[811] Those financial institutions that currently do not make available 12 months of account history will incur costs associated with obtaining additional electronic storage media to expand existing capacity.

The proposal would have required financial institutions to make available 18 months of account history, and according to discussions with industry participants prior to issuing the proposed rule, the costs associated with such an expansion would have been minimal. In response to the proposal, however, several industry commenters said that they do not currently make available 18 months of account history and that the cost of doing so would be significant. Of these, several commenters noted that they currently provide 12 months of electronic transaction history or that their systems maintain at least 12 months of transaction history in readily accessible electronic format. Industry commenters also noted that older account history information is typically archived and is less readily accessible, but can be retrieved in response to specific requests. One commenter that currently archives account information after six months estimated that it would cost an additional $1.00 per account to keep account information in active, rather than archived, status for 18 months. Because the final rule requires 12 rather than 18 months of transaction history to be made electronically available, and because it permits financial institutions that, as of the effective date, do not have readily accessible the data necessary to provide at least 12 months of electronic account history to gradually increase the number of months of account data that they provide until they have enough account information to fully comply with the requirement, the Bureau believes that the requirement to provide electronic account history information will have a minimal burden for most financial institutions.

Many providers of prepaid accounts rely on processors to provide online portals that give consumers access to account history information. Based on pre-proposal discussions with industry participants, the Bureau understands that program managers typically pay processors a flat fee per account that may be a function of both the extent of the account history provided and the number of accounts that are being serviced.[812] The Bureau expects that these covered entities will generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary totals. However, one program manager predicted that if such a fee disclosure were a regulatory requirement, the processor would offer it as part of a standard package of services at no additional cost.[813]

In formulating its proposal, the Bureau conducted outreach to prepaid issuers and program managers regarding the utilization of paper account statements by consumers and the cost to financial institutions of providing such statements. Based on these discussions and information provided by commenters, the Bureau's understanding is that consumer requests for written account histories for GPR cards are infrequent, generally well under 1 percent of active cardholder-months, regardless of whether the consumer is charged a fee for the statement. One commenter stated that it serves over 2 million cardholders and that it receives 750 requests per month for written transaction histories, equivalent to approximately 0.04 percent of all cardholder accounts.[814] The Bureau notes that some financial institutions currently charge consumers fees if they wish to receive paper statements or transaction histories, and in some cases, financial institutions may charge consumers fees that exceed the cost to provide these statements.[815] However, given the infrequent nature of such requests (regardless of whether a fee is charged for the statement), the Bureau believes that the revenue impact of the final rule's requirement to provide paper statements or account histories free of charge is likely de minimis. Since a financial institution may require that consumers provide E-Sign consent in order to receive a prepaid account, and thus provide statements or account histories electronically instead of following the periodic statement alternative, any revenue impact could be further mitigated.

Some commenters said that the requirement in the proposal to mail 18 months of transaction history upon request would impose a substantial burden on financial institutions. The commenter, mentioned above, which stated that it receives 750 requests per month for written transaction histories noted that the increase from 60 days to 18 months of transaction history is a 900 percent increase in the volume of history that would have to be provided. Another commenter estimated that extending the timeline to 18 months would increase the cost of mailing statements by three to four times. Additionally, some commenters explained that transaction data is generally moved to archived status after 12 months, and that once the data is archived, a financial institution may incur costs for retrieving information on a one-off basis in order to respond to consumers' requests for written histories.

[810] As a result of the final rule, financial institutions that do not provide consumers with 24 months of transaction history may incur additional costs in the future when migrating information across information technology platforms since additional data must be retained.

[811] In response to the Bureau's pre-proposal outreach, one program manager estimated that it would cost approximately $15,000 to modify its Web site to provide the summary total of fees as well as a summary of the total amount of deposits to the account and the total amount of all debits made to the prepaid account. This should be an upper bound on the estimated cost to this program manager of modifying its Web site to display only the required summary total of fees.

[812] One program manager that relies on a processor for this function told the Bureau that fees for data storage are charged on a per account basis one time at activation. According to the program manager, costs were generally increasing from $0.08 per account for three months of transaction history to $0.19 per account for one year of transaction history. This program manager also suggested that processor prices decrease with scale, and that because it was operating at low scale it was consequently paying among the highest prices.

[813] One program manager stated that its processor quoted a one-time cost of $65,000 for providing this functionality on its processor-hosted Web site (in response to an ad-hoc request). This potentially represents an upper bound for the true development cost since this number likely includes a mark-up over the true cost of providing the service. Actual development costs will be borne jointly by the processor and the financial institutions relying on the processor for hosting services.

[814] In pre-proposal outreach, one program manager told the Bureau that when it eliminated a $2.50 fee for receiving a paper statement, there was no change in the frequency with which statements were requested.

[815] Estimates quoted to the Bureau by financial institutions varied somewhat but generally were approximately $1 per statement to respond to ad hoc requests once the costs associated with fielding the incoming call, postage, and producing the statement were considered. Financial institutions generally noted that postage is a large driver of this cost. One financial institution noted that, given the sensitivity associated with the information, such statements need to be sent via first class mail. Another financial institution that relied on its processor to provide ad hoc paper statements to consumers pays its processor $2 for each paper statement delivered.

The Bureau acknowledges that it may cost substantially more to provide a 24 month written transaction history than to provide a 60 day written transaction history. The Bureau notes, however, that the final rule further clarifies that a financial institution may send less than 24 months of written transaction history if the consumer requests a shorter timeframe. The Bureau anticipates that many consumers requesting written transaction histories will not need access to a full 24 months of transaction history and that therefore in many cases financial institutions will be able to send a significantly shorter transaction history. The Bureau also notes that, given the small fraction of consumers that request written transaction histories, the overall burden of the requirement to send written transaction histories is small, even if the cost of each mailing is substantially higher than it would be if sending a 60-day history.

If the final rule expands consumer access to account information, financial institutions could benefit from receiving more timely notice of unauthorized transfers by consumers and potentially fewer inquiries by telephone or email. For example, in the event that a consumer identifies an unauthorized transfer, the financial institution may be able to place the appropriate holds on the account to prevent further unauthorized use. Timely notification could also decrease the costs associated with investigations of alleged errors. In addition, if timely notification by some consumers were to provide an early warning of a widespread or systemic set of unauthorized transfer attempts, the financial institution could benefit from cutting off the avenue for the unauthorized transfers before the issue becomes more widespread. However, to the extent that consumers are able to identify unauthorized transfers and other errors that they would not have identified in the absence of these disclosures, financial institutions may incur additional costs.

3. Applying Regulation E's Limited Liability and Error Resolution Regime

The final rule extends Regulation E's limited liability and error resolution regime to all prepaid accounts; provisional credit is also required for all prepaid accounts that have successfully completed the financial institution's customer identification and verification processes.[816] For prepaid accounts that have not been through the financial institution's customer identification and verification process, have not completed the process, have failed the process, or for which the financial institution has no such process for that particular prepaid program, the financial institution must comply with Regulation E's limited liability and error resolution regimes, but not with the provisional credit requirements. Under § 1005.6(a), a consumer may be held liable for an unauthorized EFT resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. In addition, § 1005.6(b) limits the amount of liability a consumer may assume.

For accounts subject to the Regulation E error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was, in fact, authorized.[817] More specifically, after receiving notice that a consumer believes that an EFT was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. Although the investigation must generally be completed within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account), the financial institution may take up to 45 days to complete the investigation if it provisionally credits the consumer's account for the amount of the alleged error within 10 business days of receiving the error notice.[818] Upon completion of the investigation, § 1005.11(c)(1) requires the financial institution to report the investigation's results to the consumer within three business days and correct an error within one business day after determining that an error occurred. In cases where the financial institution ultimately can establish that no error (or a different error) occurred, § 1005.11(d)(2) permits the financial institution to reverse the provisional credit. If the financial institution cannot establish that the transfer in question was authorized, the financial institution must credit the consumer's account (or finalize the provisional credit).

Prepaid accounts that are payroll card accounts, government benefit accounts, and those that receive Federal payments are currently required to provide Regulation E's limited liability and error resolution protections. Other types of prepaid accounts, such as GPR cards that do not receive Federal payments, currently are not required to provide these protections, although some do so by contract. One study reviewed 18 GPR card programs, estimated to represent 90 percent of the number of active GPR cards in circulation, and found that all of the programs reviewed had adopted the consumer liability protections outlined by Regulation E as it applies to payroll cards.[819] The Bureau's Study of Prepaid Account Agreements found that roughly 89 percent of all programs, and all of the largest GPR card programs, offered limited liability protections to consumers. The Bureau's Study of Prepaid Account Agreements also found that over two-thirds of prepaid programs (excluding government benefit accounts and payroll card accounts) appeared to follow Regulation E's error resolution regime, including provisional credit requirements, with roughly 80 percent of the largest GPR card programs offering such protections.

To the extent that financial institutions already follow policies consistent with Regulation E's limited liability and error resolution regime, the potential impacts on most consumers and covered persons arising from these provisions are limited. Additionally, prepaid accounts are typically subject to payment card association network rules that provide zero-liability protection and chargeback rights in some circumstances that, unless changed by the networks, apply regardless of what Regulation E requires.[820] In certain cases, business practices may differ from those guaranteed by the terms and conditions associated with the prepaid account, and consumers may, in practice, have additional protections

[816] Payroll card accounts and government benefit accounts are required to follow Regulation E's limited liability and error resolution regime regardless of whether the account had been through the customer identification and verification process. As described above, the FMS Rule requires that a prepaid card that receives a Federal payment comply with these provisions.

[817] *See* EFTA section 909(b).

[818] § 1005.11(c)(2). The financial institution has 90 days (instead of 45) if the claimed unauthorized EFT was not initiated in a State, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. § 1005.11(c)(3). Provisional credit is not required if the financial institution requires, but does not receive, written confirmation within 10 business days of an oral notice by the consumer. § 1005.11(c)(2)(i)(A).

[819] 2014 CFSI Report at 12. Another study asserts that only two-fifths of 66 GPR card programs reviewed included all of the protections, but most of this appears to be the lack of disclosure of mandatory extensions of time frames to submit claims for good cause. Regulation E, as applied to payroll card programs, does not require the disclosure of this information, so it is unclear whether it can be inferred that lack of disclosure of this information in the terms and conditions implies lack of protection for consumers. 2014 Pew Study at 20.

[820] *See, e.g.,* Network Branded Prepaid Card Ass'n, *Cardholder Protections—NBPCA Position, available at http://www.nbpca.org/en/Government-Affairs/Policy-Positions/Cardholder-Protections.aspx* (last visited Oct. 1, 2016).

beyond those articulated in the account agreement.

a. Benefits and Costs to Consumers

In general, the potential benefits to consumers arising from the final rule's requirements include reduced risk (relative to a baseline where some programs do not offer the protections of the final rule) and reduced uncertainty regarding responsibilities and liabilities among market participants. With respect to consumer uncertainty, the Bureau does not have information that would permit it to quantify the extent to which some consumers may overestimate the risks associated with using prepaid accounts (and so may underutilize them) or the extent to which other consumers may underestimate the risks (and therefore may fail to take certain precautions if they use them). Both groups will benefit from the reduced uncertainty regarding limited liability and error resolution protections that will result from the final rule.

Consumers using prepaid accounts will further benefit from any reduction in expected financial losses incurred due to unauthorized EFTs or other errors that will result from the final rule. Although financial institutions typically offer limited liability and error resolution protections in connection with prepaid accounts, the final rule will reduce consumer losses from unauthorized transfers in cases where such protections were not offered as well as ensure that errors are investigated expeditiously and that consumers regain access to funds more quickly. This potential benefit to consumers will depend on the following: (a) The number of consumers with prepaid accounts that do not currently follow the limited liability and error resolution regime, including access to provisional credit, that is described in the final rule; (b) the average magnitude of the financial losses consumers would experience from unauthorized transfers or other errors absent the final rule; and (c) the probability that these unauthorized transfers or other errors would occur absent the final rule. The Bureau notes that these benefits could be concentrated among certain segments of the population.[821]

In order to quantify the potential benefits to consumers from the final rule's requirements, the Bureau would need the quantities in (a), (b), and (c) or a database of representative market information that can be used to estimate these quantities. To the Bureau's knowledge, neither these quantities nor such a database currently exists. However, industry studies provide some insight into the magnitude and distribution of these determinants of the potential benefits from these provisions.

The Bureau first considers the number of consumers with prepaid accounts that currently do not offer the limited liability and error resolution protections, including access to provisional credit, which the final rule requires for prepaid accounts that have completed a financial institution's customer identification and verification process (and continues to require for all payroll card accounts and government benefit accounts). As described above, surveys suggest that between 8 and 16 percent of consumers have used a general purpose prepaid card in the past 12 months.[822] At present, Federal law does not require providers of these products to offer any of the limited liability and error resolution protections required by the final rule to consumers, except for those consumers with prepaid accounts that receive Federal payments (and therefore are covered by the FMS Rule), or are payroll cards or non-needs tested government benefit cards.

However, financial institutions offering prepaid accounts may (and often do) voluntarily offer these protections, in many cases because similar protections are required by payment card association network rules. As discussed above, the Bureau's Study of Prepaid Account Agreements found that the vast majority of programs reviewed followed Regulation E's limited liability protections. In addition, most prepaid programs appeared to follow Regulation E's error resolution regime, including provisional credit requirements. Excluding payroll card account programs and government benefit account programs (which are currently required to comply), over two-thirds of included programs provided error resolution protections, with provisional credit, consistent with Regulation E. The majority of the remainder offered some form of error resolution, albeit with limitations on the conditions under which provisional credit is offered. Among the programs reviewed that were offered by the largest GPR providers, the Study of Prepaid Account Agreements found that roughly 80 percent offered error resolution with provisional credit and all offered limited liability protections. Most remaining programs offered full error resolution with provisional credit in limited circumstances.

For the foregoing reasons, the Bureau believes that the number of consumers with prepaid accounts that do not currently offer the limited liability and error resolution protections (including provisional credit) that are required by the final rule is small.[823] However, the final rule will provide consumers whose prepaid accounts lack these protections with important benefits. Further, since financial institutions that voluntarily offer these protections could change their terms and conditions at any time, the final rule removes the risk to consumers that these protections could be discontinued.

The Bureau has been unable to obtain data describing the average size of the financial losses consumers currently experience from unauthorized transfers or other errors that are covered by the final rule or the frequency with which these events occur. However, these quantities may be associated with certain observable factors. The average size of a transaction is likely correlated

[821] The Final Rule may also provide additional benefits to consumers. First, the requirements may reduce the frequency with which unauthorized transfers or other errors occur by creating an additional incentive for financial institutions to prevent these adverse events in the first place. This change could benefit consumers in non-monetary ways if adverse events nevertheless impose meaningful costs (including inconvenience). Second, even if no unauthorized transfer or other error has occurred, the requirement to offer provisional credit provides consumers with a zero-interest loan and a timely investigation. Third, as discussed further below, consumers with prepaid accounts from financial institutions that currently voluntarily offer the Final Rule's protections receive some benefit from the Final Rule's requirements since, absent the Final Rule, financial institutions currently offering these protections could change their terms and conditions and stop providing these protections in the future.

[822] 2014 FRB Consumers and Mobile Financial Services Survey at 48 tbl.C.8a. *See also* 2014 Pew Survey at 1. For the purpose of this survey, respondents were explicitly told not to include gift cards, rebate cards, credit cards, or phone cards. Five percent of adults reported using a prepaid card at least once a month. *See also* 2013 FDIC Survey at 29–30 (which reports that 12 percent of households surveyed had ever used prepaid cards, 7.9 percent have used a prepaid card in the last 12 months, and 3.9 percent have used a prepaid card in the last 30 days). *See also* Mercator Advisory Group, *Prepaid 2013: U.S. Consumers Buying More Cards For Own Use,* at 9 (Oct. 2013) (which reports that 7 percent of households surveyed in 2013 currently use a GPR card). *See also id.* at 11 (which reports that 14 percent of households surveyed in 2013 purchased a GPR card in the last year). *See also* GFK, *GfK Prepaid Omnibus Research Findings,* at 6 (2014), *available at http://www.nbpca.org/~/media/2519B8BADB1B4388BAF11C511B3ACAE.ashx.* The definition of prepaid card in this survey appears to have included some products that would not be covered by the final rule's definition of prepaid account. This survey found that 16 percent of respondents had used a ''prepaid card'' that was not a gift card in the last 12 months.

[823] One study which asserts that it covers programs accounting for 90 percent of active GPR cards in circulation found that all financial institutions offered liability and error resolution provisions consistent with those in Regulation E. 2014 CFSI Scorecard at 12 (Mar. 2014).

with the loss to the consumer if the consumer is fully liable for the loss. For example, if a consumer were charged for a given purchase twice instead of once or were charged for a transaction that should have been cancelled, the loss would be correlated with the typical size of those transactions.[824] Similarly, the balance typically held in a prepaid account should be correlated with the loss to the consumer if account access is compromised and the consumer is fully liable. Finally, the frequency of transactions is likely correlated with the probability of a loss since transacting with a prepaid account creates exposure to transaction-related errors.

Although data that would permit the Bureau to quantify the typical balances and transaction sizes of prepaid accounts are limited, recent research can provide some information. One study analyzed prepaid accounts from one large program manager's GPR card program and reports whether the prepaid accounts receive periodic government direct deposits (and therefore are subject to the FMS Rule if it is a Federal payment), periodic non-government direct deposits, periodic self-funded loads, occasional reloads, or are never reloaded.[825] It found that 46 percent of GPR cards analyzed have periodic self-funded reloads and cumulative monthly purchases of $266.[826] The average lifespan of the cards that have periodic self-funded reloads was 256 days; the median, however, was only 60 days.[827] An additional 13 percent of GPR cards analyzed had occasional reloads, cumulative monthly purchases of $94, an average life of 489 days, and a median life of 330 days; and 18 percent of GPR cards analyzed had periodic non-government direct deposit, cumulative monthly purchases of $660, an average life of 925 days, and a median life of 570 days. To the extent that these figures are representative of other prepaid programs, they suggest that approximately three-quarters of GPR cards may be used for significant purchases and are likely not within the current scope of Regulation E (or the FMS Rule). Other researchers have also identified programs that offer GPR cards that consumers regularly load with funds, but are not payroll cards, are active for at least a year and are used for many thousands of dollars in purchases, loads, and cash withdrawals.[828]

Only limited data describing the frequency of transactions is available, and while these frequencies should correlate with the probability of a loss, the Bureau would require additional information to convert these frequencies into probabilities.[829] There is, however, some suggestive information about the risk of loss in data describing the incidence of fraud with GPR cards offered by one large program manager. According to one study using this data, approximately six out of every 10,000 transactions with GPR cards involve fraud, with a loss of $9.60 for every $10,000 transacted.[830] To the extent consumers are the victims of these frauds, and to the extent these average figures are similar for all types of prepaid accounts, these numbers provide some information about one particular risk that consumers encounter in using GPR cards and one benefit of the final rule.

The Bureau believes that some consumers with prepaid accounts could receive important benefits in certain circumstances from the additional protections that are required by the final rule. Further, the share of consumers with prepaid accounts who could potentially receive these benefits may grow over time. One group of industry analysts predicts that the GPR segment of prepaid accounts will grow on average 10 percent each year from 2014 to 2018, and there appears to be sustained interest among consumers in using GPR cards as transaction accounts.[831] While the voluntary provision of limited liability and error resolution protections (including provisional credit) might keep pace with this expansion, it is also possible that growth could lead to new forms of product differentiation, including variation in consumer protections.

To the extent that financial institutions sustain increased losses from the requirement to extend Regulation E's limited liability and error resolution regime, including provisional credit, to all prepaid accounts, the final rule's limited liability and error resolution provisions may result in decreased access to these products if financial institutions are more apt to close accounts that have repeated or unusual error claims or to limit who can open accounts in the first place. The requirement to provide limited liability and error resolution protection for transactions taking place prior to customer identification and verification could also lead financial institutions to prevent prepaid accounts from being used until after such identification and verification or to limit accounts' functionality prior to identification and verification, reducing access for consumers who wish to use accounts before they have been registered or who are unable or unwilling to complete the identification and verification process.[832] Additionally, the final rule's requirements may result in decreased access to prepaid accounts for some consumers if financial institutions implement more rigorous screening requirements. That is, financial institutions may have an increased incentive to identify customers who would be likely to make fraudulent error claims and deny them access to these accounts. This screening may, however, also cause some consumers who would not make such claims to be denied access to these accounts. Further, to the extent that the screening technology correctly identifies those individuals who are likely to make fraudulent error claims, negative externalities arising from these individuals' fraudulent claims activities (which benefit these consumers while imposing costs on other consumers and market participants) are reduced.

b. Benefits and Costs to Covered Persons

In general, the costs to financial institutions arising from the final rule's requirements will depend on their current business practices, the number and types of errors that their consumers claim, and any potential future changes

[824] The Bureau recognizes that the risk of loss is likely different for different types of transactions. For example, one study using data from a large program manager's GPR card portfolio shows that fraud rates differ by transaction type. 2012 FRB Kansas City Study at 72 tbl.6.1. Thus, the size of a typical transaction need not be similar to the size of a typical loss on a transaction (conditional on a loss occurring) since the types of transactions most susceptible to fraud may be relatively high-value or low-value.

[825] *Id.* at 43 tbl.2.1. It is worth noting that the shares of load types reported in table 2.1 of this study add up to 102 percent.

[826] *Id.* at 43 tbl.2.1, 59 tbl.4.9.

[827] *Id.* at 47 tbl.4.1.

[828] 2012 FRB Philadelphia Study at 67.

[829] GPR cards with periodic self-funded reloads average 5.7 purchases and 6.5 debits per month. GPR cards with occasional reloads average 2.0 purchases and 2.3 debits per month, and GPR cards with periodic non-government direct deposits have 18.1 purchases and 21 debits per month, on average. 2012 FRB Kansas City Study at 50 tbl.4.3, 59 tbl.4.9.

[830] *Id.* at 72 tbl.6.1.

[831] Mercator 12th Annual Market Forecasts at 12–13. The report addresses the growth rate in the aggregate amount loaded onto cards. This growth rate approximates the growth rate in the number of accounts as long as the amount loaded per account remains fairly stable, but it would overstate the growth rate in the number of accounts if the amount loaded per account is increasing.

[832] Financial institutions may already limit account functionality before customer identification and verification in order to comply with existing Federal requirements to perform customer identification prior to establishing prepaid accounts with particular characteristics. The consumer impacts described would take place to the extent the final rule causes financial institutions to further restrict account functionality prior to consumer identification and verification.

that would affect the number and types of errors claimed, separate and apart from the final rule. Implementation of the final rule's requirements would be simplified by the fact that financial institutions offering prepaid accounts generally keep a central record of transactions and track authorized users.

The final rule requires that those financial institutions that do not currently offer their consumers limited liability and error resolution protections in accordance with Regulation E establish procedures for complying with the requirements or modify existing procedures (depending on their current practices). Specifically, financial institutions that do not currently offer these protections will need to develop the capacity to give the required disclosures to consumers, receive oral or written error claims, investigate error claims, provide consumers with investigation results in writing, respond to any consumer request for copies of the documents that the institution relied on in making its determination, and correct any errors discovered under the required timeframes.[833] If unable to complete their investigation within the required timeframe (generally 10 business days), financial institutions will be compelled to extend provisional credit (where applicable) and, in the case that a provisionally credited amount is subsequently reversed, notify the consumer.

For those financial institutions that do not currently offer limited liability and error resolution protections in the manner required by the final rule, the extension of these protections will require the establishment or modification of practices and procedures, as well as employee training. The establishment or modification of these practices and procedures will constitute a one-time implementation cost for those financial institutions that do not currently offer limited liability and error resolution in the manner required by Regulation E, and implementing these procedures will constitute an ongoing cost for financial institutions.[834] The costs associated with implementing these procedures would be a function of the number and types of errors that consumers claim which, in turn, may be affected by the composition of the customer base and how those customers use their prepaid accounts.

Errors may vary on many dimensions that affect the cost associated with their investigation.[835] In pre-proposal outreach, the Bureau spoke with several financial institutions that immediately resolve disputes involving amounts below a certain de minimis threshold since the amount of funds at issue does not justify the likely cost associated with conducting the investigation. Separately, when an investigation is conducted, resolution times may be affected by the responsiveness of third parties, including merchants and ATM owners, and may be subject to timeframes established by networks or other standard setting bodies.[836] Additionally, the amount of information provided by the consumer and the timeliness of the report can affect the duration of the investigation.[837] For instance, ATM error claims may result from an ATM malfunction that causes the consumer to receive the wrong amount of funds or from unauthorized use. Error claims that occur when an ATM dispenses the incorrect amount of funds are generally resolved when the ATM is balanced; however, in cases involving unauthorized ATM use, it is possible that the investigation may include obtaining and consulting video evidence.

Errors may also vary in terms of their legitimacy. Consumers may assert that an error occurred when one did not occur either to attempt to defraud the financial institution or due to a misunderstanding. Since, under EFTA, the burden is on the financial institution to establish that the transaction in question was not an error, it is possible that the financial institution would be liable for errors that may not be legitimate. Because the financial institution is liable for an asserted error unless it can determine the error is not legitimate, a financial institution may incur a cost whether or not the error actually occurred. The Bureau therefore finds it more helpful to classify alleged errors as either accepted or denied, as explained below, when considering the various cases in which a financial institution may incur a cost.

Accepted disputes include situations in which the financial institution credits the consumer's account, either because an error occurred or, where an error did not occur, because an error was asserted and the financial institution could not establish that the transaction was authorized.[838] In the case of accepted disputes, financial institutions that do not currently offer limited liability and error resolution rights consistent with Regulation E will incur one-time and ongoing costs associated with training personnel, as well as one-time and ongoing costs associated with information technology support to track reported disputes, investigations, resolutions, and to produce reports for internal audit and potential supervisory review. Ongoing costs associated with conducting investigations include compensating personnel tasked with dispute intake, obtaining receipts and other documentation from merchants or ATM owners, and communicating investigation findings to the consumer. When the financial institution can neither establish that the EFT was authorized nor receive a credit from the merchant or ATM owner, financial institutions also will incur costs associated with paying funds to consumers.[839] While the Bureau does not have data that permit it to estimate the magnitude of such costs, the amount paid to consumers may be related to typical balances held in prepaid accounts, discussed above in the context of benefits to consumers.

Additionally, the final rule requires financial institutions to extend provisional credit to consumers asserting an error claim when the length of the investigation exceeds 10 business days, so long as the prepaid account has

[833] Financial institutions often rely on industry partners to perform some or all of these functions.

[834] It is possible that those institutions that currently offer Regulation E compliant error resolution on a voluntary basis will choose to rely on higher-skilled staff or perform additional reviews to assess compliance in light of the Final Rule. CFPB, *Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations, Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions,* at 96 (Nov. 2013), *available at http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf.*

[835] In addition, with the Final Rule's requirement to extend provisional credit, there could be additional monetary costs associated with errors that require an extended timeline for investigation aside from the cost associated with the investigation itself.

[836] Payment card network rules may require the merchant acquirer to reply within a specified timeline in certain instances and may, in turn, require merchants to follow the acquirer's time frame for responding to such requests. *See* Visa Inc., *Chargeback Management Guidelines for Visa Merchants* at 24 (2014), *available at http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf.*

[837] One program manager reported to the Bureau that, in 85 percent of cases, there were 15 or fewer days between the transaction date and the initial notification date. Another program manager reported that in 76 percent of cases, there were 10 or fewer days between the transaction date and the dispute notification date.

[838] Note that in some limited situations, payment card network rules permit the issuer to perform a merchant chargeback and be reimbursed. *See* Visa Inc., *Chargeback Management Guidelines for Visa Merchants,* at 43–88 (2014), *available at http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf.*

[839] In pre-proposal outreach, the Bureau spoke with several financial institutions regarding error resolution, and the rate at which error claims were paid out varied greatly. One program manager paid out roughly half of the claims made (including those credited by the merchant), with under 30 percent of all claims paid by the program manager.

been through the customer identification and verification processes. In cases where the claim is ultimately accepted, offering provisional credit represents little additional cost to the financial institution over and above any costs associated with error resolution because the amount credited is ultimately due to the consumer following the investigation. Since the financial institution would be required to pay the claim under the error resolution provision, the only cost to the financial institution associated with expediting the availability of funds is the opportunity cost of those funds as applied to another investment for the applicable period. The Bureau expects that this cost is generally negligible.

In contrast, denied disputes occur when the financial institution is able to establish that a transfer was authorized and, therefore, the institution is not ultimately required to return funds to the consumer. In the case of denied disputes, financial institutions that do not currently offer error resolution rights will incur costs associated with conducting investigations, and financial institutions that do not currently offer provisional credit will incur costs associated with crediting accounts when the length of the investigation exceeds 10 business days. Although a financial institution extending provisional credit can subsequently reverse the credit when it is able to establish that the transfer was authorized, the consumer may draw down the funds in the interim or intentionally close the account and abscond with the funds.[840] In such cases, extending provisional credit results in the financial institution losing all or some of the funds that were extended. For provisional credit that can be reclaimed, the financial institution will incur a small opportunity cost of those funds as applied to another investment for the period spanning when the funds were granted and when they could be reclaimed. The Bureau expects that this opportunity cost generally will be negligible.

The Bureau believes that, to a certain extent, financial institutions are able to limit losses associated with error claims. In pre-proposal discussions with financial institutions that provide prepaid accounts, the Bureau learned that financial institutions often close (or could close) accounts that have repeated error claims, thereby limiting their exposure to potential losses, and may add individuals to a watch list. Additionally, industry partners sometimes share information regarding individuals who appear to be instigating fraudulent activity, and one payment card network has plans to create a centralized database to better detect fraud on prepaid cards.[841] Financial institutions can limit account access prior to customer identification and verification and use information provided in the identification and verification process to help limit the risk of fraud. The presence or absence of direct deposit, customer tenure, and card use patterns—including the type of merchant and the existence of prior activity at the merchant or ATM—can all be used to predict the likelihood that fraud occurs. The limited liability and error resolution protections required by the final rule may encourage financial institutions to invest in more robust systems to prevent unauthorized transfers.

Several industry commenters said that the application of limited liability and error resolution provisions, and in particular the provisional credit requirements, to prepaid accounts under certain circumstances could increase financial institutions' fraud losses associated with prepaid accounts. Some commenters claimed that fraud risk is especially high for transactions taking place before an account has been registered or in the period shortly after a prepaid account has been opened. One commenter that processes prepaid transactions estimated that providing limited liability and error resolution rights for transactions taking place before a prepaid account is registered would lead to an increase in fraud exposure of one additional basis point, compared to a baseline fraud exposure of between four and five basis points.

The Bureau acknowledges that extending limited liability and error resolution protections, including provisional credit, to prepaid accounts that do not already offer these protections prior to customer identification and verification could increase the fraud exposure of financial institutions. Partly in response to these concerns, the Bureau has determined not to require provisional credit for prepaid accounts that have not successfully completed the financial institution's customer identification and verification process. To the extent that financial institutions nonetheless face increased fraud risk because limited liability and error resolution requirements apply before customer identification and verification, the Bureau notes that financial institutions can limit this risk by restricting a prepaid account's functionality before the identification and verification process is complete. The Bureau understands that currently many prepaid accounts cannot be used prior to customer identification and verification, or are subject to restrictions on how they can be used or the amount of funds they can hold. To the extent that the requirement to provide limited liability and error resolution protections increases fraud exposure related to transactions prior to identification and verification or early in the account's history, such restrictions may permit financial institutions to reduce fraud exposure.

Although most programs reviewed as part of the Bureau's Study of Prepaid Account Agreements provided error resolution with provisional credit, there was some heterogeneity across programs with respect to the error resolution and provisional credit policies. To the extent that concern regarding the absence of a comprehensive Federal regulatory regime governing error resolution is currently limiting consumer adoption of prepaid accounts, providing for Regulation E limited liability and error resolution coverage, with provisional credit, for prepaid accounts—which include P2P transfer products—may help to facilitate wider adoption of these accounts and could benefit financial institutions. Additionally, since the costs associated with complying with the final rule vary across financial institutions, those that are already offering these protections may benefit if competitors need to raise prices or reduce the quality of their products to cover the costs associated with extending these protections to consumers. However, those financial institutions that currently offer these protections on a voluntary basis will lose the option of ceasing to offer such protections to consumers in the future.

4. Requiring the Posting and Provision of Prepaid Account Agreements

Section 1005.19 of the final rule requires issuers to submit agreements governing prepaid accounts that they

[840] One program manager told the Bureau that it was unable to reclaim provisional credit extended in roughly 65 percent of the cases in which a merchant could provide proof that the EFT was authorized.

[841] All U.S. Visa prepaid issuing financial institutions and their program managers have been required to report into Visa's Prepaid Clearinghouse Service since June 2015. *See* Press Release, Visa Inc., *Visa Prepaid Clearinghouse Service Creates Centralized Database to Better Detect and Prevent Fraud Schemes on Prepaid Cards* (Feb. 27, 2014), *available at http://investor.visa.com/news/news-details/2014/Visa-Enhances-Industry-Fraud-Detection-on-Prepaid-Cards/default.aspx.* While the Bureau supports industry efforts to reduce fraud, the Bureau cautions that any entities that maintain or furnish watch lists, screening programs, or other similar services should consider whether and how the Fair Credit Reporting Act or other statutes may apply to its activities.

offer to the Bureau on a rolling basis. The Bureau intends to post these agreements on a publicly available Web site established and maintained by the Bureau in the future.[842] Issuers are not required to submit agreements to the Bureau if they qualify for one of two exceptions: (1) A de minimis exception for those issuers that had fewer than 3,000 open prepaid accounts as of the last day of the calendar quarter; [843] and (2) a product testing exception for those prepaid accounts offered to a limited group of consumers and otherwise meeting the requirements specified in § 1005.19(b)(5). Under § 1005.19(c), issuers also must post and maintain on their publicly available Web site any prepaid account agreements that the issuer offers to the general public (unless the issuer qualifies for the de minimis or product testing exceptions); this requirement does not apply to accounts, such as payroll card accounts or government benefit accounts, that are not offered to the general public.

In addition to these requirements, § 1009.19(d) requires that issuers provide access to individual account agreements to any consumer holding an open prepaid account, unless such agreements are required to be posted on the issuer's Web site pursuant to § 1005.19(c). An issuer may fulfill this requirement by posting and maintaining the consumer's agreement on its Web site or by promptly providing a copy of the agreement in response to a consumer's request.[844]

a. Benefits and Costs to Consumers

The final rule will generally increase the amount of information available to consumers regarding prepaid accounts both when shopping for a prepaid account and after acquisition of the prepaid account. Having online access to account agreements (both on the Bureau's Web site and on the issuer's Web site) will enable suitably motivated consumers to more easily compare the fees, as well as other terms and conditions, of various prepaid account products. Entities may use the information in the repository to develop more competitive products or extract information that they could sell or otherwise provide to consumers or third parties, for example in the form of tools that consumer can use to compare the terms of different prepaid accounts. As discussed in more detail above with respect to the final rule's pre-acquisition disclosure requirements, consumers benefit from having more information about available products and their terms because it helps them to make better choices and because it can lead to additional competition in the market for prepaid accounts. Increased competition could benefit consumers through lower prices, higher quality products, or both.

For those consumers who have already acquired a prepaid account, access to their own account's terms and conditions, regardless of whether the account is currently offered to the public, could be helpful should a question arise regarding the terms of the account. Given that some accounts are held for a period of years,[845] it is possible that consumers might misplace the initial disclosures provided with their prepaid accounts. Having the terms and conditions available post-acquisition could be helpful if a consumer wishes to assert an error or if other questions arise regarding the account.

Actual and potential consumer holders of prepaid accounts could also benefit from the requirement that issuers provide prepaid account agreements to the Bureau on a rolling basis. Provision of agreements to the Bureau will facilitate the Bureau's market monitoring, helping to ensure that prepaid accounts comply with regulatory requirements. Knowing that agreements must be provided to the Bureau and posted on the issuer's Web site could serve as an impetus for prepaid account issuers to ensure that they are complying with applicable regulatory requirements because public posting will make it more likely that agreement terms or disclosures that do not comply with such requirements are discovered.

b. Benefits and Costs to Covered Persons

Under the final rule, issuers of prepaid accounts offered to the public that do not qualify for the de minimis or testing exceptions will be required to establish procedures that ensure they provide agreements to the Bureau when required by the final rule and notify the Bureau when they withdraw an agreement. In addition, issuers will need to ensure that any submission includes the elements described in § 1005.19(b)(1). The Bureau expects that the burden imposed by this reporting requirement will be minimal, as issuers are required to maintain current account agreements for other purposes.

In addition, issuers of prepaid accounts that are offered to the public are also required to post prepaid account agreements on their publicly available Web site. Many issuers of prepaid accounts currently make account agreements available on their Web sites, but the final rule requires that issuers that do not qualify for the de minimis exception post and maintain any agreements currently offered to the public that do not qualify for the product testing exception. Therefore, issuers will need to ensure that their Web sites include current agreements. The Bureau anticipates that some issuers will incur costs to make required agreements publicly available on their Web sites.

The final rule also requires that all issuers provide consumers with access to the agreement for their own prepaid account, unless such agreements are required to be posted on the issuer's Web site pursuant to § 1005.19(c). For those issuers choosing to comply with this requirement by posting the relevant agreements online, the issuer must ensure that its Web site includes all agreements for open accounts and ensure that the agreements posted online are complete and up-to-date should product offerings evolve. For those issuers choosing to comply with the requirement by mailing a paper copy of the agreement or otherwise making a copy of the agreement available in response to a consumer request, the cost associated with this provision will depend on the frequency with which consumers make requests for such information. Costs associated with fulfilling such requests could consist of customer service agent time spent receiving and responding to a request made via telephone, as well as postage or other materials should the issuer respond to the inquiry with a paper copy of the agreement. Those issuers choosing to comply in this manner may also incur implementation costs associated with training customer service agents to handle such requests and/or changing existing IVR menu options.

Greater availability of information about the terms of available prepaid accounts could increase competition by making it easier for consumers to

[842] Only those agreements offered as of the last business day of the preceding calendar quarter that have not been previously submitted as well as those agreements that have been amended must be submitted. § 1005.19 (b)(1)(ii) and (iii). In addition, the issuer must notify the Bureau of any prepaid account agreement previously submitted that the issuer is withdrawing. § 1005.19 (b)(1)(iv).

[843] § 1005.19(b)(4).

[844] If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer must provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer is required to send to the consumer or otherwise make the copy of the consumer's agreement available no later than five business days after the issuer receives the consumer's request.

[845] *See, e.g.,* 2012 FRB Kansas City Study at 47 chart 4.1 (finding mean life spans of multiple years for some categories of prepaid accounts).

compare account costs and features across different prepaid accounts. This reduction in consumer search costs could result in lower prices, which could reduce profits for issuers of prepaid accounts.

The proposed rule would have required agreements for all prepaid accounts that do not qualify for the product testing exception, including payroll card accounts and other accounts not offered to the general public, to be posted to the issuer's publicly available Web site. Several commenters noted that issuers of payroll card accounts in particular may have different account agreements for potentially thousands of different employers, and that the burden of maintaining a public Web site making such a large number of agreements available could be especially high. Because the final rule does not require issuers to post publicly available versions of agreements for prepaid accounts that are not offered to the general public, issuers will not bear the burden of making such agreements available on their Web sites, while consumers will still have access to their own agreements pursuant to § 1009.19(d), and such agreements will be available to the public through the Bureau's future Web site.

5. Requirements Applicable to Covered Separate Credit Features

The final rule provides new protections for consumers with respect to certain overdraft credit features offered in connection with prepaid accounts. As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliate, or its business partner (except as described in new § 1026.61(a)(4)). New § 1026.61(b) generally requires that such overdraft credit features be structured as separate sub-accounts or accounts, distinct from the prepaid asset account, to facilitate transparency and compliance with various Regulation Z requirements. Under final § 1026.2(a)(15)(i), a prepaid card is a credit card under Regulation Z when it is a ''hybrid prepaid-credit card.'' New § 1026.61(a)(2)(i) provides that a prepaid card is a ''hybrid prepaid-credit card'' with respect to a separate credit feature if the card meets the following two conditions: (1) The card can be used from time to time to access credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) the separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner. A ''covered separate credit feature'' is defined in new § 1026.61(a)(2) to mean a separate credit feature accessible by a hybrid prepaid-credit card.

Certain provisions in Regulation Z apply to ''creditors'' and other provisions apply to ''card issuers.'' Under the final rule, a person that offers a covered separate credit feature accessible by a hybrid prepaid-credit card is both a ''card issuer'' and a ''creditor'' under Regulation Z. As discussed in the section-by-section analysis of § 1026.2(a)(20) above, the Bureau anticipates that most covered separate credit features accessible by hybrid prepaid-credit cards will meet the definition of ''open-end credit'' and that credit will not be home-secured. A card issuer of a hybrid prepaid-credit card that extends open-end credit (and thus charges a finance charge for the credit) that is not home-secured in connection with the covered separate credit feature is a ''creditor'' for purposes of the rules governing open-end (not home-secured) credit plans in subpart B in connection with the covered separate credit feature. The card issuer also must comply with the credit card rules set forth in subparts B and G with respect to the covered separate credit feature and the hybrid prepaid-credit card.[846] In addition, the final rule includes modifications to Regulation E that provide new consumer protections for prepaid accounts accessible by a hybrid prepaid-credit card. These changes subject providers to a number of new requirements, which are summarized below.

The final rule excludes prepaid cards from coverage as credit cards under Regulation Z when they access certain specified types of credit. First, new § 1026.61(a)(2)(ii) provides that a prepaid card is not a hybrid prepaid-credit card when it accesses a ''non-covered separate credit feature.'' A non-covered separate credit feature is a separate credit feature that either: (1) Cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Although prepaid cards that access non-covered separate credit features are not considered hybrid prepaid-credit cards, the non-covered separate credit feature is often subject to Regulation Z in its own right, depending on its terms and conditions. Second, under new § 1026.61(a)(4), a prepaid card also is not a credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees. Under the final rule, this incidental credit is generally subject to Regulation E, instead of Regulation Z.

By generally classifying prepaid cards that access covered separate credit features as credit cards, the final rule makes existing credit card provisions in Regulation Z that restrict the structure and types of fees that providers may impose applicable to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. As discussed above, the Bureau anticipates that most covered separate credit features will meet the definition of ''open-end credit'' and these credit plans will not be home-secured. Accordingly, the provisions applicable to open-end consumer credit plans are of particular importance in considering the potential impacts of the final rule. For example, existing Regulation Z § 1026.52(a) generally prohibits card issuers from imposing fees in excess of 25 percent of the credit limit during the first year following the opening of a credit card account under an open-end (not home-secured) consumer credit plan. Under the final rule, this restriction applies to credit-related fees assessed in connection with covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. In addition, § 1026.52(b) limits penalty fees, and § 1026.56 prohibits over-the-limit fees unless the consumer consents by opting-in to such fees, with respect to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans.

The final rule also modifies Regulation E to specify in § 1005.18(g)(1) that a financial institution generally must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have

[846] As discussed in more detail above in the section-by-section analysis of § 1026.2(a)(17), a person who offers a covered separate credit feature accessible by a hybrid prepaid-credit card and does not impose a finance charge is not offering open-end credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such a person would still be subject to certain Regulation Z requirements under certain circumstances.

such a credit feature. The final rule permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. However, § 1005.18(g)(1) prohibits a financial institution from charging a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card relative to the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature.

In addition to these restrictions on fee structure and type, certain newly applicable provisions of Regulations E and Z restrict how a financial institution may obtain repayment of a balance incurred on a covered separate credit feature accessible by a hybrid prepaid-credit card. The final rule, in § 1005.10(e)(1), applies the EFTA compulsory use prohibition to covered separate credit features accessible by a hybrid prepaid-credit card. Accordingly, creditors are prohibited from requiring the electronic repayment of credit extended through a covered separate credit feature accessible by a hybrid prepaid-credit card on a preauthorized, recurring basis.[847] In particular, creditors are required to offer prepaid account consumers an alternative to the automatic repayment of credit balances, such as a consumer-initiated transfer of funds from an asset account to the credit account. While consumers may voluntarily agree to an automatic repayment plan for their convenience, such voluntary plans are subject to certain restrictions.

In particular, the final rule's provisions ensure a minimum period of time between when a debt is incurred and when the debt is due to be repaid for covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans. Specifically, with regard to such plans, the final rule requires card issuers to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.[848] In addition to requiring card issuers to obtain the consumer's written, signed agreement to any automatic repayment with respect to a deposit account held with the card issuer, Regulation Z § 1026.12(d) prevents card issuers from deducting a payment more frequently than once per calendar month under any such automatic repayment plan.

Pursuant to Regulation Z as amended by the final rule, card issuers offering hybrid prepaid-credit cards must comply with a number of requirements governing solicitation and application. During the 30 days following prepaid account registration, § 1026.61(c) prohibits a card issuer from opening a covered separate credit feature accessible by a hybrid prepaid-credit card, providing a solicitation or application to open such a credit feature, or allowing an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card. Currently, § 1026.12(a)(1) prohibits unsolicited issuance of credit cards. Under the final rule, § 1026.12(a)(1) applies to hybrid prepaid-credit cards, and a card issuer may only attach a covered separate credit feature to a prepaid card in response to an oral or written request or application for the card. Any credit card applications or solicitations offered to consumers for a covered separate credit feature must comply with the requirements specified in § 1026.60. In evaluating an application, a card issuer is required by current § 1026.51(a) to establish and maintain reasonable written policies and procedures to consider the consumer's income or assets and current obligations in evaluating the consumer's ability to make the required minimum periodic payments under the terms of the plan. The final rule applies this ability to pay requirement to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans.

Current Regulation Z also includes a number of additional disclosure requirements that the final rule applies to covered separate credit features accessible by a hybrid prepaid-credit card. Before the consumer makes a transaction using a covered separate credit feature accessible by a hybrid prepaid-credit card, creditors are required to provide the account-opening disclosures required by § 1026.6(b). Moreover, the final rule requires creditors to comply with § 1026.7 and provide a periodic statement for each billing cycle in which the account has a debit or credit balance of more than $1 or in which a finance charge has been imposed. This periodic statement requirement supplements the prepaid account periodic statement that is required by Regulation E.[849] In addition, creditors generally are obligated to provide the disclosures described in § 1026.9(c)(2) when changing the terms of the covered separate credit feature.

Because of statutory differences, transactions performed using a covered separate credit feature accessible by a hybrid prepaid-credit card may, in some circumstances, be afforded liability and error resolution protections that exceed those applicable to transactions exclusively involving funds drawn from the prepaid asset account. For those credit card transactions subject to Regulation Z's liability limitations, current § 1026.12(b) restricts cardholder liability to $50 in the event of unauthorized use. By contrast, Regulation E, in current § 1005.6(b), permits a financial institution to hold a consumer liable in the event of unauthorized use for up to $500 if the consumer does not report the loss in a timely manner.[850] In addition, current Regulation Z's definition of billing error is more expansive than Regulation E's definition of error and includes an extension of credit for property or services not accepted by the consumer (or the consumer's designee) or not delivered as agreed. *Compare* § 1026.13(a), *with* § 1005.11(a).

Because Regulation Z and Regulation E provide for different liability limitations and error resolution procedures, the final rule specifies in Regulation E § 1026.12(a)(1)(iv)(B) and Regulation Z § 1026.13(i)(2) which limitations and error resolution procedures apply to transactions made with a hybrid prepaid-credit card.[851] For those transactions that exclusively draw on a covered separate credit

[847] However, a creditor may offer an incentive to consumers for agreeing to repayment by preauthorized, recurring EFTs.

[848] See the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

[849] Instead of providing a prepaid account periodic statement as required under Regulation E, final Regulation E § 1005.18(c) provides that a financial institution is not required to provide periodic statements if it makes available to the consumer balance information by telephone, 12 months of electronic account transaction history, and upon the consumer's request, 24 months of written account transaction history. As mentioned above, § 1026.5(b)(2) specifies that for credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.

[850] Irrespective of whether a transaction is subject to a liability limitation specified by Regulation E or Z, payment card networks' ''zero liability'' policies may further limit consumers' liability for unauthorized transactions.

[851] See also existing Regulation Z § 1026.12(g), which cross-references Regulation E § 1005.12(a), for guidance on whether Regulation Z or Regulation E applies regarding issuance and liability for unauthorized use, in instances involving both credit and EFT aspects.

feature, the final rule specifies that Regulation Z's liability limitations and error resolution procedures apply. For those transactions that solely debit a prepaid asset account and do not draw on a covered separate credit feature, the final rule specifies that Regulation E's liability limitations and error resolution procedures apply. Finally, for those transactions that both debit a prepaid asset account and draw on a covered separate credit feature, Regulation E's liability limitations and error resolution procedures generally apply, with the exception of the error resolution provisions of § 1026.13(d) and (g) of Regulation Z, which apply to the credit portion of the transaction.

The baseline for the Bureau's consideration of the benefits, costs, and impacts arising from the final rule is the current market for prepaid accounts. However, to inform the rulemaking, the Bureau also considers the potential future impacts of the final rule by comparing the likely future development of the market for these products to how the market might have evolved in the absence of the final rule. Consistent with the baseline used for discussion of the other final rule provisions, this baseline incorporates both the existing regulatory structure and economic attributes of the relevant market. Most notably, this baseline includes underlying consumer preferences and the current set of incumbent firms and potential entrants.

Although a number of financial institutions offer prepaid accounts to consumers, the vast majority do not currently offer overdraft services in connection with these accounts and thus their current products are not directly impacted by the various credit provisions of the final rule.[852] However, one of the largest prepaid account program managers offers an overdraft service in connection with its prepaid accounts, which include both GPR cards and payroll card accounts. The Bureau's understanding is that the credit limits extended to consumers using these overdraft services are typically smaller than credit limits offered by credit card accounts, and consumers typically pay a per transaction fee, which does not vary with the size of the overdraft, to use the feature.[853] The Bureau understands that providers voluntarily choose to limit the number of fees that a consumer may incur during a specified period, and providers may waive fees for consumers who repay the overdraft within 24 hours or who overdraft by a de minimis amount. Further, the Bureau understands that providers require consumers to opt-in to the service and only offer the service to consumers who meet certain eligibility criteria.

Financial institutions currently offering prepaid accounts subject to a negative balance fee that wish to continue to charge such fees will need to restructure these accounts to comply with the final rule's credit provisions. There is little evidence regarding how common such fees are in practice. In the Study of Prepaid Account Agreements conducted in connection with the proposed rule, the Bureau found that roughly 7 percent of reviewed agreements noted a negative balance fee in their terms and conditions.[854] In response to the proposal, one credit union league commenter stated that 91 percent of member credit union survey respondents stated that they do not charge a sustained negative balance fee. One office of a State Attorney General commented that one-third of 38 employers it surveyed used payroll card programs that included overdraft or negative balance fees, though it is unclear how many distinct prepaid account providers this figure represents. Rather than trigger coverage under the final rule's credit provisions, the Bureau believes that most financial institutions that currently reserve the right to impose negative balance fees will no longer do so.

Although there are few prepaid providers currently offering overdraft services, the final rule's restrictions will affect a significant portion of the fee-based revenue generated by those prepaid programs offering overdraft. According to the office of a State Attorney General, overdraft fees and declined balance fees may comprise a substantial portion of the fee-based revenue for financial institutions offering payroll card programs, stating that, in its survey of 38 employers' payroll card programs, overdraft fees comprised over 40 percent of the fees assessed by those vendors that charge them.

Consumers regularly using overdraft services offered in connection with prepaid accounts represent only a small minority of all prepaid account consumers. The Bureau understands that the small number of prepaid account providers that currently offer overdraft services condition consumer eligibility on receipt of a regularly occurring direct deposit exceeding a predetermined threshold. Additionally, consumers must affirmatively choose to activate, or opt-in to, the service. Therefore, only those consumers who both meet the eligibility requirements and affirmatively choose to use the service are able to overdraft. A reasonable estimate of current market activity suggests that less than 1 percent of prepaid accountholders regularly use overdraft features offered in connection with their prepaid accounts.[855] Thus, the benefits, costs, and impacts arising from the final rule's overdraft credit provisions will have a limited effect on prepaid account consumers generally, as described more fully below, even though those consumers currently relying on overdraft services may be affected by changed product features, altered eligibility requirements, or loss of access.[856]

[852] One source suggests that government benefit card program revenue from overdraft fees "virtually disappeared" in 2014. 2015 FRB Government Prepaid Cards Report at 1. In 2015, overdraft fees accounted for less than 0.1 percent of total cardholder fee revenue for government benefit card programs. 2016 FRB Government Prepaid Cards Report at 8.

[853] *See, e.g.,* 2012 NetSpend WSJ Article.

[854] Study of Prepaid Account Agreements at 25–26. This percentage excludes those agreements designated as offering opt-in overdraft services (24 of 325 reviewed agreements). Including those agreements with formal opt-in overdraft services, roughly 10 percent noted a negative balance fee. *Id.* at 26.

[855] Although NetSpend is a significant prepaid account program manager and offers overdraft services in connection with some of its GPR and payroll card products, a news article reported that only 6 percent of NetSpend's customers regularly use overdraft. 2012 NetSpend WSJ Article. In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015, and 49 percent of those active cards had direct deposit. Total Sys. Serv., Inc., Quarterly Report (Form 10–Q), at 27, *available at http://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d97203d10q.htm* (for the quarterly period ended Sept. 30, 2015).

Focusing attention only on GPR card and payroll card accounts, which excludes other prepaid account products and therefore underestimates the market size, one projection estimated that there would be 22.4 million active prepaid debit and payroll cards in the United States as of 2014. Aite Group LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity,* at 13 fig.5 (Nov. 2012). Recent reports are largely consistent with this projection. One recent report estimated that there were 6.0 million active payroll cards as of 2014. Aite Group LLC, *Checkmate: U.S. Payroll Card Programs Trump Paper Checks,* at 8 fig.4 (Apr. 2015). A second recent study estimated that there were 16.1 million GPR cards in circulation. Bob Rohr, First Annapolis, *Chase Enhances Competitive Positioning of Liquid,* Navigator: Thought Leadership on the Global Payments Industry, at 5 fig.2 (Sept. 2015), *available at http://www.firstannapolis.com/wp-content/uploads/2015/09/September-2015_First-Annapolis-Navigator1.pdf.*

[856] For example, changes in pricing structure or other protections may make covered separate credit features accessible by a hybrid prepaid-credit card either more or less desirable to a consumer relative to current overdraft services offered in connection with prepaid accounts. It is also possible that changes in the profitability of offering this product could lead those few current providers to change business models and, in so doing, potentially impact both those consumers using covered

In response to the proposal, a few industry commenters stated that the Bureau's treatment of overdraft services as credit subject to Regulation Z did not appear to be supported by any data, and they cited a lack of Bureau complaint data regarding overdraft on prepaid cards. Because relatively few consumers use overdraft services in connection with their prepaid accounts, the Bureau does not consider the volume of complaints to be informative regarding the benefits and costs of the final rule's treatment of overdraft services as credit. Further, because prepaid account providers offer overdraft services to consumers in a relatively uniform manner, there is neither an accessible counterfactual nor a natural experiment available that would enable the Bureau to evaluate alternative credit regulatory regimes.

Industry commenters also suggested that the Bureau's consumer testing did not support the Bureau's approach to regulating overdraft credit features offered in connection with prepaid accounts, stating that the testing supported a disclosure-based approach. The Bureau notes that, while consumer testing may inform the composition of a disclosure, it was not designed to evaluate behavioral responses to alternative credit regulatory regimes and, in any event, cannot capture strategic responses by industry to new regulatory requirements.

a. Benefits and Costs to Consumers

The Bureau believes that the final rule's requirements concerning disclosures, liability limitations, and error resolution procedures for covered separate credit features accessible by a hybrid prepaid-credit card provide a number of consumer benefits, aligning with those conferred by Congress on credit card accountholders under TILA. In some cases, the final rule strengthens consumer protections relative to those protections offered by current industry practices. In other cases, the final rule codifies requirements that, though largely consistent with current practices, are not mandatory under Federal law.

The Bureau believes that the final rule's requirements concerning credit-related disclosures, liability limitations, and error resolution procedures will have a minimal impact on which consumers have access to covered separate credit features accessible by a hybrid prepaid-credit card and the amount of credit offered. Although the credit-related disclosures provided to consumers seeking to add a covered separate credit feature accessible by a hybrid prepaid-credit card may motivate some consumers to choose not to apply for such a feature, the incremental cost associated with producing and distributing such disclosures, considering that providers must give various other disclosures to consumers acquiring a prepaid account, is modest. In addition, providers may further mitigate costs by obtaining E-Sign consent from the consumer and delivering subsequent credit-related disclosures in electronic form. The credit limits that providers currently offer consumers in connection with overdraft services offered in connection with prepaid accounts already serve to limit liability, so the additional requirements with respect to error resolution and liability limitations for covered separate features accessible by a hybrid prepaid-credit card should not prompt providers to engage in additional screening behaviors. These costs should not meaningfully affect which consumers are given the option to add a covered separate credit feature or the cost of that credit.

In contrast, certain other credit-related provisions of the final rule, including provisions that restrict the type and structure of certain fees and the timing of repayment, will likely have a significant impact on which consumers have access to covered separate credit features accessible by a hybrid prepaid-credit card, the amount of credit offered, and the payment terms associated with the credit. As will be discussed below, these impacts likely will occur because providers choosing to offer covered separate credit features accessible by a hybrid prepaid-credit card likely will modify their current fee structures to comply with the rule. In addition, providers likely will change eligibility criteria for covered separate credit features accessible by a hybrid prepaid-credit card due to the increased credit risk resulting from the final rule's provisions addressing the timing of repayment.

The benefits, costs, and impacts arising from the final rule's credit-related provisions likely will vary with the consumer's current intensity and intentionality of use of overdraft services. As described above, most consumers do not currently use overdraft services in connection with their prepaid accounts. Consumers use prepaid accounts for varied reasons. Some consumers rely on these accounts to aid in controlling spending or to facilitate budgeting.[857] Such consumers are unlikely to choose to use covered separate credit features accessible by a hybrid prepaid-credit card. By contrast, consumers with different motivations for using prepaid accounts may desire access to covered separate credit features and may rely on such features provided they meet the program's eligibility requirements.[858]

Consumers who currently use prepaid accounts that offer overdraft services will experience the impacts of the final rule's credit-related provisions most directly. Some consumers who currently knowingly use overdraft services in connection with their prepaid accounts rely on such services only occasionally while others choose to rely on such services as a source of credit with regularity. The Bureau received extensive consumer comment in response to the proposed rule, including comments that were coordinated as part of a letter-writing campaign organized by a program manager that offers overdraft services in connection with some of its prepaid account products. These comments stated, among other things, that consumers benefit from having access to overdraft services to make emergency or otherwise unexpected purchases. Some consumer commenters stated that the overdraft services offered by their prepaid provider were cheaper and less risky than alternatives, such as payday loans. In addition to this intentional reliance on overdraft services as source of credit, eligible consumers who have opted-in to an overdraft service may also unintentionally overdraw their prepaid accounts if they do not monitor their prepaid account balances.[859]

The Bureau expects that the final rule's restrictions on certain fees potentially charged to covered separate credit features accessible by a hybrid prepaid-credit card will incentivize, and in some cases require, those providers offering covered separate credit features accessible by a hybrid prepaid-credit card to change their pricing structures.

separate credit features accessible by a hybrid prepaid-credit card as well as prepaid accountholders not using such features.

[857] Several studies, as well as the Bureau's focus group research, indicate that some consumers view spending control or budgeting as a benefit offered by prepaid accounts. *See, e.g.*, 2014 Pew Survey; The Pew Charitable Trusts, *Key Focus Group Findings on Prepaid Debit Cards* (Apr. 2012), *available at http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/FSP1201420Pew20DebitCardsR10A4512pdf.pdf*; *see also* ICF Report I at 5.

[858] These requirements generally include receipt of a regularly occurring direct deposit in excess of a specified threshold.

[859] Some providers currently mitigate this possibility by requiring overdraft users to sign up for text or email alerts or by other mechanisms, even though they are not required by Federal law to do so.

Most notably, the final rule subjects most fees charged during the first year following the opening of a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan, other than periodic interest rates, to a cap of 25 percent of the initial credit line.[860] Currently, consumers who rely on an overdraft service offered in connection with their prepaid account generally pay a per transaction fee, which does not vary with the size of the overdraft, to use the feature.[861] This is similar to the fee structure typically used for checking account overdraft products, and these fees can be high relative to the amount of credit extended. Therefore, the final rule's restriction on the amount of fees that may be collected in the first year will be a binding constraint on the card issuer for all but infrequent users of covered separate credit features accessible by a hybrid prepaid-credit card. Considering the current pricing structure of prepaid account programs that offer overdraft services, the final rule's requirement could translate directly into lower transaction-based fees, at least during the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card, for consumers using such features.[862]

Because this provision restricts the level of certain fees and not others, it is likely that providers that currently offer overdraft services in connection with their prepaid accounts will change prepaid account pricing structures and raise fees not subject to the restriction (or create new fees).[863] Issuers of hybrid prepaid-credit cards could respond to the final rule's fee provisions by either raising fees charged in connection with the prepaid account that do not relate to the covered separate credit feature for all prepaid accountholders, assessing an application fee for the covered separate credit feature to those prepaid accountholders who apply for such credit, or shifting to a pricing structure based on a periodic interest rate.[864] However, each of these options is likely to decrease demand relative to the present for either prepaid accounts or covered separate credit features. The quantity of prepaid accounts demanded from providers that offer covered separate credit features accessible by a hybrid prepaid-credit card could decrease if these providers respond to the final rule's credit pricing restrictions by generally raising prepaid account fees that are unrelated to the covered separate credit feature.[865] Alternatively, if providers respond by imposing or raising an application fee, the number of consumers demanding credit could decrease. This could occur because an up-front application fee is more salient for consumers than the current add-on pricing model, which relies on back-end transaction-based fees, or because consumers are less likely to have available funds to pay a larger, up-front fee. Similarly, shifting to a pricing structure based on a periodic interest rate would require that card issuers disclose to consumers a comparatively large, and therefore potentially salient, interest rate (if current credit limits and repayment intervals are retained). It is also possible that providers may choose not to offer covered separate credit features accessible by a hybrid prepaid-credit card or to offer these products to a more select set of consumers, relative to the baseline.

Provider responses to the final rule's provisions may cause those consumers who use overdraft services infrequently to pay higher prices for the covered separate credit feature or to choose to use less credit. For example, if providers respond to the pricing restrictions by charging consumers a high application fee to access credit, those consumers who anticipate occasional use may choose not to apply for credit because they may not be willing to pay a salient and transparent up-front fee (unless they highly value the possibility of having this credit readily available). This could benefit some consumers by preventing them from inadvertently accessing a credit feature (after having opted-in) and incurring the attendant fees. However, if an unanticipated need for funds were to arise, some of these consumers may need to adapt their household budgets in other ways, which may include relying on other credit sources that are potentially higher cost or less convenient.[866] If a consumer needs to rely on another credit source, managing a relationship with an additional financial services provider could also result in efficiency losses, and the consumer may find understanding a second provider's terms and conditions and tracking account balances and due dates more costly than relying on one provider for both the prepaid account and credit feature.

As noted above, some consumers who frequently use overdraft services may not have developed account management skills.[867] Other such consumers may accurately anticipate their use of overdraft services but still prefer to use overdraft because they perceive overdraft services to be their best available source of short-term credit. As described above, providers will not be able to maintain the current

[860] This cap already applies to credit card accounts under an open-end (not home-secured) consumer credit plan pursuant to the CARD Act.

[861] For example, consumers may pay $15 per overdrawn transaction to access a credit line of $100. *See, e.g.,* 2012 NetSpend WSJ Article. Although providers may limit the number of fees that a consumer may incur during a specified period or opt not to charge for overdrafts that cause an account to go negative by a de minimis amount, this choice is voluntary.

[862] It is possible that some providers could choose to issue a change-in-terms notice to consumers after the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card and restore the present fee structure for consumers who have held their card for at least one year. However, the Bureau believes that such an approach is not likely to be adopted because: (1) A provider engaging in such a strategy risks losing non-overdraft related fee revenue, which may be substantial, should consumers respond to such a strategy by choosing a different product; and (2) a provider would potentially bear additional administrative costs associated with maintaining multiple fee structures within the same program. *See* Fumiko Hayashi & Emily Cuddy, *Recurrent Overdrafts: A Deliberate Decision by Some Prepaid Cardholders?,* at 32 tbl.4 (Fed. Reserve Bank of Kan. City, Working Paper No. RWP 14–08, 2015), *available at https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14–08.pdf* (showing that non-overdraft related fees comprise well over half of fees collected from overdrafters on average for one provider).

[863] If providers are profit-maximizing firms, their current choice not to offer an alternative fee structure compliant with the final rule's provisions suggests that their profits would decrease under such an alternative fee arrangement given the present industry structure.

[864] Like an application fee, periodic interest would not be subject to the restriction.

[865] Because the terms and conditions for transactions accessing the prepaid account cannot vary based on whether the prepaid accountholder accepts a covered separate credit feature accessible by a hybrid prepaid-credit card, providers are unable to target an increased prepaid account fee solely on those prepaid accountholders who accept the credit feature. Therefore, providers likely will target fees that are positively correlated with a consumer's demand for the covered separate credit feature, such as an application fee, for potential increases. This follows because a prepaid accountholder who desires a covered separate credit feature is less likely to switch to a substitute product in response to a fee increase than a prepaid accountholder who does not desire a covered separate credit feature (and therefore has more available substitute prepaid products from which to choose).

[866] Consumers may not have the funds to pay an application fee at the point when they need credit.

The fees charged currently for overdraft services in connection with prepaid accounts, which generally range from $15 to $35 per transaction, are typically lower than checking account overdraft fees. According to data obtained from one research firm, the Bureau found that the median overdraft fee among the 33 institutions monitored by the research firm was $34 in 2012, and the median overdraft fee across nearly 800 smaller banks and credit unions was $30 in 2012. CFPB Overdraft White Paper at 52.

[867] According to one study, 41 percent of prepaid users (who currently or previously had a checking account) had either closed a checking account themselves or had an account closed by an institution because of overdraft or bounced check fees. 2014 Pew Survey at 8.

per transaction fee structure for those consumers who use the covered separate credit feature accessible by a hybrid prepaid-credit card more than occasionally in the first year following account opening (assuming that the credit limit remains unchanged).[868] Providers may respond to the final rule's fee restrictions by raising other prepaid account fees not related to the covered separate credit feature or by relying on an up-front fee, such as an application fee, or periodic interest rate. However, consumers may find the payment of an up-front fee or the disclosure of a periodic interest rate highly salient. Many prepaid accountholders may not be willing to pay a one-time application fee or periodic interest rate of the magnitude that providers would need to charge to rationalize offering the credit feature. Given this response, the profit generated from an up-front fee or a periodic interest rate may not be sufficient to rationalize offering a covered separate credit feature.

Consumers who currently use overdraft features frequently will pay lower fees to access covered separate credit features under the final rule to the extent that they are able to access such services and choose to do so despite a salient up-front fee.[869] Furthermore, those consumers choosing to obtain a covered separate credit feature accessible by a hybrid prepaid-credit card despite a high up-front fee will have increased incentive to utilize it once purchased because the marginal cost associated with accessing the credit will be lower than under the current per transaction pricing structure.

The final rule also likely will affect which prepaid account consumers are eligible for covered separate credit features accessible by a hybrid prepaid-credit card. The final rule requires that card issuers establish and maintain reasonable written policies and procedures for considering the consumer's ability to make required minimum payments in deciding whether to offer the consumer a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. Furthermore, to attempt to mitigate the effects on profitability of the additional credit risk borne in complying with the final rule's credit-related provisions, it is likely that providers offering covered separate credit features accessible by a hybrid prepaid-credit card (or considering doing so) will alter the eligibility criteria. As a result, some consumers who are currently eligible (or would otherwise become eligible in the future) may lose (or not obtain) eligibility, and these consumers would either need to decrease consumption or rely upon alternative (and potentially higher cost) fund sources.

Other provisions of the final rule provide consumers with additional control over their funds by ensuring that there is a minimum period of time between when debts are incurred and when they are due to be repaid. The final rule requires that for covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans, card issuers adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date.[870] Therefore, card issuers may not require that debts be repaid immediately from the next deposit into the consumer's asset account. In addition, the Regulation Z prohibition on offsets gives consumers discretion to decide whether to use funds deposited into their prepaid accounts to pay off debts incurred in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card or for another use that they deem a higher priority. Although this no-offset provision increases the onus on the consumer to budget for the debt and to remember to pay it to avoid additional fees or other adverse effects, consumers would still have the option of setting up an automatic payment around the fixed monthly payment due date to avoid this result if the creditor chooses to offer this capability. Moreover, under the final rule, a card issuer may sweep funds only periodically (and no more than once per calendar month) from the prepaid asset account to repay a debt, so long as it has the consumer's written authorization to do so. This restriction on the frequency of sweeps and the required delay that results from the requirement relating to the timing of periodic statements allow consumers to benefit from additional control of their funds.

These restrictions on the ability of a card issuer to apply prepaid account funds to outstanding debts incurred through the use of the covered separate credit feature will increase the credit risk associated with offering covered separate credit features accessible by a hybrid prepaid-credit card and, all else equal, will decrease their profitability. To compensate for this risk, providers may respond by offering less credit to consumers, charging higher fees for credit extended, or increasing collections activity.[871] One industry commenter noted that the cost for consumers to access credit will increase if it becomes more difficult for creditors to recover debts and stated that providers may resort to the use of debt collectors if they are unable to exercise offset rights. The commenter predicted that the Bureau's proposal would increase the cost of borrowing, and consumers would be more likely to have delinquent accounts. The Bureau recognizes that the cost for some consumers to access this credit may increase, but the protections required by the final rule decrease the risk faced by consumers in using these features. Another industry commenter stated that a decision to remove or reduce an overdraft credit line could have an adverse impact on a consumer's credit score should creditors share consumer credit limits and utilization with reporting agencies. The Bureau's understanding is that providers do not currently share credit limits or utilization with reporting agencies for overdraft services, and the Bureau notes that if creditors were to decide to share consumer credit limits and utilization with reporting agencies, the impact on a consumer's credit score of such reporting may be positive as well as negative, depending on the consumer's utilization and payment behavior.

Other provisions of the final rule provide potential benefits to consumers. The final rule requires providers offering covered separate credit features accessible by a hybrid prepaid-credit card to adhere to certain requirements that restrict when they may offer these features to consumers. By temporally separating the option to add a covered separate credit feature from the choice to acquire a prepaid account, these restrictions provide the prepaid accountholder with additional transparency and ensure that the consumer has the opportunity to become informed and consider options

[868] As discussed above, consumers who opt-in to overdraft services generally pay a flat fee per overdraft. At present, there is generally no fee associated with opting-in to overdraft services offered in connection with a prepaid account.

[869] As described above, those consumers who are no longer able to access such services will potentially pay higher fees if they choose to rely on other types of consumer credit.

[870] See the section-by-section analyses of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

[871] The final rule limits the magnitude of certain fees charged in connection with covered separate credit features accessible by a hybrid prepaid-credit card so any change in fee levels must comply with these restrictions.

when applying for credit.[872] Periodic statements and other disclosures required by the final rule, as well as the requirement that the covered separate credit feature be structured as a separate account or sub-account, will aid transparency and better enable consumers to monitor their accounts. Consumers potentially will receive separate periodic statements for their prepaid account (or an electronic history of transactions for the prepaid account) and their covered separate credit feature accessible by a hybrid prepaid-credit card, though the two periodic statements may be combined if the combined statement meets the requirements of both Regulations E and Z. The periodic statement requirement ensures that consumers receive important information regarding transactions performed and fees incurred using their covered separate credit feature. Absent this requirement, creditors may choose not to disclose all such information pertaining to the covered separate credit feature. In addition, for statutory reasons, transactions solely accessing the covered separate credit feature are subject to stronger liability limitations and error resolution protections than those transactions that do not access the credit feature.[873] The Bureau anticipates that these particular requirements will have a modest incremental impact on consumer access to credit beyond the impacts arising from the other new provisions, as discussed above.

The Bureau also considered, among other options, extending the Regulation E overdraft opt-in regime, described in § 1005.17, to prepaid accounts. Industry commenters advocated this approach, as well as variations that included additional protections (such as a cap on the number of overdraft fees). One industry commenter noted that consumers may want optional overdraft services provided under Regulation E but may not want credit card services under Regulation Z. The commenter stated that consumers use overdraft services in a manner indicating conscientious use of the service and that a Regulation E disclosure and opt-in approach is sufficient to protect consumers who do not want overdraft services and to ensure that consumers who want overdraft services understand the terms of the service. Commenters also asserted that consumer confusion could result from treating prepaid overdraft services differently from deposit account overdraft services.[874] The Bureau believes that the disclosure requirements of the final rule, including the restrictions on the timing of solicitation and application for covered separate credit features, should mitigate potential consumer confusion and distinguish the prepaid card account from any optional covered separate credit feature that may subsequently be accessed using a hybrid prepaid-credit card.

The few financial institutions that currently provide overdraft services in connection with prepaid accounts generally act consistently with the Regulation E opt-in regime. However, the Bureau learned through comments that many additional financial institutions would offer overdraft services in connection with their prepaid accounts if it were to adopt a Regulation E opt-in approach. Relative to the approach taken in the final rule, the Regulation E opt-in approach could potentially result in more widespread consumer use of overdraft services in connection with prepaid accounts. This could result from additional entry by providers due to the resolution of the regulatory uncertainty that currently deters their entry and from increased marketing activities by both incumbents and entrants aimed at growing demand for overdraft services offered in connection with prepaid accounts. However, under a Regulation E opt-in approach, consumers using services that would be considered covered separate credit features accessible by a hybrid prepaid-credit card under the final rule would not enjoy the protections required by Regulation Z and other benefits, as discussed above.[875]

The Bureau believes that industry pricing could evolve to a structure that approximates the checking account overdraft pricing structure, which is heavily reliant on back-end pricing via overdraft fees, under a Regulation E opt-in approach.[876] This could result in some consumers potentially paying higher fees for overdraft services than they do at present (or than they would under the final rule), but it also could result in other consumers paying less for their prepaid accounts if growth in demand for overdraft services or competitive pressures prompt providers to adopt alternative fee schedules. Relative to the final rule, adopting a Regulation E opt-in approach could result in higher prices for overdraft services for consumers who can obtain these services because the final rule's restrictions on the pricing of covered separate credit features accessible by a hybrid prepaid-credit card would not apply.

In the proposed rule, the Bureau also considered an alternative variant of the Regulation Z approach that subjected a broader set of transactions to coverage, including incidental credit extended in the form of a negative balance on a prepaid account in most situations.[877] Under the proposal, all per transaction fees for credit transactions were finance charges, even if they were the same amount as the fee charged for transactions paid entirely with funds available in the prepaid account. The Bureau received extensive comment addressing the proposed rule's definition of finance charge. Commenters noted that a negative balance could result from force pay and other situations where the issuer does not authorize the transaction and explained that the proposed rule's definition of finance charge could consider prepaid cards to be credit cards if the financial institution charged per transaction fees for these overdrafts, even if the per transaction fee were the same as the per transaction fee charged to access prepaid account funds. Many industry commenters were concerned that because of the breadth of the fees that would be considered finance charges under the proposal, a prepaid account issuer either could not charge

[872] The final rule provides that card issuers must adhere to timing requirements regarding solicitation and application that generally prevent card issuers from doing any of the following within 30 days of prepaid account registration: (1) Opening a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) making a solicitation or providing an application for such a feature; or (3) allowing an existing credit feature to become such a covered separate credit feature accessible by a hybrid prepaid-credit card.

[873] Those transactions that access both the prepaid asset account and the covered separate credit feature generally are subject to Regulation E's liability limitations and error resolution procedures, as well as some of Regulation Z's error resolution procedures, described in existing § 1026.13(d) and (g).

[874] For example, one industry trade association commenter noted that subjecting overdraft services to Regulation Z could result in consumer confusion and that consumers may mistakenly purchase prepaid cards believing that they are credit cards.

[875] As discussed above, the Bureau is engaged in research and other activity in anticipation of a separate rulemaking regarding checking account overdraft products and practices. The Bureau expects that the rulemaking will consider whether additional regulatory protections are warranted for those products and practices.

[876] In a study of several large banks' checking account overdraft programs, the Bureau found that, for opted-in consumers, overdraft and NSF fees accounted for about 75 percent of their total checking account fees and averaged over $250 per year. CFPB, *Data Point: Checking Account Overdraft,* at 5 (July 2014), *available at http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.*

[877] Under the proposal, Regulation Z did not apply when the prepaid card only accessed credit not subject to any finance charge, as defined in proposed § 1026.4, or any fee described in proposed § 1026.4(c), and any credit accessed was not payable by written agreement in more than four installments.

general transaction fees on the prepaid account or would have to waive certain fees on any transaction that happened to involve credit, as defined under the proposal, to avoid triggering the credit card rules. One industry commenter estimated that such transactions, which can occur in connection with gasoline purchases, hotel stays, and other common consumer transactions, account for 10 percent of all prepaid card transactions.

Commenters discussed burdens to both industry and consumers arising from the application of the proposed rule's credit provisions in these situations. Commenters stated that the proposed rule's approach would have the consequence of causing financial institutions issuing prepaid cards that do not have credit features to eliminate per transaction (''pay-as-you-go'') pricing plans and prepaid card use outside of the United States, impose stricter authorization rules, hold authorizations for longer periods than they do currently, or freeze cardholder funds, thereby inconveniencing consumers. Further, commenters argued that providers would need to implement new fee logic patterns, among other adjustments.

The final rule's approach to these issues mitigates these concerns. Under new § 1026.61(a)(4), a prepaid card is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the provider generally does not charge credit-related fees for the credit. This exception is intended to exempt three types of credit so long as the provider generally does not charge credit-related fees for the credit: (1) incidental credit related to ''force pay'' transactions; (2) a de minimis $10 payment cushion; and (3) a delayed load cushion where credit is extended while a load of funds from an asset account is pending. New § 1026.61(a)(4)(ii)(B) allows a provider to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account.

The final rule's approach of not subjecting incidental credit to the Regulation Z requirements will avoid the costs associated with subjecting products to coverage due to force pay transactions and delayed load situations. Further, the de minimis payment cushion exemption will encourage providers to extend small amounts of credit to consumers (at no additional cost) relative to the approach in the proposed rule. The Bureau believes that, in general, these provisions will benefit consumers and providers alike.

b. Benefits and Costs to Covered Persons

This discussion covers many of the same issues already addressed in the preceding section. The final rule introduces additional requirements for prepaid account providers that offer covered separate credit features accessible by a hybrid prepaid-credit card.[878] As discussed above, the Bureau's understanding is that few financial institutions currently offer prepaid accounts with overdraft services. By restricting how providers may offer overdraft services to prepaid accountholders, the final rule's provisions may limit the economic viability of some current business practices. Because overdraft services currently offered in the market do not conform to the final rule's requirements, providers offering covered separate credit features accessible by a hybrid prepaid-credit card will need to restructure existing programs if they wish to continue offering the product. The final rule's requirements could adversely affect the profitability of existing overdraft programs and may lead some current providers to discontinue offering such services.[879]

The Bureau also understands that other firms currently might be considering offering covered separate credit features accessible by a hybrid prepaid-credit card in the future. The final rule's requirements decrease the likelihood that such entry will occur. For example, the final rule's provision subjecting most fees charged during the first year (other than periodic interest rates) of the covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan to a cap of 25 percent of the initial credit line prevents providers from implementing certain pricing structures. These additional constraints likely will reduce the potential profitability of offering covered separate credit features accessible by a hybrid prepaid-credit card.

Several industry commenters stated that the additional costs imposed by the final rule's credit-related requirements will motivate those few prepaid account providers offering overdraft services to stop doing so or to offer it in a form that is more costly and less convenient to consumers. By contrast, one consumer advocate commenter suggested that by providing additional regulatory clarity, the final rule's provisions may lead more financial institutions offering prepaid accounts to choose to offer related credit features. While the Bureau recognizes that regulatory uncertainty has likely discouraged the widespread availability of related credit features, the Bureau considers it unlikely that greater regulatory clarity alone could offset the costs of the new regulatory requirements sufficiently so that more financial institutions would offer prepaid accounts with related credit features.

The final rule limits the types of fees that card issuers may charge during the first year after a consumer holder of a prepaid account opens a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. Among other restrictions, the final rule subjects most fees charged during the first year of the covered separate credit feature (other than periodic interest rates) to a cap of 25 percent of the initial credit line. Given the pricing structure and size of the lines of credit offered in conjunction with current prepaid overdraft offerings, the Bureau believes the final rule's fee cap requirement generally will be binding for any consumer incurring more than one overdraft fee in the first year after the opening of the covered separate credit feature accessible by a hybrid prepaid-credit card.[880] Because this restriction could mean that some consumers pay fewer fees subject to the cap, providers will experience a reduction in revenues.

Providers may respond to this revenue reduction by adopting an alternative pricing structure that is less reliant on transaction-based fees to access covered separate credit features, but adoption of such an alternative

[878] These obligations fall on the financial institution, card issuer, or creditor depending on the provision. In some cases, the same entity may fulfill multiple roles.

[879] The final rule's additional restrictions constrain provider choice regarding fee schedules relative to the present and, at best, will have a neutral impact on profitability, all else equal.

[880] The Bureau believes that current transaction-based charges for overdrafts range from $15 to $35. Assuming a credit line of $100, the new restriction implies that the card issuer may collect, at most, one overdraft fee (or $25) in the first year of the covered separate credit feature accessible by a hybrid prepaid-credit card. It is possible that card issuers would be willing to extend larger credit lines to consumers than they do at present. However, issuers would incur more risk in doing so and likely would need to develop more robust underwriting procedures, both to ensure a sufficient return and to comply with Regulation Z's ability-to-pay requirement.

pricing structure is likely to result in decreased demand for covered separate credit features or prepaid accounts generally. For example, providers may choose to adopt a pricing structure that includes higher fees for non-credit related features of the prepaid account. However, adopting such a pricing strategy would potentially put these providers at a competitive disadvantage because it would mean raising the price of holding a prepaid account for any consumer relying on the non-credit related features targeted for the price increase, including consumers who do not use covered separate credit features accessible by a hybrid prepaid-credit card. In response to such a price increase, consumers not seeking a covered separate credit feature accessible by a hybrid prepaid-credit card may turn to prepaid accounts offered by other financial institutions.

Alternatively, providers may adopt a pricing structure in which a fee is collected during the application process prior to the opening of the covered separate credit feature (and thus is not subject to the cap), or they may choose to charge a periodic interest rate. However, when faced with the option of pre-paying for overdraft services, consumers may be less willing to incur up-front charges for the service than they are under the current per transaction pricing structure, which relies on back-end fees. In addition, consumers may find disclosure of the periodic interest rate to be a salient deterrent to opening a covered separate credit feature accessible by a hybrid prepaid-credit card, especially at rate that providers may need to charge to rationalize offering the feature. Regardless of the alternative fee schedule adopted, the small group of prepaid account providers that offer covered separate credit features accessible by a hybrid prepaid-credit card will earn lower profits than they do at present (all else equal).

Other provisions of the final rule also decrease the profitability of offering covered separate credit features accessible by a hybrid prepaid-credit card. The final rule restricts a creditor's ability to access assets held in a consumer's prepaid account, permitting creditors to sweep funds from the prepaid account only monthly to repay a debt incurred by an associated covered separate credit feature.[881] As noted by commenters, creditors that do not obtain the consumer's written consent to sweep funds will need to offer consumers an alternative means of repaying the balance, which could require updating current systems or adopting new systems. Commenters also noted that credit cards and prepaid cards rely on different payment processing systems, so changing to a Regulation Z compliant system would likely imply substantial implementation costs.[882]

Aside from these implementation costs, the final rule's restriction on sweeps raises the ongoing cost to creditors associated with offering these accounts by increasing the risk of default.[883] In addition, the final rule's requirement that with respect to covered separate credit features accessible by a hybrid prepaid-credit card that are open-end (not home-secured) consumer credit plans, card issuers adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the fixed monthly payment due date ensures a time gap between when a debt is incurred and when it must be repaid. To manage this additional credit risk, card issuers may choose to offer less credit to consumers or to charge higher fees (or a periodic interest rate) for credit extended.

To comply with the final rule's provisions, the few prepaid providers that currently offer overdraft services will incur implementation costs associated with educating consumers about any product changes, developing new disclosures, and designing and executing new procedures. Industry commenters noted that credit card regulatory expertise may not currently exist in-house and that providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card may need to acquire such expertise. In addition, one provider that currently offers overdraft services in connection with some of its prepaid products commented that modifying its business to apply Regulation Z would cause it to incur costs associated with developing a billing system and accepting alternative forms of payment, among other costs. Providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card will need to ensure that any solicitation and application materials conform to Regulation Z's requirements. This may require providers to produce new disclosures or modify existing disclosures. Providers wishing to offer covered separate credit features accessible by a hybrid prepaid-credit card additionally are required to comply with the final rule's timing requirements with respect to the solicitation of consumer holders of prepaid accounts, application, and account opening.

Card issuers are also required to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make required minimum payments when deciding to offer a covered separate credit feature accessible by a hybrid prepaid-credit card that is an open-end (not home-secured) consumer credit plan. As noted above, card issuers should incur minimal additional burden from these provisions because they can assess the consumer's ability-to-pay at low cost. Given providers' increased incentive to screen applicants due to their inability to sweep incoming funds immediately from the prepaid asset account to pay a debt incurred on the covered separate credit feature, the incremental impact of this provision on operational costs is minimal.[884]

Providers will also incur ongoing costs in adhering to other provisions of the final rule. These costs include those associated with providing periodic statements for covered separate credit features accessible by a hybrid prepaid-credit card as well as additional disclosures in certain circumstances, such as when certain account terms change. Specifically, providers will incur costs designing these disclosures and ensuring that they comply with Regulation Z. In some cases, providers will also incur costs associated with printing and distributing these disclosures.[885] Finally, to the extent that Regulation Z's liability limitations and error resolution provisions apply, providers may incur additional costs due to Regulation Z's more restrictive limitations on consumer liability and expanded definition of error. However, these costs should be minimal if credit lines do not increase relative to the present.

Because the final rule's provisions could affect consumer choice, the small number of prepaid providers that

[881] Creditors must obtain the consumer's consent to sweep funds. Because they may sweep funds only monthly, creditors will maintain debts on their books for a longer period, relative to the present where sweeps occur with the next incoming deposit, and will incur a small opportunity cost in connection with decreased access to funds so long as they do not charge consumers a periodic interest rate.

[882] One commenter estimated that most small financial institutions would incur a total approximate cost of $95,000 to implement the Regulation Z requirements. However, the basis for this estimate is unclear.

[883] Providers may pass on some of these increased costs to consumers by increasing prices for the prepaid account and the covered separate credit feature.

[884] If fewer consumers qualify for the product as a result of the final rule's requirement to assess the consumer's ability to make the required minimum payments, provider revenues could decrease.

[885] Providers could mitigate some of these costs by obtaining E-Sign consent from the consumer.

currently offer overdraft services may experience changes in the size or composition of the customer base seeking this product. Adjustments in aggregate market demand or consumer substitution to or from other providers within the market could affect these providers' profits. For example, if financial institutions currently offering prepaid accounts with overdraft services make their products less desirable to consumers who value credit by not offering covered separate credit features or by charging higher fees to hold prepaid accounts, those financial institutions offering prepaid accounts without covered separate credit features could benefit as consumers substitute away from products offering covered separate credit features.

In terms of alternatives, the Bureau also considered extending the Regulation E opt-in regime to prepaid accounts. Several industry commenters urged the Bureau to adopt a Regulation E opt-in approach, stating that it would provide consumers sufficient protection and would be less costly to implement than covering overdraft services under Regulation Z. Those few providers that currently offer overdraft services in connection with their prepaid accounts largely adhere to the Regulation E opt-in requirements, and therefore they would incur minimal additional costs in implementing such an approach, relative to the baseline of the current market. Based on comments received in response to the proposal, the Bureau believes that resolving the regulatory uncertainty that currently deters some providers from offering overdraft services by adopting a Regulation E opt-in approach would lead many more prepaid providers to offer overdraft services in connection with their prepaid accounts than offer such products currently. In addition, given the additional costs imposed by the Regulation Z approach relative to the Regulation E opt-in approach, more financial institutions offering prepaid accounts may have found it economically viable to offer overdraft services in the future under a Regulation E opt-in regime relative to the approach adopted by the final rule.

The Bureau also considered an alternative variant of the Regulation Z approach in the proposed rule that subjected a broader set of transactions to coverage, including those transactions accessing credit outside the course of a transaction; credit offered by parties unrelated to the prepaid account issuer, its affiliates, or its business partners; and credit extended as a negative balance on a prepaid account that would have been subject to a per transaction fee (even if the amount of the fee were the same as the amount charged for transactions paid entirely with funds available in the prepaid account). As discussed above, commenters suggested that this approach would impose a number of costs on industry, including: (1) potential compliance issues when the consumer attaches an unrelated credit feature to the prepaid account without the knowledge of the unrelated third-party creditor; and (2) interruptions to the flow of funds in contexts, such as force pay transactions, where an account balance may become negative and a transaction-related fee (that is the same as the fee charged for transactions paid entirely with funds available in the prepaid account) may be imposed, even though the prepaid account issuer does not authorize the credit extension.

The final rule's approach mitigates these concerns by excluding prepaid cards from coverage as credit cards under Regulation Z when they access certain specified types of credit. First, under new § 1026.61(a)(2)(ii), a prepaid card is not a hybrid prepaid-credit card with respect to "non-covered separate credit features," which means that the separate credit feature either: (1) cannot be accessed in the course of a prepaid card transaction to obtain goods or services, obtain cash, or conduct P2P transfers; or (2) is offered by an unrelated third party that is not the prepaid account issuer, its affiliate, or its business partner. Second, under new § 1026.61(a)(4), a prepaid card also is not a hybrid prepaid-credit card when the prepaid card accesses incidental credit in the form of a negative balance on the asset account where the prepaid account issuer generally does not charge credit-related fees for the credit. New § 1026.61(a)(4)(ii)(B) allows a provider to qualify for the exception in new § 1026.61(a)(4) even if it charges transaction fees on the asset feature of the prepaid account for overdrafts so long as the amount of the per transaction fee does not exceed the amount of the per transaction fee imposed for transactions conducted entirely with funds available in the asset feature of a prepaid account.

F. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, as Described in Section 1026

The final rule's requirements apply uniformly across covered financial institutions without regard for their asset size.[886] Among those depository institutions and credit unions that the Bureau believes are directly affected by the final rule, roughly 67 percent have $10 billion or less in total assets.[887] The impact of the final rule on depository institutions and credit unions will depend on a number of factors, including: (1) whether the institution offers prepaid accounts; (2) the relative contribution of prepaid account earnings to overall firm profits; and (3) the cost of complying with the final rule (which depends on both present prepaid account offerings and the regulations to which those accounts are currently subject).

With respect to most provisions, the Bureau does not expect that the final rule will have a unique impact on depository institutions and credit unions with $10 billion or less in total assets, as described in section 1026. One exception pertains to the provisions addressing covered separate credit features accessible by a hybrid prepaid-credit card. Issuers with consolidated assets of less than $10 billion are exempt from the Board's Regulation II restrictions on debit card interchange fees.[888] Additionally, for issuers with over $10 billion in assets, Regulation II's interchange fee restrictions do not apply to electronic debit transactions made using debit cards provided pursuant to certain government-administered payment programs or using certain reloadable, general-use prepaid cards.[889] However, these exemptions for issuers with over $10 billion in assets do not apply if a cardholder may incur a fee or charge for an overdraft [890] (unless the fee or charge is imposed for transferring funds from another asset account to cover a shortfall in the account accessible by the card).[891] Because they would be subject to Regulation II's restrictions on debit interchange fees if they offered overdraft services in connection with prepaid accounts, financial institutions with greater than $10 billion in assets presently have less incentive to offer overdraft services than

[886] The de minimis exception for providing prepaid account agreements to the Bureau and posting them to a Web site is a function of the number of open accounts, not the asset size of the issuer.

[887] These figures reflect asset sizes reported as of December 2015 in the Federal Financial Institutions Examination Council 041 Call Report and the NCUA 5300 Call Report. Depository institutions and credit unions offering white label programs or programs through certain agent relationships were not included in arriving at this statistic.

[888] 12 CFR 235.5(a).

[889] 12 CFR 235.5(b) and (c).

[890] Here, an overdraft includes a shortage of funds or a transaction processed for an amount exceeding the account balance.

[891] 12 CFR 235.5(d)(1).

similarly situated depository institutions with less than $10 billion in assets. Therefore, the new consumer protections applicable to covered separate credit features accessible by a hybrid prepaid-credit card may be more likely to have an impact on those institutions with less than $10 billion in assets. One credit union commenter agreed with this conclusion but did not provide specific rationale for why the impact on those institutions with less than $10 billion in assets would differ from the impact on institutions with greater than $10 billion in assets.

2. Impact of the Final Rule's Provisions on Consumers in Rural Areas

Consumers in rural areas may derive benefits from the final rule that are different in certain respects from the benefits experienced by consumers in general. Consumers in rural areas may differ from other consumers in terms of their reliance on prepaid accounts as well as their ability to use online disclosures for shopping by accessing the internet.[892] The Bureau is not aware of evidence that states whether consumers in rural areas are more likely to acquire prepaid accounts, to use prepaid accounts that do not currently follow Regulation E's limited liability and error resolution regime, or to use covered separate credit features accessible by a hybrid prepaid-credit card.[893]

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[894] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[895] 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.[896] 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.[897]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[898] 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.[899]

The undersigned certified that the proposed rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. In the proposed rule, the Bureau requested comment regarding its methodology for estimating burden on small entities as well as relevant data. The Bureau received little comment with respect to these issues. However, the Bureau addresses the comments received and integrates additional information provided by commenters into its analysis of these issues when available and informative. Upon considering relevant comments as well as the modifications to the proposed rule that were made in developing the final rule, the conclusion that the rule will not have a significant economic impact on a substantial number of small entities is unchanged. Therefore, a FRFA is not required.[900]

A. Overview of Analysis

The analysis below evaluates the economic impact of the final rule on directly affected small entities as defined by the RFA. The Bureau considers an entity to be "directly affected" by the final rule for RFA purposes if it issues prepaid accounts, manages a prepaid account program, or offers covered separate credit features accessible by a hybrid prepaid-credit card.[901] This analysis establishes that directly affected small banks and credit unions each represent a fraction of 1 percent of all small banks and credit unions. Further, the analysis also establishes that directly affected small or potentially small non-bank entities comprise roughly 4 percent of all small entities within the relevant North American Industry Classification System (NAICS) code.[902] These percentages do not comprise a substantial number of small entities for purposes of the RFA.

Further, this analysis also establishes that the only small non-bank entities likely to experience a significant economic impact from the final rule are those that currently: (1) Do not provide limited liability protections to consumers; (2) do not provide error resolution protections to consumers; or (3) offer products that would be considered covered separate credit features accessible by a hybrid prepaid-credit card.[903] The Bureau concludes that less than 1 percent of all small non-bank entities within the relevant NAICS code will experience a significant economic impact from the final rule. This does not comprise a significant economic impact on a substantial number of small entities for purposes of the RFA.

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[892] Broadband availability may be more limited in rural areas. *See* Nat'l Telecomm. and Info. Admin., *U.S. Broadband Availability: June 2010—June 2012,* at 10 (May 2013), *available at http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf.*

[893] One study found that consumers living in rural areas were more likely to deposit tax refunds onto a prepaid card than consumers living in urban areas. Caroline Ratcliff et al., Urban Inst., *Prepaid Cards at Tax Time and Beyond,* at 26 (Mar. 2014), *available at http://www.urban.org/UploadedPDF/413082-prepaid-cards-at-tax-time-report.pdf.* Another study reports prepaid debit card use by metropolitan status and did not find a robust relationship between whether a household was in a metropolitan area and prepaid debit card use. 2013 FDIC Survey at 41.

[894] Public Law 96–354, 94 Stat. 1164 (1980).

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

[896] 5 U.S.C. 601–612. The term "'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment]." 5 U.S.C. 601(4). The term "'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment]." 5 U.S.C. 601(5). Aside from credit unions, the Bureau does not believe that any small not-for-profit organizations are regulated by the final rule for RFA purposes. In its Study of Prepaid Account Agreements, the Bureau did not locate any small governmental jurisdictions regulated by the final rule for RFA purposes.

[897] 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.*

[898] 5 U.S.C. 601 *et seq.*

[899] 5 U.S.C. 609.

[900] 5 U.S.C. 605(b).

[901] The final rule directly regulates financial institutions, card issuers, and creditors. In many cases, entities other than financial institutions perform program management functions. To inform the rulemaking, the Bureau additionally considers the impact of the final rule on such entities even though the final rule does not directly regulate these entities for RFA purposes.

[902] The North American Industry Classification System (NAICS) is the standard used by the SBA to match small business size standards to industries. For this analysis, the Bureau considers directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).

[903] A few commenters noted that the proposal's approach of limiting the exemption to the requirement to provide the long-form disclosure pre-acquisition to those retailers selling products from at least two different issuing financial institutions would potentially have a disproportionate impact on small retailers. The final rule mitigates this concern by broadening the type of entity that qualifies for the alternative timing regime. Further, such retailers are not "directly affected" by the final rule for RFA purposes, and even if they were, limiting the exemption would not cause these retailers to experience a significant economic impact.

B. Number and Classes of Directly Affected Entities

The provisions of the final rule apply to any account meeting the criteria described in § 1005.2(b)(3). Providers of these accounts include issuers and program managers. Prepaid account issuers are typically banks and credit unions, and program managers are typically non-banks.[904] Some issuers also act as the program manager for some or all of the prepaid accounts that they issue. While most of the final rule does not directly regulate prepaid program managers for RFA purposes if they are not financial institutions, the Bureau exercises its discretion to take a comprehensive approach that considers both prepaid account issuers and program managers in determining whether the final rule will have a significant economic impact on a substantial number of small entities.[905] Financial institutions, creditors, and card issuers must also comply with the final rule's requirements pertaining to credit.[906]

Because the Bureau is not aware of a comprehensive list of entities that actively issue or manage prepaid accounts or a comprehensive list of prepaid account programs, the Bureau compiled its own list of known prepaid account issuers and program managers in connection with the proposed rule.[907] Table 1 reports estimated counts of banks, credit unions, and non-bank entities identified by the Bureau as likely directly affected by the final rule. Table 1 also reports the total number of entities, as well as the total number of small or potentially small entities, within each relevant NAICS code to provide context for those counts.[908]

Banks and credit unions. Based on its Study of Prepaid Account Agreements, outreach to interested stakeholders and other regulatory agencies, review of industry studies, and consideration of comments received in response to the proposed rule, the Bureau has determined that the final rule will directly affect very few small banks or credit unions.

Several commenters to the proposed rule suggested that the Bureau undercounted the number of small banks or credit unions directly affected by the proposed rule's provisions. However, those commenters appeared to include banks or credit unions that offer prepaid cards through a vendor or bankers' bank in concluding that the Bureau undercounted the number of directly affected small banks or credit unions. As described in the proposed rule, the Bureau does not consider those entities directly affected by the final rule and therefore does not include such entities in its counts (to the extent that they could be identified).[909]

In such relationships, a distinct vendor or banker's bank generally handles most compliance duties. The Bureau considered such entities, which generally perform these duties on behalf of program participants, to be directly affected by the final rule for RFA purposes but did not include program participants (to the extent that they could be identified as such by the Bureau). Program participants that rely on white-label providers or other agent-based relationships generally include small banks or credit unions that offer prepaid products as a convenience to their customers. One trade association commenter stated that small banks participating in these programs may retain certain responsibilities, including retrieving and replacing disclosures and verifying vendor compliance. The Bureau believes that these costs would not comprise a significant economic impact for such entities. Further, the Bureau understands that prepaid accounts offered through these arrangements generally provide limited liability and error resolution protections and do not provide overdraft services. Therefore, the concern raised by commenters does not affect the Bureau's conclusion for RFA purposes because such entities would not experience a significant economic impact, as discussed below, even if they were included in the Bureau's counts.

A few industry commenters also suggested that the rule would affect entities that do not currently offer prepaid products but may wish to do so in the future. For purposes of the RFA, the Bureau uses the set of current market participants as the baseline and therefore considers the impact of the final rule only on entities that currently offer products that meet the final rule's criteria for a prepaid account.

For this analysis, the Bureau considered small those banks and credit unions averaging less than $550 million in assets across the institution's four quarterly Call Report entries for 2012.[910] As shown in Table 1, the Bureau identified 19 directly affected small or potentially small banks and six directly affected small credit unions.[911] These entities constitute less than 1 percent of small banks and credit unions. This fraction does not comprise a substantial number of small entities under the RFA. Because the number of directly affected small or potentially small banks and credit unions was so small, the Bureau did not evaluate whether the economic impact of the final rule on small banks and credit unions is significant.[912]

Non-bank entities. As described above, directly affected non-bank entities are primarily prepaid program managers but also include issuers of P2P payment products and other non-Visa or non-MasterCard branded prepaid products. For this analysis, the Bureau considered directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).[913] The SBA considers small

[904] P2P payment products and other non-Visa or non-MasterCard branded prepaid products are sometimes issued by non-bank entities.

[905] To determine whether the economic impact is significant, the Bureau compares the total revenues earned by both the program manager and the issuer to the total costs incurred by these entities resulting from the final rule. In some cases, the same entity performs both the issuing and program management functions, and in other cases, different entities perform these functions.

[906] Currently, the non-bank program manager fulfills these roles for those prepaid products that offer overdraft services although the creditor may be an entity distinct from the program manager or issuer.

[907] This list was compiled using information gathered from the Bureau's review of publicly available information and industry outreach. This compilation includes all issuers and program managers whose prepaid account agreements were included in the Study of Prepaid Account Agreements. The Bureau also included other issuers and program managers identified in its pre-proposal review of publicly available information even though account agreements for their prepaid programs were not located. The Bureau does not believe that modifications made to the proposed rule to arrive at the final rule will increase the number of directly affected entities and therefore retains the estimates of total entity counts obtained in connection with the proposed rule.

[908] Because many of the directly affected non-bank entities are privately held firms, information regarding their size was difficult to obtain, so a reliable size classification could not be made. In addition, one bank's size could not be classified because multiple banks shared the same name. Therefore, out of an abundance of caution, the Bureau considered any entity for which a size classification could not be made to be "potentially small."

[909] 79 FR 77102, 77284 n.536 (Dec. 23, 2014).

[910] The Bureau obtained similar classifications using assets reported in later year Call Reports. The SBA considers small those banks and credit unions with less than $550 million in assets. U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Feb. 2016), *available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[911] Using asset sizes for 2013 and 2014 to assign a size classification yielded 17 small or potentially small banks and five small credit unions. Using asset sizes for 2015 yielded 16 small or potentially small banks and five small credit unions.

[912] As discussed below, the Bureau found that there was not a significant economic impact on a substantial number of small non-bank entities, and the Bureau has no reason to believe that the impact would be meaningfully greater for banks and credit unions.

[913] According to the Census Bureau, NAICS code 522320 corresponds to "establishments primarily

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those non-bank entities within NAICS code 522320 with average annual receipts less than $38.5 million.[914] The Bureau used revenue estimates obtained by reviewing publicly available information as a proxy for receipts in evaluating the entity's size. The Bureau considered small those entities estimated to have less than $38.5 million in annual revenues.[915]

The Bureau identified 127 non-bank entities that the final rule will directly affect. The Bureau could classify the size of 44 such entities, and approximately 30 percent of these entities (13 entities) were classified as small. It is likely, however, that many of the remaining 83 non-bank entities that the Bureau was unable to classify are small as well. Therefore, the Bureau classified these entities as potentially small. Applying these classifications, the number of directly affected small or potentially small non-bank entities is a modest percentage of all small entities within the relevant NAICS code (4 percent).[916] This does not comprise a substantial number of small entities under the RFA. Nonetheless, the Bureau evaluated the impacts of the final rule's provisions on these entities to inform the rulemaking more fully.

Table 1: Covered Providers and Directly Affected Small Entities

Category	NAICS Code	Total Entities[a]	Total Small Entities[b]	Directly Affected Entities Identified	Directly Affected Small Entities and Potentially Small Entities Identified	Directly Affected Small Entities Identified
Commercial Banking[c]	522110	7,150	5,939	71	19	18
Credit Unions	522130	6,960	6,582	16	6	6
Non-Bank Entities	522320	2,465	2,325	127	96	13

[a] For banks and credit unions, the total entity count includes those entities operating in the fourth quarter of 2012 as indicated by their respective call reports. For non-bank entities, total entity counts are derived from the U. S. Census Bureau's Statistics of U.S. Businesses ("SUSB"), which relies on information from the 2012 Economic Census.

[b] The SBA's small entity threshold for commercial banks and credit unions is $550 million in assets, and the SBA small entity threshold for NAICS code 522320 is $38.5 million in average annual receipts.

In order to determine which banks and credit unions are small, the quarterly asset sizes (for 2012) for those entities operating as of the fourth quarter of 2012 were averaged, and those banks and credit unions averaging less than $550 million in assets were classified as small. For those entities only operating for part of the year, the quarters from which assets were available were used to obtain the average.

The total number of small non-bank entities was derived from the firm count reported in the latest available SUSB (2012) using the percentage of entities within the reported NAICS code that were small according to reported receipts size.

[c] All banks are included here regardless of charter type. The vast majority of directly affected bank entities are commercial banks (and correspond to NAICS Code 522110), although there are five savings banks, one savings and loan association, and one industrial bank included in these counts.

Note: Counts exclude white-label and agent bank program participants to the extent that they were identified by the Bureau.

C. Impacts of Provisions on Directly Affected Non-Bank Entities

The following discussion summarizes the economic impacts arising from the major provisions of the final rule on directly affected small non-bank entities. Most of the final rule does not directly regulate these entities for RFA purposes if they are not financial

engaged in providing one or more of the following: (1) Financial transaction processing (except central bank); (2) reserve and liquidity services (except central bank); and/or (3) check or other financial instrument clearinghouse services (except central bank)." One illustrative example given by the Census Bureau is "electronic funds [*sic*] transfer services." U.S. Census Bureau, *2007 NAICS Definition, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522320&search=2007*. FinCEN relied on NAICS code 522320 in its Prepaid Access Rule. *See* 76 FR 45403, 45414 (July 29, 2011).

[914] U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Feb. 2016), *available at http://www.sba.gov/sites/default/files/files/_Standards_Table.pdf*.

[915] When available, the Bureau used publicly available revenue estimates for 2012, which coincides with the most recent Economic Census. When revenue estimates from 2012 were not available, the Bureau used available information from recent years.

[916] In its Regulatory Flexibility Act analysis for its Prepaid Access Rulemaking, FinCEN relied on commercial database information (Dun and Bradstreet, D&B Duns Market Identifiers Plus (US)) and narrowed its count to those entities within NAICS code 522320 that perform either EFTs or electronic financial payment services. FinCEN estimated that 700 entities met this classification. Using the SBA threshold of $7 million in average annual receipts that was in effect at the time, FinCEN estimated that 93 percent (or 651) of these entities were small. *See* 76 FR 45403, 45414–15 (July 29, 2011).

Currently, the SBA considers entities within NAICS code 522320 with less than $38.5 million in average annual receipts to be small. It follows that *at least* 651 entities meeting FinCEN's narrower classification would be considered small so long as the total number of entities meeting the narrower classification is unchanged. The Bureau concludes that under the narrower classification used by FinCEN, directly affected small or potentially small non-bank entities comprise, at most, 15 percent (96/651) of all small entities.

institutions.[917] However, prepaid account issuers may work with small non-bank entities (generally program managers) to comply with the final rule. Aside from the credit-related provisions and the extension of Regulation E's limited liability and error resolution regime, other than provisional credit requirements, to all prepaid accounts,[918] most provisions of the final rule will result in minimal burden for small non-bank entities. The Bureau discusses these impacts in detail below, using the current market as the baseline. In addition, the Bureau briefly discusses other provisions that potentially affect small non-bank entities.

1. Credit-Related Requirements

The final rule's provisions relating to credit could cause those entities that currently offer overdraft services in connection with prepaid accounts to experience a significant economic impact in complying with the final rule's requirements. These impacts are discussed in more detail in the section 1022(b)(2)(A) consideration of benefits, costs, and impacts above. However, the Bureau's understanding is that two small or potentially small non-bank entities, at most, offer products that would be considered covered separate credit features accessible by a hybrid prepaid-credit card.[919]

2. Limited Liability and Error Resolution Requirements

The final rule requires financial institutions offering prepaid accounts to comply with Regulation E's limited liability and error resolution regime, with some modification to the requirement to extend provisional credit. For accounts subject to Regulation E's limited liability and error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was authorized.[920] Specifically, after receiving notice that a consumer believes that an EFT was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. EFTA and Regulation E further state that if the financial institution is unable to complete the investigation within 10 business days, the institution may take up to 45 days to complete the investigation if it provisionally re-credits the consumer's account for the amount of the alleged error.[921] If the financial institution ultimately can establish that the transfer in question was not an error, it can reverse the provisional credit.

Under EFTA and Regulation E,[922] a consumer may be held liable for an unauthorized EFT resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. If the consumer provides notice to the financial institution within two business days of learning of the loss or theft, the consumer's liability is the lesser of $50 or the amount of any unauthorized transfers made before giving notice. If notice is not given within two business days, the consumer's liability is the lesser of $500 or the sum of (1) the lesser of $50 or the amount of unauthorized transfers occurring within two business days of learning of the loss or theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution.[923] If a consumer's periodic statement shows an unauthorized transfer, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent or face unlimited liability for all unauthorized transfers made after the 60-day period.

Current Regulation E applies to some prepaid products that are included in the final rule's definition of prepaid account—namely payroll card accounts and certain accounts used for distribution of government benefits.[924] Further, many financial institutions currently provide prepaid products, which are considered prepaid accounts under the final rule, that offer limited liability and error resolution protections even though the financial institution is not directly required to do so by Regulation E at present. There are many factors influencing current business practices with respect to these protections. First, as discussed in greater detail above, the FMS Rule extends Regulation E's payroll card account protections to prepaid cards that receive Federal payments. Because it may be difficult to distinguish prepaid accounts that receive Federal payments from those that do not receive such payments, financial institutions may choose to extend these protections to all prepaid accounts. Second, as discussed in more detail below, the Bureau's market research suggests that many financial institutions choose to provide these protections to consumers by contract as part of their customer service offerings. Finally, payment card network associations' rules require that financial institutions limit consumers' liability for unauthorized charges and remedy certain errors related to transactions that occur over their networks and may require that financial institutions extend provisional credit within a shorter timeframe than required by EFTA and Regulation E for losses from unauthorized card use.[925]

[917] With regard to the final rule's credit provisions, however, non-bank entities may be directly regulated if they are creditors or card issuers.

[918] The final rule only extends the Regulation E provisional credit requirements to prepaid accounts for which the financial institution has completed the customer identification and verification process. These protections are currently required for payroll card accounts and government benefit accounts. The exception for unverified accounts does not extend to payroll card accounts or government benefit accounts.

[919] In addition, those entities currently charging negative balance fees must restructure accounts to comply with the final rule's credit-related provisions if they wish to continue to charge these fees. As discussed above, the Bureau found in its Study of Prepaid Account Agreements that some prepaid programs may impose a fee if a prepaid account has a negative balance. Evaluated on a program level (and not an entity/provider level) and excluding those agreements for those programs designated as offering opt-in overdraft services, the Study found that roughly 7 percent of reviewed agreements noted such a fee in their terms and conditions. To avoid triggering coverage under the credit provisions of the final rule, the Bureau believes that most providers will choose not to impose negative balance fees.

There is little evidence regarding how common such fees are in practice. One credit union league commenter stated that 91 percent of member credit union survey respondents stated that they do not charge a sustained negative balance fee, but they did not clarify if survey respondents were addressing negative balance fees assessed on prepaid accounts in particular. Even if 9 percent of credit unions offering prepaid accounts charge such fees, there is not a substantial number of credit unions directly affected by this provision. Another commenter stated that one-third of 38 employers surveyed used payroll card vendors with programs that included overdraft or negative balance fees. However, it is unclear how many distinct program managers this data included because the study reported statistics in terms of employer respondents and not in terms of the number of entities offering payroll card programs

[920] EFTA section 909(b).

[921] The timeline is somewhat different for certain types of transactions and for new accounts.

[922] EFTA section 909; § 1005.6.

[923] Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

[924] Under current Regulation E, covered government benefit programs do not need to provide periodic statements or online access to account information so long as they provide balance information to benefits recipients via telephone and electronic terminals and at least 60 days of written account history upon request. Needs-tested EBT programs established or administered under State or local law are exempt from Regulation E. § 1005.15(a).

[925] *See, e.g.,* Visa Inc., *Zero Liability, available at https://www.visa.com/chip/personal/security/zero-liability.jsp* (last visited Oct. 1, 2016); MasterCard Inc., *Zero Liability Protection, available at http://www.mastercard.us/zero-liability.html* (last visited Oct. 1, 2016).

Limited liability protections. The Bureau's market research conducted in connection with the proposed rule, including its Study of Prepaid Account Agreements, strongly suggested that the vast majority of directly affected small or potentially small non-bank entities extend some form of limited liability protections to consumers. Table 2 summarizes the Bureau's findings from its Study of Prepaid Account Agreements regarding industry practice with respect to limited liability. Of the 96 directly affected small or potentially small non-bank entities identified by the Bureau, 15 entities only offered payroll card accounts, to the Bureau's knowledge, and therefore were required to provide Regulation E's limited liability protections to consumers. The Bureau was able to locate an agreement for at least one prepaid account program for all but 14 of the remaining 81 entities.

In its Study of Prepaid Account Agreements, the Bureau examined the language in prepaid account agreements that addressed limitations on consumers' liability for unauthorized transfers to assess whether each program contractually provided the limited liability protections that Regulation E requires for covered accounts. For each entity with at least one available prepaid account agreement (and offering at least one non-payroll card program),[926] the Bureau classified the entity's limited liability protections as belonging to one of three categories: (1) Liability limitations consistent with Regulation E's requirements or better for all reviewed agreements; (2) some liability limitations but less than what is required by Regulation E; and (3) no limited liability protections.[927]

Table 2 reports the results of this review. The Bureau determined that approximately 75 percent (16 percent + 59 percent) of all small or potentially small non-bank entities likely to be directly affected by the final rule provided protections at least as comprehensive as those required by Regulation E. The Bureau found that 4 percent of small or potentially small non-bank entities provided some liability limitations (but less than what Regulation E requires for at least one program). Six percent of small or potentially small non-bank entities had at least one agreement that did not mention any liability limitations.[928] The Bureau was unable to locate any account agreements for the remaining 15 percent of small or potentially small non-bank entities.

The final column of Table 2 reports the relative frequency of limited liability protections offered by directly affected small or potentially small non-bank entities with at least one available agreement (or which only offer payroll card accounts). Within this narrower group of entities, 88 percent (18 percent + 70 percent) provided liability limitations at least as comprehensive as Regulation E's requirements for all reviewed programs, and thus, will not need to change their practices to comply with the final rule. An additional 5 percent provided some liability limitations for at least one of their programs and thus will incur only a portion of the total burden arising from the final rule's requirement to extend Regulation E's limited liability protections.[929]

[926] The Bureau did not identify any directly affected small or potentially small non-bank entities that exclusively offered government benefit programs.

[927] The Bureau reviewed available prepaid account agreements, as described in its Study of Prepaid Account Agreements. In some instances, a small or potentially small non-bank entity offered multiple programs that appeared to provide different levels of limited liability protection. When a non-bank entity offered multiple programs with different levels of protection, the Bureau classified the entity according to the program providing the lowest level of protection for consumers. The Bureau classified error resolution policies similarly.

[928] One of these six entities also did not provide error resolution protections (see below).

[929] The Bureau repeated this analysis restricting attention to just those 13 non-bank entities that it could classify as small. Of these entities, 12 provided liability limitations consistent with Regulation E (or only offered payroll card accounts). The one remaining entity did not have an available account agreement.

Table 2: Current Industry Practice with Respect to Limited Liability Among Directly Affected Non-Bank Entities of Small or Potentially Small Size

Current Business Practice	Number of Directly Affected Small or Potentially Small Non-Bank Entities	Percent of All Directly Affected Small or Potentially Small Non-Bank Entities	Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Liability Limitations Consistent with Regulation E or Better (for all reviewed agreements, excluding payroll only providers)	57	59%	70%
Some Liability Limitations, Less than What is Provided for Under Regulation E (for at least some reviewed agreements)	4	4%	5%
No Limited Liability Protections (for at least some reviewed agreements)	6	6%	7%
Could not Locate any Account Agreements (excluding payroll only providers)	14	15%	NA
Total Number of Directly Affected Small or Potentially Small Non-Bank Entities	96	100%	100%

Error resolution protections. The Bureau's market research performed in connection with the proposed rule, including its Study of Prepaid Account Agreements, strongly suggested that the majority of directly affected small or potentially small non-bank entities extended some form of error resolution protections to consumers. Table 3 summarizes the Study's findings regarding industry practice with respect to error resolution and provisional credit for the 96 directly affected small or potentially small non-bank entities identified by the Bureau.

In its Study of Prepaid Account Agreements, the Bureau examined relevant language in prepaid account agreements addressing error resolution to assess whether each program contractually provided the same error resolution protections that Regulation E requires for covered accounts. For each small or potentially small non-bank entity with at least one available prepaid account agreement, the Bureau classified the entity's error resolution protections as belonging to one of four categories: (1) Full error resolution, consistent with Regulation E, with provisional credit for all consumers when the error is not resolved within a defined period of time (for all reviewed agreements); (2) error resolution with limitations on provisional credit; (3) error resolution with no mention of provisional credit; and (4) no error resolution.

Table 3 reports the results of that review. The Bureau determined that approximately 58 percent (16 percent + 42 percent) of all small or potentially small non-bank entities directly affected by the final rule provided full error resolution with provisional credit for all reviewed programs.[930] Therefore, over half of small or potentially small non-bank entities will not need to change their error resolution or provisional credit practices to comply with the final rule. Further, an additional 18 percent of entities provided error resolution protections but only offered provisional credit in limited circumstances. These non-bank entities will experience only a portion of the total increase in burden associated with the final rule's requirement that a financial institution extend provisional credit to all consumers whose prepaid accounts have been verified when an error is not resolved within a defined period. An additional 8 percent of entities offered error resolution to consumers but will potentially incur the entire increase in burden associated with extending provisional credit because they do not currently offer it. Only 2 percent of small or potentially small non-bank entities (two entities) provided no error resolution protections for at least one of

[930] The percentages cited in this paragraph may not add up to 100 percent due to rounding.

their prepaid programs and, therefore, will incur the entire burden associated with providing error resolution and provisional credit for at least one program.

The final column of Table 3 reports the relative frequency of the error resolution policies for those directly affected small or potentially small non-bank entities for which the Bureau could locate at least one program's agreement (or that only offer payroll card accounts). Within this group of directly affected entities, 67 percent (18 percent + 49 percent) provided full error resolution with provisional credit for all reviewed programs and thus will not need to change their policies. An additional 21 percent will incur only a portion of the total burden arising from the final rule's provisional credit requirements.[931]

Table 3: Current Industry Practice with Respect to Error Resolution and Provisional Credit Among Directly Affected Non-Bank Entities of Small or Potentially Small Size

Current Business Practice	Number of Directly Affected Small or Potentially Small Non-Bank Entities	Percent of All Directly Affected Small or Potentially Small Non-Bank Entities	Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Full Error Resolution with Provisional Credit (for all reviewed agreements, excluding payroll only providers)	40	42%	49%
Error Resolution with Limitations on Provisional Credit (for at least some reviewed agreements)	17	18%	21%
Error Resolution but No Provisional Credit (for at least some reviewed agreements)	8	8%	10%
No Error Resolution Coverage (for at least some reviewed agreements)	2	2%	2%
Could not Locate a Prepaid Account Agreement (excluding payroll only providers)	14	15%	NA
Total Number of Directly Affected Small or Potentially Small Non-Bank Entities	96	100%	100%

Costs associated with limited liability and error resolution protections. Those few directly affected small or potentially small non-bank entities that do not provide limited liability or error resolution protections to consumers will incur costs associated with providing these protections. As described in the section 1022(b)(2)(A) discussion, these entities will incur one-time implementation costs associated with the establishment or modification of

[931] The Bureau repeated this analysis restricting attention to the 13 non-bank entities that could be classified as small. The distribution of policies was as follows: 31 percent of entities complied with Regulation E because they only offered payroll card accounts; 46 percent provided full error resolution with provisional credit for all reviewed agreements (excluding payroll only providers); 8 percent provided error resolution with limitations on provisional credit for at least some reviewed agreements; 8 percent provided error resolution with no mention of provisional credit for at least some reviewed agreements; and 0 percent did not provide error resolution protections. Prepaid account agreements could not be located for 8 percent of the small non-bank entities.

policies and procedures to extend these protections (in addition to increased ongoing operational costs). This includes costs associated with developing the capacity to: (1) Give required error resolution notices to consumers; (2) receive oral or written error claims; (3) investigate error claims; (4) provide consumers with investigation results in writing; (5) respond to any consumer requests for copies of the documents that the institution relied upon in making its determination of whether the transaction was authorized; and (6) correct any errors discovered within the required timeframes. The establishment of these policies and procedures will constitute a one-time cost for those few small or potentially small non-bank entities that do not offer limited liability or error resolution protections to consumers. Implementing these procedures and paying out claims and provisional credit will create ongoing costs.[932]

Both those directly affected small or potentially small non-bank entities that offer limited liability and error resolution protections to consumers but do not provide provisional credit and those entities that provide liability protections or provisional credit in a more limited form than required by the final rule will incur costs arising from the final rule. The costs associated with paying out claims will increase for those directly affected entities offering less comprehensive liability protections than required by the final rule. Further, directly affected entities that do not offer provisional credit (or that offer it in a more limited form) will be unable to use funds extended as provisional credit during the investigation period for other uses and will therefore incur a small opportunity cost. Finally, an entity that extends provisional credit and subsequently determines that an alleged error was, in fact, an authorized transfer could incur additional costs if it is unable to reclaim provisional credit previously extended.

The costs associated with providing these consumer protections may vary across covered entities for several reasons. For example, an entity's customer base may influence both the type of errors reported (and therefore the costs associated with investigations) as well as the likelihood of reclaiming provisional credit previously extended. The initial screening procedures used by a prepaid account provider to determine account eligibility, as well as ongoing monitoring of accounts, likely affect realized losses. Although small entities could be at a disadvantage with respect to fraud screening relative to larger entities that may have access to more information or more sophisticated screening technologies, small entities are sometimes able to rely on industry partners to screen for and to investigate potential fraud.[933] Small entities may choose to limit fraud liability by closing accounts that have repeated error claims or by not offering accounts to individuals who previously engaged in potentially fraudulent activity.

As discussed in the proposed rule, the Bureau conducted pre-proposal industry outreach to attempt to determine the costs borne by prepaid account providers to implement Regulation E compliant error resolution, including provisional credit. Estimates of the ongoing costs associated with providing error resolution with provisional credit varied. During this outreach, one program manager, which provided limited liability and error resolution protections with provisional credit consistent with Regulation E to all consumers, stated that it reserved $0.35 per active cardholder per month for fraud losses (including both losses related to Regulation E error claims as well as other types of fraud). During pre-proposal outreach, another program manager, which also provided limited liability and error resolution with provisional credit consistent with Regulation E, stated that it incurred total fraud losses related to Regulation E that translated to roughly $0.22 per cardholder per month. One commenter to the proposed rule that processes prepaid transactions estimated that the prepaid industry generally experiences fraud losses of between four and five basis points when the cardholder's identity is known. The commenter estimated that providing limited liability and error resolution rights for transactions taking place before a prepaid account is registered would lead to an increase in fraud exposure of one additional basis point. However, the Bureau notes that the final rule does not require that financial institutions offer provisional credit to holders of unverified prepaid accounts.

Those small or potentially small non-bank entities that provide limited liability and error resolution protections to consumers but give provisional credit only in limited circumstances (or not at all) will sustain increased ongoing operational costs. The Bureau did not receive comment explicitly addressing the incremental cost associated with extending provisional credit incurred by those entities that otherwise provide error resolution protections. However, estimates derived from available information suggest that the magnitude of the ongoing cost of providing these protections is roughly one-third of the total ongoing cost associated with fraud losses (including those specifically related to provisional credit).[934] If the upper bound of overall fraud losses, including losses associated with providing provisional credit, is assumed to be $0.22 to $0.35 per active cardholder per month (based on the information above), it follows that the cost to extend provisional credit to all consumers is roughly $0.08 to $0.12 per active cardholder per month. Because many financial institutions currently provide provisional credit (albeit in

[932] This discussion assumes that the burdens associated with the requirements to provide liability and error resolution protections are borne by a non-bank program manager. However, in practice, some banks or credit unions may perform these functions themselves, rather than rely on a non-bank program manager. Further, non-bank program managers tasked with the functions associated with resolving errors by issuing banks may in turn rely on industry partners, including processors. The Bureau's understanding from discussion with industry participants in developing the proposed rule is that processors may charge a fixed fee per dispute as well as a variable fee component that depends on the complexity of the dispute and investigation.

[933] In pre-proposal outreach, one potentially small program manager told the Bureau that it receives information from its processor regarding whether a consumer had filed unsubstantiated disputes with other prepaid programs serviced by the processor.

[934] During pre-proposal outreach, one program manager told the Bureau that when extended provisional credit to all accounts (having previously only provided provisional credit to those accounts receiving Federal payments), its losses from providing provisional credit increased by four to six times the previous level, and overall fraud losses increased 40 percent (including the increased losses arising from extending provisional credit). Assuming that there was no change in fraud losses not relating to provisional credit, this implies that provisional credit accounted for between 7 and 10 percent of the initial level of fraud losses and just over a third of the final fraud losses. This is shown as follows. Let E = fraud losses not relating to provisional credit, P = fraud losses relating to provisional credit, and L = total fraud losses prior to the expansion of provisional credit coverage to all consumers. Therefore, L = P + E prior to the expansion of provisional credit coverage to all consumers. After the expansion of provisional credit coverage to all consumers (and assuming no change in E), it follows that (i.) 1.4L = 5P + E if losses increase by four times the previous level and (ii.) 1.4L = 7P + E if losses increase by six times the previous level. The percentage of initial fraud losses accounted for by provisional credit is represented by P/L. Rearranging (i.) gives P/L = 0.4/4 = 10 percent, and rearranging (ii.) gives P/L = 0.4/6 = 6.7 percent. In the scenario described by (i.), a four time increase, fraud losses not relating to provisional credit (E) account for 90 percent of the total fraud losses before the increase. In the scenario described by (ii.), a six time increase, (E) accounts for 93.3 percent of the total fraud losses before the increase. Assuming that E does not change, the percentage of final fraud losses accounted for by provisional credit once extended to all accounts in scenario (i.) is 5(.10)/[5(.10) + .90] = 36 percent and 7(.067)/[7(.067) + .933] = 34 percent in scenario (ii.).

limited circumstances), the impact of this provision is further mitigated.

3. Other Major Provisions Potentially Affecting Small Entities

The final rule includes a number of additional requirements that are fully applicable to small entities. The final rule requires financial institutions to comply with the following provisions. For the reasons stated below, the cumulative burdens arising from these provisions, which are more extensively described in the section 1022(b)(2)(A) discussion above, are expected to be minimal for small non-bank entities.

Pre-acquisition disclosure requirements. The final rule requires that financial institutions disclose fees to consumers in a specifically described disclosure form (the ''short form''). The short form disclosure includes a ''static'' portion containing specified subset of fees, an ''additional fee types'' portion that states the total number of fee types that are charged for the prepaid account but which are not disclosed in the static portion of the form, the two fee types that generated the most revenue from consumers during the prior 24-month period that are not disclosed in the static portion of the form, and certain other information.[935] In addition to the short form disclosure, financial institutions are required to provide a disclosure that includes a full listing of fees and related conditions, together with certain other information, in accordance with certain formatting requirements (the ''long form'').

Financial institutions will need to review and revise existing disclosures to ensure that they conform to the new requirements and will incur one-time implementation costs to do so. Because certain disclosure requirements depend on the channel through which the prepaid account is distributed, the magnitude of the burden associated these requirements will depend on how the prepaid account is distributed.[936] For those prepaid accounts distributed in a retail location, the final rule requires that the product's packaging material include the short form disclosure and that the long form disclosure be accessible by telephone and online. Financial institutions distributing prepaid accounts online are required to provide the short form and long form disclosures online, and those financial institutions distributing prepaid accounts in person (other than in a retail location) are required to provide both forms in print. For transactions conducted by telephone, financial institutions are required to provide the short form disclosure information orally, to inform consumers of the existence of the long form disclosure and its availability by telephone and on a Web site, and to provide the information in the long form disclosure to the consumer upon request.

From industry outreach conducted in connection with the proposed rule, the Bureau learned that small non-bank entities typically do not distribute prepaid accounts through the retail channel.[937] To the extent that they distribute accounts through the retail channel, small non-bank entities generally rely on this channel for a limited proportion of their overall portfolio. Small non-bank entities distributing accounts through non-retail channels will incur a one-time cost to review and edit existing disclosures to ensure that they include all applicable fees and follow the specified formatting requirements. This may include acquiring the capability to determine which fees must be disclosed in the revenue-based fee portion of the short form disclosure if such information is not already readily accessible. Small non-bank entities will need to revise the disclosures they currently provide to comply with the final rule's requirements. This will require small non-bank entities distributing prepaid accounts online to update Web sites. Those small non-bank entities distributing prepaid accounts orally by telephone may need to update interactive voice response (IVR) systems, scripts, and training for live customer service agents.

As described in the section 1022(b)(2)(A) discussion, the pre-acquisition disclosure requirements also impose ongoing operational costs. To determine the composition of the short form disclosure, small non-bank entities will need to review revenue data on an annual biennial basis to ascertain which fees should be included in the revenue-based part of the short form disclosure. Absent a need to revise the short form disclosure, reviewing the information necessary to make these determinations should comprise minimal ongoing cost. If a revision to the disclosure is necessary, small non-bank entities will incur costs associated with these revisions. Small non-bank entities will incur costs, believed to be minimal, to update Web sites and phone systems to include the revised disclosures, if applicable. The Bureau believes that the costs associated with updates to written and electronic disclosures are minimal.

Requirements pertaining to consumer access to account information. Other key provisions of the final rule potentially triggering burden include expansions to requirements to provide consumer access to account information (largely extending the current payroll card account periodic statement alternative to all prepaid accounts with certain modifications) and the establishment of certain additional disclosures related to consumer access to account information. Financial institutions offering prepaid accounts are required to comply with Regulation E's periodic statement requirement, but the final rule also provides an alternative means of compliance with this requirement. Specifically, financial institutions are not required to furnish periodic statements to consumers so long as they provide the following at no cost to the consumer: (1) Access to the prepaid account balance through a readily available telephone line; (2) access to at least 12 months of account transaction history online; and (3) at least 24 months of written account transaction history upon the consumer's request. Regardless of whether the financial institution chooses to provide periodic statements or implement the alternative, the financial institution must disclose to the consumer a summary total of the amount of all fees it assessed against the consumer's prepaid account, for both the prior calendar month as well as the calendar year to date.

Although not all covered financial institutions are required to make transaction history available to consumers under current Regulation E, current industry practice is to provide consumers with electronic access to at least 60 days of transaction history. Regulation E requires financial institutions to provide payroll card accountholders with electronic access to at least 60 days of account history if they do not furnish periodic statements.

[935] Additionally, a short form disclosure for a payroll card account or government benefit account must include either (1) a statement that consumers are not required to accept such an account that directs the consumer to ask about other ways to receive wages, salary, or benefits, or (2) a statement that the consumer has several options to receive wages, salary, or benefits, followed by a list of options available to the consumer, and a statement that directs the consumer to choose one.

[936] These channels include retail distribution, online distribution, and in-person distribution (other than in a retail location), among others. The impacts on financial institutions relying on each of these channels to distribute prepaid accounts are described in the section 1022(b)(2)(A) discussion.

[937] This is, in part, due to the potentially high fixed costs associated with distributing prepaid accounts through this channel. If a small, non-bank entity performs program management functions to offer a white label solution in a retail environment, it could incur some implementation costs depending on the terms of the contract. The Bureau's understanding is that few such small, non-bank entities exist.

Additionally, the FMS Rule requires that consumers holding accounts that receive Federal payments have access to at least 60 days of account history. In addition, the Bureau understands from industry outreach conducted in connection with the proposed rule that some financial institutions make available online more than 60 days of transaction history, ranging from six months to the entire life of the prepaid account. The final rule requires that those financial institutions relying on the alternative means of complying with Regulation E's periodic statement requirement provide 12 months of electronic history as well as 24 months of written account history on request. Additionally, financial institutions offering prepaid accounts will need to modify existing transaction history reporting or periodic statements to include the required summary total of fees.

The costs associated with implementing these provisions depend on the extent to which the financial institution relies on outside vendors to perform information technology functions. For those covered entities maintaining in-house information technology platforms, the cost associated with updating systems to maintain this information and providing additional electronic storage media should be limited. Those covered entities that format their own periodic statements or transaction histories, and do not currently display the required summary total of fees on their periodic statements or transaction histories, will incur a one-time implementation cost to modify these disclosures.[938]

Many small non-bank entities rely on processors to provide online hosting of consumer account histories. The Bureau's understanding from outreach conducted in connection with the proposed rule is that entities outsourcing this function pay processors a fee per prepaid account. This fee may depend on the extent of account history provided to consumers as well as the total number of accounts hosted by the processor.[939] These entities generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary total of fees.[940] However, one non-bank program manager predicted that its processor would offer such a modification as part of its standard package of services at no additional cost if such summary totals were a regulatory requirement.

As discussed in the section 1022(b)(2)(A) consideration of benefits, costs, and impacts, the Bureau's understanding from industry outreach is that most covered financial institutions provide consumers with telephone access to balance information. Therefore, the Bureau regards the potential burdens associated with these provisions to be de minimis and not likely, considered separately or cumulatively, to result in a significant economic impact.

Submission and posting of account agreements. The final rule also requires prepaid account issuers to submit copies of their agreements to the Bureau on a rolling basis and to post the agreements that they offer to the general public on their publicly available Web sites. For any issuer that is not required by § 1005.19(c) to post agreements on its own publicly available Web site, the final rule requires that the issuer provide access to individual account agreements to any consumer holding an open prepaid account. An issuer may fulfill this requirement by posting and maintaining the consumer's agreement on its Web site or by promptly providing a copy of the agreement in response to a consumer's request.[941]

The Bureau believes that the costs associated with submitting new and updated agreements to the Bureau (and withdrawing old agreements) and responding to consumer requests will be minimal because, in most cases, entities will comply with the requirement through electronic submission of the agreement to the Bureau and by posting copies of their agreement on a preexisting publicly available Web site. For those entities that choose not to post agreements online, the cost associated with responding to ad hoc consumer requests for copies of account agreements would include the one-time cost of training customer service agents and ongoing costs for postage.

D. Conclusion

To determine whether the economic impact of the final rule will be significant, the Bureau compared estimates of the cumulative costs imposed by the provisions on directly affected small or potentially small non-bank entities to estimates of revenues earned by these entities.[942] To determine whether the final rule is likely to have a significant economic impact on directly affected small non-bank entities, the Bureau compares an estimate of revenues earned by the entities to an estimate of the aggregate potential costs incurred by these entities to comply with the final rule's provisions.[943]

Revenues. Because both revenue information and metrics describing the number of active prepaid accounts were not generally available (at the entity level) for directly affected small or potentially small non-bank entities, the Bureau relied on findings from industry studies (which may cover programs offered by entities that are not small or potentially small) to derive an estimate

[938] During outreach conducted in connection with the proposed rule, one program manager estimated that it would cost approximately $15,000 to modify its Web site to provide the summary total of fees as well as a summary total of the total amount of deposits to the account and the total amount of all debits made to the prepaid account. Because the proposed rule's approach required additional modifications, this should be an upper bound on the estimated cost to this program manager of modifying its Web site to display only the summary total of fees required by the final rule.

[939] During outreach conducted in connection with the proposed rule, one non-bank program manager that relies on a processor for this function stated that its processor charged fees for data storage on a per-account basis at activation. Costs were generally increasing from $0.08 per account for three months of transaction history to $0.19 per account for one year of transaction history. This program manager also suggested that, because processor prices decrease with scale, it paid among the highest prices charged by the processor because it was operating at low scale.

[940] During outreach conducted in connection with the proposed rule, one non-bank program manager stated that its processor quoted a one-time cost of $65,000 associated with providing the summary totals required by the proposed rule on its processor-hosted Web site (in response to an ad-hoc request). In all probability, this represents an upper bound for the true development cost because this number likely includes a mark-up over the true cost of providing the service, and the final rule does not require all of the summary totals included in the proposed rule.

[941] If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer must provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer is required to send to the consumer or otherwise make the copy of the consumer's agreement available no later than five business days after the issuer receives the consumer's request.

[942] The Bureau did not separately consider the costs borne by small banks and credit unions because the final rule will not directly affect a substantial number of such entities, as shown above. However, it is worth noting that issuers (typically banks and credit unions) and program managers (frequently non-banks) jointly earn revenues and bear costs. The current policies of small non-bank entities are considered in determining if the economic impact of the final rule will be significant.

[943] The revenue split between the issuer and the program manager varies across prepaid programs that rely on distinct firms to perform these functions. In this analysis, the Bureau does not take a position as to whether the prepaid account issuer or the program manager assumes the burdens imposed by the final rule's provisions. However, it is worth noting, for purposes of considering the economic impact of the final rule's requirements with respect to error resolution and limited liability, that a program manager that assumes fraud risk likely has the ability to determine the fees charged to consumers, to control screening procedures, or to take other actions to mitigate fraud losses.

of the likely fee and interchange revenue earned per cardholder per month for certain types of prepaid accounts.[944] Although entities offering prepaid accounts may derive revenue from many sources, including other lines of business, the Bureau conservatively assumed that small entities only derive revenues from fees paid by cardholders and interchange fees. The Bureau obtained revenue estimates $9.98 per active cardholder per month for GPR accounts distributed online and $6.77 per active cardholder per month for payroll card accounts.[945]

Costs. The Bureau does not derive a cost per active cardholder per month incurred by small non-bank entities arising from the rule's provisions relating to credit. One credit union service organization commenter estimated that it would take most small financial institutions $95,000 to comply with the credit-related provisions of the final rule. However, the Bureau assumes that final rule's provisions regarding credit will constitute a significant economic impact on those small non-bank entities that currently offer overdraft services in connection with their prepaid products.

As described above, the Bureau estimates that those entities that do not offer any form of limited liability or error resolution protections to consumers will sustain an increase in ongoing costs of $0.22 to $0.35 per active cardholder per month. In addition, these entities will incur costs associated with implementing Regulation E compliant limited liability and error resolution protections.

The Bureau estimates that those entities that currently provide limited liability and error resolution protections without provisional credit will experience an increase in ongoing costs of roughly $0.08 to $0.12 per active cardholder per month (or up to one-third of the ongoing costs incurred by those entities that do not provide any form of limited liability or error resolution protections). In addition, these entities will incur costs associated with implementing the administration of provisional credit. The one-time implementation costs for these activities should be minimal for those entities already otherwise providing error resolution.

The Bureau does not have information that would enable it to isolate the ongoing cost associated with extending Regulation E's limited liability protections from the ongoing cost of providing error resolution generally. However, to the extent that ongoing fraud loss estimates provided to the Bureau during pre-proposal outreach include the cost associated with providing liability limitations, these costs may be, at most, $0.23 per cardholder per month.[946] Given this uncertainty, the Bureau conservatively assumes that the absence of either limited liability protections or error resolution protections could cause an entity to experience a significant economic impact.

With respect to other costs, those small or potentially small entities offering prepaid accounts typically do not provide these accounts through the retail channel. Therefore, the costs associated with the pre-acquisition disclosure requirements, expressed on a per active cardholder per month basis, are minimal.[947] As discussed above, the ongoing operational and one-time implementation costs associated with the final rule's requirements regarding access to account information will vary depending on whether the entity performs these functions in-house or relies on an external processor. Some entities will incur costs associated with making available additional transaction history. From the Study of Prepaid Account Agreements, the industry standard appears to be to provide at least 60 days of transaction history information online. Pre-proposal outreach suggested that those entities that rely on a processor may expect an upper bound cost of $0.01 per active cardholder per month to make additional transaction history information available.[948] In addition, the Bureau estimates the upper bound of the cost associated with modifying transaction histories or statements to include the required fee totals to be less than $0.01 per active cardholder per month for those performing the software modification in-house and $0.02 per active cardholder per month for those relying on a processor to perform the modification.[949] The cost associated with submitting agreements to the Bureau and with responding to consumer requests for agreements is minimal, as described above in the

[944] *See* 2012 FRB Philadelphia Study; *see also* 2012 FRB Kansas City Study. One credit union commenter estimated that average annual prepaid profits were $5,000 per small financial institution, but it did not provide revenue information nor did it clarify whether these were profits earned by financial institutions that offer prepaid cards through a vendor. Another commenter suggested that the data relied upon by the Bureau was old and that prices in the industry have decreased, but the commenter did not provide an alternative preferred source of data nor did the commenter argue that revenues per cardholder have decreased.

[945] Using this approach, the Bureau obtained a revenue estimate of $9.14 per active cardholder per month for GPR accounts distributed in a retail setting, but the Bureau notes that its understanding from pre-proposal industry outreach is that small non-bank entities typically do not distribute prepaid accounts in a retail setting. The Bureau obtained revenue estimates by combining information from tables 5.7 and 5.8 from the 2012 FRB Philadelphia Study. For example, the Bureau estimated revenues earned from GPR accounts distributed online in the following manner. First, using information in table 5.7, the difference between the interchange received and the interchange paid ($23.35 − $6.41 = $16.94) determined the net interchange. Next, the ratio of total revenues (assuming that these are composed of only cardholder fees and net interchange earned) to cardholder fees was obtained (($76.00 + $16.94)/$76.00 = 1.223). This inflator was applied to cardholder fees reported in table 5.8 (1.223*$8.16 = $9.98).

[946] If the ongoing cost of providing limited liability, error resolution, and provisional credit protections is $0.35 per active cardholder per month, and provisional credit represents $0.12 of that total, then the ongoing cost associated with providing limited liability protections could be, at most, $0.23 per active cardholder per month.

[947] For those entities distributing prepaid accounts via the telephone, the costs associated with the pre-acquisition disclosure requirements, which are considered more extensively in the section 1022(b)(2)(A) discussion, are estimated to be $0.03 per active cardholder per month (assuming that 5 percent of consumers acquiring an account via the telephone request that the long form be read to them and an average card life of 11 months). According to the 2012 FRB Kansas City Study, the mean lifespan for prepaid cards included in its analysis was 347 days. 2012 FRB Kansas City Study at 47 tbl.4.1.

The costs associated with providing the pre-acquisition disclosure for accounts distributed online are minimal because they consist largely of a Web site update. According to one survey, online distribution is nine times as common as phone distribution. 2014 Pew Survey at 5. Therefore, accounting for the relative frequency of the distribution channel, the costs associated with the pre-acquisition disclosure requirements, expressed on an active cardholder per month basis, are de minimis.

[948] One program manager operating at small scale reported that its costs were $0.08 per account for three months of transaction history and $0.19 per account for one year of transaction history. The processor charged these costs at activation (one time). Given an average GPR card account life of 11 months, this translates to an increase in costs of $0.01 per active cardholder per month.

[949] To derive these estimates, the Bureau assumes that a small non-bank program manager earns $3 million in annual revenues. This was the median revenue estimate identified by the Bureau for those small non-bank program managers for which a revenue estimate was located in publicly available information. Using the estimate of $9.98 in revenues per active cardholder per month cited above for GPR card revenues, this translates to roughly 300,601($3,000,000/$9.98) active cardholder-months on an annual basis. The Bureau assumes that these fixed implementation costs are spread out over a five year period (or over 1,503,005 active cardholder-months). Therefore, the upper bound of the cost associated with modifying transaction histories or statements to include the required fee totals is estimated to be $0.01 per active cardholder per month, using the cost estimate of $15,000 quoted above, ($15,000/1,503,005) for those entities performing the software modification in-house and $0.02 per active cardholder per month, taking the average of the two cost estimates ($65,000 and $0) quoted above, (($65,000 + $0)/(2*1,503,005)) for those entities relying on a processor to perform the modification.

section 1022(b)(2)(A) consideration of benefits, costs, and impacts.

Further, the Bureau believes that non-compliance related economic costs, such as potential future changes in market share arising from the new disclosure requirements, are minimal for all provisions except for those concerning covered separate credit features accessible by a hybrid prepaid-credit card. Such non-compliance related economic costs, including potential costs relating to disclosure, are difficult to predict, and the Bureau does not have reason to believe that they would cause small entities to experience a significant economic impact. In the aggregate, the costs not related to credit, error resolution, and limited liability are estimated to comprise at most $0.06 per active cardholder per month.

Entities experiencing a significant economic impact. Considering the revenue estimates described above, the Bureau concludes that those few small or potentially small non-bank entities that provide prepaid accounts that lack either limited liability or error resolution protections will likely experience a significant economic impact.[950] In addition, the Bureau assumes that those entities currently offering overdraft services in connection with prepaid accounts may experience a significant economic impact from the final rule's provisions.

In sum, the Bureau believes that there are approximately 14 directly affected small or potentially small non-bank entities are likely to experience a significant economic impact from the final rule's provisions. In arriving at this conclusion, the Bureau used the observed distribution of error resolution and limited liability protections to impute likely levels of protection for those entities for which no account agreement is available.[951] The Bureau assumes that the two directly affected small or potentially small non-bank entities that offer covered separate credit features accessible by a hybrid prepaid-credit card will experience a significant economic impact from the final rule's provisions. In addition, the Bureau conservatively assumes that all 12 entities that currently provide liability limitations less than provided by Regulation E will incur a significant economic impact.[952] Two of these entities also do not provide error resolution protections.

These 14 entities comprise less than 1 percent of the 2,325 small non-bank entities in the relevant NAICS code. The Bureau also believes that roughly 2 percent of all small non-bank entities in the relevant NAICS code that perform either EFTs or electronic payment services will experience a significant economic impact.[953]

E. Certification

Accordingly, the undersigned certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[954] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Further, the Bureau may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

On December 23, 2014, notice of the proposed rule was published in the **Federal Register**. The Bureau invited comment on the burden estimates and any other aspect of the proposed collections of information, including suggestions for reducing the burden. The comment period for the proposal expired on March 23, 2015.

The Bureau received one comment specifically addressing the PRA notice. A commenter from a university research center summarized the quantitative information presented in the PRA notice and asked why the analysis of regulatory costs did not include an estimate of how the proposal would affect prepaid account users and sellers beyond initial regulatory compliance. The Bureau considered the benefits and costs to consumers of the proposed rule, as well as the impact on access to credit, in the discussion pursuant to Dodd-Frank Act section 1022(b). Regarding PRA burden specifically, however, there is no impact on consumers from this rulemaking since only business entities are respondents with respect to the information collections that are materially affected. Regarding program managers and issuers, the Bureau used current market information about costs and other data as well as data on the numbers of users to estimate both the one-time and the ongoing PRA burden of the information collections in the rule. Ongoing PRA burden accounts for burden from the information collections beyond initial regulatory compliance.

The final rule amends 12 CFR part 1005, Electronic Fund Transfers (Regulation E) and 12 CFR part 1026, Truth in Lending (Regulation Z). Regulation E and Regulation Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170–0014 (Electronic Fund Transfer Act (Regulation E) 12 CFR part 1005). The Bureau's OMB control number for Regulation Z is 3170–0015 (Truth in Lending Act (Regulation Z) 12 CFR part 1026). As described below, the final rule amends the collections of information currently in Regulation E and Regulation Z subparts B and G. The frequency of response is on occasion. These information collections are required to provide benefits for consumers and are mandatory. The only information the Bureau collects under the final rule are the account agreements

[950] It is worth noting that this approach does not take into account the likely cost and revenue structure of P2P payment programs that may offer prepaid accounts to consumers. However, the Bureau identified only four small or potentially small non-bank entities offering P2P payment programs. One of these entities does not provide error resolution protections for consumers so the Bureau assumes that it will incur a significant economic impact. Therefore, this information omission, at most, could result in failing to attribute a significant economic impact to three small or potentially small non-bank entities.

[951] The Bureau excludes payroll only providers from the observed distribution when imputing the likely protections for those 14 small or potentially small non-bank entities for which the Bureau could not locate account agreements. With respect to limited liability, 12 entities are imputed to provide liability limitations consistent with Regulation E, one entity is imputed to provide liability limitations that are less comprehensive than what Regulation E provides, and one entity is imputed to not provide liability limitations. With respect to error resolution, eight entities are imputed to provide error resolution consistently with Regulation E (including provisional credit), four entities are imputed to provide error resolution consistently with Regulation E but with limitations on provisional credit, and two entities are imputed to provide error resolution consistently with Regulation E but no provisional credit.

[952] These 12 entities include six entities that do not provide liability limitations, four entities that provide liability limitations that are not as comprehensive as required by Regulation E, one entity imputed to not provide liability limitations, and one entity imputed to provide liability limitations that are not as comprehensive as those required by Regulation E.

[953] To derive this estimate, the Bureau assumes that 700 entities are within the NAICS code 522320 and perform either EFTs or electronic payment services. This is consistent with the number relied upon in FinCEN's Prepaid Access Rule. *See* 76 FR 45403 (July 29, 2011). Using a threshold of $7 million in annual receipts (the SBA threshold at the time), FinCEN estimated that 93 percent, or 651, of these entities were small. At present, the SBA considers entities within NAICS code 522320 with under $38.5 million in annual receipts to be small. Therefore, the Bureau further assumes that *at least* 651 of these entities are small. The Bureau conservatively uses a denominator of 651 to obtain this estimate.

[954] 44 U.S.C. 3501 *et seq.*

for prepaid account programs, so no issue of confidentiality arises. The affected public includes businesses, government agencies and other for-profit and not-for-profit organizations. The Bureau is not aware of any small not-for-profit organizations, aside from credit unions, that are directly affected by the final rule.

The Bureau generally accounts for the paperwork burden associated with Regulation E and Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository financial institutions and insured credit unions with more than $10 billion in total assets, their depository institution affiliates (together, the Bureau depository respondents), and certain non-depository financial institutions (the Bureau non-depository respondents), such as prepaid account program managers. The Bureau and the FTC generally both have enforcement authority over non-depository financial institutions under Regulation E and Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden on Bureau non-depository respondents. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the total paperwork burden for the financial institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

For Regulation E, using the Bureau's burden estimation methodology discussed below, the estimated burden for the approximately 181 prepaid account providers likely subject to the final rule, including Bureau respondents, is one-time burden of 155,347 hours and ongoing burden of 14,304 hours. The Bureau allocates to itself 76,343 hours of one-time burden: Bureau depository respondents account for 15,504 hours while Bureau non-depository respondents account for 121,678 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining one-time burden (155,347 − 15,504 − 121,678 = 18,165 hours) is allocated to the other Federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority. Similarly, the Bureau allocates to itself 7,207 hours of ongoing burden: Bureau depository respondents account for 1,410 hours while Bureau non-depository respondents account for 11,595 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining ongoing burden (14,304 − 1,410 − 11,595 = 1,299 hours) is allocated to the other Federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority.

For Regulation Z, using the Bureau's burden estimation methodology discussed below, the estimated burden for three non-depository institutions subject to the final rule would be one-time burden of 460 hours and ongoing burden of 6,491 hours. The Bureau allocates to itself half of both these burden estimates (230 hours and 3,245 hours, respectively) and half to the FTC.

The aggregate estimates of total burdens presented in this part are based on estimated burden hours that are averages across respondents. The Bureau expects that the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent. The Bureau used existing burden estimates, information obtained through industry research and outreach, and information provided in comments on the proposed rule to develop the figures presented below.

Most prepaid account programs already comply with the current requirements of Regulation E, as they apply to payroll card accounts. The additional requirements in the final rule would, with a few exceptions, require small extensions or revisions to existing practices after the initial costs. There are several participants in the prepaid account supply chain and the activities of the participants may vary across prepaid account programs. The Bureau understands that, in general, the respondents for purposes of PRA are program managers, except for the collection required by § 1005.19 (internet posting of prepaid account agreements and submission to the Bureau), where the respondents will likely be prepaid account issuers.[955]

Regarding the new requirements in Regulation E, the Bureau's PRA burden estimation methodology assumes that one-time burden from the short form and long form disclosure requirements and the access to account information requirement depends on the number of fee schedules. The number of responses-per-respondent for these information collections is the number of fee schedules per program manager. The one-time burden from the error resolution requirements arises from the relatively few programs that do not already meet the requirements. The number of responses-per-respondent for this information collection is the number of non-compliant programs per program manager. We assume that the one-time burden from the rolling submission of account agreements, which includes fee schedules, depends primarily on the fee schedule, and therefore the number of responses-per-respondent for this information collection is the number of fee schedules per issuer. Ongoing burden may increase with the above factors as well as with the number of customers.

A. Regulation E

As discussed further below, the final rule requires financial institutions to make available to consumers disclosures before a consumer acquires a prepaid account. These disclosures take two forms: A short form disclosure highlighting key fees and information that the Bureau believes are most important for consumers to know about prior to acquisition and a long form disclosure that sets forth all of the prepaid account's fees and the conditions under which those fees could be imposed as well as certain other information. Second, the final rule extends, with certain modifications, existing error resolution and limited liability provisions for payroll card accounts and certain government benefit accounts to all prepaid accounts.[956] Third, the final rule adopts provisions requiring prepaid account issuers to submit agreements to the Bureau for posting on a publicly-available Web site established and maintained by the Bureau and to post prepaid account agreements offered to the public on the issuers' own Web sites. Finally, the final rule, as applicable, revises and clarifies subparts A and B of Regulation E in various places to reflect the new provisions adopted for prepaid accounts. These revisions and clarifications include, among other

[955] An issuer may also be a program manager and issuers can delegate to program managers the submission of prepaid account agreements to the Bureau. These practices would not affect any of the Bureau's estimates of total burden but may affect how the burden is divided among depository institutions and non-depository institutions.

[956] All prepaid cards used to distribute Federally-administered benefits (such as Social Security and SSI) and State and local non-needs tested benefits (such as unemployment, child support, and pension payments) are currently covered by Regulation E. However, government agencies are currently not required to provide periodic statements or online access to account information for cards distributing State and local non-needs tested benefits, as long as balance information is made available to benefits recipients via telephone and electronic terminals and a written account history of at least 60 days is given upon request. Needs-tested EBT programs established or administered under State or local law are not currently subject to Regulation E pursuant to existing § 1005.15(a). The final rule does not change this.

things, revisions to provisions currently applicable to payroll card accounts and certain government benefit accounts.

The Bureau's Study of Prepaid Account Agreements and review of industry research found that most programs of GPR prepaid accounts and government benefit accounts currently comply with the major provisions of the payroll card requirements of Regulation E. Thus, on an ongoing basis, these accounts will be affected mostly by the modifications adopted in the final rule to the current provisions for payroll card accounts and which will now also hold for GPR prepaid accounts and government benefits accounts.

Providers of prepaid accounts generally provide account opening disclosures, change-in-terms notices, and annual error resolution notices that meet the current requirements of Regulation E. Final § 1005.18(f)(1) expands the account opening requirements of § 1005.7(b)(5) as applied to prepaid accounts to require the disclosure of all fees, not just fees for EFTs. However, the Bureau understands that most fees are currently generally disclosed at account opening. Thus, the one-time and ongoing burden from this requirement should be minimal.

Providers offering certain EFT services for prepaid accounts would also need to provide transaction disclosures. For example, a disclosure would be required for transactions conducted at an ATM. The Bureau believes that most or all providers currently give these disclosures. In the alternative, however, these disclosures impose minimal burden as they are machine-generated and do not involve an employee of the institution. For preauthorized transfers to the consumer's account occurring at least once every 60 days, such as direct deposit, the institution would be required to provide notice as to whether the transfer occurred unless positive notice was provided by the payor. In lieu of sending a notice of deposit, the institution may provide a readily available telephone number that the consumer can call to verify receipt of the deposit. Thus, the burden of this requirement is also minimal. For preauthorized transfers from the account, either the institution or the payee would need to notify the consumer of payment variations. Because in the vast majority of instances the payee, rather than the account provider, would satisfy this obligation, the burden on providers is minimal.

Under final § 1005.18(b)(2) and (4), a financial institution is required to make available a short form and a long form disclosure before the consumer acquires the prepaid account, subject to certain exceptions provided in § 1005.18(b)(1). The Bureau estimates that providers, including Bureau respondents, will take 40 hours per prepaid account fee schedule, on average, to develop the short form disclosure and to update systems. Providers will take eight hours every 24 months for each prepaid account fee schedule to evaluate, and if necessary, update the information on the short form disclosure regarding additional fee types. Providers will incur no other ongoing costs for the short form disclosure since they already offer consumers a pre-acquisition disclosure. The Bureau estimates that providers, including Bureau respondents, will take on average 8 hours per prepaid account fee schedule to develop the long form disclosure and update systems. Most of the content of the long form disclosure is already provided in prepaid account agreements.[957]

Final § 1005.18(f)(3) requires that certain disclosures be made on the actual prepaid account access device. These include the name of the financial institution and the URL of a Web site and a telephone number that the consumer can use to contact the financial institution about the prepaid account. The Bureau believes that currently all prepaid account access devices provide these disclosures.

Final § 1005.18(c)(1) requires financial institutions to furnish periodic statements unless the provider uses the alternative method of compliance, which requires the financial institution to make available to the consumer the following information: The consumer's account balance, through a readily available telephone line, at least 12 months of transaction history electronically, and written transaction history in response to an oral or written request that covers the 24 months preceding the date the financial institution receives the request. The Bureau expects that most providers will use the alternative method of compliance. The Study of Prepaid Account Agreements found that most prepaid account programs provided electronic access to account information; and while few agreements stated that the program provided at least 12 months of prepaid account transaction history, many programs provided access to account information for much longer time frames than what was listed in the account agreements. In addition, several commenters stated that they provided 12 months of electronic transaction history. Regarding the requirement to provide a transaction history in writing pursuant to § 1005.18(c)(1)(iii), few consumers ever request a written transaction history.

Regardless of how a financial institution chooses to comply, final § 1005.18(c)(5) requires that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account for both the prior month as well as the calendar year to date. This information must be disclosed on any periodic statement and any electronic or written history of account transactions provided.[958] Prepaid account programs generally do not currently provide these summary totals. The Bureau estimates that providers will take on average 24 hours per prepaid account fee schedule to implement these changes.

The final rule extends to all prepaid accounts the limited liability and error resolution provisions of Regulation E, as they currently apply to payroll card accounts.[959] *See* § 1005.18(e)(1) and (2). As discussed above, the Study of Prepaid Account Agreements and its industry research found that most providers of prepaid accounts provide limited liability and error resolution protections (including provisional credit) generally consistent with the Regulation E requirements for payroll card accounts. The Bureau estimates that providers (including Bureau respondents) that do not fully comply with the payroll card rule's limited liability and error resolution provisions will require 8 hours per non-compliant program to develop fully compliant

[957] Final § 1005.18(b)(4)(vii) requires that the long form disclosure include the disclosures described in § 1026.60(e)(1) or (2)(ii) if at any point a covered separate credit feature accessible by a hybrid prepaid-card (as defined in § 1026.61) may be offered in connection with the prepaid account. This burden is minimal given the Bureau's burden estimation methodology for Regulation Z, as explained below. Final § 1005.18(b)(9) provides that if a financial institution principally uses a foreign language in certain circumstances then it must provide both the short and long form in that same foreign language. The Bureau believes that current industry practice regarding pre-acquisition disclosures in foreign languages is generally consistent with this requirement. The long form disclosure also needs to be provided in English upon request, but this is a minimal one-time and ongoing expense.

[958] For periodic statements, the monthly summary may be for the statement period or for the prior calendar month; for other transaction histories, it must be for the prior calendar month.

[959] The Bureau is finalizing an exception from the requirement to provide provisional credit for prepaid accounts (other than payroll card accounts and government benefit accounts) for which the financial institution has not completed its consumer identification and verification process with respect to that prepaid account. § 1005.18(e)(3).

limited liability and error resolution procedures. Regarding ongoing costs, Bureau outreach indicates that providers receive perhaps one call per month per customer who actively uses a card and that 95 percent of those calls are resolved without requiring time from a customer service agent. Of the remaining 5 percent, very few calls involve assertions of error, but escalated calls are time consuming and respondents incur an ongoing burden.

If a financial institution changes a prepaid account's terms and conditions as a result of § 1005.18(h)(1) taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or § 1005.18(f)(2) for existing customers, a financial institution must notify consumers with accounts acquired before October 1, 2017 at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information fewer than 30 days in advance of the change becoming effective, the financial institution is permitted instead to provide notice of the change within 30 days of obtaining the consumer's contact information.

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

Financial institutions with prepaid accounts that offer overdraft credit features are likely to trigger this requirement. For any consumer who has not consented to electronic communications and who will be receiving other physical mailings from the financial institution in the specified time period, that financial institution will incur a cost of printing the notice, which can be included in the envelope or package which was already scheduled to be delivered. It is unlikely that the financial institution will incur additional mailing costs to send these notices. The remaining notices of change may be sent to consumers electronically. Therefore, the Bureau believes that the cost associated with providing these notices is minimal.

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

Final § 1005.19(b) requires certain issuers to submit to the Bureau, on a rolling basis, short form disclosures and prepaid account agreements (including fee schedules) that are offered, amended or withdrawn. The Bureau estimates that each issuer will initially take 1 hour to register and spend 5 minutes to upload each of 17 agreements (our estimate of the overall average number of fee schedules per issuer). Thus the one-time burden is 145 (= 60 + (5*17)) minutes or 2.42 hours per issuer. There is considerable uncertainty regarding the number of issuers that will offer, amend or withdraw an issuer agreement each year on an ongoing basis and the number of issuer agreements that each issuer will offer, amend or withdraw. The Bureau's experience with the submission of credit card agreements pursuant to § 1026.58 of Regulation Z suggests that issuers who upload issuer agreements will upload at most 5 issuer agreements annually on an ongoing basis.[960] We assume that every issuer uploads 5 issuer agreements annually on an ongoing basis, so our estimate is an upper bound on the burden.

The estimated burden on Bureau respondents from the final rule's changes to Regulation E are summarized below.

[960] In a recent analysis of submissions for the third quarter of 2014, the Bureau found 103 credit card issuers submitted 429 agreements in a single quarter, so just over four per issuer. 80 FR 21153, 21156. We repeated this analysis using submissions for all of 2014, which is the last year of data available, and found that 210 credit card issuers submitted 1002 agreements, so just under five per issuer. *See http://www.consumerfinance.gov/credit-cards/agreements/.*

Table 1

		One-time Burden (Bureau Respondents)					One-time Burden (Bureau Amount)	
		Number of Respondents	Average Burden per Response (hours)	Average Responses per Respondent	Average Burden per Respondent (hours)	Total One-time Burden (hours)	Half the Burden on Bureau Non-DIs (hours)	One-time Bureau Burden (hours)
1005.18(b)(2), 1005.15(c)	Short form disclosure	160	40.00	11.87	474.91	75,985.33	33,718.49	42,266.84
1005.18(b)(4), 1005.15(c)	Long form disclosure	160	8.00	11.87	94.98	15,197.07	6,743.70	8,453.37
1005.18(c)(5), 1005.15(d)	Access to prepaid account information	160	24.00	11.87	284.94	45,591.20	20,231.09	25,360.10
1005.18(e)(2), 1005.11	Error resolution	20	8.00	1.86	14.86	297.14	133.71	163.43
1005.19(b)	Submission of agreements	46	2.42	1.00	2.42	111.32	12.10	99.22
Total						**137,182.05**	**60,839.09**	**76,342.96**

Table 2

		Ongoing burden (Bureau respondents)				Ongoing burden (Bureau amount)	
		Number of Respondents	Average Burden per Response (minutes)	Average Annual Responses per Respondent	Total Ongoing Burden (hours)	Half the burden on Bureau non-DIs (hours)	Ongoing Bureau burden (hours)
1005.18(b)(2)(ix)	Short form additional fee type disclosure	160	240	11.87	7,599.84	3,371.92	4,227.92
1005.18(e)(2), 1005.11	Error resolution	20	30	538.52	5,385.19	2,423.34	2,961.85
1005.19(b)	Submission of agreements	46	5	5.00	19.17	2.08	17.08
Total					**13,004.20**	**5,797.34**	**7,206.86**

B. Regulation Z

The Bureau understands that approximately 218,000 consumers currently have a form of overdraft protection on their GPR and payroll cards.[961] The Bureau's PRA estimation methodology assumes that the same number will use a credit feature after the final rule takes effect, although this is likely an overestimate.[962] Further, the methodology generally assumes that the per-respondent and per transaction burdens would be consistent with those currently reported for credit card accounts in Regulation Z.

As described in greater detail above, in the final rule, the Bureau generally intends to cover under Regulation Z overdraft credit features offered in connection with prepaid accounts where the credit features are offered by the prepaid account issuer, its affiliates, or its business partners (except as described in new § 1026.61(a)(4)).[963] The Bureau anticipates that most of these overdraft credit features covered under the final rule would meet the definition of "open-end credit." [964] In addition, under the final rule, a prepaid card that accesses such an overdraft credit feature would be a "credit card" under Regulation Z.[965] The overdraft credit features described above would be governed by subparts A, B, D, and G of Regulation Z. Pursuant to Regulation Z, persons offering such plans would be required to comply with the requirements governing information collections. These requirements are as follows.

As discussed below, certain disclosure provisions in Regulation Z apply to "creditors" and other disclosure provisions apply to "card issuers." Under the final rule, a person that is offering an overdraft credit feature as described above in connection with a prepaid account would be both a "card issuer" and a "creditor" under Regulation Z.

Persons offering an overdraft credit feature described above in connection with a prepaid account are required to inform consumers of costs and terms before they use the credit feature and in general to inform them of certain subsequent changes in the terms of the credit feature. Initial information would need to include the finance charge and

[961] The Bureau is aware of three providers of overdraft credit features on prepaid accounts and believes that NetSpend is the only significant provider. A recent financial filing suggested that NetSpend had 3.6 million active cards as of Sept. 30, 2015. Total Sys. Serv., Inc., Form 10–Q, at 27, *available at https://www.sec.gov/Archives/edgar/data/721683/000119312515367677/d97203d10q.htm* (for the quarterly period ended Sept. 30, 2015). NetSpend also stated in a news article that only about 6 percent of its customers regularly use overdraft. *See* 2012 NetSpend WSJ Article. Assuming each NetSpend customer has overdraft protection on only one account, there are 216,000 prepaid accounts with overdraft protection. No data is available for the other two providers. The Bureau believes, based on industry data, that the median provider of prepaid accounts likely has about 10,000 customers. Assuming 10 percent have an overdraft service or credit feature on one prepaid account gives an additional 2,000 accounts with overdraft protection.

[962] Current data on the size of the market for credit features on prepaid accounts has limited usefulness in predicting the size of the market under the final rule, since both eligibility criteria and credit features may change as a result. See previous discussions in this supplementary information.

[963] These overdraft credit features are covered under the term "covered separate credit feature" as defined in new § 1026.61.

[964] This would apply if the creditor establishes a program where the creditor routinely extends credit and may impose finance charges from time to time on an outstanding unpaid balance for credit.

[965] The final rule defines such a prepaid card that is a credit card as a "hybrid prepaid-credit card" in new § 1026.61.

other charges, the APR, a description of how balances on which a finance charge is based would be calculated, and any collateral that would secure repayment. If the creditor changes certain terms initially disclosed, or increases the minimum periodic payment, a written change-in-terms notice generally would need to be provided to the consumer at least 45 days prior to the effective date of the change. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau also assumes that for these accounts, the number of account opening disclosures equals the number of accounts in any year.[966]

Creditors are required to provide a written statement of activity for each billing cycle (*i.e.,* periodic statement). The statement has to be provided for each account that has a balance of more than $1 or on which a finance charge is imposed, and it has to include a description of activity on the account, opening and closing balances, finance charges imposed, and payment information. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 80 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account.

Creditors are required to notify consumers about their rights and responsibilities regarding billing errors. Creditors have to provide either a complete statement of billing rights each year or a summary on each periodic statement. If a consumer alleges a billing error, the creditor must provide an acknowledgment, within 30 days of receipt, that the creditor received the consumer's error notice and must report on the results of its investigation within 90 days. If a billing error did not occur, the creditor must provide an explanation as to why the creditor believed an error did not occur and provide documentary evidence to the consumer upon request. The creditor must also give notice of the portion of the disputed amount and related finance or other charges that the consumer still owed and notice of when payment was due. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau further assumes that, based on discussions with industry, in any year 1.5 percent of customers will assert errors that require significant time from customer service representatives.

Persons offering an overdraft credit feature discussed above in connection with a prepaid account are required, when advertising their product, to include certain basic credit information if the advertisement refers to specified credit terms or costs. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.

Persons offering an overdraft credit feature described above in connection with a prepaid account are required to send the Bureau copies of the overdraft credit feature agreement. The Bureau estimates each card issuer will take 5 minutes to upload each agreement. We assume the same overall average number of agreements per issuer as above (which will not be representative of any of the three), so each issuer will initially take 85 minutes to upload 17 agreements and will upload 5 agreements annually on an ongoing basis.

Finally, persons offering overdraft credit features as described above in connection with a prepaid account must provide additional disclosures with solicitations and applications. Such card issuers must disclose key terms of the account, such as the APR, information about variable rates, and fees such as annual fees, minimum finance charges, and transaction fees for purchases. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.[967]

The estimated burden on Bureau respondents from the changes to Regulation Z are summarized below.

[966] In one recent analysis, the median life span for GPR cards with occasional reloads was 330 days and 570 days for GPR cards with periodic non-government direct deposit. 2012 FRB Kansas City Study at 47 tbl.4.1.

[967] The recordkeeping requirement in § 1026.25 does not specify the kind of records that must be retained, so for purposes of PRA the paperwork burden is minimal.

Table 3

		One-time burden (Bureau Respondents)				
		Number of Respondents	Average Burden per Response (hours)	Average Responses per Respondent	Total One-time Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	3	8	1	24.00	12.00
1026.7(b)	Periodic statements	3	80	1	240.00	120.00
1026.9	Change in terms	3	8	1	24.00	12.00
1026.13	Error resolution	3	8	1	24.00	12.00
1026.16	Advertising	3	40	1	120.00	60.00
1026.58	Internet posting of credit card agreements	3	1.42	1	4.25	2.13
1026.60(a)(2)	Application and solicitation disclosures	3	8	1	24.00	12.00
Total					460.25	230.13

Table 4

		Ongoing burden (Bureau Respondents)				
		Number of Respondents	Average Burden per Response (minutes)	Average Annual Responses per Respondent	Total Ongoing Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	3	0.25	78,667	983.33	491.67
1026.7(b)	Periodic statements	3	0.0625	944,000	2,950.00	1,475.00
1026.9	Change in terms	3	0.125	78,667	491.67	245.83
1026.13	Error resolution	3	30	1,180	1,770.00	885.00
1026.16	Advertising	3	25	5	6.25	3.13
1026.58	Internet posting of credit card agreements	3	5	5	1.25	0.63
1026.60(a)(2)	Application and solicitation disclosures	3	480	12	288.00	144.00
Total					6,490.50	3,245.25

The Consumer Financial Protection Bureau has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: The Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the internet to *oira_submission@omb.eop.gov*, with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov*.

List of Subjects

12 CFR Part 1005

Automated teller machines, Banks, Banking, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittances, Reporting and recordkeeping requirements, Savings Associations.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR parts 1005 and 1026 as follows:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5532, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o–1.

Subpart A—General

■ 2. Section 1005.2 is amended by revising paragraphs (b)(2) and (3) to read as follows:

§ 1005.2 Definitions.

* * * * *

(b) * * *

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(3) The term includes a prepaid account.

(i) "Prepaid account" means:

(A) A "payroll card account," which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions) are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person; or

(B) A "government benefit account," as defined in § 1005.15(a)(2); or

(C) An account that is marketed or labeled as "prepaid" and that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines; or

(D) An account:

(*1*) That is issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter,

(*2*) Whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, and

(*3*) That is not a checking account, share draft account, or negotiable order of withdrawal account.

(ii) For purposes of paragraphs (b)(3)(i)(C) and (D) of this section, the term "prepaid account" does not include:

(A) An account that is loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement;

(B) An account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments;

(C) The person-to-person functionality of an account established by or through the United States government whose primary function is to conduct closed-loop transactions on U.S. military installations or vessels, or similar government facilities;

(D)(*1*) A gift certificate as defined in § 1005.20(a)(1) and (b);

(*2*) A store gift card as defined in § 1005.20(a)(2) and (b);

(*3*) A loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); or

(*4*) A general-use prepaid card as defined in § 1005.20(a)(3) and (b) that is both marketed and labeled as a gift card or gift certificate; or

(E) An account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency, as set forth in § 1005.15(a)(2).

* * * * *

■ 3. Section 1005.10 is amended by revising paragraph (e)(1) to read as follows:

§ 1005.10 Preauthorized transfers.

* * * * *

(e) *Compulsory use*—(1) *Credit.* No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. This exception does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

* * * * *

■ 4. Section 1005.11 is amended by revising paragraphs (c)(2)(i)(A) and (B) and adding paragraph (c)(2)(i)(C) to read as follows:

§ 1005.11 Procedures for resolving errors.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error;

(B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220); or

(C) The alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not completed its consumer identification and verification process, as set forth in § 1005.18(e)(3)(ii).

* * * * *

■ 5. Section 1005.12 is amended by revising paragraphs (a)(1)(ii), (a)(1)(iv), and (a)(2)(i) and (ii) and adding paragraph (a)(2)(iii) to read as follows:

§ 1005.12 Relation to other laws.

(a) * * *

(1) * * *

(ii) The issuance of an access device (other than an access device for a prepaid account) that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a) of this part;

* * * * *

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving:

(A) Except with respect to a prepaid account, an extension of credit that is incident to an electronic fund transfer that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a);

(B) With respect to transactions that involve a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, an extension of credit that is incident to an electronic fund transfer that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction;

(C) Transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4); and

(D) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, transactions that access the prepaid account, as applicable.

(2) * * *

(i) The addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z (12 CFR part 1026);

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device; and

(iii) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a consumer's liability for unauthorized use and the investigation of errors involving transactions that access the non-covered separate credit feature, as applicable.

* * * * *

■ 6. Section 1005.15 is revised to read as follows:

§ 1005.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the Act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local

law or administered by a state or local agency. The agency shall comply with all applicable requirements of the Act and this part except as modified by this section.

(2) For purposes of this section, the term "account" or "government benefit account" means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Pre-acquisition disclosure requirements.* (1) Before a consumer acquires a government benefit account, a government agency shall comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b).

(2) *Additional content for government benefit accounts*—(i) *Statement regarding consumer's payment options.* As part of its short form pre-acquisition disclosures, the agency must provide a statement that the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive their benefit payments from the agency instead of receiving them via the account, using the following clause or a substantially similar clause: "You do not have to accept this benefits card. Ask about other ways to receive your benefits." Alternatively, an agency may provide a statement that the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and directing the consumer to indicate which option the consumer chooses using the following clause or a substantially similar clause: "You have several options to receive your payments: [list of options available to the consumer]; or this benefits card. Tell the benefits office which option you choose." This statement must be located above the information required by § 1005.18(b)(2)(i) through (iv). This statement must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by § 1005.18(b)(2)(i) through (iv).

(ii) *Statement regarding state-required information or other fee discounts and waivers.* An agency may, but is not required to, include a statement in one additional line of text in the short form disclosure directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to § 1005.18(b)(3)(i) and (ii), or, if no such statements are disclosed, above the statement required by § 1005.18(b)(2)(x). This statement must appear in the same type size used to disclose variable fee information pursuant to § 1005.18(b)(3)(i) and (ii), or, if none, the same type size used for the information required by § 1005.18(b)(2)(x) through (xiii).

(3) *Form of disclosures.* When a short form disclosure required by paragraph (c) of this section is provided in writing or electronically, the information required by § 1005.18(b)(2)(i) through (ix) shall be provided in the form of a table. Except as provided in § 1005.18(b)(6)(iii)(B), the short form disclosure required by § 1005.18(b)(2) shall be provided in a form substantially similar to Model Form A–10(a) of appendix A of this part. Sample Form A–10(f) in appendix A of this part provides an example of the long form disclosure required by § 1005.18(b)(4) when the agency does not offer multiple service plans.

(d) *Access to account information*—(1) *Periodic statement alternative.* A government agency need not furnish periodic statements required by § 1005.9(b) if the agency makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer);

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 12 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the agency receives the consumer's request.

(2) *Additional access to account information requirements.* For government benefit accounts, a government agency shall comply with the account information requirements applicable to prepaid accounts as set forth in § 1005.18(c)(3) through (5).

(e) *Modified disclosure, limitations on liability, and error resolution requirements.* A government agency that provides information under paragraph (d)(1) of this section shall comply with the following:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 1005.7(b) by disclosing:

(i) *Access to account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (e)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph (a) of appendix A–5 of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–5 of this part, in place of the notice required by § 1005.7(b)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–5 of this part, in place of the notice required by § 1005.8(b). Alternatively, the agency may include on or with each electronic or written history provided in accordance with paragraph (d)(1) of this section, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) in appendix A–3 of this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) *Modified limitations on liability requirements.* (i) For purposes of § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the unauthorized transfer; or

(B) The date the agency sends a written history of the consumer's account transactions requested by the

consumer under paragraph (d)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) An agency may comply with paragraph (e)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) *Modified error resolution requirements.* (i) The agency shall comply with the requirements of § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (d)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the agency sends a written history of the consumer's account transactions requested by the consumer under paragraph (d)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(4)(i) of this section, an agency complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the agency within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

(f) *Disclosure of fees and other information.* For government benefit accounts, a government agency shall comply with the disclosure and change-in-terms requirements applicable to prepaid accounts as set forth in § 1005.18(f).

(g) *Government benefit accounts accessible by hybrid prepaid-credit cards.* For government benefit accounts accessible by hybrid prepaid-credit cards as defined in Regulation Z, 12 CFR 1026.61, a government agency shall comply with prohibitions and requirements applicable to prepaid accounts as set forth in § 1005.18(g).

■ 7. Section 1005.17 is amended by revising paragraphs (a)(2) and (3) and adding paragraph (a)(4) to read as follows:

§ 1005.17 Requirements for overdraft services.

(a) * * *

(2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account;

(3) A line of credit or other transaction exempt from Regulation Z (12 CFR part 1026) pursuant to 12 CFR 1026.3(d); or

(4) A covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61; or credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of 12 CFR 1026.61(a)(4).

* * * * *

■ 8. Section 1005.18 is revised to read as follows:

§ 1005.18 Requirements for financial institutions offering prepaid accounts.

(a) *Coverage.* A financial institution shall comply with all applicable requirements of the Act and this part with respect to prepaid accounts except as modified by this section. For rules governing government benefit accounts, see § 1005.15.

(b) *Pre-acquisition disclosure requirements*—(1) *Timing of disclosures*—(i) *General.* Except as provided in paragraphs (b)(1)(ii) or (iii) of this section, a financial institution shall provide the disclosures required by paragraph (b) of this section before a consumer acquires a prepaid account.

(ii) *Disclosures for prepaid accounts acquired in retail locations.* A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section before a consumer acquires a prepaid account in person at a retail location if the following conditions are met:

(A) The prepaid account access device is contained inside the packaging material.

(B) The disclosures required by paragraph (b)(2) of this section are provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material.

(C) The disclosures required by paragraph (b)(2) of this section include the information set forth in paragraph (b)(2)(xiii) of this section that allows a consumer to access the information required to be disclosed by paragraph (b)(4) of this section by telephone and via a Web site.

(D) The long form disclosures required by paragraph (b)(4) of this section are provided after the consumer acquires the prepaid account.

(iii) *Disclosures for prepaid accounts acquired orally by telephone.* A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section before a consumer acquires a prepaid account orally by telephone if the following conditions are met:

(A) The financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the information required to be disclosed by paragraph (b)(4) of this section is available both by telephone and on a Web site.

(B) The financial institution makes the information required to be disclosed by paragraph (b)(4) of this section available both by telephone and on a Web site.

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

(2) *Short form disclosure content.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:

(i) *Periodic fee.* The periodic fee charged for holding the prepaid account, assessed on a monthly or other periodic basis, using the term "Monthly fee," "Annual fee," or a substantially similar term.

(ii) *Per purchase fee.* The fee for making a purchase using the prepaid account, using the term "Per purchase" or a substantially similar term.

(iii) *ATM withdrawal fees.* Two fees for using an automated teller machine to initiate a withdrawal of cash in the United States from the prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term "ATM withdrawal" or a substantially similar term, and "in-network" or "out-of-network," respectively, or substantially similar terms.

(iv) *Cash reload fee.* The fee for reloading cash into the prepaid account using the term "Cash reload" or a substantially similar term. The fee disclosed must be the total of all charges from the financial institution and any third parties for a cash reload.

(v) *ATM balance inquiry fees.* Two fees for using an automated teller machine to check the balance of the prepaid account in the United States, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term "ATM balance inquiry" or a substantially similar term, and "in-network" or "out-of-network," respectively, or substantially similar terms.

(vi) *Customer service fees.* Two fees for calling the financial institution about the prepaid account, both for calling an interactive voice response system and a live customer service agent, using the term "Customer service" or a

substantially similar term, and "automated" or "live agent," or substantially similar terms, respectively, and "per call" or a substantially similar term. When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, disclose only the fee for calling the live agent customer service about the prepaid account, using the term "Live customer service" or a substantially similar term and "per call" or a substantially similar term.

(vii) *Inactivity fee.* The fee for non-use, dormancy, or inactivity of the prepaid account, using the term "Inactivity" or a substantially similar term, as well as the conditions that trigger the financial institution to impose that fee.

(viii) *Statements regarding additional fee types*—(A) *Statement regarding number of additional fee types charged.* A statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: "We charge [x] other types of fees." The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding:

(*1*) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section; and

(*2*) Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(B) *Statement directing consumers to disclosure of additional fee types.* If a financial institution makes a disclosure pursuant to paragraph (b)(2)(ix) of this section, a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by paragraph (b)(2)(viii)(A) of this section, using the following clause or a substantially similar clause: "Here are some of them:".

(ix) *Disclosure of additional fee types*—(A) *Determination of which additional fee types to disclose.* The two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in paragraphs (b)(2)(ix)(D) and (E) of this section, excluding:

(*1*) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section;

(*2*) Any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in paragraphs (b)(2)(ix)(D) and (E) of this section; and

(*3*) Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(B) *Disclosure of fewer than two additional fee types.* A financial institution that has only one additional fee type that satisfies the criteria in paragraph (b)(2)(ix)(A) of this section must disclose that one additional fee type; it may, but is not required to, also disclose another additional fee type of its choice. A financial institution that has no additional fee types that satisfy the criteria in paragraph (b)(2)(ix)(A) of this section is not required to make a disclosure under this paragraph (b)(2)(ix); it may, but is not required to, disclose one or two fee types of its choice.

(C) *Fee variations in additional fee types.* If an additional fee type required to be disclosed pursuant to paragraph (b)(2)(ix)(A) of this section has more than two fee variations, or when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with paragraph (b)(3)(i) of this section. Except when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraph (b)(7)(ii)(B)(*1*) of this section. If a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section, except that the financial institution would disclose only the one fee variation name and fee amount instead of two.

(D) *Timing of initial assessment of additional fee type disclosure*—(*1*) *Existing prepaid account programs as of October 1, 2017.* For a prepaid account program in effect as of October 1, 2017, the financial institution must disclose the additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014.

(*2*) *Existing prepaid account programs as of October 1, 2017 with unavailable data.* If a financial institution does not have 24 months of fee revenue data for a particular prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017.

(*3*) *New prepaid account programs created on or after October 1, 2017.* For a prepaid account program created on or after October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the first 24 months of the program.

(E) *Timing of periodic reassessment and update of additional fee types disclosure*—(*1*) *General.* A financial institution must reassess its additional fee types disclosure periodically as described in paragraph (b)(2)(ix)(E)(*2*) of this section and upon a fee schedule change as described in paragraph (b)(2)(ix)(E)(*3*) of this section. The financial institution must update its additional fee types disclosure if the previous disclosure no longer complies with the requirements of this paragraph (b)(2)(ix).

(*2*) *Periodic reassessment.* A financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of this paragraph (b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(*4*) of this section. A financial institution may, but is not required to, carry out this reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences.

(*3*) *Fee schedule change.* If a financial institution revises the fee schedule for a prepaid account program, it must

determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of this paragraph (b)(2)(ix) for the 24 months following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of this paragraph (b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(*4*) of this section. If an immediate change in terms and conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system as described in § 1005.8(a)(2) and that change affects the prepaid account program's fee schedule, the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the change permanent, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(*4*) of this section.

(*4*) *Update printing exception.* Notwithstanding the requirements to update additional fee types disclosures in paragraph (b)(2)(ix)(E) of this section, a financial institution is not required to update the listing of additional fee types that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to paragraph (b)(2)(ix)(E)(*2*) of this section or prior to a fee schedule change pursuant to paragraph (b)(2)(ix)(E)(*3*) of this section.

(x) *Statement regarding overdraft credit features.* If a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered at any point to a consumer in connection with the prepaid account, a statement that overdraft/credit may be offered, the time period after which it may be offered, and that fees would apply, using the following clause or a substantially similar clause: "You may be offered overdraft/credit after [x] days. Fees would apply." If no such credit feature will be offered at any point to a consumer in connection with the prepaid account, a statement that no overdraft credit feature is offered, using the following clause or a substantially similar clause: "No overdraft/credit feature."

(xi) *Statement regarding registration and FDIC or NCUA insurance.* A statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable, as follows:

(A) *Account is insurance eligible and does not have pre-acquisition customer identification/verification.* If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: "Register your card for [FDIC insurance eligibility] [NCUA insurance, if eligible,] and other protections."

(B) *Account is not insurance eligible and does not have pre-acquisition customer identification/verification.* If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: "Not [FDIC] [NCUA] insured. Register your card for other protections."

(C) *Account is insurance eligible and has pre-acquisition customer identification/verification.* If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened, using the following clause or a substantially similar clause: "Your funds are [eligible for FDIC insurance] [NCUA insured, if eligible]."

(D) *Account is not insurance eligible and has pre-acquisition customer identification/verification.* If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid account program before the account is opened, using the following clause or a substantially similar clause: "Your funds are not [FDIC] [NCUA] insured."

(E) *No customer identification/verification.* If a prepaid account program is set up such that there is no customer identification and verification process for any prepaid accounts within the prepaid account program, using the following clause or a substantially similar clause: "Treat this card like cash. Not [FDIC] [NCUA] insured."

(xii) *Statement regarding CFPB Web site.* A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau (*cfpb.gov/prepaid*) for general information about prepaid accounts, using the following clause or a substantially similar clause: "For general information about prepaid accounts, visit *cfpb.gov/prepaid*."

(xiii) *Statement regarding information on all fees and services.* A statement directing the consumer to the location of the long form disclosure required by paragraph (b)(4) of this section to find details and conditions for all fees and services. For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, this statement must also include a telephone number and a Web site URL that a consumer may use to directly access, respectively, an oral and an electronic version of the long form disclosure required under paragraph (b)(4) of this section. The disclosure required by this paragraph must be made using the following clause or a substantially similar clause: "Find details and conditions for all fees and services in [location]" or, for prepaid accounts offered at retail locations pursuant to paragraph (b)(1)(ii) of this section, made using the following clause or a substantially similar clause: "Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [Web site]." The Web site URL may not exceed 22 characters and must be meaningfully named. A financial institution may, but is not required to, disclose an SMS code at the end of the statement disclosing the telephone number and Web site URL, if the SMS code can be accommodated on the same line of text as the statement required by this paragraph.

(xiv) *Additional content for payroll card accounts*—(A) *Statement regarding wage or salary payment options.* For payroll card accounts, a statement that the consumer does not have to accept the payroll card account and directing the consumer to ask about other ways to receive wages or salary from the employer instead of receiving them via the payroll card account using the following clause or a substantially similar clause: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the

consumer chooses using the following clause or a substantially similar clause: ''You have several options to receive your wages: [list of options available to the consumer]; or this payroll card. Tell your employer which option you choose.'' This statement must be located above the information required by paragraphs (b)(2)(i) through (iv).

(B) *Statement regarding state-required information or other fee discounts and waivers.* For payroll card accounts, a financial institution may, but is not required to, include a statement in one additional line of text directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. This statement must be located directly below any statements disclosed pursuant to paragraphs (b)(3)(i) and (ii) of this section, or, if no such statements are disclosed, above the statement required by paragraph (b)(2)(x) of this section.

(3) *Short form disclosure of variable fees and third-party fees and prohibition on disclosure of finance charges*—(i) *General disclosure of variable fees.* If the amount of any fee that is required to be disclosed in the short form disclosure pursuant to paragraphs (b)(2)(i) through (vii) and (ix) of this section could vary, a financial institution shall disclose the highest amount it may impose for that fee, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, using the following clause or a substantially similar clause: ''This fee can be lower depending on how and where this card is used.'' Except as provided in paragraph (b)(3)(ii) of this section, a financial institution must use the same symbol and statement for all fees that could vary. The linked statement must be located above the statement required by paragraph (b)(2)(x) of this section.

(ii) *Disclosure of variable periodic fee.* If the amount of the periodic fee disclosed in the short form disclosure pursuant to paragraph (b)(2)(i) of this section could vary, as an alternative to the disclosure required by paragraph (b)(3)(i) of this section, the financial institution may disclose the highest amount it may impose for the periodic fee, followed by a symbol, such as a dagger, that is different from the symbol the financial institution uses pursuant to paragraph (b)(3)(i) of this section, to indicate that a waiver of the fee or a lower fee might apply, linked to a statement in one additional line of text disclosing the waiver or reduced fee amount and explaining the circumstances under which the fee waiver or reduction may occur. The linked statement must be located directly above or in place of the linked statement required by paragraph (b)(3)(i) of this section, as applicable.

(iii) *Single disclosure for like fees.* As an alternative to the two-tier fee disclosure required by paragraphs (b)(2)(iii), (v), and (vi) of this section and any two-tier fee required by paragraph (b)(2)(ix) of this section, a financial institution may disclose a single fee amount when the amount is the same for both fees.

(iv) *Third-party fees in general.* Except as provided in paragraph (b)(3)(v) of this section, a financial institution may not include any third-party fees in a disclosure made pursuant to paragraph (b)(2) of this section.

(v) *Third-party cash reload fees.* Any third-party fee included in the cash reload fee disclosed in the short form pursuant to paragraph (b)(2)(iv) of this section must be the highest fee known by the financial institution at the time it prints, or otherwise prepares, the short form disclosure required by paragraph (b)(2) of this section. A financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure.

(vi) *Prohibition on disclosure of finance charges.* A financial institution may not include in a disclosure made pursuant to paragraphs (b)(2)(i) through (ix) of this section any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

(4) *Long form disclosure content.* In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:

(i) *Title for long form disclosure.* A heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid account program.

(ii) *Fees.* All fees that may be imposed in connection with a prepaid account. For each fee, the financial institution must disclose the amount of the fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. A financial institution may not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed. A financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer. The financial institution must also disclose any third-party fee amounts known to the financial institution that may apply. For any such third-party fee disclosed, the financial institution may, but is not required to, include either or both a statement that the fee is accurate as of or through a specific date or that the third-party fee is subject to change. If a third-party fee may apply but the amount of that fee is not known by the financial institution, it must include a statement indicating that the third-party fee may apply without specifying the fee amount. A financial institution is not required to revise the long form disclosure required by paragraph (b)(4) of this section to reflect a fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure.

(iii) *Statement regarding registration and FDIC or NCUA insurance.* The statement required by paragraph (b)(2)(xi) of this section, together with an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

(iv) *Statement regarding overdraft credit features.* The statement required by paragraph (b)(2)(x) of this section.

(v) *Statement regarding financial institution contact information.* A statement directing the consumer to a telephone number, mailing address, and Web site URL of the person or office that a consumer may contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a copy of transaction history pursuant to paragraph (c)(1)(iii) of this section if the financial institution does not provide periodic statements pursuant to § 1005.9(b), or to notify the financial institution when the consumer believes that an unauthorized electronic fund transfer occurred as required by § 1005.7(b)(2) and paragraph (d)(1)(ii) of this section.

(vi) *Statement regarding CFPB Web site and telephone number.* A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau (*cfpb.gov/prepaid*) for general information about prepaid accounts, and a statement directing the consumer to a Consumer Financial

Protection Bureau telephone number (1–855–411–2372) and Web site URL (*cfpb.gov/complaint*) to submit a complaint about a prepaid account, using the following clause or a substantially similar clause: "For general information about prepaid accounts, visit *cfpb.gov/prepaid*. If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1–855–411–2372 or visit *cfpb.gov/complaint*."

(vii) *Regulation Z disclosures for overdraft credit features.* The disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), in accordance with the requirements for such disclosures in 12 CFR 1026.60, if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, may be offered in connection with the prepaid account. A financial institution may, but is not required to, include above the Regulation Z disclosures required by this paragraph a heading and other explanatory information introducing the overdraft credit feature. A financial institution is not required to revise the disclosure required by this paragraph to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure.

(5) *Disclosure requirements outside the short form disclosure.* At the time a financial institution provides the short form disclosure, it must also disclose the following information: the name of the financial institution; the name of the prepaid account program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any. In a setting other than in a retail location, this information must be disclosed in close proximity to the short form. In a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material. In a retail location, the purchase price must be disclosed either on the exterior of or in close proximity to the prepaid account access device's packaging material.

(6) *Form of pre-acquisition disclosures*—(i) *General*—(A) *Written disclosures.* Except as provided in paragraphs (b)(6)(i)(B) and (C) of this section, disclosures required by paragraph (b) of this section must be in writing.

(B) *Electronic disclosures.* The disclosures required by paragraph (b) of this section must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a Web site when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section. Electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via Web browsers or mobile applications, as applicable, and via screen readers. Electronic disclosures provided pursuant to paragraph (b) of this section need not meet the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(C) *Oral disclosures.* Disclosures required by paragraphs (b)(2) and (5) of this section must be provided orally when a consumer acquires a prepaid account orally by telephone as described in paragraph (b)(1)(iii) of this section. For prepaid accounts acquired in retail locations or orally by telephone, disclosures required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(B) or (b)(1)(iii)(B) of this section also must be made orally.

(ii) *Retainable form.* Pursuant to § 1005.4(a)(1), disclosures required by paragraph (b) of this section must be made in a form that a consumer may keep, except for disclosures provided orally pursuant to paragraphs (b)(1)(ii) or (iii) of this section, long form disclosures provided via SMS as permitted by paragraph (b)(2)(xiii) of this section for a prepaid account sold at retail locations pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, and the disclosure of a purchase price pursuant to paragraph (b)(5) of this section that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section.

(iii) *Tabular format*—(A) *General.* When a short form disclosure is provided in writing or electronically, the information required by paragraphs (b)(2)(i) through (ix) of this section shall be provided in the form of a table. Except as provided in paragraph (b)(6)(iii)(B) of this section, the short form disclosures required by paragraph (b)(2) of this section shall be provided in a form substantially similar to Model Forms A–10(a) through (d) in appendix A of this part, as applicable. When a long form disclosure is provided in writing or electronically, the information required by paragraph (b)(4)(ii) of this section shall be provided in the form of a table. Sample Form A–10(f) in appendix A of this part provides an example of the long form disclosure required by paragraph (b)(4) of this section when the financial institution does not offer multiple service plans.

(B) *Multiple service plans*—(*1*) *Short form disclosure for default service plan.* When a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by paragraphs (b)(2)(i) through (ix) of this section may be provided in the tabular format described in paragraph (b)(6)(iii)(A) of this section for the service plan in which a consumer is initially enrolled by default upon acquiring the prepaid account.

(*2*) *Short form disclosure for multiple service plans.* As an alternative to disclosing the default service plan pursuant to paragraph (b)(6)(iii)(B)(*1*) of this section, when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, fee disclosures required by paragraphs (b)(2)(i) through (vii) and (ix) of this section may be provided in the form of a table with separate columns for each service plan, in a form substantially similar to Model Form A–10(e) in appendix A of this part. Column headings must describe each service plan included in the table, using the terms "Pay-as-you-go plan," "Monthly plan," "Annual plan," or substantially similar terms; or, for multiple service plans offering preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service, column headings must describe each service plan included in the table for the preferred- and non-preferred service plans, as applicable.

(*3*) *Long form disclosure.* The information in the long form disclosure required by paragraph (b)(4)(ii) of this section must be presented in the form of a table for all service plans.

(7) *Specific formatting requirements for pre-acquisition disclosures*—(i) *Grouping*—(A) *Short form disclosure.* The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must be grouped together and provided in that order. The information required by paragraphs (b)(2)(v) through (ix) of this section must be generally grouped

together and provided in that order. The information required by paragraphs (b)(3)(i) and (ii) of this section, as applicable, must be generally grouped together and in the location described by paragraphs (b)(3)(i) and (ii) of this section. The information required by paragraphs (b)(2)(x) through (xiii) of this section must be generally grouped together and provided in that order. The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section must be located above the information required by paragraphs (b)(2)(i) through (iv) of this section, as described in paragraph (b)(2)(xiv)(A) of this section. The statement regarding state-required information or other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section, when applicable, must appear in the location described by paragraph (b)(2)(xiv)(B) of this section.

(B) *Long form disclosure.* The information required by paragraph (b)(4)(i) of this section must be located in the first line of the long form disclosure. The information required by paragraph (b)(4)(ii) of this section must be generally grouped together and organized under subheadings by the categories of function for which a financial institution may impose the fee. Text describing the conditions under which a fee may be imposed must appear in the table required by paragraph (b)(6)(iii)(A) of this section in close proximity to the fee amount. The information in the long form disclosure required by paragraphs (b)(4)(iii) through (vi) of this section must be generally grouped together, provided in that order, and appear below the information required by paragraph (b)(4)(ii) of this section. If, pursuant to § 1005.18(b)(4)(vii), the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), such disclosures must appear below the disclosures required by paragraph (b)(4)(vi) of this section.

(C) *Multiple service plan disclosure.* When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, in lieu of the requirements in paragraph (b)(7)(i)(A) of this section for grouping of the disclosures required by paragraphs (b)(2)(i) through (iv) and (v) through (ix) of this section, the information required by paragraphs (b)(2)(i) through (ix) of this section must be grouped together and provided in that order.

(ii) *Prominence and size*—(A) *General.* All text used to disclose information in the short form or in the long form disclosure pursuant to paragraphs (b)(2), (b)(3)(i) and (ii), and (b)(4) of this section must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast.

(B) *Short form disclosure*—(*1*) *Fees and other information.* The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must appear as follows: Fee amounts in bold-faced type; single fee amounts in a minimum type size of 15 points (or 21 pixels); two-tier fee amounts for ATM withdrawal in a minimum type size of 11 points (or 16 pixels) and in no larger a type size than what is used for the single fee amounts; and fee headings in a minimum type size of eight points (or 11 pixels) and in no larger a type size than what is used for the single fee amounts. The information required by paragraphs (b)(2)(v) through (ix) of this section must appear in a minimum type size of eight points (or 11 pixels) and appear in the same or a smaller type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The information required by paragraphs (b)(2)(x) through (xiii) of this section must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required to be disclosed by paragraphs (b)(2)(v) through (ix) of this section. Additionally, the statements disclosed pursuant to paragraphs (b)(2)(viii)(A) and (b)(2)(x) of this section and the telephone number and URL disclosed pursuant to paragraph (b)(2)(xiii) of this section, where applicable, must appear in bold-faced type. The following information must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size that what is used for the information required by paragraphs (b)(2)(x) through (xiii) of this section: text used to distinguish each of the two-tier fees pursuant to paragraphs (b)(2)(iii), (v), (vi), and (ix) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies ''per call,'' where applicable; and text used to explain the conditions that trigger an inactivity fee and that the fee applies monthly or for the applicable time period, pursuant to paragraph (b)(2)(vii) of this section.

(*2*) *Variable fees.* The symbols and corresponding statements regarding variable fees disclosed in the short form pursuant to paragraphs (b)(3)(i) and (ii) of this section, when applicable, must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(x) through (xiii) of this section. A symbol required next to the fee amount pursuant to paragraphs (b)(3)(i) and (ii) of this section must appear in the same type size or pixel size as what is used for the corresponding fee amount.

(*3*) *Payroll card account additional content.* The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section, when applicable, must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The statement regarding state-required information and other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section must appear in the same type size used to disclose variable fee information pursuant to paragraph (b)(3)(i) and (ii) of this section, or, if none, the same type size used for the information required by paragraphs (b)(2)(x) through (xiii) of this section.

(C) *Long form disclosure.* Long form disclosures required by paragraph (b)(4) of this section must appear in a minimum type size of eight points (or 11 pixels).

(D) *Multiple service plan short form disclosure.* When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, the fee headings required by paragraphs (b)(2)(i) through (iv) of this section must appear in bold-faced type. The information required by paragraphs (b)(2)(i) through (xiii) of this section must appear in a minimum type size of seven points (or nine pixels), except the following must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(i) through (xiii) of this section: Text used to distinguish each of the two-tier fees required by paragraphs (b)(2)(iii) and (v) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies ''per call,'' where applicable; text used to explain the conditions that trigger an inactivity fee pursuant to paragraph (b)(2)(vii) of this section; and text used to distinguish that fees required by paragraphs (b)(2)(i) and (vii) of this section apply monthly or for the applicable time period.

(iii) *Segregation.* Short form and long form disclosures required by paragraphs (b)(2) and (4) of this section must be segregated from other information and must contain only information that is required or permitted for those

disclosures by paragraph (b) of this section.

(8) *Terminology of pre-acquisition disclosures.* Fee names and other terms must be used consistently within and across the disclosures required by paragraph (b) of this section.

(9) *Prepaid accounts acquired in foreign languages*—(i) *General.* A financial institution must provide the pre-acquisition disclosures required by paragraph (b) of this section in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances:

(A) The financial institution principally uses a foreign language on the prepaid account packaging material;

(B) The financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language.

(ii) *Long form disclosures in English upon request.* A financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to paragraph (b)(9)(i) of this section must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to paragraph (b)(4) of this section in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language.

(c) *Access to prepaid account information*—(1) *Periodic statement alternative.* A financial institution need not furnish periodic statements required by § 1005.9(b) if the financial institution makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 12 months preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the financial institution receives the consumer's request.

(2) *Periodic statement alternative for unverified prepaid accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written history of the consumer's account transactions pursuant to paragraph (c)(1)(iii) of this section for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in paragraph (e)(3)(i)(A) through (C) of this section.

(3) *Information included on electronic or written histories.* The history of account transactions provided under paragraphs (c)(1)(ii) and (iii) of this section must include the information set forth in § 1005.9(b).

(4) *Inclusion of all fees charged.* A financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

(5) *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date on any periodic statement provided pursuant to § 1005.9(b) and on any history of account transactions provided or made available by the financial institution.

(d) *Modified disclosure requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(1) *Initial disclosures.* The financial institution shall modify the disclosures under § 1005.7(b) by disclosing:

(i) *Access to account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account transaction history, such as the address of a Web site, and a summary of the consumer's right to receive a written account transaction history upon request (in place of the summary of the right to receive a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph may be made by providing a notice substantially similar to the notice contained in paragraph (a) of appendix A–7 of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–7 of this part, in place of the notice required by § 1005.7(b)(10).

(2) *Annual error resolution notice.* The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–7 of this part, in place of the notice required by § 1005.8(b). Alternatively, a financial institution may include on or with each electronic and written account transaction history provided in accordance with paragraph (c)(1) of this section, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) of appendix A–3 of this part, modified as necessary to reflect the error resolution provisions set forth in paragraph (e) of this section.

(e) *Modified limitations on liability and error resolution requirements*—(1) *Modified limitations on liability requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(i) For purposes of § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic account transaction history made available to the consumer reflects the unauthorized transfer; or

(B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (e)(1)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(2) *Modified error resolution requirements.* A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:

(i) The financial institution shall comply with the requirements of § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph

(c)(1)(ii) of this section, provided that the electronic account transaction history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(2)(i) of this section, a financial institution complies with the requirements for resolving errors in § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

(3) *Error resolution for unverified accounts*—(i) *Provisional credit for errors on accounts that have not been verified.* As set forth in § 1005.11(c)(2)(i)(C), for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting a consumer's account if the financial institution has not completed its consumer identification and verification process with respect to that prepaid account.

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

(A) It has not concluded its consumer identification and verification process, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part.

(B) It has concluded its consumer identification and verification process, but could not verify the identity of the consumer, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part; or

(C) It does not have a consumer identification and verification process by which the consumer can register the prepaid account.

(iii) *Resolution of pre-verification errors.* If a consumer's account has been verified, the financial institution must comply with the provisions set forth in § 1005.11(c) in full with respect to any errors that satisfy the timing requirements of § 1005.11, or the modified timing requirements in this paragraph (e), as applicable, including with respect to errors that occurred prior to verification.

(A) Notwithstanding paragraph (e)(3)(iii) of this section, if, at the time the financial institution was required to provisionally credit the account (pursuant to § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable), the financial institution has not yet completed its identification and verification process with respect to that account, the financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting the account.

(f) *Disclosure of fees and other information*—(1) *Initial disclosure of fees and other information.* A financial institution must include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to paragraph (b)(4) of this section.

(2) *Change-in-terms notice.* The change-in-terms notice provisions in § 1005.8(a) apply to any change in a term or condition that is required to be disclosed under § 1005.7 or paragraph (f)(1) of this section. If a financial institution discloses the amount of a third-party fee in its pre-acquisition long form disclosure pursuant to paragraph (b)(4)(ii) of this section and initial disclosures pursuant to paragraph (f)(1) of this section, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in that fee amount imposed by the third party. If a financial institution provides pursuant to paragraph (f)(1) of this section the Regulation Z disclosures required by paragraph (b)(4)(vii) of this section for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein.

(3) *Disclosures on prepaid account access devices.* The name of the financial institution and the Web site URL and a telephone number a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. If a financial institution does not provide a physical access device in connection with a prepaid account, the disclosure must appear on the Web site, mobile application, or other entry point a consumer must visit to access the prepaid account electronically.

(g) *Prepaid accounts accessible by hybrid prepaid-credit cards*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, with respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, a financial institution must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature.

(2) *Exception for higher fees or charges.* A financial institution is not prohibited under paragraph (g)(1) of this section from imposing a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature.

(h) *Effective date and special transition rules for disclosure provisions*—(1) *Effective date generally.* Except as provided in paragraphs (h)(2) and (3) of this section, the requirements of this subpart, as modified by this section, apply to prepaid accounts as defined in § 1005.2(b)(3), including government benefit accounts subject to § 1005.15, beginning October 1, 2017.

(2) *Early disclosures*—(i) *Exception for disclosures on existing prepaid account access devices and prepaid account packaging materials.* The disclosure requirements of this subpart, as modified by this section, shall not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017.

(ii) *Disclosures for prepaid accounts acquired on or after October 1, 2017.* This paragraph applies to prepaid accounts acquired by consumers on or after October 1, 2017 via packaging materials that were manufactured, printed, or otherwise produced prior to October 1, 2017.

(A) *Notices of certain changes.* If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been

required under § 1005.8(a) or paragraph (f)(2) of this section for existing customers, the financial institution must provide to the consumer a notice of the change within 30 days of obtaining the consumer's contact information.

(B) *Initial disclosures.* The financial institution must mail or deliver to the consumer initial disclosures pursuant to § 1005.7 and paragraph (f)(1) of this section that have been updated as a result of paragraph (h)(1) of this section taking effect, within 30 days of obtaining the consumer's contact information.

(iii) *Disclosures for prepaid accounts acquired before October 1, 2017.* This paragraph applies to prepaid accounts acquired by consumers before October 1, 2017. If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been required under § 1005.8(a) or paragraph (f)(2) of this section for existing customers, the financial institution must provide to the consumer a notice of the change at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to notify the consumer of the change in accordance with the timing requirements set forth in paragraph (h)(2)(ii)(A) of this section.

(iv) *Method of providing notice to consumers.* With respect to prepaid accounts governed by paragraph (h)(2)(ii) or (iii) of this section, if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*), or is not otherwise already mailing or delivering to the consumer written account-related communications within the respective time periods specified in paragraphs (h)(2)(ii) or (iii) of this section, the financial institution may provide to the consumer a notice of a change in terms and conditions pursuant to paragraph (h)(2)(ii) or (iii) of this section or required or voluntary updated initial disclosures as a result of paragraph (h)(1) of this section taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.

(3) *Account information not available on October 1, 2017*—(i) *Electronic and written account transaction history.* If, on October 1, 2017, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to paragraph (c)(1)(ii) of this section or to provide 24 months of written account transaction history upon request pursuant to paragraph (c)(1)(iii) of this section, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in paragraphs (c)(1)(ii) and (iii) of this section.

(ii) *Summary totals of fees.* If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to paragraph (c)(5) of this section, the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by paragraph (c)(5) of this section.

■ 9. Section 1005.19 is added to read as follows:

§ 1005.19 Internet posting of prepaid account agreements.

(a) *Definitions*—(1) *Agreement.* For purposes of this section, "agreement" or "prepaid account agreement" means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. "Agreement" or "prepaid account agreement" also includes fee information, as defined in paragraph (a)(3) of this section.

(2) *Amends.* For purposes of this section, an issuer "amends" an agreement if it makes a substantive change (an "amendment") to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in paragraph (a)(3) of this section, is deemed to be substantive.

(3) *Fee information.* For purposes of this section, "fee information" means the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to § 1005.18(b)(4).

(4) *Issuer.* For purposes of this section, "issuer" or "prepaid account issuer" means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement.

(5) *Offers.* For purposes of this section, an issuer "offers" an agreement if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public.

(6) *Offers to the general public.* For purposes of this section, an issuer "offers to the general public" an agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.

(7) *Open account.* For purposes of this section, a prepaid account is an "open account" or "open prepaid account" if: There is an outstanding balance in the account; the consumer can load funds to the account even if the account does not currently hold a balance; or the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, in connection with the account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is considered an "open account" or "open prepaid account."

(8) *Prepaid account.* For purposes of this section, "prepaid account" means a prepaid account as defined in § 1005.2(b)(3).

(b) *Submission of agreements to the Bureau*—(1) *Submissions on a rolling basis.* An issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Rolling submissions must be sent to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer any prepaid account agreement as described in paragraphs (b)(1)(ii) through (iv) of this section. Each submission must contain:

(i) Identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), the effective date of the prepaid account agreement, the name of the program manager, if any, and the names of other relevant parties, if applicable (such as the employer for a

payroll card program or the agency for a government benefit program);

(ii) Any prepaid account agreement offered by the issuer that has not been previously submitted to the Bureau;

(iii) Any prepaid account agreement previously submitted to the Bureau that has been amended, as described in paragraph (b)(2) of this section; and

(iv) Notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing, as described in paragraphs (b)(3), (b)(4)(ii), and (b)(5)(ii) of this section.

(2) *Amended agreements.* If a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change comes effective.

(3) *Withdrawal of agreements no longer offered.* If an issuer no longer offers a prepaid account agreement that was previously submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the issuer ceases to offer the agreement, that it is withdrawing the agreement.

(4) *De minimis exception.* (i) An issuer is not required to submit any prepaid account agreements to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. If the issuer has 3,000 or more open prepaid accounts as of the last day of the calendar quarter, the issuer must submit to the Bureau its prepaid account agreements no later than 30 days after the last day of that calendar quarter.

(ii) If an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau.

(5) *Product testing exception.* (i) An issuer is not required to submit a prepaid account agreement to the Bureau if the agreement meets the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section. If the agreement fails to meet the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section as of the last day of the calendar quarter, the issuer must submit to the Bureau that prepaid account agreement no later than 30 days after the last day of that calendar quarter. An agreement qualifies for the product testing exception if the agreement:

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 3,000 open prepaid accounts; and

(C) Is not offered other than in connection with such a product test.

(ii) If an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement.

(6) *Form and content of agreements submitted to the Bureau*—(i) *Form and content generally.* (A) Each agreement must contain the provisions of the agreement and the fee information currently in effect.

(B) Agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of this section, and therefore are not required to be included in submissions to the Bureau:

(*1*) Ancillary disclosures required by state or Federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act;

(*2*) Solicitation or marketing materials;

(*3*) Periodic statements; and

(*4*) Documents that may be sent to the consumer along with the prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Fee information.* Fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. The agreement or addendum thereto must contain all of the fee information, as defined by paragraph (a)(3) of this section.

(iii) *Integrated agreement.* An issuer may not provide provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addendum). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addendum, as appropriate.

(c) *Posting of agreements offered to the general public.* (1) An issuer must post and maintain on its publicly available Web site any prepaid account agreements offered to the general public that the issuer is required to submit to the Bureau under paragraph (b) of this section.

(2) Agreements posted pursuant to this paragraph (c) must conform to the form and content requirements for agreements submitted to the Bureau set forth in paragraph (b)(6) of this section.

(3) The issuer must post and update the agreements posted on its Web site pursuant to this paragraph (c) as frequently as the issuer is required to submit new or amended agreements to the Bureau pursuant to paragraph (b)(2) of this section.

(4) Agreements posted pursuant to this paragraph (c) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible to the public and must be accessible without submission of personally identifiable information.

(d) *Agreements for all open accounts*—(1) *Availability of an individual consumer's prepaid account agreement.* With respect to any open prepaid account, an issuer must either:

(i) Post and maintain the consumer's agreement on its Web site; or

(ii) Promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. If the issuer makes an agreement available upon request, the issuer must provide the consumer with the ability to request a copy of the agreement by telephone. The issuer must send to the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request.

(2) *Form and content of agreements.* (i) Except as provided in this paragraph (d), agreements posted on the issuer's Web site pursuant to paragraph (d)(1)(i) of this section or sent to the consumer upon the consumer's request pursuant to paragraph (d)(1)(ii) of this section must conform to the form and content requirements for agreements submitted to the Bureau as set forth in paragraph (b)(6) of this section.

(ii) If the issuer posts an agreement on its Web site under paragraph (d)(1)(i) of this section, the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer.

(iii) Agreements posted or otherwise provided pursuant to this paragraph (d) may contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, provided that the issuer takes appropriate

measures to make the agreement accessible only to the consumer or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to this paragraph (d) must set forth the specific provisions and fee information applicable to the particular consumer.

(v) Agreements posted pursuant to paragraph (d)(1)(i) of this section must be updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to paragraph (b)(2) of this section. Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be accurate as of the date the agreement is sent to the consumer.

(vi) Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

(e) *E-Sign Act requirements.* Except as otherwise provided in this section, issuers may provide prepaid account agreements in electronic form under paragraphs (c) and (d) of this section without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(f) *Effective date*—(1) *Effective date generally.* Except as provided in paragraph (f)(2) of this section, the requirements of this section apply to prepaid accounts beginning on October 1, 2017.

(2) *Delayed effective date for the agreement submission requirement.* The requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to paragraph (b) of this section is delayed until October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018.

(3) *Requirements to post and provide consumers agreements.* Nothing in paragraph (f)(2) of this section shall affect the requirements to post prepaid account agreements on an issuer's Web site pursuant to paragraphs (c) and (d) of this section or the requirement to provide a copy of the consumer's agreement to the consumer upon request pursuant to paragraph (d) of this section.

Subpart B—Requirements for Remittance Transfers

■ 10. Section 1005.32 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 1005.32 Estimates.

(a) * * *

(1) * * *

(iii) The remittance transfer is sent from the sender's account with the institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

* * * * *

■ 11. In Appendix A to part 1005:

■ a. In the table of contents:

■ i. The entries for A–5 and A–7 are revised.

■ ii. Entries for A–10(a) through A–10(f) are added.

■ iii. The entry for reserved A–10 through A–30 is revised to A–11 through A–29.

■ b. Model Clauses A–5 and A–7 are revised.

■ c. Model Forms A–10(a) through (f) are added.

■ d. Model Forms A–11 through A–29 are reserved.

The additions and revisions read as follows:

Appendix A to Part 1005—Model Disclosure Clauses and Forms

Table of Contents

A–5—Model Clauses for Government Agencies (§ 1005.15(e)(1) and (2))

(a) Disclosure by government agencies of information about obtaining account information for government benefit accounts (§ 1005.15(e)(1)(i)).

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM) (a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations]. This information, along with a 12-month history of account transactions, is also available online at [Internet address].

You also have the right to obtain at least 24 months of written history of account transactions by calling [telephone number], or by writing to us at [address]. You will not be charged a fee for this information unless you request it more than once per month. [Optional: Or you may request a written history of account transactions by contacting your caseworker.]

(b) Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 1005.15(e)(1)(ii) and (e)(2)).

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your [agency's name for program] account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address] [optional: or by contacting your caseworker]. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at

[telephone number][the telephone number shown above].

* * * * *

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

(a) Disclosure by financial institutions of information about obtaining account information for prepaid accounts (§ 1005.18(d)(1)(i)).

You may obtain information about the amount of money you have remaining in your prepaid account by calling [telephone number]. This information, along with a 12-month history of account transactions, is also available online at [Internet address].

[For accounts that are or can be registered:] [If your account is registered with us,] You also have the right to obtain at least 24 months of written history of account transactions by calling [telephone number], or by writing us at [address]. You will not be charged a fee for this information unless you request it more than once per month.

(b) Disclosure of error-resolution procedures for financial institutions that do not provide periodic statements (§ 1005.18(d)(1)(ii) and (d)(2)).

In Case of Errors or Questions About Your Prepaid Account Telephone us at [telephone number] or Write us at [address] [or email us at [email address]] as soon as you can, if you think an error has occurred in your prepaid account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [prepaid account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, [and your account is registered with us,] we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. [Keep reading to learn more about how to register your card.]

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [Internet address]].

(c) *Warning regarding unregistered prepaid accounts (§ 1005.18(e)(3)).*

It is important to register your prepaid account as soon as possible. Unless you register your account, we may not credit your account in the amount you think is in error until we complete our investigation. To register your account, go to [Internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity.

BILLING CODE 4810–AM–P

A-10(A)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR GOVERNMENT BENEFIT ACCOUNTS (§§ 1005.15(C) AND 1005.18(B)(2), (3), (6), AND (7))

You have several options to receive your payments: direct deposit to your bank account; direct deposit to your own prepaid account; or this benefits card. Tell the benefits office which option you choose.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$0	**$0**	**$0** in-network **$1.95*** out-of-network	**N/A**

ATM balance inquiry (in-network or out-of-network)	$0 or $1.95*
Customer service (automated or live agent)	$0 or $1.95 per call
Inactivity	$0

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$0.50 or $1.00
[Additional fee type]	$3.00

* This fee can be lower depending on how and where this card is used. [See [location] for free ways to access your funds and balance information.]

No overdraft/credit feature.
Your funds are eligible for FDIC insurance.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services in the cardholder agreement.

A-10(B)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PAYROLL CARD ACCOUNTS

(§ 1005.18(B)(2), (3), (6), AND (7))

You do not have to accept this payroll card.
Ask your employer about other ways to receive your wages.

Monthly fee	Per purchase	ATM withdrawal	Cash reload
$0	**$0**	**$0** in-network **$1.95*** out-of-network	**N/A**

ATM balance inquiry (in-network or out-of-network)	$0 or $1.95*
Customer service (automated or live agent)	$0 or $1.95 per call
Inactivity	$0

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$1.00*
[Additional fee type]	$3.00

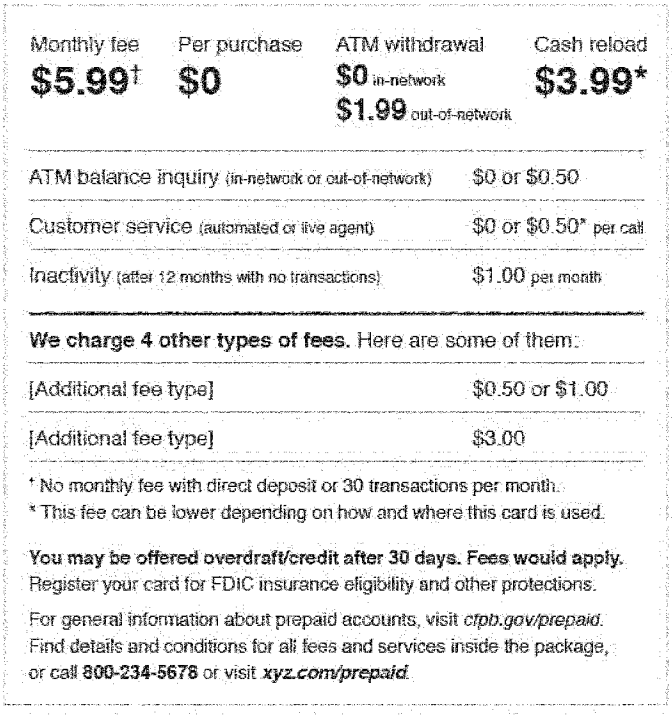
* This fee can be lower depending on how and where this card is used.
[See [location] for free ways to access your funds and balance information.]

No overdraft/credit feature.
Your funds are eligible for FDIC insurance.

For general information about prepaid accounts, visit *cfpb.gov/prepaid.*
Find details and conditions for all fees and services in the cardholder agreement.

A-10(C)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS, EXAMPLE 1

(§ 1005.18(B)(2), (3), (6), AND (7))



Monthly fee	Per purchase	ATM withdrawal	Cash reload
$5.99†	**$0**	**$0** in-network **$1.99** out-of-network	**$3.99***

ATM balance inquiry (in-network or out-of-network)	$0 or $0.50
Customer service (automated or live agent)	$0 or $0.50* per call
Inactivity (after 12 months with no transactions)	$1.00 per month

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$0.50 or $1.00
[Additional fee type]	$3.00

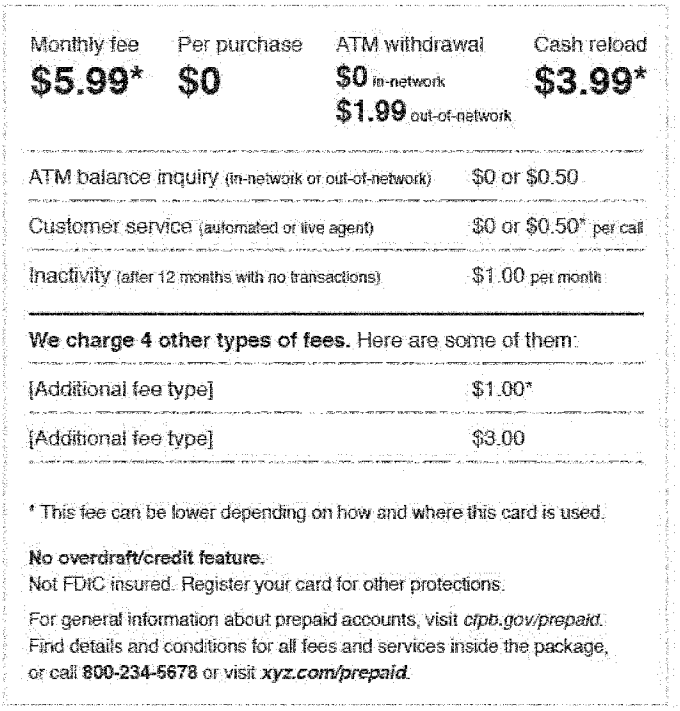
† No monthly fee with direct deposit or 30 transactions per month.
* This fee can be lower depending on how and where this card is used.

You may be offered overdraft/credit after 30 days. Fees would apply.
Register your card for FDIC insurance eligibility and other protections.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services inside the package,
or call **800-234-5678** or visit ***xyz.com/prepaid***.

A-10(D)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS, EXAMPLE 2

(§ 1005.18(B)(2), (3), (6), AND (7))



Monthly fee	Per purchase	ATM withdrawal	Cash reload
$5.99*	**$0**	**$0** in-network **$1.99** out-of-network	**$3.99***

ATM balance inquiry (in-network or out-of-network)	$0 or $0.50
Customer service (automated or live agent)	$0 or $0.50* per call
Inactivity (after 12 months with no transactions)	$1.00 per month

We charge 4 other types of fees. Here are some of them:

[Additional fee type]	$1.00*
[Additional fee type]	$3.00

* This fee can be lower depending on how and where this card is used.

No overdraft/credit feature.
Not FDIC insured. Register your card for other protections.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services inside the package, or call **800-234-5678** or visit ***xyz.com/prepaid***.

A-10(E)—MODEL FORM FOR SHORT FORM DISCLOSURES FOR PREPAID ACCOUNTS WITH MULTIPLE SERVICE PLANS (§ 1005.18(B)(2), (3), (6), AND (7))

	Pay-as-you-go plan	Monthly plan	Annual plan
Plan fee	$0	$5.99† per mo.	$39.99 per yr.
Per purchase	$0.25	$0	$0
ATM withdrawal (in-net.)	$0	$0	$0
ATM withdrawal (out-net.)	$2.50	$1.99	$1.99
Cash reload	$4.99*	$4.99*	$4.99*
ATM balance inquiry (in-net.)	$0.50	$0.50	$0.50
ATM balance inquiry (out-net.)	$1.00	$1.00	$1.00
Live customer service (per call)	$1.50	$0.50	$0.50
Inactivity (after 12 mo. w/ no trans.)	$2.50 per mo.	$2.50 per mo.	$2.50 per mo.
We charge 4 other types of fees. Here are some of them:			
[Additional fee type]	$1.00*	$1.00*	$1.00*
[Additional fee type]	$3.00	$3.00	$3.00

† $1.00 monthly fee with direct deposit.
* This fee can be lower depending on how and where this card is used.

No overdraft/credit feature.
Not FDIC insured. Register your card for other protections.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
Find details and conditions for all fees and services inside the package, or call **800-234-5678** or visit ***xyz.com/prepaid***.

A-10(F)—SAMPLE FORM FOR LONG FORM DISCLOSURES FOR PREPAID ACCOUNTS

(§ 1005.18(B)(4), (6), AND (7))

List of all fees for XYZ Prepaid Card

All fees	Amount	Details
Get started		
Card purchase	$3.95	
Monthly usage		
Monthly fee	$5.99	Monthly fee is waived in any month in which you receive a direct deposit or conduct at least 30 transactions.
Add money		
Direct deposit	$0.50	
Cash reload	$3.99	Fees of up to $3.99 may apply when reloading your card at XYZ reload agents. Locations may be found at *xyzbank.com/prepaid/reloads*.
Spend money		
Bill payment (regular delivery)	$0.50	Bill pay available when you log in to your account at *xyzbank.com/prepaid* or using the XYZ Bank mobile app. Regular bill pay transactions will be completed within 3 business days for electronic payments and within approximately 7 days if we have to mail a paper check to pay your bill.
Bill payment (expedited delivery)	$1.00	Bill pay available when you log in to your account at *xyzbank.com/prepaid* or using the XYZ Bank mobile app. Expedited bill pay transactions will be completed within 1 business day. Electronic payments only.
Get cash		
ATM withdrawal (in-network)	$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at *xyzbank.com/ATMs*.
ATM withdrawal (out-of-network)	$1.99	This is our fee. We will not charge you this fee for your first 3 out-of-network ATM withdrawals each month. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
Information		
Customer service (automated)	$0	No fee for calling our automated customer service line, including for balance inquiries.
Customer service (live agent)	$0.50	Per call. First 3 calls per month are free.
ATM balance inquiry (in-network)	$0	"In-network" refers to the XYZ Bank ATM Network. Locations can be found at *xyzbank.com/ATMs*.
ATM balance inquiry (out-of-network)	$0.50	This is our fee. "Out-of-network" refers to all the ATMs outside of the XYZ Bank ATM Network. You may also be charged a fee by the ATM operator.
Using your card outside the U.S.		
International transaction	3%	Of the U.S. dollar amount of each transaction.
International ATM withdrawal	$3.00	This is our fee. You may also be charged a fee by the ATM operator, even if you do not complete a transaction.
International ATM balance inquiry	$2.00	This is our fee. You may also be charged a fee by the ATM operator.
Other		
Inactivity	$1.00	You will be charged $1.00 each month after you have not completed a transaction using your card for 12 months.

Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ Bank, an FDIC-insured institution. Once there, your funds are insured up to $250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See *fdic.gov/deposit/deposits/prepaid.html* for details.

No overdraft/credit feature.

Contact XYZ Bank by calling 1-800-555-5555, by mail at 555 Street Name, Anytown, NY, or visit *xyzbank.com/prepaid*.

For general information about prepaid accounts, visit *cfpb.gov/prepaid*.
If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit *cfpb.gov/complaint*.

BILLING CODE 4810–AM–C

A–11 through A–29 [Reserved]

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■ 12. In Supplement I to part 1005:

■ a. Under *Section 1005.2—Definitions:*

■ i. In subsection *2(b) Account,* paragraph 2 is removed and paragraph 3 is redesignated as paragraph 2.
■ ii. Subsection *Paragraph 2(b)(3)* is added.
■ b. Under *Section 1005.4—General Disclosure Requirements; Jointly Offered Services:*
■ i. In subsection *4(a) Form of Disclosures,* paragraph 1 is revised.
■ c. Under *Section 1005.10—Preauthorized Transfers:*
■ i. Subsection *10(e)(1) Credit* is revised.
■ ii. In subsection *10(e)(2) Employment or Government Benefit,* paragraph 2 is added.
■ d. Under *Section 1005.12—Relation to Other Laws:*
■ i. Subsection *12(a) Relation to Truth in Lending* is revised.
■ ii. In subsection *12(b) Preemption of Inconsistent State Laws,* paragraph 2 is revised and paragraphs 3 and 4 are added.
■ e. *Section 1005.15—Electronic Fund Transfer of Government Benefits* is added.
■ f. *Section 1005.18—Requirements for Financial Institutions Offering Payroll Card Accounts* is removed.
■ g. *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts* is added.
■ h. *Section 1005.19—Internet Posting of Prepaid Account Agreements* is added.
■ i. Under *Section 1005.30—Remittance Transfer Definitions:*
■ i. In subsection *30(c) Designated Recipient,* paragraph 2.ii is revised.
■ ii. In subsection *30(g) Sender,* paragraphs 1 and 3 are revised.
■ j. Under *Appendix A—Model Disclosure Clauses and Forms:*
■ i. Paragraphs 2 and 3 are revised.

The revisions, additions, and removals read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.2—Definitions

* * * * *

2(b) Account

* * * * *

Paragraph 2(b)(3)

Paragraph 2(b)(3)(i)

1. *Debit card includes prepaid card.* For purposes of subpart A of Regulation E, unless otherwise specified, the term debit card also includes a prepaid card.

2. *Certain employment-related cards not covered as payroll card accounts.* The term ''payroll card account'' does not include an account used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer's primary source of salary or other compensation. The term also does not include an account used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include an account that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. While such accounts would not be payroll card accounts, such accounts could constitute prepaid accounts generally, provided the other conditions of the definition of that term in § 1005.2(b)(3) are satisfied. In addition, all transactions involving the transfer of funds to or from a payroll card account or prepaid account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

3. *Marketed or labeled as ''prepaid.''* The term ''marketed or labeled as 'prepaid' '' means promoting or advertising an account using the term ''prepaid.'' For example, an account is marketed or labeled as prepaid if the term ''prepaid'' appears on the access device associated with the account or the access device's packaging materials, or on a display, advertisement, or other publication to promote purchase or use of the account. An account may be marketed or labeled as prepaid if the financial institution, its service provider, including a program manager, or the payment network on which an access device for the account is used, promotes or advertises, or contracts with another party to promote or advertise, the account using the label ''prepaid.'' A product or service that is marketed or labeled as prepaid is not a ''prepaid account'' pursuant to § 1005.2(b)(3)(i)(C) if it does not otherwise meet the definition of account under § 1005.2(b)(1).

4. *Issued on a prepaid basis.* To be issued on a prepaid basis, a prepaid account must be loaded with funds when it is first provided to the consumer for use. For example, if a consumer purchases a prepaid account and provides funds that are loaded onto a card at the time of purchase, the prepaid account is issued on a prepaid basis.

5. *Capable of being loaded with funds.* A prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance.

6. *Prepaid account acting as a pass-through vehicle for funds.* To satisfy § 1005.2(b)(3)(i)(D), a prepaid account must be issued on a prepaid basis or be capable of being loaded with funds. This means that the prepaid account must be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product, such as a digital wallet, is only capable of storing a consumer's payment credentials for other accounts but is incapable of having funds stored on it, such a product is not a prepaid account. However, if a product allows a consumer to transfer funds, which can be stored before the consumer designates a destination for the funds, the product satisfies § 1005.2(b)(3)(i)(D).

7. *Not required to be reloadable.* Prepaid accounts need not be reloadable by the consumer or a third party.

8. *Primary function.* To satisfy § 1005.2(b)(3)(i)(D), an account's primary function must be to provide consumers with general transaction capability, which includes the general ability to use loaded funds to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers. This definition excludes accounts that provide such capability only incidentally. For example, the primary function of a brokerage account is to hold funds so that the consumer can conduct transactions through a licensed broker or firm, not to conduct transactions with multiple, unaffiliated merchants for good or services, or at automated teller machines, or to conduct person-to-person transfers. Similarly, the primary function of a savings account is to accrue interest on funds held in the account; such accounts restrict the extent to which the consumer can conduct general transactions and withdrawals. Accordingly, brokerage accounts and savings accounts do not satisfy § 1005.2(b)(3)(i)(D), and thus are not prepaid accounts as defined by § 1005.2(b)(3). The following examples provide additional guidance:

i. An account's primary function is to enable a consumer to conduct transactions with multiple, unaffiliated merchants for goods or services, at automated teller machines, or to conduct person-to-person transfers, even if the account also enables a third party to disburse funds to a consumer. For example, a prepaid account that conveys tax refunds or insurance proceeds to a consumer meets the primary function test if the account can be used, *e.g.,* to purchase goods or services at multiple, unaffiliated merchants.

ii. Whether an account satisfies § 1005.2(b)(3)(i)(D) is determined by reference to the account, not the access device associated with the account. An account satisfies § 1005.2(b)(3)(i)(D) even if the account's access device can be used for other purposes, for example, as a form of identification. Such accounts may include, for example, a prepaid account used to disburse student loan proceeds via a card device that can be used at unaffiliated merchants or to withdraw cash from an automated teller machine, even if that access device also acts as a student identification card.

iii. Where multiple accounts are associated with the same access device, the primary function of each account is determined separately. One or more accounts can satisfy § 1005.2(b)(3)(i)(D) even if other accounts associated with the same access device do not. For example, a student identification card may act as an access device associated with two separate accounts: An account used to conduct transactions with multiple, unaffiliated merchants for goods or services, and an account used to conduct closed-loop

transactions on campus. The account used to conduct transactions with multiple, unaffiliated merchants for goods or services satisfies § 1005.2(b)(3)(i)(D), even though the account used to conduct closed-loop transactions does not (and as such the latter is not a prepaid account as defined by § 1005.2(b)(3)).

iv. An account satisfies § 1005.2(b)(3)(i)(D) if its primary function is to provide general transaction capability, even if an individual consumer does not in fact use it to conduct multiple transactions. For example, the fact that a consumer may choose to withdraw the entire account balance at an automated teller machine or transfer it to another account held by the consumer does not change the fact that the account's primary function is to provide general transaction capability.

v. An account whose primary function is other than to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, does not satisfy § 1005.2(b)(3)(i)(D). Such accounts may include, for example, a product whose only function is to make a one-time transfer of funds into a separate prepaid account.

9. *Redeemable upon presentation at multiple, unaffiliated merchants.* For guidance, see comments 20(a)(3)–1 and –2.

10. *Person-to-person transfers.* A prepaid account whose primary function is to conduct person-to-person transfers is an account that allows a consumer to send funds by electronic fund transfer to another consumer or business. An account may qualify as a prepaid account if its primary function is person-to-person transfers even if it is neither redeemable upon presentation at multiple, unaffiliated merchants for goods or services, nor usable at automated teller machines. A transaction involving a store gift card would not be a person-to-person transfer if it could only be used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

Paragraph 2(b)(3)(ii)

1. *Excluded health care and employee benefit related prepaid products.* For purposes of § 1005.2(b)(3)(ii)(A), ''health savings account'' means a health savings account as defined in 26 U.S.C. 223(d); ''flexible spending arrangement'' means a health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; ''medical savings account'' means an Archer MSA as defined in 26 U.S.C. 220(d); ''health reimbursement arrangement'' means a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106; ''dependent care assistance program'' means a dependent care assistance program pursuant to 26 U.S.C. 129; and ''transit or parking reimbursement arrangement'' means a qualified transportation fringe benefit provided by an employer pursuant to 26 U.S.C. 132.

2. *Excluded disaster relief funds.* For purposes of § 1005.2(b)(3)(ii)(B), ''qualified disaster relief funds'' means funds made available through a qualified disaster relief program as defined in 26 U.S.C. 139(b).

3. *Marketed and labeled as a gift card or gift certificate.* Section 1005.2(b)(3)(ii)(D) excludes, among other things, reloadable general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates, whereas § 1005.20(b)(2) excludes such products that are marketed or labeled as gift cards or gift certificates. Comment 20(b)(2)–2 describes, in part, a network-branded GPR card that is principally advertised as a less-costly alternative to a bank account but is promoted in a television, radio, newspaper, or Internet advertisement, or on signage as ''the perfect gift'' during the holiday season. For purposes of § 1005.20, such a product would be considered marketed as a gift card or gift certificate because of this occasional holiday marketing activity. For purposes of § 1005.2(b)(3)(ii)(D), however, such a product would not be considered to be both marketed and labeled as a gift card or gift certificate and thus would be covered by the definition of prepaid account.

* * * * *

Section 1005.4—General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1. *General.* The disclosures required by this part must be in a clear and readily understandable written form that the consumer may retain. Additionally, except as otherwise set forth in §§ 1005.18(b)(7) and 1005.31(c), no particular rules govern type size, number of pages, or the relative conspicuousness of various terms. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

* * * * *

Section 1005.10—Preauthorized Transfers

* * * * *

10(e) Compulsory Use

10(e)(1) Credit

1. *General rule for loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis.

2. *Overdraft credit plans not accessible by hybrid prepaid-credit cards.* i. Section 1005.10(e)(1) provides an exception from the general rule for an overdraft credit plan other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. A financial institution may therefore require the automatic repayment of an overdraft credit plan, other than a covered separate credit feature accessible by a hybrid prepaid-credit card, even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

ii. Credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z, 12 CFR 1026.61(a)(4), is considered credit extended pursuant to an overdraft credit plan for purposes of § 1005.10(e)(1). Thus, the exception for overdraft credit plans in § 1005.10(e)(1) applies to this credit.

3. *Applicability to covered separate credit features accessible by hybrid prepaid-credit cards.* i. Under § 1005.10(e)(1), creditors may not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. The prohibition in § 1005.10(e)(1) applies to any credit extended under such a credit feature, including preauthorized checks. *See* Regulation Z, 12 CFR 1026.61, and comment 61(a)(1)–3.

ii. Under Regulation Z, 12 CFR 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under Regulation Z, 12 CFR 1026.12(d)(3), with respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, a card issuer generally is not prohibited from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer is prohibited under Regulation Z, 12 CFR 1026.12(d), from automatically deducting all or part of the cardholder's credit card debt under a covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. Section 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

4. *Incentives.* A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

10(e)(2) Employment or Government Benefit

* * * * *

2. *Government benefit.* A government agency may not require consumers to receive government benefits by direct deposit to any particular institution. A government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit. Alternatively, a government agency may give recipients the choice of having their benefits deposited at a particular

institution (designated by the government agency) or receiving their benefits by another means.

* * * * *

Section 1005.12—Relation to Other Laws

12(a) Relation to Truth in Lending

1. *Issuance rules for access devices other than access devices for prepaid accounts.* For access devices that also constitute credit cards (other than access devices for prepaid accounts), the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in § 1005.17(a). Regulation Z (12 CFR part 1026) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

2. *Overdraft services.* The addition of an overdraft service, as that term is defined in § 1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§ 1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (§ 1005.17).

3. *Issuance of prepaid access devices that can access a covered separate credit feature subject to Regulation Z.* An access device for a prepaid account cannot access a covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in 12 CFR 1026.61(c). Regulation Z, 12 CFR 1026.61(c), provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow an existing credit feature that was opened prior to the consumer to become a covered separate credit feature accessible by the hybrid prepaid-credit card. An access device for a prepaid account that is not a hybrid prepaid-credit card as that term is defined in Regulation Z, 12 CFR 1026.61, is subject to the issuance rules in Regulation E.

4. *Addition of a covered separate credit feature to an existing access device for a prepaid account.* Regulation Z governs the addition of a covered separate credit feature as that term is defined in Regulation Z, 12 CFR 1026.61, to an existing access device for a prepaid account. In this case, the access device would become a hybrid prepaid-credit card under Regulation Z (12 CFR part 1026). A covered separate credit feature may be added to a previously issued access device for a prepaid account only upon the consumer's application or specific request as described in Regulation Z, 12 CFR 1026.12(a)(1), and only in compliance with 12 CFR 1026.61(c).

5. *Determining applicable regulation related to liability and error resolution.* i. Under § 1005.12(a)(1)(iv)(B), with respect to a transaction that involves a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, where credit is extended under a covered separate credit feature accessible by a hybrid prepaid-credit card that is incident to an electronic fund transfer when the hybrid prepaid-credit card accesses both funds in the asset feature of a prepaid account and credit extensions from the credit feature with respect to a particular transaction, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the covered separate credit feature). Section 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4), these transactions are governed solely by the liability limitations and error resolution procedures in Regulation E, and Regulation Z does not apply. Section 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

ii. Under § 1005.12(a)(1)(iv)(A), with respect to an account (other than a prepaid account) where credit is extended incident to an electronic fund transfer under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account).

iii. For transactions involving access devices that also function as credit cards under Regulation Z (12 CFR part 1026), whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not access funds in a consumer asset account, such as a checking account or prepaid account, the liability limitations and error resolution requirements of Regulation Z apply. If the transaction accesses funds in an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction access funds in an asset account but also involves an extension of credit under the overdraft credit feature subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from an asset account, but also is used to obtain unauthorized cash advances directly from a credit feature that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

iv. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or an access device that draws on the consumer's checking account. When used as a credit card, the card does not first access any funds in the checking account but draws only on a separate credit feature subject to Regulation Z. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as an access device to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as an access device for the checking account and as a credit card; for example, the thief makes some purchases using the card to access funds in the checking account and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as an access device for the checking account, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft credit feature subject to Regulation Z attached to the checking account. The overdraft credit feature associated with the card is accessed only when the consumer uses the card to make a purchase (or other transaction) for which there are insufficient or unavailable funds in the checking account. In this situation, if the card is stolen and used to make purchases funded entirely by available funds in the checking account, the liability limits and the error resolution provisions of Regulation E apply. If the use of the card results in an extension of credit that is incident to an electronic fund transfer where the transaction is funded partially by funds in the consumer's asset account and partially by credit extended under the overdraft credit feature, the error resolution provisions of Regulation Z, 12 CFR 1026.13(d) and (g), apply in addition to the Regulation E provisions, but the other liability limit and error resolution provisions of Regulation Z do not. Relatedly, if the use

of the card is funded entirely by credit extended under the overdraft credit feature, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z. *See* Regulation Z, 12 CFR 1026.13(i).

E. The same principles in comment 12(a)–5.iv.A, B, C, and D apply to an access device for a prepaid account that also is a hybrid prepaid-credit card with respect to a covered separate credit feature under Regulation Z, 12 CFR 1026.61. *See also* Regulation Z, 12 CFR 1026.13(i)(2) and comment 13(i)–4.

12(b) Preemption of Inconsistent State Laws

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2. *Preemption determinations generally.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination.

3. *Preemption determination—Michigan.* The Board of Governors of the Federal Reserve System determined that certain provisions in the state law of Michigan are preempted by the Federal law, effective March 30, 1981:

i. *Definition of unauthorized use.* Section 488.5(4) of the state law of Michigan, governing electronic fund transfers, is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

ii. *Consumer liability for unauthorized use of an account.* Section 488.14 of the state law of Michigan, governing electronic fund transfers, is preempted because it is inconsistent with § 1005.6 and is less protective of the consumer than the Federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the Federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

iii. *Error resolution.* Section 488.15 of the state law of Michigan, governing electronic fund transfers, is preempted because it is inconsistent with § 1005.11 and is less protective of the consumer than the Federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the Federal law generally requires errors to be resolved within 45 days.

iv. *Receipts and periodic statements.* Sections 488.17 and 488.18 of the state law of Michigan, governing electronic fund transfers, are preempted because they are inconsistent with § 1005.9, other than for transfers of $15 or less pursuant to § 1005.9(e). The state provisions require a different disclosure of information than does the Federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

4. *Preemption determination—Tennessee.* The Bureau determined that the following provision in the state law of Tennessee is preempted by the Federal law, effective April 25, 2013:

i. *Gift certificates, store gift cards, and general-use prepaid cards.* Section 66–29–116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and general-use prepaid cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or general-use prepaid cards and their underlying funds are permitted to expire under § 1005.20(e).

* * * * *

Section 1005.15—Electronic Fund Transfer of Government Benefits

15(c) Pre-Acquisition Disclosure Requirements

1. *Disclosing the short and long form before acquisition.* Section 1005.15(c)(1) requires that, before a consumer acquires an account governed by § 1005.15, a government agency must comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b). Section 1005.18(b)(1)(i) generally requires delivery of both the short form disclosure required by § 1005.18(b)(2), accompanied by the information in § 1005.18(b)(5), and the long form disclosure required by § 1005.18(b)(4) before a consumer acquires a prepaid account. For purposes of § 1005.15(c), a consumer is deemed to have received the disclosures required by § 1005.18(b) prior to acquisition when the consumer receives the disclosures before choosing to receive benefits via the government benefit account. The following example illustrates when a consumer receives disclosures before acquisition of an account for purposes of § 1005.15(c):

i. A government agency informs a consumer that she can receive distribution of benefits via a government benefit account in the form of a prepaid card. The consumer receives the prepaid card and the disclosures required by § 1005.18(b) to review at the time the consumer receives benefits eligibility information from the agency. After receiving the disclosures, the consumer chooses to receive benefits via the government benefit account. These disclosures were provided to the consumer pre-acquisition, and the agency has complied with § 1005.15(c). By contrast, if the consumer does not receive the disclosures required by § 1005.18(b) to review until the time at which the consumer received the first benefit payment deposited into the government benefit account, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with § 1005.15(c).

2. *Acquisition and disclosures given during the same appointment.* The disclosures and notice required by § 1005.15(c) may be given in the same process or appointment during which the consumer receives a government benefit card. When a consumer receives benefits eligibility information and enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by § 1005.15(c) before the consumer chooses to receive the first benefit payment on the card complies with the timing requirements of § 1005.15(c).

3. *Form and formatting requirements for government benefit account disclosures.* The form and formatting requirements for government benefit accounts in § 1005.15(c) correspond to those for payroll card accounts set forth in § 1005.18(b). See comments 18(b)(2)(xiv)(A)–1 and 18(b)(2)(xiv)(B)–1 for additional guidance regarding the requirements set forth in § 1005.15(c)(2)(i) and (ii), respectively.

4. *Disclosure requirements outside the short form disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution be disclosed outside the short form disclosure. For government benefit accounts, the financial institution that must be disclosed pursuant to § 1005.18(b)(5) is the financial institution that directly holds the account or issues the account's access device. The disclosure provided outside the short form disclosure may, but is not required to, also include the name of the government agency that established the government benefit account.

15(d) Access to Account Information

1. *Access to account information.* For guidance, see comments 18(c)–1 through –3 and 18(c)–5 through –9.

15(e) Modified Disclosure, Limitations on Liability, and Error Resolution Requirements

1. *Modified limitations on liability and error resolution requirements.* For guidance, see comments 18(e)–1 through –3.

15(f) Disclosure of Fees and Other Information

1. *Disclosures on prepaid account access devices.* Pursuant to § 1005.18(f)(3), the name of the financial institution and the Web site URL and a telephone number a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. For government benefit accounts, the financial institution whose name and contact information must be disclosed pursuant to § 1005.18(f)(3) is the financial institution that directly holds the account or issues the account's access device.

* * * * *

Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

1. *Issuance of access device.* Consistent with § 1005.5(a) and except as provided, as applicable, in § 1005.5(b), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online.

2. *Application to employers and service providers.* Typically, employers and third-

party service providers do not meet the definition of a "financial institution" subject to the regulation because they neither hold prepaid accounts (including payroll card accounts) nor issue prepaid cards and agree with consumers to provide EFT services in connection with prepaid accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Pre-Acquisition Disclosure Requirements

1. *Written and electronic pre-acquisition disclosures.* Section 1005.4(a)(1) generally requires that disclosures be made in writing; written disclosures may be provided in electronic form in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because § 1005.18(b)(6)(i)(B) provides that electronic disclosures required by § 1005.18(b) need not meet the consumer consent or other applicable provisions of the E-Sign Act, § 1005.18(b) addresses certain requirements for written and electronic pre-acquisition disclosures separately. Section 1005.18(b) also addresses specific requirements for pre-acquisition disclosures provided orally.

2. *Currency.* Fee amounts required to be disclosed by § 1005.18(b) may be disclosed in a foreign currency for a prepaid account denominated in that foreign currency, other than the fee for the purchase price required by § 1005.18(b)(5). For example, a prepaid account sold in a U.S. airport intended for use in England may disclose in pound sterling (£) the fees required to be disclosed in the short form and long form disclosures and outside the short form disclosure, except for the purchase price.

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

1. *Disclosing the short form and long form before acquisition.* Section 1005.18(b)(1)(i) generally requires delivery of a short form disclosure as described in § 1005.18(b)(2), accompanied by the information required to be disclosed by § 1005.18(b)(5), and a long form disclosure as described in § 1005.18(b)(4) before a consumer acquires a prepaid account. For purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening or choosing to be paid via a prepaid account, as illustrated by the following examples:

i. A consumer inquires about obtaining a prepaid account at a branch location of a bank. A consumer then receives the disclosures required by § 1005.18(b). After receiving the disclosures, a consumer then opens a prepaid account with the bank. This consumer received the short form and long form pre-acquisition in accordance with § 1005.18(b)(1)(i).

ii. A consumer learns that he or she can receive wages via a payroll card account, at which time the consumer is provided with a payroll card and the disclosures required by § 1005.18(b) to review. The consumer then chooses to receive wages via a payroll card account. These disclosures were provided pre-acquisition in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the disclosures required by § 1005.18(b) to review at the end of the first pay period, after the consumer received the first payroll payment on the payroll card, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with § 1005.18(b)(1)(i).

2. *Disclosures provided electronically.* Disclosures required by § 1005.18(b) may be provided before or after a consumer has initiated the process of acquiring a prepaid account electronically. When the disclosures required by § 1005.18(b) are presented after a consumer has initiated the process for acquiring a prepaid account online or via a mobile device, but before a consumer chooses to accept the prepaid account, such disclosures are also made pre-acquisition in accordance with § 1005.18(b)(1)(i). The disclosures required by § 1005.18(b) that are provided electronically when a consumer acquires a prepaid account electronically are not considered to be given pre-acquisition unless a consumer must view the Web page containing the disclosures before choosing to accept the prepaid account. The following examples illustrate several methods by which a financial institution may present § 1005.18(b) disclosures before a consumer acquires a prepaid account electronically in compliance with § 1005.18(b)(1)(i):

i. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), and the long form disclosure required by § 1005.18(b)(4) on the same Web page. A consumer must view the Web page before choosing to accept the prepaid account.

ii. A financial institution presents the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), on a Web page. The financial institution includes, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), a link that directs the consumer to a separate Web page containing the long form disclosure required by § 1005.18(b)(4). The consumer must view the Web page containing the long form disclosure before choosing to accept the prepaid account.

iii. A financial institution presents on a Web page the short form disclosure required by § 1005.18(b)(2), together with the information required by § 1005.18(b)(5), followed by the initial disclosures required by § 1005.7(b), which contains the long form disclosure required by § 1005.18(b)(4), in accordance with § 1005.18(f)(1). The financial institution includes, after the short form disclosure or as part of the statement required by § 1005.18(b)(2)(xiii), a link that directs the consumer to the section of the initial disclosures containing the long form disclosure pursuant to § 1005.18(b)(4). A consumer must view this Web page before choosing to accept the prepaid account.

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

1. *Retail locations.* Section 1005.18(b)(1)(ii) sets forth an alternative timing regime for pre-acquisition disclosures for prepaid accounts acquired in person at retail locations. For purposes of § 1005.18(b)(1)(ii), a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account. A branch of a financial institution that offers its own prepaid accounts is not a retail location with respect to those accounts and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to the timing requirement set forth in § 1005.18(b)(1)(i).

2. *Disclosures provided inside prepaid account access device packaging material.* Except when providing the long form disclosure post-acquisition in accordance with the retail location exception set forth in § 1005.18(b)(1)(ii), the disclosures required by § 1005.18(b)(2), (4), and (5) must be provided to a consumer pre-acquisition in compliance with § 1005.18(b)(1)(i). A short form disclosures is not considered to have been provided pre-acquisition if, for example, it is inside the packaging material accompanying a prepaid account access device such that the consumer cannot see or access the disclosures before acquiring the prepaid account.

3. *Consumers working in retail locations.* A payroll card account offered to consumers working in retail locations is not eligible for the retail location exception in § 1005.18(b)(1)(ii); thus, a consumer employee must receive both the short form and long form disclosures for the payroll card account pre-acquisition pursuant to the timing requirement set forth in § 1005.18(b)(1)(i).

4. *Providing the long form disclosure by telephone and Web site pursuant to the retail location exception.* Pursuant to § 1005.18(b)(1)(ii), a financial institution may provide the long form disclosure described in § 1005.18(b)(4) after a consumer acquires a prepaid account in a retail location, if the conditions set forth in § 1005.18(b)(1)(ii)(A) through (D) are met. Pursuant to § 1005.18(b)(1)(ii)(C), a financial institution must make the long form disclosure accessible to consumers by telephone and via a Web site when not providing a written version of the long form disclosure pre-acquisition. A financial institution may, for example, provide the long form disclosure by telephone using an interactive voice response or similar system or by using a customer service agent.

18(b)(1)(iii) Disclosures for Prepaid Accounts Acquired Orally by Telephone

1. *Prepaid accounts acquired by telephone.* Section 1005.18(b)(1)(iii) sets forth requirements for prepaid accounts acquired orally by telephone. For purposes of § 1005.18(b)(1)(iii), a prepaid account is considered to have been acquired orally by telephone when a consumer speaks to a customer service agent or communicates with an automated system, such as an interactive voice response system, to provide personally identifiable information to acquire a prepaid account. Prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system are not considered to have been acquired orally by telephone.

2. *Disclosures for prepaid accounts acquired by telephone.* Pursuant to § 1005.18(b)(1)(iii), a financial institution must disclose the information required by § 1005.18(b)(2) and (5) orally before a consumer acquires a prepaid account orally by telephone. A financial institution may, for example, provide these disclosures by using an interactive voice response or similar system or by using a customer service agent, after the consumer has initiated the purchase of a prepaid account by telephone, but before the consumer acquires the prepaid account. In addition, a financial institution must provide the initial disclosures required by § 1005.7, as modified by § 1005.18(f)(1), before the first electronic fund transfer is made involving the prepaid account.

18(b)(2) Short Form Disclosure Content

1. *Disclosures that are not applicable or are free.* The short form disclosures required by § 1005.18(b)(2) must always be provided prior to prepaid account acquisition, even when a particular feature is free or is not applicable to a specific prepaid account product. For example, if a financial institution does not charge a fee to a consumer for withdrawing money at an automated teller machine in the financial institution's network or an affiliated network, which is required to be disclosed pursuant to § 1005.18(b)(2)(iii), the financial institution would list ''ATM withdrawal in-network'' on the short form disclosure and list ''$0'' as the fee. If, however, the financial institution does not have its own network or an affiliated network from which a consumer can withdraw money via automated teller machine, the financial institution would list ''ATM withdrawal in-network'' on the short form disclosure but instead of disclosing a fee amount, state ''N/A.'' (The financial institution must still disclose any fee it charges for out-of-network ATM withdrawals.)

2. *Prohibition on disclosure of finance charges.* Pursuant to § 1005.18(b)(3)(vi), a financial institution may not include in the short form disclosure finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61. *See also* comment 18(b)(3)(vi)–1.

18(b)(2)(i) Periodic Fee

1. *Periodic fee variation.* If the amount of a fee disclosed on the short form could vary, the financial institution must disclose in the short form the information required by § 1005.18(b)(3)(i). If the amount of the periodic fee could vary, the financial institution may opt instead to use an alternative disclosure pursuant to § 1005.18(b)(3)(ii). *See* comments 18(b)(3)(i)–1 and 18(b)(3)(ii)–1.

18(b)(2)(iii) ATM Withdrawal Fees

1. *International ATM withdrawal fees.* Pursuant to § 1005.18(b)(2)(iii), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to initiate a withdrawal of cash in the United States from the prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to initiate a withdrawal of cash in a foreign country in the disclosure required by § 1005.18(b)(2)(iii), although it may be required to disclose that fee as an additional fee type pursuant to § 1005.18(b)(2)(ix).

18(b)(2)(iv) Cash Reload Fee

1. *Total of all charges.* Pursuant to § 1005.18(b)(2)(iv), a financial institution must disclose the total of all charges imposed when a consumer reloads cash into a prepaid account, including charges imposed by the financial institution as well as any charges that may be imposed by third parties for the cash reload. The cash reload fee includes the cost of adding cash to the prepaid account at a point-of-sale terminal, the cost of purchasing an additional card or other device on which cash is loaded and then transferred into the prepaid account, or any other method a consumer may use to reload cash into the prepaid account. For example, a financial institution does not have its own proprietary cash reload network and instead contracts with a third-party reload network for this service. The financial institution itself does not charge any fee related to cash reloads but the third-party reload network charges a fee of $3.95 per cash reload. The financial institution must disclose the cash reload fee as $3.95. If the financial institution offers more than one method to reload cash into the prepaid account, § 1005.18(b)(3)(i) requires disclosure of the highest cash reload fee. For example, a financial institution contracts with two third-party cash reload networks; one third party charges $3.95 for a point-of-sale reload and the other third party charges $2.95 for purchase of a reload pack. In addition to the third-party cash reload charge, the financial institution charges a $1 fee for every cash reload. The financial institution must disclose the cash reload fee on the short form as $4.95, that is, the highest third-party fee plus the financial institution's $1 fee. See comments 18(b)(3)(v)–1 for additional guidance regarding third-party fees for cash reloads.

2. *Cash deposit fee.* If a financial institution does not permit cash reloads via a third-party reload network but instead permits cash deposits, for example, in a bank branch, the term ''cash deposit'' may be substituted for ''cash reload.''

18(b)(2)(v) ATM Balance Inquiry Fees

1. *International ATM balance inquiry fees.* Pursuant to § 1005.18(b)(2)(v), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to check the balance of the prepaid account in the United States, both within and outside of the financial institution's network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to check the balance of the prepaid account in a foreign country in the disclosure required by § 1005.18(b)(2)(v), although it may be required to disclose that fee as an additional fee type pursuant to § 1005.18(b)(2)(ix).

18(b)(2)(vii) Inactivity Fee

1. *Inactivity fee conditions.* Section 1005.18(b)(2)(vii) requires disclosure of any fee for non-use, dormancy, or inactivity of the prepaid account as well as the conditions that trigger the financial institution to impose that fee. For example, a financial institution that imposes an inactivity fee of $1 per month after 12 months without any transactions on the prepaid account would disclose on the short form ''Inactivity (after 12 months with no transactions)'' and ''$1.00 per month.''

18(b)(2)(viii) Statements Regarding Additional Fee Types

18(b)(2)(viii)(A) Statement Regarding Number of Additional Fee Types Charged

1. *Fee types counted in total number of additional fee types.* Section 1005.18(b)(2)(viii)(A) requires a statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: ''We charge [x] other types of fees.'' The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding fees required to be disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (b)(5) and any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. The following clarify which fee types to include in the total number of additional fee types:

i. *Fee types excluded from the number of additional fee types.* The number of additional fee types required to be disclosed pursuant to § 1005.18(b)(2)(viii)(A) does not include the fees otherwise required to be disclosed in the short form pursuant to § 1005.18(b)(2)(i) through (vii), nor any purchase fee or activation fee required to be disclosed outside the short form pursuant to § 1005.18(b)(5). It also does not include any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a credit feature defined in 12 CFR 1026.61. The number of additional fee types includes only fee types under which the financial institution may charge fees; accordingly, third-party fees are not included unless they are imposed for services performed on behalf of the financial institution. In addition, the number of additional fee types includes only fee types the financial institution may charge consumers with respect to the prepaid account; accordingly, additional fee types does not include other revenue sources such as interchange fees or fees paid by employers for payroll card programs, government agencies for government benefit programs, or other entities sponsoring prepaid account programs for financial disbursements.

ii. *Fee types counted in the number of additional fee types.* Fee types that bear a relationship to, but are separate from, the static fee types disclosed in the short form must be counted as additional fees for purposes of § 1005.18(b)(2)(viii). For

example, the ATM withdrawal and ATM balance inquiry fee types required to be disclosed respectively by § 1005.18(b)(2)(iii) and (v) that are excluded from the number of additional fee types pursuant to § 1005.18(b)(2)(viii) do not include such services outside of the United States. Thus, any international ATM fees charged by the financial institution for ATM withdrawal or balance inquiries must each be counted in the total number of additional fee types. Similarly, any fees for reloading funds into a prepaid account in a form other than cash (such as electronic reload and check reload, as described in comment 18(b)(2)(viii)(A)–2) must be counted in the total number of additional fee types because § 1005.18(b)(2)(iv) is limited to cash reloads. Also, additional fee types disclosed in the short form pursuant to § 1005.18(b)(2)(ix) must be counted in the total number of additional fee types.

2. *Examples of fee types and fee variations.* The term fee type, as used in § 1005.18(b)(2)(viii) and (ix), is a general category under which a financial institution charges fees to consumers. A financial institution may charge only one fee within a particular fee type, or may charge two or more variations of fees within the same fee type. The following is a list of examples of fee types a financial institution may use when determining both the number of additional fee types charged pursuant to § 1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to § 1005.18(b)(2)(ix). A financial institution may create an appropriate name for other additional fee types.

i. *Fee types related to reloads of funds.* Fees for reloading funds into a prepaid account. Fees for cash reloads are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(iv) and that such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix). Fee types for other methods to reload funds, such as Electronic reload or Check reload, would be counted in the total number of additional fee types and may be required to be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix).

A. *Electronic reload.* Fees for reloading a prepaid account through electronic methods. Fee variations within this fee type may include fees for transferring funds from a consumer's bank account via ACH, reloads conducted using a debit card or credit card, and for incoming wire transfers.

B. *Check reload.* Fees for reloading a prepaid account using checks. Fee variations within this fee type may include fees for depositing checks at an ATM, depositing checks with a teller at the financial institution's branch location, mailing checks to the financial institution for deposit, and depositing checks using remote deposit capture.

ii. *Fee types related to withdrawals of funds.* Fees for withdrawing funds from a prepaid account. Per purchase fees and ATM withdrawal fees within the United States are fee types required to be disclosed in the short form respectively pursuant to § 1005.18(b)(2)(ii) and (iii) and thus such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix). Fee types for other methods to withdraw funds, such as Electronic withdrawal, Teller withdrawal, Cash back at point of sale (POS), and Account closure would be counted in the total of additional fee types and may be required to be disclosed as additional fee types pursuant to § 1005.18(b)(2)(ix).

A. *Electronic withdrawal.* Fees for withdrawing funds from a prepaid account through electronic methods other than an ATM. Fee variations within this fee type may include fees for transferring funds from the prepaid account to a consumer's bank account or other destination.

B. *Teller withdrawal.* Fees for withdrawing funds from a prepaid account in person with a teller at a bank or credit union. Fee variations within this fee type may include fees for withdrawing funds, whether at the financial institution's own branch locations or at another bank or credit union.

C. *Cash back at POS.* Fees for withdrawing cash from a prepaid account via cash back at a merchant's point-of-sale terminal.

D. *Account closure.* Fees for closing out a prepaid account, such as for a check refund. Fee variations within this fee type may include fees for regular and expedited delivery of close-out funds.

iii. *Fee types related to international transactions.* Fee types for international transactions and ATM activity.

A. *International ATM withdrawal.* Fees for withdrawing funds at an ATM outside the United States. This fee type does not include fees for ATM withdrawals in the United States, as such fees are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(iii).

B. *International ATM balance inquiry.* Fees for balance inquiries at an ATM outside the United States. This fee type does not include fees for ATM balance inquiries in the United States, as such fees are required to be disclosed in the short form pursuant to § 1005.18(b)(2)(v).

C. *International transaction (excluding ATM withdrawal and balance inquiry).* Fees for transactions outside the United States. Fee variations within this fee type may include fees for currency conversion, foreign exchange processing, and other charges for transactions outside of the United States.

iv. *Bill payment.* Fees for bill payment services. Fee variations within this fee type may include fees for ACH bill payment, paper check bill payment, check cancellation, and expedited delivery of paper check.

v. *Person-to-person or card-to-card transfer of funds.* Fees for transferring funds from one prepaid account to another prepaid account. Fee variations within this fee type may include fees for transferring funds to another prepaid account within or outside of a specified prepaid account program, transferring funds to another cardholder within United States or outside the United States, and expedited transfer of funds.

vi. *Paper checks.* Fees for providing paper checks that draw on the prepaid account. Fee variations within this fee type may include fees for providing checks and associated shipping costs. This does not include checks issued as part of a bill pay service, which are addressed in comment 18(b)(2)(viii)(A)–2.iv above.

vii. *Stop payment.* Fees for stopping payment of a preauthorized transfer of funds.

viii. *Fee types related to card services.* Fee types for card services.

A. *Card replacement.* Fees for replacing or reissuing a prepaid card that has been lost, stolen, damaged, or that has expired. Fee variations within this fee types may include fees for replacing the card, regular or expedited delivery of the replacement card, and international card replacement.

B. *Secondary card.* Fees for issuing an additional access device assigned to a particular prepaid account.

C. *Personalized card.* Fees for customizing or personalizing a prepaid card.

ix. *Legal.* Fees for legal process. Fee variations within this fee type may include fees for garnishments, attachments, levies, and other court or administrative orders against a prepaid account.

3. *Multiple service plans.* Pursuant to § 1005.18(b)(2)(vi), a financial institution using the multiple service plan short form disclosure pursuant to § 1005.18(b)(6)(iii)(B)(*2*) must disclose only the fee for calling customer service via a live agent. Thus, pursuant to § 1005.18(b)(2)(viii), any charge for calling customer service via an interactive voice response system must be counted in the total number of additional fee types.

4. *Consistency in additional fee type categorization.* A financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to § 1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to § 1005.18(b)(2)(ix).

18(b)(2)(viii)(B) Statement Directing Consumers to Disclosure of Additional Fee Types

1. *Statement clauses.* Section 1005.18(b)(2)(viii)(B) requires, if a financial institution makes a disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix), it must include in the short form a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by § 1005.18(b)(2)(viii)(A), using the following clause or a substantially similar clause: ''Here are some of them:''. A financial institution that makes no disclosure pursuant to § 1005.18(b)(2)(ix) may not include a disclosure pursuant to § 1005.18(b)(2)(viii)(B). The following examples provide guidance regarding substantially similar clauses a financial institution may use in certain circumstances to make its disclosures under § 1005.18(b)(2)(viii)(A) and (B):

i. A financial institution that has one additional fee type and discloses that additional fee type pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 1 other type of fee. It is:''.

ii. A financial institution that has five additional fee types and discloses one of those additional fee types pursuant to § 1005.18(b)(2)(ix) might provide the statements required by § 1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 5 other types of fees. Here is 1 of them:''.

iii. A financial institution that has two additional fee types and discloses both of those fee types pursuant to § 1005.18(b)(2)(ix) might provide the statement required by § 1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 2 other types of fees. They are:''.

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

18(b)(2)(ix)(A) Determination of Which Additional Fee Types To Disclose

1. *Number of fee types to disclose.* Section 1005.18(b)(2)(ix)(A) requires disclosure of the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in § 1005.18(b)(2)(ix)(D) and (E), excluding the categories set forth in § 1005.18(b)(2)(ix)(A)(*1*) through (*3*). See comment 18(b)(2)(viii)(A)–2 for guidance on and examples of fee types. If a prepaid account program has two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A), it must disclose both fees. If a prepaid account program has three or more fee types that potentially satisfy the criteria in § 1005.18(b)(2)(ix)(A), the financial institution must disclose only the two fee types that generate the highest revenue from consumers. See comment 18(b)(2)(ix)(B)–1 for guidance regarding the disclosure of additional fee types for a prepaid account with fewer than two fee types that satisfy the criteria in § 1005.18(b)(2)(ix)(A).

2. *Abbreviations.* Commonly accepted or readily understandable abbreviations may be used as needed for additional fee types and fee variations disclosed pursuant to § 1005.18(b)(2)(ix). For example, to accommodate on one line in the short form disclosure the additional fee types ''international ATM balance inquiry'' or ''person-to-person transfer of funds,'' with or without fee variations, a financial institution may choose to abbreviate the fee type name as ''Int'l ATM inquiry'' or ''P2P transfer.''

3. *Revenue from consumers.* The revenue calculation for the disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix)(A) is based on fee types that the financial institution may charge consumers with respect to the prepaid account. The calculation excludes other revenue sources such as revenue generated from interchange fees and fees paid by employers for payroll card programs, government agencies for government benefit programs, and other entities sponsoring prepaid account programs for financial disbursements. It also excludes third-party fees, unless they are imposed for services performed on behalf of the financial institution.

4. *Assessing revenue within and across prepaid account programs to determine disclosure of additional fee types.* Pursuant to § 1005.18(b)(2)(ix)(A), the disclosure of the two fee types that generate the highest revenue from consumers must be determined for each prepaid account program or across prepaid account programs that share the same fee schedule. Thus, if a financial institution offers more than one prepaid account program, unless the programs share the same fee schedule, the financial institution must consider the fee revenue data separately for each prepaid account program and not consolidate the fee revenue data across prepaid account programs. Prepaid account programs are deemed to have the same fee schedules if they charge the same fee amounts, including offering the same fee waivers and fee reductions for the same features. The following examples illustrate how to assess revenue within and across prepaid account programs to determine the disclosure of additional fee types:

i. *Prepaid account programs with different fee schedules.* A financial institution offers multiple prepaid account programs and each program has a different fee schedule. The financial institution must consider the revenue from consumers for each program separately; it may not consider the revenue from all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

ii. *Prepaid account programs with identical fee schedules.* A financial institution offers multiple prepaid account programs and they all share the same fee schedule. The financial institution may consider the revenue across all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

iii. *Prepaid account programs with both different fee schedules and identical fee schedules.* A financial institution offers multiple prepaid account programs, some of which share the same fee schedule. The financial institution may consider the revenue across all prepaid account programs with identical fee schedules in determining the disclosure of additional fee types for those programs. The financial institution must separately consider the revenue from each of the prepaid account programs with unique fee schedules.

iv. *Multiple service plan prepaid account programs.* A financial institution that discloses multiple service plans on a short form disclosure as permitted by § 1005.18(b)(6)(iii)(B)(*2*) must consider revenue across all of those plans in determining the disclosure of additional fee types for that program. If, however, the financial institution instead is disclosing the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(*1*), the financial institution must consider the revenue generated from consumers for the default service plan only. See § 1005.18(b)(6)(iii)(B)(*2*) and comment 18(b)(6)(iii)(B)(*2*)–1 for guidance on what constitutes multiple service plans.

5. *Exclusions.* Once the financial institution has calculated the fee revenue data for the prepaid account program or across prepaid account programs that share the same fee schedule during the appropriate time period, it must remove from consideration the categories excluded pursuant to § 1005.18(b)(2)(ix)(A)(*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 disclose 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 must disclose the highest fee, $3, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, pursuant to § 1005.18(b)(3)(i). Thus, the financial institution would disclose on the short form the fee type as ''Bill payment'' and the fee amount as ''$3.00*''.

iii. *Two fee variations with like fee amounts.* A financial institution offers two methods of check reload for which it charges a fee—depositing checks at an ATM and depositing checks with a teller at the financial institution's branch locations. There is a fee of $0.50 for both methods of check deposit. The financial institution must calculate the total revenue generated from both of these check reload methods during the required time period to determine whether it must disclose this fee type as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because the fee amounts are the same for the two methods of check deposit, if the fee type is required to be disclosed as an additional fee type, the financial institution's options for disclosing this fee type in accordance with § 1005.18(b)(2)(ix)(C) and (b)(3)(iii) include: ''Check reload (ATM or teller check dep)'' and the fee amount as ''$0.50'' or ''Check reload'' and the fee amount as ''$0.50''.

iv. *Multiple service plans.* A financial institution provides a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*). Notwithstanding that an additional fee type has only two fee variations, a financial institution must disclose the highest fee in accordance with § 1005.18(b)(3)(i).

2. *One fee variation under a particular fee type.* Section 1005.18(b)(2)(ix)(C) provides in part that, if a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation, if any, for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) and (vi), except that the financial institution must disclose only the one fee variation name and fee amount instead of two. For example, a financial institution offers one method of electronic reload for which it charges a fee—electronic reload conducted using a debit card. The financial institution must calculate the total revenue generated from consumers for the fee type electronic reload (*i.e.,* in this case, electronic reloads conducted using a debit card) during the required time period to determine whether it must disclose electronic reload as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because the financial institution only charges one fee variation under the fee type electronic reload, if this fee type is required to be disclosed as an additional fee type, the financial institution has two options for disclosing this fee type in accordance with § 1005.18(b)(2)(ix)(C): ''Electronic reload (debit card)'' and the fee amount as ''$1.00'' or ''Electronic reload'' and the fee amount as ''$1.00''.

18(b)(2)(ix)(D) Timing of Initial Assessment of Additional Fee Types Disclosure

18(b)(2)(ix)(D)(1) Existing Prepaid Account Programs as of October 1, 2017

1. *24 month period with available data.* Section 1005.18(b)(2)(ix)(D)(*1*) requires for a prepaid account program in effect as of October 1, 2017 the financial institution must disclose additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014. Thus, a prepaid account program that was in existence as of October 1, 2017 must assess its additional fee types disclosure from data collected during a consecutive 24-month period that took place between October 1, 2014 and October 1, 2017. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on October 1, 2017. The earliest 24-month period from which that financial institution could calculate its first additional fee types disclosure would be from October 1, 2014 to September 30, 2016.

18(b)(2)(ix)(D)(2) Existing Prepaid Account Programs as of October 1, 2017 With Unavailable Data

1. *24 month period without available data.* Section 1005.18(b)(2)(ix)(D)(*2*) requires that if a financial institution does not have 24 months of fee revenue data for a particular

prepaid account program from which to calculate the additional fee types disclosure in advance of October 1, 2017, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. For example, a financial institution begins offering to consumers a prepaid account program six months before October 1, 2017. Because the prepaid account program will not have 24 months of fee revenue data prior to October 1, 2017, pursuant to § 1005.18(b)(2)(ix)(D)(*2*) the financial institution must disclose the additional fee types it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on October 1, 2017. The financial institution would take into account the data it had accumulated at the time of its calculation to arrive at the reasonably anticipated additional fee types for the prepaid account program.

18(b)(2)(ix)(E) Timing of Periodic Reassessment and Update of Additional Fee Types Disclosure

18(b)(2)(ix)(E)(2) Periodic Reassessment

1. *Periodic reassessment and, if applicable, update of additional fee types disclosure.* Pursuant to § 1005.18(b)(2)(ix)(E)(*2*), a financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of § 1005.18(b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in § 1005.18(b)(2)(ix)(E)(*4*). The following examples provide guidance on the periodic assessment and, if applicable, update of the disclosure of additional fee types pursuant to § 1005.18(b)(2)(ix)(E)(*2*):

i. *Reassessment with no change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and the two additional fee types previously disclosed continue to qualify as additional fee types pursuant to § 1005.18(b)(2)(ix). The financial institution is not required to take any action with regard to the disclosure of additional fee types for that prepaid account program.

ii. *Reassessment with a change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill payment continued to qualify as an additional fee type pursuant to § 1005.18(b)(2)(ix) but check reload qualified as the second additional fee type instead of card replacement. The financial institution must update the additional fee types disclosure in its short form disclosures provided electronically, orally, and in writing (other than for printed materials that qualify for the update printing exception in § 1005.18(b)(2)(ix)(E)(*4*)) no later than January 1, 2020, which is three months after the end of the 24-month period.

iii. *Reassessment with the addition of an additional fee type already voluntarily disclosed.* A financial institution disclosed one additional fee type (bill payment) and voluntarily disclosed one other additional fee type (card replacement, both for regular and expedited delivery) for a particular prepaid account program on October 1, 2017. Starting on October 1, 2019, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill payment continued to qualify as an additional fee type pursuant to § 1005.18(b)(2)(ix) and card replacement now qualified as the second additional fee type. Because the financial institution already had disclosed its card replacement fees in the format required for an additional fee type disclosure, the financial institution is not required to take any action with regard to the additional fee types disclosure in the short form for that prepaid account program.

2. *Reassessment more frequently than every 24 months.* Pursuant to § 1005.18(b)(2)(ix)(E)(*2*), a financial institution may, but is not required to, carry out the reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences. A financial institution may choose to do this, for example, to sync its reassessment process for additional fee types with its financial reporting schedule or other financial analysis it performs regarding the particular prepaid account program. If a financial institution chooses to reassess its additional fee types disclosure more frequently than every 24 months, it is still required to use 24 months of fee revenue data to conduct the reassessment. For example, a financial institution first offered a particular prepaid account program on October 1, 2016 and thus was required to estimate its initial additional fee types disclosure pursuant to § 1005.18(b)(2)(ix)(D)(*2*). If the financial institution chooses to begin its reassessment of its fee revenue data on October 1, 2018, it would use the data it collected over the previous 24 months (October 1, 2016 to September 30, 2018) and complete its reassessment and its update, if applicable, by January 1, 2019.

18(b)(2)(ix)(E)(3) Fee Schedule Change

1. *Revised prepaid account programs.* Section 1005.18(b)(2)(ix)(E)(*3*) requires that if a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change. A fee schedule change resets the 24-month period for assessment; a financial institution must comply with the requirements of § 1005.18(b)(2)(ix)(E)(*2*) at the end of the 24-month period following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of § 1005.18(b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in § 1005.18(b)(2)(ix)(E)(*4*). For example, if a financial institution lowers its card replacement fee from $4 to $3 on December 1, 2018 after having first assessed its additional fee types disclosure as of October 1, 2017, the financial institution would assess whether it reasonably anticipates that the existing additional fee types disclosure will continue to reflect the additional fee types that generate the highest revenue from consumers for that prepaid account program for the next 24 months (until December 1, 2020). If the financial institution reasonably anticipates that its additional fee types will remain unchanged over the next 24 months, the financial institution is not required to take any action with regard to the additional fee types disclosure for that prepaid account program. In the same example, if the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of § 1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change, the financial institution must update the listing of additional fee types at the time the fee schedule change goes into effect, except as provided in the update printing exception pursuant to § 1005.18(b)(2)(ix)(E)(*4*).

18(b)(2)(ix)(E)(4) Update Printing Exception

1. *Application of the update printing exception to prepaid accounts sold in retail locations.* Pursuant to § 1005.18(b)(2)(ix)(E)(*4*), notwithstanding the requirements to update additional fee types disclosures in § 1005.18(b)(2)(ix)(E), a financial institution is not required to update the listing of additional fee types that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to § 1005.18(b)(2)(ix)(E)(*2*) or prior to a fee schedule change pursuant to § 1005.18(b)(2)(ix)(E)(*3*). For prepaid accounts sold in retail locations, for example, § 1005.18(b)(2)(ix)(E)(*4*) permits a financial institution to implement any necessary updates to the listing of the additional fee types disclosures on the short form disclosure that appear on its physical prepaid account packaging materials at the time the financial institution prints new materials. Section 1005.18(b)(2)(ix)(E)(*4*) does not require financial institutions to destroy existing inventory in retail locations or elsewhere in the distribution channel, to the extent the disclosures on such packaging materials are otherwise accurate, to comply with this requirement. For example, a financial institution determines that an additional fee type listed on a short form disclosure in a retail location no longer qualifies as an additional fee type pursuant to § 1005.18(b)(2)(ix). The financial institution must update any electronic and

oral short form disclosures pursuant to the timing requirements set forth in § 1005.18(b)(2)(ix)(E). Pursuant to § 1005.18(b)(2)(ix)(E)(*4*), the financial institution may continue selling any previously printed prepaid account packages that contain the prior listing of additional fee types; prepaid account packages printed after that time must contain the updated listing of additional fee types.

18(b)(2)(x) Statement Regarding Overdraft Credit Features

1. *Short form disclosure when overdraft credit feature may be offered.* Section 1005.18(b)(2)(x) requires disclosure of a statement if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered at any point to a consumer in connection with the prepaid account. This statement must be provided on the short form disclosures for all prepaid accounts that may offer such a feature, regardless of whether some consumers may never be solicited or qualify to enroll in such a feature.

18(b)(2)(xi) Statement Regarding Registration and FDIC or NCUA Insurance

1. *Disclosure of FDIC or NCUA insurance.* Section 1005.18(b)(2)(xi) requires a statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable. If the consumer's prepaid account funds are held at a credit union, the disclosure must indicate NCUA insurance eligibility. If the consumer's prepaid account funds are held at a financial institution other than a credit union, the disclosure must indicate FDIC insurance eligibility.

2. *Customer identification and verification processes.* For additional guidance on the timing of customer identification and verification processes, and on prepaid account programs for which there is no customer identification and verification process for any prepaid accounts within the prepaid account program, see § 1005.18(e)(3) and comments 18(e)–4 and –5.

18(b)(2)(xiii) Statement Regarding Information on All Fees and Services

1. *Financial institution's telephone number.* For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), the statement required by § 1005.18(b)(2)(xiii) must also include a telephone number (and the Web site URL) that a consumer may use to directly access an oral version of the long form disclosure. To provide the long form disclosure by telephone, a financial institution could use a live customer service agent or an interactive voice response system. The financial institution could use a telephone number specifically dedicated to providing the long form disclosure or a more general customer service telephone number for the prepaid account program. For example, a financial institution would be deemed to provide direct access pursuant to § 1005.18(b)(2)(xiii) if a consumer navigates one or two prompts to reach the oral long form disclosure via a live customer service agent or an interactive voice response system using either a specifically dedicated telephone number 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).

18(b)(3) Short Form Disclosure of Variable Fees and Third-Party Fees and Prohibition on Disclosure of Finance Charges

18(b)(3)(i) General Disclosure of Variable Fees

1. *Short form disclosure of variable fees.* Section 1005.18(b)(3)(i) requires disclosure in the short form of the highest fee when a fee can vary, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used. For example, a financial institution provides interactive voice response (IVR) customer service for free and provides the first three live agent customer service calls per month for free, after which it charges $0.50 for each additional live agent customer service call during that month. Pursuant to § 1005.18(b)(2)(vi), the financial institution must disclose both its IVR and live agent customer service fees on the short form disclosure. The financial institution would disclose the IVR fee as $0 and the live agent customer service fee as $0.50, followed by an asterisk (or other symbol) linked to a statement explaining that the fee can be lower depending on how and where the prepaid account is used. Except as described in § 1005.18(b)(3)(ii), § 1005.18(b)(3)(i) does not permit a financial institution to describe in the short form disclosure the specific conditions under which a fee may be reduced or waived, but the financial institution could use, for example, any other part of the prepaid account's packaging or other printed materials to disclose that information. The conditions under which a fee may be lower

are required to be disclosed in the long form disclosure pursuant to § 1005.18(b)(4)(ii).

18(b)(3)(ii) Disclosure of Variable Periodic Fee

1. *Periodic fee variation alternative.* If the amount of the periodic fee disclosed in the short form pursuant to § 1005.18(b)(2)(i) could vary, a financial institution has two alternatives for disclosing the variation, as set forth in § 1005.18(b)(3)(i) and (ii). For example, a financial institution charges a monthly fee of $4.95, but waives this fee if a consumer receives direct deposit into the prepaid account or conducts 30 or more transactions during that month. Pursuant to § 1005.18(b)(3)(ii), the financial institution could list its monthly fee of $4.95 on the short form disclosure followed by a dagger symbol that links to a statement that states, for example, ''No monthly fee with direct deposit or 30 transactions per month.'' This statement may take up no more than one line of text in the short form disclosure and must be located directly above or in place of the linked statement required by § 1005.18(b)(3)(i). Alternatively, pursuant to § 1005.18(b)(3)(i), the financial institution could list its monthly fee of $4.95 on the short form disclosure followed by an asterisk that links to a statement that states, ''This fee can be lower depending on how and where this card is used.''

18(b)(3)(iii) Single Disclosure for Like Fees

1. *Alternative for two-tier fees in the short form disclosure.* Pursuant to § 1005.18(b)(3)(iii), a financial institution may opt to disclose one fee instead of the two fees required by § 1005.18(b)(2)(iii), (v), and (vi) and any two-tier fee required by § 1005.18(b)(2)(ix), when the amount is the same for both fees. The following examples illustrate how to provide a single disclosure for like fees on both the short form disclosure and the multiple service plan short form disclosure:

i. A financial institution charges $1 for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may list the $1 fee once under the general heading ''ATM withdrawal'' required by § 1005.18(b)(2)(iii); in that case, it need not disclose the terms ''in-network'' or ''out-of-network.''

ii. A financial institution using the multiple service plan short form disclosure pursuant to § 1005.18(b)(6)(iii)(B)(*2*) charges $1 under each of its service plans for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may disclose the ATM withdrawal fee on one line, instead of two, using the general heading ''ATM withdrawal'' required by § 1005.18(b)(2)(iii); in that case, it need not disclose the terms ''in-network'' or ''out-of-network.''

18(b)(3)(iv) Third-Party Fees in General

1. *General prohibition on disclosure of third-party fees in the short form.* Section 1005.18(b)(3)(iv) states that a financial institution may not include any third-party fees in a disclosure made pursuant to § 1005.18(b)(2), except for, as provided by § 1005.18(b)(3)(v), the cash reload fee required to be disclosed by § 1005.18(b)(2)(iv). Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed pursuant to § 1005.18(b)(3)(iv). For example, if a program manager performs customer service functions for a financial institution's prepaid account program, and charges a fee for live agent customer service, that fee must be disclosed pursuant to § 1005.18(b)(2)(iv).

18(b)(3)(v) Third-Party Cash Reload Fees

1. *Updating third-party fees.* Section 1005.18(b)(3)(v) provides that a financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure. For example, at the time a financial institution first prints packaging material for its prepaid account program, it discloses on the short form the $3.99 fee charged by the third-party reload network with which it contracts to provide cash reloads. Ten months later, the third-party reload network raises its cash reload fee to $4.25. The financial institution is not required to update its on-package disclosures to reflect the change in the cash reload fee until the financial institution next prints packaging materials for that prepaid account program. With respect to that financial institution's electronic and oral disclosures for that prepaid account program, the financial institution may, but is not required to, update its short form disclosure immediately upon learning of the third-party reload network's change to its cash reload fee. Alternatively, the financial institution may wait to update its electronic and oral short form disclosures to reflect the change in the cash reload fee until it otherwise updates those disclosures.

18(b)(3)(vi) Prohibition on Disclosure of Finance Charges

1. *No disclosure of finance charges in the short form.* Section 1005.18(b)(3)(vi) provides that a financial institution may not include in a disclosure made pursuant to § 1005.18(b)(2)(i) through (ix) any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. If a financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature, it must disclose on the short form for purposes of § 1005.18(b)(2)(i) through (vii) and (ix) the amount of the comparable fee rather than the higher fee. *See, e.g.,* § 1005.18(g)(2) and related commentary.

18(b)(4) Long Form Disclosure Content

18(b)(4)(ii) Fees

1. *Disclosure of all fees.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose in the long form all fees that may be imposed in connection with a prepaid account, not just fees for electronic fund transfers or the right to make transfers. The requirement to disclose all fees in the long form includes any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 but does not include finance charges imposed on the covered separate credit feature as described in 12 CFR 1026.4(b)(11)(i). See comment 18(b)(7)(i)(B)–2 for guidance on disclosure of finance charges as part of the § 1005.18(b)(4)(ii) fee disclosure in the long form. A financial institution may also be required to include finance charges in the Regulation Z disclosures required pursuant to § 1005.18(b)(4)(vii).

2. *Disclosure of conditions.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose the amount of each fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. For example, if a financial institution charges a cash reload fee, the financial institution must list the amount of the cash reload fee and also specify any circumstances under which a consumer can qualify for a lower fee. Similarly, if a financial institution discloses both a periodic fee and an inactivity fee, it must indicate whether the inactivity fee will be charged in addition to, or instead of, the periodic fee. A financial institution may, but is not required to, also include on the long form disclosure additional information or limitations related to the service or feature for which a fee is charged, such as, for cash reloads, any limit on the amount of cash a consumer may load into the prepaid account in a single transaction or during a particular time period. The general requirement in § 1005.18(b)(4)(ii) does not apply to individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis.

3. *Disclosure of a service or feature without a charge.* Pursuant to § 1005.18(b)(4)(ii), a financial institution may, but is not required to, list in the long form disclosure any service or feature it provides or offers at no charge to the consumer. For example, a financial institution may list ''online bill pay'' in its long form disclosure and indicate a fee amount of ''$0'' when the financial institution does not charge consumers a fee for that feature. By contrast, where a fee is waived or reduced under certain circumstances or where a service or feature is available for an introductory period without a fee, the financial institution may not list the fee amount as ''$0''. Rather, the financial institution must list the highest fee, accompanied by an explanation of the waived or reduced fee amount and any conditions for the waiver or discount. For example, if a financial institution waives its monthly fee for any consumer who receives direct deposit payments into the prepaid account or conducts 30 or more transactions in a given month, the long form disclosure must list the regular monthly fee amount along with an explanation that the monthly

fee is waived if the consumer receives direct deposit or conducts 30 or more transactions each month. Similarly, for an introductory fee, the financial institution would list the highest fee, and explain the introductory fee amount, the duration of the introductory period, and any conditions that apply during the introductory period.

4. *Third-party fees.* Section 1005.18(b)(4)(ii) requires disclosure in the long form of any third-party fee amounts known to the financial institution that may apply. Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed on the long form pursuant to § 1005.18(b)(4)(ii). Also pursuant to § 1005.18(b)(4)(ii), for any third-party fee disclosed, a financial institution may, but is not required to, include either or both a statement that the fee is accurate as of or through a specific date or that the third-party fee is subject to change. For example, a financial institution that contracts with a third-party remote deposit capture service must include in the long form disclosure the amount of the fee known to the financial institution that is charged by the third party for remote deposit capture services. The financial institution may, but is not required to, also state that the third-party remote deposit capture fee is accurate as of or through a specific date, such as the date the financial institution prints the long form disclosure. The financial institution may also state that the fee is subject to change. Section 1005.18(b)(4)(ii) also provides that, if a third-party fee may apply but the amount of the fee is not known by the financial institution, it must include a statement indicating that a third-party fee may apply without specifying the fee amount. For example, a financial institution that permits out-of-network ATM withdrawals would disclose that, for ATM withdrawals that occur outside the financial institution's network, the ATM operator may charge the consumer a fee for the withdrawal, but the financial institution is not required to disclose the out-of-network ATM operator's fee amount if it does not know the amount of the fee.

18(b)(4)(iii) Statement Regarding Registration and FDIC or NCUA Insurance

1. *Statement regarding registration and FDIC or NCUA insurance, including implications thereof.* Section 1005.18(b)(4)(iii) requires that the long form disclosure include the same statement regarding prepaid account registration and FDIC or NCUA insurance eligibility required by § 1005.18(b)(2)(xi) in the short form disclosure, together with an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

i. *Bank disclosure of FDIC insurance.* For example, XYZ Bank offers a prepaid account program for sale at retail locations that is set up to be eligible for FDIC deposit insurance, but does not conduct customer identification and verification before consumers purchase the prepaid account. XYZ Bank may disclose the required statements as "Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ Bank, an FDIC-insured institution. Once there, your funds are insured up to $250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See *fdic.gov/deposit/deposits/prepaid.html* for details." Conversely, if XYZ Bank offers another prepaid account program for sale at retail locations for which it conducts customer identification and verification after purchase of the prepaid account, but the program is not set up to be eligible for FDIC insurance, XYZ Bank may disclose the required statements as "Not FDIC insured. Your funds will be held at or transferred to XYZ Bank. If XYZ Bank fails, you are not protected by FDIC deposit insurance and could lose some or all of your money. Register your card for other protections."

ii. *Credit union disclosure of NCUA insurance.* For example, ABC Credit Union offers a prepaid account program for sale at its own branches that is set up to be eligible for NCUA share insurance, but does not conduct customer identification and verification before consumers purchase the prepaid account. ABC Credit Union may disclose the requirement statements as "Register your card for NCUA insurance, if eligible, and other protections. Your funds will be held at or transferred to ABC Credit Union, an NCUA-insured institution. Once there, if specific share insurance requirements are met and your card is registered, your funds are insured up to $250,000 by the NCUA in the event ABC Credit Union fails." See comment 18(b)(2)(xi)–1 for guidance as to when NCUA insurance coverage should be disclosed instead of FDIC insurance coverage.

18(b)(4)(vii) Regulation Z Disclosures for Overdraft Credit Features

1. *Long form Regulation Z disclosure of overdraft credit features.* Section 1005.18(b)(4)(vii) requires that the long form include the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), in accordance with the requirements for such disclosures in 12 CFR 1026.60, if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered to a consumer in connection with the prepaid account. If the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), pursuant to § 1005.18(b)(7)(i)(B), such disclosures must appear below the disclosures required by § 1005.18(b)(4)(vi). If the disclosures provided pursuant to Regulation Z, 12 CFR 1026.60(e)(1), are provided in writing, these disclosures must be provided in the form required by 12 CFR 1026.60(a)(2), and to the extent possible, on the same page as the other disclosures required by § 1005.18(b)(4).

2. *Updates to the long form for changes to the Regulation Z disclosures.* Pursuant to § 1005.18(b)(4)(vii), a financial institution is not required to revise the disclosure required by that paragraph to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed on the long form pursuant to § 1005.18(b)(4)(ii). *See* comment 18(b)(4)(ii)–1.

18(b)(5) Disclosure Requirements Outside the Short Form Disclosure

1. *Content of disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution, the name of the prepaid account program, and any purchase price or activation fee for the prepaid account be disclosed outside the short form disclosure. A financial institution may, but is not required to, also disclose the name of the program manager or other service provider involved in the prepaid account program.

2. *Location of disclosure.* In addition to setting forth the required content for disclosures outside the short form disclosure, § 1005.18(b)(5) requires that, in a setting other than a retail location, the information required by § 1005.18(b)(5) must be disclosed in close proximity to the short form. For example, if the financial institution provides the short form disclosure online, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form if it appears on the same Web page as the short form disclosure. If the financial institution offers the prepaid account in its own branch locations and provides the short form disclosure on the exterior of its preprinted packaging materials, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it appears on the exterior of the packaging. If the financial institution provides written short form disclosures in a manner other than on preprinted packaging materials, such as on paper, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity if it appears on the same piece of paper as the short form disclosure. If the financial institution provides the short form disclosure orally, the information required by § 1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it is provided immediately before or after disclosing the fees and information required pursuant to § 1005.18(b)(2). For prepaid accounts sold in a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), § 1005.18(b)(5) requires the information other than purchase price be disclosed on the exterior of the access device's packaging material. If the purchase price, if any, is not also disclosed on the exterior of the packaging, disclosure of the purchase price on or near the sales rack or display for the packaging material is deemed in close proximity to the short form disclosure.

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

18(b)(6)(i) General

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

1. *Providing pre-acquisition disclosures electronically.* Section 1005.18(b)(6)(i)(B) requires electronic delivery of the disclosures required by § 1005.18(b) when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and, among other things, in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. For example, if a consumer is acquiring a prepaid account via a Web site or mobile application, it would be reasonable to expect that a consumer would be able to access the disclosures required by § 1005.18(b) on the first page or via a direct link from the first page of the Web site or mobile application or on the first page that discloses the details about the specific prepaid account program. See comment 18(b)(1)(i)–2 for additional guidance on placement of the short form and long form disclosures on a Web page.

2. *Disclosures responsive to smaller screens.* In accordance with the requirement in § 1005.18(b)(6)(i)(B) that electronic disclosures be provided in a responsive form, electronic disclosures provided pursuant to § 1005.18(b) must be provided in a way that responds to different screen sizes, for example, by stacking elements of the disclosures in a manner that accommodates consumer viewing on smaller screens, while still meeting the other formatting requirements set forth in § 1005.18(b)(7). For example, the disclosures permitted by § 1005.18(b)(2)(xiv)(B) or (b)(3)(ii) must take up no more than one additional line of text in the short form disclosure. If a consumer is acquiring a prepaid account using a mobile device with a screen too small to accommodate these disclosures on one line of text in accordance with the size requirements set forth in § 1005.18(b)(7)(ii)(B), a financial institution is permitted to display the disclosures permitted by § 1005.18(b)(2)(xiv)(B) and (b)(3)(ii), for example, by stacking those disclosures in a way that responds to smaller screen sizes, while still meeting the other formatting requirements in § 1005.18(b)(7).

3. *Machine-readable text.* Section 1005.18(b)(6)(i)(B) requires that electronic disclosures must be provided using machine-readable text that is accessible via both Web browsers (or mobile applications, as applicable) and screen readers. A disclosure would not be deemed to comply with this requirement if it was not provided in a form that can be read automatically by Internet search engines or other computer systems.

18(b)(6)(ii) Retainable Form

1. *Retainable disclosures.* Section 1005.18(b)(6)(ii) requires that, except for disclosures provided orally pursuant to § 1005.18(b)(1)(ii) or (iii), long form disclosures provided via SMS as permitted by § 1005.18(b)(2)(xiii) for a prepaid account sold at retail locations pursuant to the retail location exception in § 1005.18(b)(1)(ii), and the disclosure of a purchase price pursuant to § 1005.18(b)(5) that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in § 1005.18(b)(1)(ii), disclosures provided pursuant to § 1005.18(b) must be made in a form that a consumer may keep. For example, a short form disclosure with a tear strip running though it would not be deemed retainable because use of the tear strip to gain access to the prepaid account access device inside the packaging would destroy part of the short form disclosure. Electronic disclosures are deemed retainable if the consumer is able to print, save, and email the disclosures from the Web site or mobile application on which they are displayed.

18(b)(6)(iii) Tabular Format

18(b)(6)(iii)(B) Multiple Service Plans

18(b)(6)(iii)(B)(1) Short Form Disclosure for Default Service Plan

1. *Disclosure of default service plan excludes short-term or promotional service plans.* Section 1005.18(b)(6)(iii)(B)(*1*) provides that when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by final § 1005.18(b)(2)(i) through (ix) may be provided in the tabular format described in final § 1005.18(b)(6)(iii)(A) for the service plan in which a consumer is initially enrolled by default upon acquiring a prepaid account. Pursuant to the requirement in § 1005.18(b)(3)(i) to disclose the highest amount a financial institution may impose for a fee disclosed pursuant to § 1005.18(b)(2)(i) through (vii) and (ix), a financial institution would not be permitted to disclose any short-term or promotional service plans as a default service plan.

18(b)(6)(iii)(B)(2) Short Form Disclosure for Multiple Service Plans

1. *Disclosure of multiple service plans.* The multiple service plan disclosure requirements in § 1005.18(b)(6)(iii)(B)(*2*) apply when a financial institution offers more than one service plan within a particular prepaid account program, each plan has a different fee schedule, and the financial institution opts not to disclose the default service plan pursuant to § 1005.18(b)(6)(iii)(B)(*1*). *See* Model Form A–10(e). For example, a financial institution that offers a prepaid account program with one service plan for which a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee may use the short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*). Similarly, a financial institution that offers a prepaid account program with preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service (*e.g.,* a mobile phone service), often referred to as ''loyalty plans,'' may also use the short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*). Pricing variations based on whether a consumer elects to use a specific feature of a prepaid account, such as waiver of the monthly fee for consumers electing to receive direct deposit, does not constitute multiple service plans or a loyalty plan. See comment 18(b)(3)(iii)–1.ii for guidance on providing a single disclosure for like fees for multiple service plan short form disclosures.

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

18(b)(7)(i) Grouping

18(b)(7)(i)(B) Long Form Disclosure

1. *Conditions must be in close proximity to fee amount.* Pursuant to § 1005.18(b)(4)(ii), the long form disclosure generally must disclose all fees that may be imposed in connection with a prepaid account, including the amount of the fee and any conditions under which the fee may be imposed, waived, or reduced. Pursuant to § 1005.18(b)(7)(i)(B), text describing the conditions under which a fee may be imposed must appear in the table in the long form disclosure in close proximity to the fee amount disclosed pursuant to § 1005.18(b)(4)(ii). For example, a financial institution is deemed to comply with this requirement if the text describing the conditions is located directly to the right of the fee amount in the long form disclosure, as illustrated in Sample Form A–10(f). See comment 18(b)(6)(i)(B)–2 regarding stacking of electronic disclosures for display on smaller screen sizes.

2. *Category of function for finance charges.* Section 1005.18(b)(7)(i)(B) requires that the information required by § 1005.18(b)(4)(ii) must be generally grouped together and organized under subheadings by the categories of function for which a financial institution may impose the fee. If any finance charges may be imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, the financial institution may, but is not required to, group all finance charges together under a single subheading. This includes situations where the financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. For example, if a financial institution charges on the prepaid account a $0.50 per transaction fee for each transaction that accesses funds in the asset feature of a prepaid account and a $1.25 per transaction fee for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is permitted to disclose the $0.50 per transaction fee under a general transactional subheading and disclose the additional $0.75 per transaction fee under a separate subheading together with any other finance charges that may be imposed on the prepaid account.

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

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

pixel size requirements for each element of the disclosures required by § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4). A financial institution may provide disclosures in a type size larger than the required minimum to enhance consumer comprehension in any acquisition scenario, as long as the financial institution complies with the type/pixel size hierarchy set forth in § 1005.18(b)(7)(ii).

2. *''Point'' refers to printed disclosures and ''pixel'' refers to electronic disclosures.* References in § 1005.18(b)(7)(ii) to ''point'' size correspond to printed disclosures and references to ''pixel'' size correspond to disclosures provided via electronic means.

18(b)(7)(ii)(A) General

1. *Contrast required between type color and background of disclosures.* Section § 1005.18(b)(7)(ii)(A) requires that all text used to disclose information in the short form or in the long form disclosure pursuant to § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast. A financial institution complies with the color requirements if, for example, it provides the disclosures required by § 1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) printed in black type on a white background or white type on a black background. Also, pursuant to § 1005.18(b)(7)(ii)(A), the type and color may differ between the short form disclosure and the long form disclosure provided for a particular prepaid account program. For example, a financial institution may use one font/type style for the short form disclosure for a particular prepaid account program and use a different font/type style for the long form disclosure for that same prepaid account program. Similarly, a financial institution may use black type for the short form disclosure for a particular prepaid account program and use blue type for the long form disclosure for that same prepaid account program.

18(b)(7)(iii) Segregation

1. *Permitted information outside the short form and long form disclosures.* Section 1005.18(b)(7)(iii) requires that the short form and long form disclosures required by § 1005.18(b)(2) and (4) be segregated from other information and contain only information that is required or permitted for those disclosures by § 1005.18(b). This segregation requirement does not prohibit the financial institution from providing information elsewhere on the same page as the short form disclosure, such as the information required by § 1005.18(b)(5), additional disclosures required by state law for payroll card accounts, or any other information the financial institution wishes to provide about the prepaid account. Similarly, the segregation requirement does not prohibit a financial institution from providing the long form disclosure on the same page as other disclosures or information, or as part of a larger document, such as the prepaid account agreement. *See also* § 1005.18(b)(1) and (f)(1).

18(b)(8) Terminology of Pre-Acquisition Disclosures

1. *Consistent terminology.* Section 1005.18(b)(8) requires that fee names and other terms be used consistently within and across the disclosures required by § 1005.18(b). For example, a financial institution may not name the fee required to be disclosed by § 1005.18(b)(2)(vii) an ''inactivity fee'' in the short form disclosure and a ''dormancy fee'' in the long form disclosure. However, a financial institution may substitute the term prepaid ''account'' for the term prepaid ''card,'' as appropriate, wherever it is used in § 1005.18(b).

18(b)(9) Prepaid Accounts Acquired in Foreign Languages

1. *Prepaid accounts acquired in foreign languages.* Section 1005.18(b)(9)(i) requires a financial institution to provide the pre-acquisition disclosures required by § 1005.18(b)(2) of this section in a foreign language in certain circumstances.

i. *Examples of situations in which foreign language disclosures are required.* The following examples illustrate situations in which a financial institution must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of that prepaid account:

A. The financial institution principally uses a foreign language on the packaging material of a prepaid account sold in a retail location or distributed at a bank or credit union branch, even though a few words appear in English on the packaging.

B. The financial institution principally uses a foreign language in a television advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account, whether by speaking to a customer service representative or interacting with an interactive voice response (IVR) system.

C. The financial institution principally uses a foreign language in an online advertisement for a prepaid account. That advertisement includes a Web site URL through which a consumer can acquire the prepaid account.

D. The financial institution principally uses a foreign language on a printed advertisement for a prepaid account. That advertisement includes a telephone number or a Web site URL a consumer can call or visit to acquire the prepaid account. The pre-acquisition disclosures must be provided to the consumer in that same foreign language prior to the consumer acquiring the prepaid account.

E. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution and has the option to proceed with the prepaid account acquisition process in a foreign language, whether by speaking to a customer service representative or interacting with an IVR system.

F. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer visits the financial institution's Web site. On that Web site, the consumer has the option to proceed with the prepaid account acquisition process in a foreign language.

ii. *Examples of situations in which foreign language disclosures are not required.* The following examples illustrate situations in which a financial institution is not required to provide the pre-acquisition disclosures in a foreign language:

A. A consumer visits the financial institution's branch location in person and speaks to an employee in a foreign language about acquiring a prepaid account. The consumer proceeds with the acquisition process in that foreign language.

B. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution's customer service line and speaks to a customer service representative in a foreign language. However, if the customer service representative proceeds with the prepaid account acquisition process over the telephone, the financial institution would be required to provide the pre-acquisition disclosures in that foreign language.

C. The financial institution principally uses a foreign language in an advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account. The consumer calls the telephone number provided on the advertisement and has the option to proceed with the prepaid account acquisition process in English or in a foreign language. The consumer chooses to proceed with the acquisition process in English.

2. *Principally used.* All relevant facts and circumstances determine whether a foreign language is principally used by the financial institution to advertise, solicit, or market under § 1005.18(b)(9). Whether a foreign language is principally used is determined at the packaging material, advertisement, solicitation, or marketing communication level, not at the prepaid account program level or across the financial institution's activities as a whole. A financial institution that advertises a prepaid account program in multiple languages would evaluate its use of foreign language in each advertisement to determine whether it has principally used a foreign language therein.

3. *Advertise, solicit, or market a prepaid account.* Any commercial message, appearing in any medium, that promotes directly or indirectly the availability of prepaid accounts constitutes advertising, soliciting, or marketing for purposes of § 1005.18(b)(9). Examples illustrating advertising, soliciting, or marketing include, but are not limited to:

i. Messages in a leaflet, promotional flyer, newspaper, or magazine.

ii. Electronic messages, such as on a Web site or mobile application.

iii. Telephone solicitations.

iv. Solicitations sent to the consumer by mail or email.

v. Television or radio commercials.

4. *Information in the long form disclosure in English.* Section 1005.18(b)(9)(ii) states that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to

§ 1005.18(b)(9)(i) must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language. A financial institution may, but is not required to, provide the English version of the information required by § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in § 1005.18(b) for the long form disclosure.

18(c) Access to Prepaid Account Information

1. *Posted transactions.* The electronic and written history of the consumer's account transactions provided under § 1005.18(c)(1)(ii) and (iii), respectively, shall reflect transfers once they have been posted to the account. Thus, a financial institution does not need to include transactions that have been authorized but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under § 1005.18(c)(1)(ii) must be made available in a form that the consumer may keep, as required under § 1005.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, a financial institution satisfies the requirement if it provides electronic history on a Web site in a format that is capable of being printed or stored electronically using a web browser.

3. *Written history.* Requests that exceed the requirements of § 1005.18(c)(1)(iii) for providing written account transaction history, and which therefore a financial institution may charge a fee, include the following:

i. A financial institution may assess a fee or charge to a consumer for responding to subsequent requests for written account transaction history made in a single calendar month. For example, if a consumer requests written account transaction history on June 1 and makes another request on August 5, the financial institution may not assess a fee or charge to the consumer for responding to either request. However, if the consumer requests written account transaction history on June 1 and then makes another request on June 15, the financial institution may assess a fee or charge to the consumer for responding to the request made on June 15, as this is the second response in the same month.

ii. If a financial institution maintains more than 24 months of written account transaction history, it may assess a fee or charge to the consumer for providing a written history for transactions occurring more than 24 months preceding the date the financial institution receives the consumer's request, provided the consumer specifically requests the written account transaction history for that time period.

iii. If a financial institution offers a consumer the ability to request automatic mailings of written account transaction history on a monthly or other periodic basis, it may assess a fee or charge for such automatic mailings but not for the written account transaction history requested pursuant to § 1005.18(c)(1)(iii). *See* comment 18(c)–6.

4. *12 months of electronic account transaction history.* Section 1005.18(c)(1)(ii) requires a financial institution to make available at least 12 months of account transaction history electronically. If a prepaid account has been opened for fewer than 12 months, the financial institution need only provide electronic account transaction history pursuant to § 1005.18(c)(1)(ii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution need not make available electronic account transaction history. *See* comment 9(b)–3. If an inactive account becomes active, the financial institution must again make available 12 months of electronic account transaction history.

5. *24 months of written account transaction history.* Section 1005.18(c)(1)(iii) requires a financial institution to provide at least 24 months of account transaction history in writing upon the consumer's request. A financial institution may provide fewer than 24 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been opened for fewer than 24 months, the financial institution need only provide written account transaction history pursuant to § 1005.18(c)(1)(iii) since the time of account opening. Even if a prepaid account is closed or becomes inactive, the financial institution must continue to provide upon request at least 24 months of written account transaction history preceding the date the request is received. When a prepaid account has been closed or inactive for 24 months or longer, the financial institution is no longer required to make available any written account transaction history pursuant to § 1005.18(c)(1)(iii).

6. *Periodic statement alternative for unverified prepaid accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written history of the consumer's account transactions for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in § 1005.18(e)(3)(i)(A) through (C). If a prepaid account is verified, a financial institution must provide written account transaction history upon the consumer's request that includes the period during which the account was not verified, provided that the period is within the 24-month time frame specified in § 1005.18(c)(1)(iii).

7. *Inclusion of all fees charged.* A financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a financial institution that follows the periodic statement alternative in § 1005.18(c)(1) must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the electronic history of the consumer's account transactions made available pursuant to § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to § 1005.18(c)(1)(iii).

8. *Summary totals of fees.* Section 1005.18(c)(5) requires a financial institution to disclose a summary total of the amount of all fees assessed by the financial institution against a prepaid account for the prior calendar month and for the calendar year to date.

i. *Generally.* A financial institution that furnishes a periodic statement pursuant to § 1005.9(b) for a prepaid account must display the monthly and annual fee totals on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its Web site, the financial institution must display the monthly and annual fee totals on the periodic statement and on the consumer's electronic account transaction history made available on its Web site. Likewise, a financial institution that follows the periodic statement alternative in § 1005.18(c)(1) must display the monthly and annual fee totals on the electronic history of the consumer's account transactions made available pursuant to § 1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to § 1005.18(c)(1)(iii). If a financial institution provides periodic statements pursuant to § 1005.9(b), fee totals may be disclosed for each statement period rather than each calendar month, if different. The summary totals of fees should be net of any fee reversals.

ii. *Third-party fees.* A financial institution may, but is not required to, include third-party fees in its summary totals of fees provided pursuant to § 1005.18(c)(5). For example, a financial institution must include in the summary totals of fees the fee it charges a consumer for using an out-of-network ATM, but it need not include any fee charged by an ATM operator, with whom the financial institution has no relationship, for the consumer's use of that operator's ATM. Similarly, a financial institution need not include in the summary totals of fees the fee charged by a third-party reload network for the service of adding cash to a prepaid account at a point-of-sale terminal. A financial institution may, but is not required to, inform consumers of third-party fees such as by providing a disclaimer to indicate that the summary totals do not include certain third-party fees or to explain when third-

party fees may occur or through some other method.

9. *Display of summary totals of fees.* A financial institution may, but is not required to, also include sub-totals of the types of fees that make up the summary totals of fees as required by § 1005.18(c)(5). For example, if a financial institution distinguishes optional fees (*e.g.,* custom card design fees) from fees to use the account, in displaying the summary totals of fees, the financial institution may include sub-totals of those fees, provided the financial institution also presents the combined totals of all fees.

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

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the model clause in paragraph (b) of appendix A–7 of this part). Specifically, an institution may disclose to prepaid account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under § 1005.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a prepaid account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity and to provide access to a Web site or mobile application through which account information can be viewed. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 1005.6 and 1005.11. A consumer is not deemed to have accessed a prepaid account electronically when the consumer receives an automated text message or other automated account alert, or checks the account balance by telephone.

3. *Untimely notice of error.* An institution that provides a transaction history under § 1005.18(c)(1) is not required to comply with the requirements of § 1005.11 for any notice of error from the consumer received more than 60 days after the earlier of the date the consumer electronically accesses the account transaction history or the date the financial institution sends a written account transaction history upon the consumer's request. (Alternatively, as provided in § 1005.18(e)(2)(ii), an institution need not comply with the requirements of § 1005.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 1005.6 (including the extension of time limits in § 1005.6(b)(4)) before it may impose any liability on the consumer.

4. *Verification of accounts.* Section 1005.18(e)(3) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution need not extend provisional credit for any prepaid account for which it has not completed its collection of consumer identification and verification process. Consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number.

5. *Financial institution has not completed verification.* Section 1005.18(e)(3)(ii)(A) states that, provided it discloses to the consumer the risks of not registering a prepaid account, a financial institution has not completed its consumer identification and verification process where it has not concluded the process with respect to a particular consumer. For example, a financial institution initiates the identification and verification process by collecting identifying information about a consumer and informing the consumer of the nature of the outstanding information, but despite efforts to obtain additional information from the consumer, the financial institution is unable to conclude the process because of conflicting information about the consumer's current address. As long as the information needed to complete the verification process remains outstanding, the financial institution has not concluded its consumer identification and verification process with respect to that consumer. A financial institution may not delay completing its customer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

6. *Account verification prior to acquisition.* A financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have completed its consumer identification and verification process with respect to that account. For example, a university contracts with a financial institution to disburse financial aid to students via the financial institution's prepaid accounts. To facilitate the accurate 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 completed its consumer identification and verification process with respect to those accounts.

18(f) Disclosure of Fees and Other Information

1. *Initial disclosure of fees and other information.* Section 1005.18(f)(1) requires a financial institution to include, as part of the initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to § 1005.18(b)(4). Section 1005.18(b)(4)(ii) requires a financial institution to disclose in its pre-acquisition long form disclosure all fees imposed in connection with a prepaid account. Section 1005.18(b)(4) also contains several specific statements that must be provided as part of the long form disclosure. A financial institution may, but is not required to, disclose the information required by § 1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in § 1005.18(b) for the long form disclosure as part of its initial disclosures provided pursuant to § 1005.7; a financial institution may choose to do so, however, in order to satisfy other requirements in § 1005.18. See, *e.g.,* § 1005.18(b)(1)(ii) regarding the retail location exception.

2. *Changes to the Regulation Z disclosures for overdraft credit features.* Pursuant to § 1005.18(f)(2), if a financial institution provides pursuant § 1005.18(f)(1) the Regulation Z disclosures required by § 1005.18(b)(4)(vii) for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed pursuant to § 1005.18(b)(4)(ii). *See* comment 18(b)(4)(ii)–1.

3. *Web site and telephone number on a prepaid account access device.* Section 1005.18(f)(3) requires that the name of a financial institution and the Web site URL and a telephone number that a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. A disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device does not constitute a disclosure on the access device. The financial institution must provide this information to allow consumers to, for example, contact the financial institution to learn about the terms and conditions of the prepaid account, obtain prepaid account balance information, request a copy of transaction history pursuant to § 1005.18(c)(1)(iii) if the financial institution does not provide periodic statements pursuant to § 1005.9(b), or to notify the financial institution when the consumer believes that an unauthorized electronic fund transfer has occurred as required by §§ 1005.7(b)(2) and 1005.18(d)(1)(ii).

18(g) Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards

1. *Covered separate credit feature accessible by a hybrid prepaid-credit card.* Regulation Z, 12 CFR 1026.61, defines the term covered separate credit feature accessible by a hybrid prepaid-credit card.

2. *Asset feature.* i. Regulation Z, 12 CFR 1026.61(a)(5)(ii), defines the term asset feature.

ii. Section 1005.18(g) applies to account terms, conditions, and features that apply to the asset feature of the prepaid account. Section 1005.18(g) does not apply to the account terms, conditions, or features that apply to the covered separate credit feature, regardless of whether it is structured as a separate credit account or as a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account.

3. *Scope of § 1005.18(g).* Under § 1005.18(g), a financial institution may offer different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

4. *Variation in account terms, conditions, or features.* i. Account terms, conditions, and features subject to § 1005.18(g) include, but are not limited to:

A. Interest paid on funds deposited into the asset feature of the prepaid account, if any;

B. Fees or charges imposed on the asset feature of the prepaid account. See comment 18(g)–5 for additional guidance on how § 1005.18(g) applies to fees or charges imposed on the asset feature of the prepaid account.

C. The type of access device provided to the consumer. For instance, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit feature that is accessible by a hybrid prepaid-credit card, while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature;

D. Minimum balance requirements on the asset feature of the prepaid account; or

E. Account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

5. *Fees.* i. With respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, § 1005.18(g) only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program that do not have a such a credit feature. Section 1005.18(g) prohibits a financial institution from imposing a lower fee or charge on prepaid accounts with a covered separate credit feature than the amount of a comparable fee or charge it charges on prepaid accounts in the same prepaid account program without such a credit feature. With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, a fee or charge imposed on the asset feature of the prepaid account generally is a finance charge under Regulation Z (12 CFR part 1026) to the extent that the amount of the fee or charge exceeds the amount of a comparable fee or charge imposed on prepaid accounts in the same prepaid account program that do not have such a credit feature. *See* Regulation Z, 12 CFR 1026.4(b)(11)(ii). With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, this comment below provides illustrations of how § 1005.18(g) applies to fees or charges imposed on the asset feature of a prepaid account. The term ''non-covered separate credit feature'' refers to a separate credit feature that is not accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

ii. The following examples illustrate how § 1005.18(g) applies to per transaction fees for each transaction to access funds available in the asset feature of the prepaid account.

A. Assume that a consumer has selected a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered. For prepaid accounts without such a credit feature, the financial institution charges $0.50 for each transaction conducted that accesses funds available in the prepaid account. For prepaid accounts with a credit feature, the financial institution also charges $0.50 on the asset feature for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction that accesses funds in the asset feature of the prepaid account, regardless of whether the prepaid account has a covered separate credit feature accessible by a hybrid prepaid-credit card. Also, with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, the $0.50 per transaction fee imposed on the asset feature for each transaction that accesses funds available in the asset feature of the prepaid account is not a finance charge under 12 CFR 1026.4(b)(11)(ii). See Regulation Z, 12 CFR 1026.4(b)(11)(ii) and comment 4(b)(11)(ii)–1, for a discussion of the definition of finance charge with respect to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

B. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a $1.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g)(2) on prepaid accounts with a covered separate credit feature than it charges on prepaid accounts without such a credit feature. The $0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a $0.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than it imposes on prepaid accounts in the same program without such a credit feature.

iii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, with such a credit feature are comparable only to per transaction fees for each transaction to access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from a source other than the funds in the asset feature are not comparable for purposes of § 1005.18(g). To illustrate:

A. Assume a financial institution charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Also, assume that the financial institution charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, for purposes of § 1005.18(g), the financial institution is imposing the same fee for each transaction it pays, regardless of whether the transaction accesses funds available in the asset feature of the prepaid accounts without a covered separate credit feature, or is paid from credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Also, for purposes of Regulation Z, 12 CFR 1026.4(b)(11)(ii), the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the financial

institution charges $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. The financial institution is permitted to charge the higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that the financial institution imposes $0.25 on the asset feature of the prepaid account for each transaction conducted where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the financial institution is in violation of § 1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than the amount of the comparable fee it imposes on prepaid accounts in the same program without such a credit feature.

D. Assume a financial institution charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Assume also that the financial institution charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. The financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

E. Assume same facts as in paragraph D above, except that assume the financial institution also charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a $0.50 per transaction fee. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the per transaction fee (*i.e.,* the fee of $0.50) to access funds available in the asset feature of the prepaid accounts on a prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted by drawing funds into a prepaid account from some other source (*i.e.,* the fee of $1.25) are not comparable for purposes of § 1005.18(g). The financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction to access funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

iv. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the financial institution's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* Regulation Z, 12 CFR 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of § 1005.18(g). To illustrate:

A. Assume a financial institution charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.,* the fee of $1.25) is compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.,* the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.,* the fee of $1.25) is not comparable for purposes of § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

B. Assume that a financial institution charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.,* the fee of $1.25) is compared with the fees to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature (*i.e.,* the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.,* the fee of $1.25) is not comparable for purposes of § 1005.18(g). In this case, the financial institution is permitted to charge a higher fee under § 1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

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

1. *Disclosures not on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(1) provides that, except as provided in § 1005.18(h)(2) and (3), the disclosure requirements of subpart A, as modified by § 1005.18, apply to prepaid accounts as defined in § 1005.2(b)(3), including government benefit accounts subject to § 1005.15, beginning October 1, 2017. This effective date applies to disclosures made available or provided to consumers electronically, orally by telephone, or in a form other than on pre-printed materials, such as disclosures printed on paper by a financial institution upon a consumer's request.

2. *Disclosures on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(2)(i) provides that the disclosure requirements of subpart A, as modified by § 1005.18, do not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials

that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. This includes, for example, disclosures contained on or in packages for prepaid accounts sold at retail, or disclosures for payroll card accounts or government benefit accounts that are distributed to employees or benefits recipients in packages or envelopes. Disclosures and access devices that are manufactured, printed, or otherwise produced on or after October 1, 2017 must comply with all the requirements of subpart A.

3. *Form of notice to consumers.* A financial institution that is required to notify consumers of a change in terms and conditions pursuant to § 1005.18(h)(2)(ii) or (iii), or that otherwise provides updated initial disclosures as a result of § 1005.18(h)(1) taking effect, may provide the notice or disclosures either as a separate document or included in another notice or mailing that the consumer receives regarding the prepaid account to the extent permitted by other laws and regulations.

4. *Ability to contact the consumer.* A financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(h)(2)(ii) or (iii). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

5. *Closed and inactive prepaid accounts.* The requirements of § 1005.18(h)(2)(iii) do not apply to prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive account becomes active, the financial institution must comply with the applicable portions of those provisions within 30 days of the account becoming active again in order to avail itself of the timing requirements and accommodations set forth in§ 1005.18(h)(2)(iii) and (iv).

6. *Account information not available on October 1, 2017.* i. *Electronic and written account transaction history.* A financial institution following the periodic statement alternative in § 1005.18(c) must make available 12 months of electronic account transaction history pursuant to § 1005.18(c)(1)(ii) and must provide 24 months of written account transaction history upon request pursuant to § 1005.18(c)(1)(iii) beginning October 1, 2017. If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to make available or provide the account histories for the required time periods, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in § 1005.18(c)(1)(ii) and (iii). For example, a financial institution that had been retaining only 60 days of account history before October 1, 2017 would provide 60 days of written account transaction history upon a consumer's request on October 1, 2017. If, on November 1, 2017, the consumer made another request for written account transaction history, the financial institution would be required to provide three months of account history. The financial institution must continue to provide as much account history as it has accumulated at the time of a consumer's request until it has accumulated 24 months of account history. Thus, all financial institutions must fully comply with the electronic account transaction history requirement set forth in § 1005.18(c)(1)(ii) no later than October 1, 2018 and must fully comply with the written account transaction history requirement set forth in § 1005.18(c)(1)(iii) no later than October 1, 2019.

ii. *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to § 1005.18(c)(5) beginning October 1, 2017. If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals of fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by § 1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on November 1, 2017 for the month of October, and the year-to-date fee total beginning on October 1, 2017, provided the financial institution discloses that it is displaying the year-to-date total beginning on October 1, 2017 rather than for the entire calendar year 2017. On January 1, 2018, financial institutions must begin displaying year-to-date fee totals for calendar year 2018.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(a) Definitions

19(a)(1) Agreement

1. *Provisions contained in separate documents included.* Section 1005.19(a)(1) defines a prepaid account agreement, for purposes of § 1005.19, as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement may consist of several documents that, taken together, define the legal obligation between the issuer and consumer.

19(a)(2) Amends

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 1005.19(a)(2) provides that any change in the fee information, as defined in § 1005.19(a)(3), is deemed to be substantive. Examples of other changes that generally would be considered substantive include:

i. Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement.

ii. Addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee.

iii. Changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated.

iv. Changes that may affect how the terms of the agreement are construed or applied, such as changes to a choice of law provision.

v. Changes that may affect the parties to whom the agreement may apply, such as changes to provisions regarding authorized users or assignment of the agreement.

vi. Changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number.

vii. Changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program.

viii. Changes to the name of the prepaid account program to which the agreement applies.

2. *Non-substantive changes.* Changes that generally would not be considered substantive include, for example:

i. Correction of typographical errors that do not affect the meaning of any terms of the agreement.

ii. Changes to the issuer's corporate logo or tagline.

iii. Changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins.

iv. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

v. Adding, removing, or modifying a table of contents or index.

vi. Changes to titles, headings, section numbers, or captions.

19(a)(4) Issuer

1. *Issuer.* Section 1005.19(a)(4) provides that, for purposes of § 1005.19, issuer or prepaid account issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement. For example, Bank X and Bank Y work together to issue prepaid accounts. A consumer that obtains a prepaid account issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states ''This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Prepaid Account.'' The prepaid account issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the prepaid account through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.

2. *Use of third-party service providers.* An issuer has a legal obligation to comply with the requirements of § 1005.19. However, an issuer generally may use a third-party service provider to satisfy its obligations under

§ 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of § 1005.19 on the issuer's behalf. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition of issuer, Bank is the issuer of these prepaid accounts for purposes of § 1005.19. However, Program Manager services the prepaid accounts, including mailing to consumers account opening materials and making available to consumers their electronic account transaction history, pursuant to § 1005.18(c)(1)(ii). While Bank is responsible for ensuring compliance with § 1005.19, Bank may arrange for Program Manager (or another appropriate third-party service provider) to submit prepaid account agreements to the Bureau under § 1005.19 on Bank's behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

3. *Third-party Web sites.* As explained in comment 19(c)–2, if an issuer provides consumers with access to specific information about their individual accounts, such as making available to consumers their electronic account transaction history, pursuant to § 1005.18(c)(1)(ii), through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of § 1005.19. Such a Web site is deemed to be maintained by the issuer for purposes of § 1005.19 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of § 1005.19. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition of issuer, Bank is the issuer of these prepaid accounts for purposes of § 1005.19. Bank does not maintain a Web site specifically related to prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic account transaction history, through a Web site maintained by Program Manager. Program Manager designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of § 1005.19. Bank therefore may comply with § 1005.19(c) or (d)(1) by ensuring that agreements offered by Bank are posted on Program Manager's Web site in accordance with § 1005.19(c) or (d)(1), respectively. Bank need not create and maintain a Web site branded and held out to the public as belonging to Bank in order to comply with § 1005.19(c) and (d) as long as Bank ensures that Program Manager's Web site complies with these sections.

19(a)(6) Offers to the General Public

1. *Prepaid accounts offered to limited groups.* An issuer is deemed to offer a prepaid account agreement to the general public even if the issuer markets, solicits applications for, or otherwise makes available prepaid accounts only to a limited group of persons. For example, an issuer may solicit only residents of a specific geographic location for a particular prepaid account; in this case, the agreement would be considered to be offered to the general public. Similarly, agreements for prepaid accounts issued by a credit union are considered to be offered to the general public even though such prepaid accounts are available only to credit union members.

2. *Prepaid account agreements not offered to the general public.* A prepaid account agreement is not offered to the general public when a consumer is offered the agreement only by virtue of the consumer's relationship with a third party. Examples of agreements not offered to the general public include agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs.

19(a)(7) Open Account

1. *Open account.* A prepaid account is an open account if (i) there is an outstanding balance in the account; (ii) the consumer can load more funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, in connection with a prepaid account. Under this definition, an account that meets any of these criteria is considered to be open even if the account is deemed inactive by the issuer.

19(a)(8) Prepaid Account

1. *Prepaid account.* Section 1005.19(a)(7) provides that, for purposes of § 1005.19, the term prepaid account means a prepaid account as defined in § 1005.2(b)(3). Therefore, for purposes of § 1005.19, a prepaid account includes, among other things, a payroll card account as defined in § 1005.2(b)(3)(iii) and a government benefit account as defined in §§ 1005.2(b)(3)(iii) and 1005.15(a)(2).

19(b) Submission of Agreements to the Bureau

19(b)(1) Submissions on a Rolling Basis

1. *Rolling submission requirement.* Section 1005.19(b)(1) requires issuers to send submissions to the Bureau no later than 30 days after offering, amending, or ceasing to offer any prepaid account agreement, as described in § 1005.19(b)(1)(ii) through (iv). For example, if on July 1 an issuer offers a prepaid account agreement that has not been previously submitted to the Bureau, it must submit that agreement to the Bureau by July 31 of the same year. Similarly, if on August 1 an issuer amends a prepaid account agreement previously submitted to the Bureau, and the change becomes effective on September 15, the issuer must submit the entire amended agreement as required by § 1005.19(b)(2) by October 15 of the same year. Furthermore, if on December 31 an issuer ceases to offer a prepaid account agreement that was previously submitted to the Bureau, it must submit notification to the Bureau that it is withdrawing that agreement as required by § 1005.19(b)(3) by January 30 of the following year.

2. *Prepaid accounts offered in conjunction with multiple issuers.* If a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. Alternatively, each issuer may use the program manager to submit the agreement on its behalf, in accordance with comment 19(a)(4)–2.

19(b)(2) Amended Agreements

1. *Change-in-terms notices not permissible.* Section 1005.19(b)(2) requires that if an agreement previously submitted to the Bureau is amended, the issuer must submit the entire revised agreement to the Bureau. An issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. Amendments must be integrated into the text of the agreement (or the optional addendum described in § 1005.19(b)(6)), not provided as separate riders.

19(b)(3) Withdrawal of Agreements No Longer Offered

1. *No longer offers agreement.* Section 1005.19(b)(3) provides that, if an issuer no longer offers an agreement that was previously submitted to the Bureau, the issuer must notify the Bureau no later than 30 days after the issuer ceases to offer the agreement that it is withdrawing the agreement. An issuer no longer offers an agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement.

19(b)(4) De Minimis Exception

1. *Relationship to other exceptions.* The de minimis exception in § 1005.19(b)(4) is distinct from the product testing exception under § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

2. *De minimis exception.* Under § 1005.19(b)(4), an issuer is not required to submit any prepaid account agreements to the Bureau under § 1005.19(b)(1) if the issuer has fewer than 3,000 open prepaid accounts. For example, an issuer has 2,000 open

prepaid accounts. The issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception.

3. *Date for determining whether issuer qualifies.* Whether an issuer qualifies for the de minimis exception is determined as of the last day of each calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of December 31, the last day of the calendar quarter. As of January 30, the issuer has 3,100 open prepaid accounts. As of March 31, the last day of the following calendar quarter, the issuer has 2,700 open prepaid accounts. Even though the issuer had 3,100 open prepaid accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open prepaid accounts was less than 3,000 as of March 31. The issuer therefore is not required to submit any agreements to the Bureau under § 1005.19(b)(1).

4. *Date for determining whether issuer ceases to qualify.* Whether an issuer ceases to qualify for the de minimis exception under § 1005.19(b)(4) is determined as of the last day of the calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of June 30, the last day of the calendar quarter. The issuer is not required to submit any agreements to the Bureau under § 1005.19(b) by July 30 (the 30th day after June 30) because the issuer qualifies for the de minimis exception. As of July 15, the issuer has 3,100 open prepaid accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under § 1005.19(b)(4) is determined as of the last day of the calendar quarter. The issuer still has 3,100 open prepaid accounts as of September 30. Because the issuer had 3,100 open prepaid accounts as of September 30, the issuer ceases to qualify for the de minimis exception and must submit its agreements to the Bureau by October 30, the 30th day after the last day of the calendar quarter.

5. *Option to withdraw agreements.* Section 1005.19(b)(4) provides that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make rolling submissions to the Bureau as required by § 1005.19(b)(1) until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. For example, an issuer offers three agreements and has 3,001 open accounts as of December 31. The issuer submitted each of the three agreements to the Bureau by January 30 as required under § 1005.19(b). As of March 31, the issuer has only 2,999 open accounts. The issuer has two options. First, the issuer may notify the Bureau that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Bureau, the issuer is no longer required to make rolling submissions to the Bureau under § 1005.19(b) unless it later ceases to qualify for the de minimis exception. Alternatively, the issuer may choose not to notify the Bureau that it is withdrawing its agreements. In this case, the issuer must continue making rolling submissions to the Bureau as required by § 1005.19(b). The issuer might choose not to withdraw its agreements if, for example, the issuer believes it will likely cease to qualify for the de minimis exception again in the near future.

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

1. *Agreements currently in effect.* Agreements submitted to the Bureau must contain the provisions of the agreement and fee information currently in effect. For example, on June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers. The change in that fee will become effective on August 1. The issuer must submit and post the amended agreement with the decreased out-of-network ATM withdrawal fee to the Bureau by August 31 as required by § 1005.19(b)(2) and (c).

2. *Fee information variations do not constitute separate agreements.* Fee information that may vary from one consumer to another depending on the consumer's state of residence or other factors must be disclosed by setting forth all the possible variations. For example, an issuer offers a prepaid account with a monthly fee of $4.95 or $0 if the consumer regularly receives direct deposit to the prepaid account. The issuer must submit to the Bureau one agreement with fee information listing the possible monthly fees of $4.95 or $0 and including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

3. *Integrated agreement requirement.* Issuers may not submit provisions of the agreement or fee information in the form of change-in-terms notices or riders. The only addendum that may be submitted as part of an agreement is the optional fee information addendum described in § 1005.19(b)(6)(ii). Changes in provisions or fee information must be integrated into the body of the agreement or the optional fee information addendum described in § 1005.19(b)(6)(ii). For example, it would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document on January 1 and subsequently submit a change-in-terms notice or an addendum to indicate amendments to the previously submitted agreement. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and a single optional addendum displaying variations in fee information.

19(c) Posting of Agreements Offered to the General Public

1. *Requirement applies only to agreements offered to the general public.* An issuer is only required to post and maintain on its publicly available Web site the prepaid account agreements that the issuer offers to the general public as defined by § 1005.19(a)(6) and must submit to the Bureau under § 1005.19(b). For agreements not offered to the general public, the issuer is not required to post and maintain the agreements on its publicly available Web site, but is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d). This posting requirement is distinct from that of § 1005.7, as modified by § 1005.18(f)(1), which requires an issuer to provide certain disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account, and the change-in-terms notice required under § 1005.8(a), as modified by § 1005.18(f)(2). This requirement is also distinct from that of § 1005.18(b)(4), which requires issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, may require posting of the long form disclosure on the issuer's Web site. Additionally, if an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under § 1005.19(b)(4) or the agreement qualifies for the product testing exception under § 1005.19(b)(5), the issuer is not required to post and maintain any agreements on its Web site under § 1005.19(c). The issuer is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d) by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the consumer's request.

2. *Issuers that do not otherwise maintain Web sites.* If an issuer offers an agreement to the general public as defined by § 1005.19(a)(6), that issuer must post that agreement on a publicly available Web site it maintains. If an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of § 1005.19. Such a third-party Web site is deemed to be maintained by the issuer for purposes of § 1005.19(c) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party Web site can comply with § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with § 1005.19(c).

19(d) Agreements for All Open Accounts

1. *Requirement applies to all open accounts.* The requirement to provide access to prepaid account agreements under § 1005.19(d) applies to all open prepaid accounts. For example, an issuer that is not required to post agreements on its Web site because it qualifies for the de minimis exception under § 1005.19(b)(4) would still be required to provide consumers with access to their specific agreements under § 1005.19(d). Similarly, an agreement that is

no longer offered would not be required to be posted on the issuer's Web site, but would still need to be provided to the consumer to whom it applies under § 1005.19(d). Additionally, an issuer is not required to post on its Web site agreements not offered to the general public, such as agreements for payroll card accounts and government benefit accounts, as explained in comment 19(c)–1, but the issuer must still provide consumers with access to their specific agreements under § 1005.19(d).

2. *Agreements sent to consumers.* Section 1005.19(d)(1)(ii) provides, in part, that if an issuer makes an agreement available upon request, the issuer must send the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request. If the issuer mails the agreement, the agreement must be posted in the mail five business days after the issuer receives the consumer's request. If the issuer hand delivers or provides the agreement electronically, the agreement must be hand delivered or provided electronically five business days after the issuer receives the consumer's request. For example, if the issuer emails the agreement, the email with the attached agreement must be sent no later than five business days after the issuer receives the consumer's request.

19(f) Effective Date

1. *Delayed effective date for the agreement submission requirement.* Section 1005.19(f)(2) provides that the requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to § 1005.19(b) is delayed until October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. After October 1, 2018, issuers must submit on a rolling basis prepaid account agreements or notifications of withdrawn agreements to the Bureau within 30 days after offering, amending, or ceasing to offer the agreements.

2. *Continuing obligation to post and provide consumer agreements.* Pursuant to § 1005.19(f)(3), during the delayed agreement submission period set forth in § 1005.19(f)(2), an issuer must post agreements on its Web site as required by § 1005.19(c) and (d)(1)(i) using the agreements it would have otherwise submitted to the Bureau under § 1005.19(b) and must provide a copy of the consumer's agreement to the consumer upon request pursuant to § 1005.19(d)(1)(ii). For purposes of § 1005.19(c)(2) and (d)(2), agreements posted by an issuer on its Web site must conform to the form and content requirements set forth in § 1005.19(b)(6). For purposes of § 1005.19(c)(3) and (d)(2)(v), amended agreements must be posted to the issuer's Web site no later than 30 days after the change becomes effective as required by § 1005.19(b)(2).

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Section 1005.30 Remittance Transfer Definitions

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30(c) Designated Recipient

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ii. For transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in a location physically outside of any State depends on whether the provider at the time the transfer is requested has information indicating that funds are to be received in a foreign country. See comments 30(c)–2.iii and 30(e)–3.i.C for illustrations of when a remittance transfer provider would have such information and when the provider would not. For transfers to all other accounts, whether funds are to be received at a location physically outside of any State depends on where the account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Further, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then these accounts are located in a State.

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30(g) Sender

1. *Determining whether a consumer is located in a State.* Under § 1005.30(g), the definition of "sender" means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. A sender located on a U.S. military installation that is physically located in a foreign country is located in a State. For transfers sent from a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), whether the consumer is located in a State depends on the location of the consumer. If the provider does not know where the consumer is at the time the consumer requests the transfer from the consumer's prepaid account (other than a prepaid account that is a payroll card account or a government benefit account) the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer. For transfers from all other accounts belonging to a consumer, whether a consumer is located in a State depends on where the consumer's account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of "sender" in § 1005.30(g), notwithstanding comment 3(a)–3. For these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then these accounts are located in a State. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

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3. *Non-consumer accounts.* A transfer that is requested to be sent from an account that was not established primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account held by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g). Additionally, a transfer that is requested to be sent from an account held by a financial institution under a *bona fide* trust agreement pursuant to § 1005.2(b)(2) is not requested primarily for personal, family, or household purposes, and a consumer requesting a transfer from such an account is therefore not a sender under § 1005.30(g).

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Appendix A—Model Disclosure Clauses and Forms

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2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of §§ 1005.5(b)(2) and (3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(c), 1005.15(e)(1) and (2), 1005.18(b)(2), (3), (6) and (7), 1005.18(d)(1) and (2), 1005.31, 1005.32 and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of the act provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively.

3. *Altering the clauses.* Unless otherwise expressly addressed in the rule, the following applies. Financial institutions may use clauses of their own design in conjunction with the Bureau's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 13. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 14. Section 1026.2 is amended by revising paragraphs (a)(15)(i), (a)(15)(ii)(A), and (a)(15)(ii)(B), and by adding paragraphs (a)(15)(ii)(C) and (a)(15)(iv) to read as follows:

§ 1026.2 Definitions and rules of construction.

(a) * * *

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit. The term credit card includes a hybrid prepaid-credit card as defined in § 1026.61.

(ii) * * *

(A) A home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card;

(B) An overdraft line of credit that is accessed by a debit card; or

(C) An overdraft line of credit that is accessed by an account number, except if the account number is a hybrid prepaid-credit card that can access a covered separate credit feature as defined in § 1026.61.

* * * * *

(iv) *Debit card* means any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account as defined in § 1026.61. The term *debit card* does not include a prepaid card as defined in § 1026.61.

* * * * *

■ 15. Section 1026.4 is amended by revising paragraphs (b)(2), (c)(3), and (c)(4), and by adding paragraph (b)(11) to read as follows:

§ 1026.4 Finance charge.

* * * * *

(b) * * *

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account (except a prepaid account as defined in § 1026.61) to the extent that the charge exceeds the charge for a similar account without a credit feature.

* * * * *

(11) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61:

(i) Any fee or charge described in paragraphs (b)(1) through (10) of this section imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account.

(ii) Any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(c) * * *

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. This paragraph does not apply to credit offered in connection with a prepaid account as defined in § 1026.61.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. This paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

* * * * *

Subpart B—Open-End Credit

* * * * *

■ 16. Section 1026.6 is amended by adding paragraphs (b)(3)(iii)(D) and (E) to read as follows:

§ 1026.6 Account-opening disclosures.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(D) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(E) With regard to a non-covered separate credit feature accessible by a prepaid card as defined in § 1026.61, any fee or charge imposed on the asset feature of the prepaid account.

* * * * *

■ 17. Section 1026.7 is amended by revising paragraph (b)(11)(ii)(A) to read as follows:

§ 1026.7 Periodic statement.

* * * * *

(b) * * *

(11) * * *

(ii) * * *

(A) Periodic statements provided solely for charge card accounts, other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in § 1026.61; and

* * * * *

■ 18. Section 1026.12 is amended by revising paragraph (d) to read as follows:

§ 1026.12 Special credit card provisions.

* * * * *

(d) *Offsets by card issuer prohibited—*(1) *General rule.* A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) *Rights of the card issuer.* This paragraph (d) does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) *Periodic deductions.* (i) This paragraph (d) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

(ii) With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, for purposes of this paragraph (d)(3), "periodically" means no more frequently than once per calendar month, such as on a monthly due date disclosed on the applicable periodic statement in accordance with the requirements of § 1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer.

* * * * *

■ 19. Section 1026.13 is amended by revising paragraph (i) to read as follows:

§ 1026.13 Billing error resolution.

* * * * *

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* A creditor shall comply with the

requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section if:

(1) Except with respect to a prepaid account as defined in § 1026.61, an extension of credit that is incident to an electronic fund transfer occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; or

(2) With regard to a covered separate credit feature and an asset feature of a prepaid account where both are accessible by a hybrid prepaid-credit card as defined in § 1026.61, an extension of credit that is incident to an electronic fund transfer occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction.

* * * * *

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

* * * * *

■ 20. Section 1026.52 is amended by revising the heading for paragraph (a) to read as follows:

§ 1026.52 Limitations on fees.

(a) Limitations during first year after account opening—* * *

* * * * *

■ 21. Section 1026.60 is amended by revising paragraph (a)(5)(iv) and paragraph (b) introductory text to read as follows:

§ 1026.60 Credit and charge card applications and solicitations.

(a) * * *

(5) * * *

(iv) Lines of credit accessed solely by account numbers except for a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card as defined in § 1026.61;

* * * * *

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1), or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section. With respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in § 1026.61, a charge card issuer also shall disclose the applicable items in paragraphs (b)(3), (13), and (14) of this section.

* * * * *

■ 22. Section 1026.61 is added to read as follows:

§ 1026.61 Hybrid prepaid-credit cards.

(a) *Hybrid prepaid-credit card*—(1) *In general.* (i) Credit offered in connection with a prepaid account is subject to this section and this regulation as specified below.

(ii) For purposes of this regulation, except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in paragraph (a)(2)(i) of this section when it can access credit from that credit feature, or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in paragraph (a)(3) of this section when it can access credit from that credit feature. A hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to those credit features.

(iii) A prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of this regulation if the only credit offered in connection with the prepaid account meets the conditions set forth in paragraph (a)(4) of this section.

(2) *Prepaid card can access credit from a covered separate credit feature*—(i) *Covered separate credit feature.* (A) A separate credit feature that can be accessed by a hybrid prepaid-credit card as described in this paragraph (a)(2)(i) is defined as a covered separate credit feature. A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied:

(*1*) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and

(*2*) The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

(B) A separate credit feature that meets the conditions set forth in paragraph (a)(2)(i)(A) of this section is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(ii) *Non-covered separate credit feature.* A separate credit feature that does not meet the two conditions set forth in paragraph (a)(2)(i) of this section is defined as a non-covered separate credit feature. A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in paragraph (a)(2)(i) of this section. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it may be subject to this regulation depending on its own terms and conditions, independent of the connection to the prepaid account.

(3) *Prepaid card can access credit extended through a negative balance on the asset feature of the prepaid account*—(i) *In general.* Except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card when it is a single device that can be used from time to time to access credit extended through a negative balance on the asset feature of the prepaid account.

(ii) *Negative asset balances.* Notwithstanding paragraph (a)(3)(i) of this section with regard to coverage under this regulation, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates paragraph (b) of this section. A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card as described in paragraph (a)(4) of this section.

(4) *Exception.* A prepaid card is not a hybrid prepaid-credit card and is not a credit card for purposes of this regulation where:

(i) The prepaid card cannot access credit from a covered separate credit feature as described in paragraph (a)(2)(i) of this section; and

(ii) The prepaid card only can access credit extended through a negative balance on the asset feature of the prepaid account where both paragraphs (a)(4)(ii)(A) and (B) of this section are satisfied.

(A) The prepaid account issuer has an established policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction, or declining to authorize any such transactions except in one or more of the following circumstances:

(*1*) The amount of the transaction will not cause the asset feature balance to become negative by more than $10 at the time of the authorization; or

(*2*) In cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the amount of the transaction will not cause the asset feature balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

(B) The following fees or charges are not imposed on the asset feature of the prepaid account:

(*1*) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This paragraph does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available;

(*2*) Any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or

(*3*) Any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

(C) A prepaid account issuer may still satisfy the exception in paragraph (a)(4) of this section even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in paragraph (a)(4)(ii)(B) of this section.

(5) *Definitions.* For purposes of this section and other provisions in the regulation that relate to hybrid prepaid-credit cards:

(i) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(ii) *Asset feature* means an asset account that is a prepaid account, or an asset subaccount of a prepaid account.

(iii) *Business partner* means a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate.

(iv) *Credit feature* means a separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card.

(v) *Prepaid account* means a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3).

(vi) *Prepaid account issuer* means a financial institution as defined in Regulation E, 12 CFR 1005.2(i), with respect to a prepaid account.

(vii) *Prepaid card* means any card, code, or other device that can be used to access a prepaid account.

(viii) *Separate credit feature* means a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account.

(b) *Structure of credit features accessible by hybrid prepaid-credit cards.* With respect to a credit feature that is accessible by a hybrid prepaid-credit card, a card issuer shall not structure the credit feature as a negative balance on the asset feature of a prepaid account. A card issuer shall structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i).

(c) *Timing requirement for credit card solicitation or application with respect to hybrid prepaid-credit cards.* (1) With respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered:

(i) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card;

(ii) Make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or

(iii) Allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

(2) For purposes of paragraph (c) of this section, the term *solicitation* has the meaning set forth in § 1026.60(a)(1).

* * * * *

■ 23. In Supplement I to part 1026—Official Interpretations:

■ a. Under *Section 1026.2—Definitions and Rules of Construction:*

■ i. In subsection *2(a)(7) Card Issuer,* paragraph 1 is revised and paragraph 2 is added.

■ ii. In *subsection 2(a)(14) Credit,* paragraph 3 is added.

■ iii. In *subsection Paragraph 2(a)(15):*

■ A. Paragraph 2.i.B is revised.

■ B. Paragraph 2.i.F is added.

■ C. Paragraph 2.ii.C is revised.

■ D. Paragraph 2.ii.D is added.

■ E. Paragraphs 3 and 4 are revised.

■ iv. In subsection *Paragraph 2(a)(17)(i),* paragraph 8 is added.

■ v. In subsection *Paragraph 2(a)(17)(iii),* paragraph 2 is added.

■ vi. In subsection *2(a)(20) Open-End Credit,* paragraphs 2 and 4 are revised.

■ b. Under *Section 1026.4—Finance Charge:*

■ i. In subsection *4(a) Definition,* paragraph 4 introductory text is revised.

■ ii. In subsection *Paragraph 4(b)(2),* paragraph 1 is revised and paragraph 2 is added.

■ iii. Subsection *Paragraph 4(b)(11)* is added.

■ iv. In subsection *Paragraph 4(c)(3),* paragraph 1 is revised and paragraph 2 is added.

■ iv. In subsection *Paragraph 4(c)(4),* paragraph 1 is revised and paragraph 3 is added.

■ c. Under *Section 1026.5—General Disclosure Requirements:*

■ i. In subsection *5(b)(2)(ii) Timing Requirements,* paragraph 4.i is revised.

■ d. Under *Section 1026.6—Account-Opening Disclosures:*
■ i. In subsection *6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans*, paragraphs 1 and 2 are added.
■ ii. Subheading *Paragraph 6(b)(3)(iii)* and subsections *Paragraph 6(b)(3)(iii)(D)* and *Paragraph 6(b)(3)(iii)(E)* are added.
■ e. Under *Section 1026.7—Periodic Statement:*
■ i. In subsection *7(b)(13) Format Requirements,* paragraph 1 is revised.
■ f. Under *Section 1026.8—Identifying Transactions on Periodic Statements:*
■ i. In subsection *8(a) Sale Credit,* paragraph 1 introductory text is revised and paragraph 9 is added.
■ ii. In subsection *8(b) Nonsale credit,* the subheading is revised, paragraph 1.ii is revised, paragraphs 1.v and 1.vi are added, and 2 introductory text is revised.
■ g. Under *Section 1026.10—Payments:*
■ i. In subsection *10(a) General Rule.,* the subheading is revised, and paragraph 2.ii is revised.
■ ii. In subsection *10(b) Specific Requirements for Payments,* paragraph 1 is revised.
■ h. Under *Section 1026.12—Special Credit Card Provisions:*
■ i. In subsection *Paragraph 12(a)(1),* paragraphs 2 and 7 are revised.
■ ii. In subsection *Paragraph 12(a)(2),* paragraph 6.i is revised, paragraph 6.ii is redesignated as 6.iii, and new paragraph 6.ii is added.
■ iii. In subsection *12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer,* paragraph 5 is added.
■ iv. In subsection *12(c)(1) General Rule,* paragraphs 1 introductory text and 1.ii are revised.
■ v. In subsection *12(d) Offsets by Card Issuer Prohibited,* paragraph 1 is added.
■ vi. In subsection *Paragraph 12(d)(1),* paragraph 2 is revised.
■ vii. In subsection *Paragraph 12(d)(2),* paragraph 1.i is revised, paragraph 1.ii is redesignated as 1.iv, and new paragraph 1.ii and paragraph 1.iii are added.
■ viii. In subsection *Paragraph 12(d)(3),* paragraph 1.iii is revised and paragraphs 2.iii and 3 are added.
■ i. Under *Section 1026.13—Billing Error Resolution:*
■ i. In subsection *13(i) Relation to Electronic Fund Transfer Act and Regulation E,* paragraphs 2, 3 introductory text, 3.i, and 3.iv are revised and paragraphs 4 and 5 is added.
■ j. Under *Section 1026.52—Limitations on Fees:*
■ i. In subsection *52(a)(1) General rule,* paragraph 1 introductory text is revised and paragraphs 1.iii and 1.iv are added.
■ ii. In subsection *52(a)(2) Fees Not Subject to Limitations,* paragraph 1 introductory text is revised, paragraphs 2 and 3 are redesignated as paragraphs 4 and 5, and new paragraphs 2 and 3 are added.
■ iii. In subsection *52(b) Limitations on Penalty Fees,* paragraphs 3 and 4 are added.
■ iv. In subsection *52(b)(2)(i) Fees That Exceed Dollar Amount Associated with Violation,* paragraph 7 is added.
■ k. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges:*
■ i. In subsection *55(a) General Rule,* paragraphs 3 and 4 are added.
■ l. Under *Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit:*
■ i. In subsection *57(a)(1) College student credit card,* paragraph 1 is revised.
■ ii. In subsection *57(a)(5) College credit card agreement,* paragraph 1 is revised.
■ iii. In subsection *57(b) Public disclosure of agreements,* paragraph 3 is added.
■ iv. In subsection *57(c) Prohibited inducements,* paragraph 7 is added.
■ m. Under *Section 1026.60—Credit and Charge Card Applications and Solicitations:*
■ i. Paragraph 1 is revised.
■ ii. In subsection *60(b) Required Disclosures,* paragraphs 3 and 4 are added.
■ iii. In subsection *60(b)(4) Transaction Charges,* paragraph 3 is added.
■ iv. In subsection *60(b)(8) Cash Advance Fee,* paragraph 4 is added.
■ n. *Section 1026.61—Hybrid Prepaid-Credit Cards* is added.

The revisions, additions, and removals read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

* * * * *

Section 1026.2 Definitions and Rules of Construction

* * * * *

2(a)(7) Card Issuer

1. *Agent.* i. An agent of a card issuer is considered a card issuer. Except as provided in comment 2(a)(7)–1.ii, because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

ii. Under § 1026.2(a)(7), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer as those terms are defined in § 1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

2. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

* * * * *

2(a)(14) Credit

* * * * *

3. *Transactions on the asset features of prepaid accounts when there are insufficient or unavailable funds.* Credit includes authorization of a transaction on the asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. See § 1026.61 and related commentary on the applicability of this regulation to credit that is extended in connection with a prepaid account.

Paragraph 2(a)(15)

* * * * *

2. * * *

i. * * *

B. A debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). See comment 2(a)(15)–2.ii.C for guidance on whether a debit card that is solely an account number is a credit card.

* * * * *

F. A prepaid card that is a hybrid prepaid-credit card as defined in § 1026.61.

ii. * * *

C. An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services or as provided in § 1026.61 with respect to a hybrid prepaid-credit card. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into

another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 1026.2(a)(15)(i).

D. A prepaid card that is not a hybrid prepaid-credit card as defined in § 1026.61.

3. *Charge card.* i. Charge cards are credit cards where no periodic rate is used to compute the finance charge. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term *charge card* is, however, distinguished from credit card or credit card account under an open-end (not home-secured) consumer credit plan in §§ 1026.6(b)(2)(xiv), 1026.7(b)(11) (except as described in comment 2(a)(15)–3.ii below), 1026.7(b)(12), 1026.9(e), 1026.9(f), 1026.28(d), 1026.52(b)(1)(ii)(C), 1026.60, and appendices G–10 through G–13.

ii. A hybrid prepaid-credit card as defined in § 1026.61 is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. Unlike other charge card accounts, the requirements in § 1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under § 1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

4. *Credit card account under an open-end (not home-secured) consumer credit plan.* i. An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 1026.2(a)(15)(ii) if:

A. The account is accessed by a credit card, as defined in § 1026.2(a)(15)(i); and

B. The account is not excluded under § 1026.2(a)(15)(ii)(A) through (C).

ii. As noted in § 1026.2(a)(15)(ii)(C), the exclusion from credit card account under an open-end (not home-secured) consumer credit plan provided by that paragraph for an overdraft line of credit that is accessed by an account number does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card (including a hybrid prepaid-credit card that is solely an account number) as defined in § 1026.61.

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2(a)(17) Creditor

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Paragraph 2(a)(17)(i)

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8. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

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Paragraph 2(a)(17)(iii)

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2. *Prepaid cards that are not hybrid prepaid-credit cards.* See § 1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

* * * * *

2(a)(20) Open-End Credit

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2. *Existence of a plan.* i. The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer.

ii. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely extends credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. See § 1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

iii. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

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4. *Finance charge on an outstanding balance.* i. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

ii. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, any service, transaction, activity, or carrying charges imposed on the covered separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card, generally is a finance charge. *See* § 1026.4(a) and (b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature accessible by a hybrid prepaid-credit card, any service, transaction, activity, or carrying charges that are finance charges under § 1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance as described in § 1026.2(a)(20) if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated.

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Section 1026.4 Finance Charge

4(a) Definition

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4. *Treatment of transaction fees on credit card plans.* Except with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, which are addressed in more detail in §§ 1026.4(b)(11) and 1026.61, any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

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4(b) Examples of Finance Charges

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Paragraph 4(b)(2)

1. *Checking or transaction account charges.* A charge imposed in connection with a credit feature on a checking or transaction account (other than a prepaid account as defined in § 1026.61) is a finance charge under § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 1026.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 1026.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

2. *Prepaid accounts.* Fee or charges related to credit offered in connection with prepaid accounts as defined in § 1026.61 are discussed in §§ 1026.4(b)(11) and 1026.61 and related commentary.

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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 in connection with this account structure are specified in § 1026.4(b)(11) and related commentary.

ii. If a prepaid card can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii), the card is not a hybrid prepaid-credit card with respect to that credit feature. In that case:

A. Section 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in § 1026.4 determine whether these fees or charges are finance charges; and

B. Fees or charges on the asset feature of the prepaid account are not finance charges under § 1026.4 with respect to the non-covered separate credit feature. See comment 61(a)(2)–5.iii for guidance on the applicability of this regulation in connection with non-covered credit features accessible by prepaid cards.

iii. If the prepaid card is not a hybrid prepaid-credit card because the only credit extended through a negative balance on the asset feature of the prepaid account is pursuant to § 1026.61(a)(4), fees charged on the asset feature of the prepaid account in accordance with § 1026.61(a)(4)(ii)(B) are not finance charges.

Paragraph 4(b)(11)(i)

1. *Transaction fees imposed on the covered separate credit feature.* Consistent with comment 4(a)–4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. Transaction charges that are imposed on the asset feature of a prepaid account are subject to § 1026.4(b)(11)(ii) and related commentary, instead of § 1026.4(b)(11)(i).

Paragraph 4(b)(11)(ii)

1. *Fees or charges imposed on the asset feature of a prepaid account.* i. Under § 1026.4(b)(11)(ii), with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined § 1026.61, any fee or charge imposed on the asset feature of the prepaid account is a finance charge to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This comment provides guidance with respect to comparable fees under § 1026.4(b)(11)(ii) for the two types of credit extensions on a covered separate credit feature. *See* § 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. Comment 4(b)(11)(ii)–1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Comment 4(b)(11)(ii)–1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

ii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, for such credit from the credit feature are comparable only to per transaction fees for each transaction to access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of § 1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Also, assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the additional $0.75 is a finance charge.

C. Assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.,* a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the $1.25 excess is a finance charge.

D. Assume same facts as in paragraph C above, except that assume the prepaid account issuer also charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a $0.50 per transaction fee. The $1.25 excess in paragraph C is still a finance charge because load or transfer fees that are charged on the asset feature of prepaid account for credit from the covered separate credit feature are compared only to per transaction fees

imposed for accessing funds in the asset feature of the prepaid account for prepaid accounts without such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of § 1026.4(b)(11)(ii).

iii. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* § 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of § 1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature are not comparable for purposes of § 1026.4(b)(11)(ii).

B. Assume that a prepaid account issuer charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without 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 separate asset account are not comparable for purposes of § 1026.4(b)(11)(ii).

2. *Relation to Regulation E.* See Regulation E, 12 CFR 1005.18(g), which only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature in the same prepaid account program.

4(c) Charges Excluded From the Finance Charge

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Paragraph 4(c)(3)

1. *Assessing interest on an overdraft balance.* Except with respect to credit offered in connection with a prepaid account as defined in § 1026.61, a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

2. *Credit accessed in connection with a prepaid account.* See comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

Paragraph 4(c)(4)

1. *Participation fees—periodic basis.* The participation fees described in § 1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. Except as provided in § 1026.4(c)(4) for covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61, the provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

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3. *Credit accessed in connection with by a prepaid account.* See comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

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Subpart B—Open-End Credit

Section 1026.5—General Disclosure Requirements

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5(b) Time of Disclosures

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5(b)(2) Periodic Statements

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5(b)(2)(ii) Timing Requirements

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4. * * *

i. *Charge card accounts.* For purposes of § 1026.5(b)(2)(ii)(A)(*1*), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to § 1026.7(b)(11)(i)(A). Because § 1026.7(b)(11)(ii) provides that § 1026.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in § 1026.61, § 1026.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 1026.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. A card issuer that complies with § 1026.5(b)(2)(ii)(A) as discussed above with respect to a charge card account has also complied with § 1026.5(b)(2)(ii)(B)(*2*). Section 1026.5(b)(2)(ii)(B)(*1*) does not apply to charge card accounts because, for purposes of § 1026.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 1026.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

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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)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans

1. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a creditor is required to

disclose under § 1026.6(b)(2) any fees or charges imposed on the asset feature that are charges imposed as part of the plan under § 1026.6(b)(3) to the extent those fees fall within the categories of fees or charges required to be disclosed under § 1026.6(b)(2). For example, assume that a creditor imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under § 1026.6(b)(3) and must be disclosed under § 1026.6(b)(2)(iv).

2. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* A creditor is not required to disclose under § 1026.6(b)(2) any fee or charge imposed on the asset feature of a prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3).

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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 assessed by a hybrid prepaid-credit card. To illustrate:

i. Assume a prepaid account issuer charges a $0.50 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. The $0.50 fees are comparable fees and the $0.50 fee for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card is not a charge imposed as part of the plan. However, if in this example, the prepaid account issuer imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, the $0.75 excess is a charge imposed as part of the plan. This $0.75 excess also is a finance charge under § 1026.4(b)(11)(ii).

ii. See comment 4(b)(11)(ii)–1 for additional illustrations of when a prepaid account issuer is charging comparable per transaction fees or load or transfer fees on the prepaid account.

Paragraph 6(b)(3)(iii)(E)

1. *Fees imposed on the asset feature of a prepaid account in connection with a non-covered separate credit feature.* With regard to a non-covered separate credit feature accessible by a prepaid card as defined in § 1026.61, under § 1026.6(b)(3)(iii)(E), none of the fees or charges imposed on the asset balance of the prepaid account are charges imposed as part of the plan under § 1026.6(b)(3) with respect to the non-covered separate credit feature. In addition, none of these fees or charges imposed on the asset feature of the prepaid account are finance charges with respect to the non-covered separate credit feature as discussed in comment 4(b)(11)–1.ii.B.

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Section 1026.7—Periodic Statement

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7(b) Rules Affecting Open-End (Not Home-Secured) Plans

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7(b)(13) Format Requirements

1. *Combined asset account and credit account statements.* Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear. This guidance also applies to financial institutions that provide information about prepaid accounts and account activity in connection with covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61 on one periodic statement.

Section 1026.8 Identifying Transactions on Periodic Statements

8(a) Sale Credit

1. *Sale credit.* The term ''sale credit'' refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8(b)–1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. See comment 8(a)–9 for guidance on when credit accessed by a hybrid prepaid-credit card from a covered separate credit feature is ''sale credit' or ''nonsale credit.'' ''Sale credit'' includes:

* * * * *

9. *Covered separate credit feature accessible by hybrid prepaid-credit card.* i. A transaction will be treated as a ''sale credit'' under § 1026.8(a) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant with credit from a covered separate credit feature and the credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. The $15 credit transaction will be treated as ''sale credit'' under § 1026.8(a).

ii. On the other hand, a transaction will be treated as ''nonsale credit'' for purposes of § 1026.8(b) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, the $15 credit transaction is treated as ''nonsale credit'' under § 1026.8(b). *See* comment 8(b)–1.vi below.

iii. If a transaction is ''sale credit'' as described above in comment 8(a)–9.i, the following applies:

A. If a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds in the asset feature of the prepaid account, and partially paid with credit from a covered separate credit feature, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction.

B. For a transaction at point of sale where credit from a covered separate credit feature is accessed by a hybrid prepaid-credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit such as cash back given to the cardholder, the creditor must disclose the entire amount of the credit transaction as sale credit, including the part of the transaction that does not relate to the purchase of goods or services.

8(b) Nonsale Credit

1. * * *

ii. An advance on a credit plan that is accessed by overdrafts on an asset account

other than a prepaid account as defined in § 1026.61.

* * * * *

v. An advance at an ATM on a covered separate credit feature accessed by a hybrid prepaid-credit card as defined in § 1026.61. If a hybrid prepaid-credit card is used to obtain an advance at an ATM and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with a credit extension from the covered separate credit feature, the amount to be disclosed under § 1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

vi. A transaction where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase, as described in comment 8(a)–9.ii. In this scenario, the amount to be disclosed under § 1026.8(b) is the amount of the credit extension, not the total amount of the purchase transaction.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to an asset account other than a prepaid account as defined in § 1026.61 or by means of a debit card tied to an overdraft credit plan:

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Section 1026.10—Payments

10(a) General Rule

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2. * * *

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. Section 1026.12(d)(3)(ii) defines ''periodically'' to mean no more frequently than once per calendar month for payments made periodically from a deposit account, including a prepaid account, held by a card issuer to pay credit card debt in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 held by the card issuer. In a payroll deduction plan in which funds are deposited to a prepaid account held by the card issuer, and from which payments are made on a monthly basis to a covered separate credit feature accessible by a hybrid prepaid-credit card that is held by the card issuer, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

* * * * *

10(b) Specific Requirements for Payments

1. *Payment by electronic fund transfer.* A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. See section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e).

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Section 1026.12—Special Credit Card Provisions

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12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

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2. *Addition of credit features.* If the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. For example, the following constitute issuance of a credit card:

i. Granting overdraft privileges on a checking account when the consumer already has a check guarantee card; or

ii. Allowing a prepaid card to access a covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in § 1026.61 with respect to the covered separate credit feature.

* * * * *

7. *Issuance of non-credit cards.* i. *Issuance of non-credit cards other than prepaid cards.* A. Under § 1026.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card other than a prepaid card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card other than a prepaid card only upon the consumer's specific request.

B. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

ii. *Issuance of a prepaid card.* Section 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any covered separate credit feature that would make the prepaid card into a hybrid prepaid-credit card as defined in § 1026.61 at the time the card is issued and only opens a covered separate credit feature, or provides an application or solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 in compliance with § 1026.61(c). A covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with § 1026.61(c). An issuer does not connect a prepaid card to a covered separate credit feature that would make the card into a credit card simply by providing the disclosures required by Regulation E, 12 CFR 1005.18(b)(2)(x), (b)(4)(iv), and (vii), with the prepaid card. See § 1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in § 1026.61 may be issued as a replacement or substitution for another hybrid prepaid-credit card. See also Regulation E, 12 CFR 1005.5 and 1005.18(a), and related commentary, governing issuance of access devices under Regulation E.

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Paragraph 12(a)(2)

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6. * * *

i. Replacing a single card that is both a debit card and a credit card with a credit card and a separate debit card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing a single card that is both a prepaid card and a credit card with a credit card and a separate prepaid card where the latter card is not a hybrid prepaid-credit card as defined in § 1026.61.

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12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

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5. *Prepaid cards.* i. Section 1026.12(c) applies to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature as defined in § 1026.61. The following examples illustrate when a hybrid prepaid-credit card is used to purchase property or services:

A. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services where credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card to cover the amount of the purchase.

B. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a

covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from a covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services because credit is transferred to the asset feature of the prepaid account to cover the amount of a purchase made with the card. This is true even though the $15 credit transaction is treated as ''nonsale credit'' under § 1026.8(b). *See* comments 8(a)–9.ii and 8(b)–1.vi.

ii. For a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with credit from the covered separate credit feature, the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of § 1026.12(c). The amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

12(c)(1) General Rule

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This would include when the goods or services are purchased by a consumer using a hybrid prepaid-credit card to access a covered separate credit feature as defined in § 1026.61. This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

* * * * *

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to credit extended by the overdraft line other than a covered separate credit feature accessible by a hybrid prepaid-credit card.)

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12(d) Offsets by Card Issuer Prohibited

1. *Meaning of funds on deposit.* For purposes of § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer's prepaid account as defined in § 1026.61. In addition, for purposes of § 1026.12(d), deposit account includes a prepaid account.

Paragraph 12(d)(1)

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2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example) or if the card issuer receives funds designated for the consumer's prepaid account as defined in § 1026.61 with the issuer, such as by means of an ACH deposit or an electronic transmittal of funds the consumer submits as cash at a non-bank location, the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

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Paragraph 12(d)(2)

1. * * *

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account.

ii. With respect to a credit card account other than a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, indicia of the consumer's awareness and intent to grant a security interest in a deposit account include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

iii. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, in order for a consumer to show awareness and intent to grant a security interest in a deposit account, including a prepaid account, all of the following conditions must be met:

A. In addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the deposit account agreement and the credit card account agreement;

B. The separate document setting forth the security agreement must be signed by the consumer;

C. The separate document setting forth the security agreement must refer to the deposit account number and to a specific amount of funds in the deposit account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer;

D. The separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest and each of those conditions must be separately signed or initialed by the consumer.

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Paragraph 12(d)(3)

1. * * *

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e)), the fact that the option exists should be clearly indicated.

2. * * *

iii. Automatically deducting from the consumer's deposit account any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

3. *Prepaid accounts.* With respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61, a card issuer is not prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (including the prepaid account) held with the card issuer (subject to the limitations of § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account more frequently than once per calendar month, pursuant to such a plan. To illustrate, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25th day of each month. In this case:

i. The card issuer is not prohibited under § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25th of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in comment 12(d)(3)–1) and comply with the limitations in § 1026.13(d)(1).

ii. The card issuer is prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (including the prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made or expected to be made to the deposit account.

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Section 1026.13—Billing Error Resolution

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13(i) Relation to Electronic Fund Transfer Act and Regulation E

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2. *Incidental credit under an agreement with respect to an account other than a prepaid account.* Except with respect to a prepaid account as defined in § 1026.61, for credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution, § 1026.13(i)(1) provides that certain error resolution procedures in both this part and Regulation E apply. Except with respect to a prepaid account, incidental credit that is not

extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund transfer using a debit card, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions—examples.* If a consumer uses a debit card to withdraw money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

* * * * *

iv. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

4. *Credit under a covered separate credit feature accessible by a hybrid prepaid-credit card.* For transactions involving a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, whether Regulation E (12 CFR part 1005) or Regulation Z applies depends on the nature of the transaction. For example:

i. If the transaction solely involves an extension of credit under a covered separate credit feature and does not access funds from the asset feature of the prepaid account, the error resolution requirements of Regulation Z apply. To illustrate, assume that there is $0 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulation Z apply to the transaction. This is true regardless of whether the $25 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether the $25 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the transaction.

ii. If the transaction accesses funds from the asset feature of a prepaid account only (with no credit extended under the credit feature), the provisions of Regulation E apply.

iii. If the transaction accesses funds from the asset feature of a prepaid account but also involves an extension of credit under the covered separate credit feature, a creditor must comply with the requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). To illustrate, assume that there is $10 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulations E and Z apply as described above to the transaction. This is true regardless of whether $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether $15 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account and a $25 transaction is debited from the asset feature to cover the amount of the transaction. When this paragraph applies:

A. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

B. The creditor need not provisionally credit the consumer's account, under Regulation E, 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

C. The creditor must credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error.

D. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

5. *Prepaid cards that are not hybrid prepaid-credit cards.* Regulation E, 12 CFR 1005.12(a)(1)(iv)(C) and (D), and (a)(2)(iii) provide guidance on whether error resolution procedures in Regulations E or Z apply to transactions involving credit features that are accessed by prepaid cards that are not hybrid prepaid-credit cards as defined in § 1026.61. Regulation E 12 CFR 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in § 1026.61(a)(4), these transactions are governed solely by error resolution procedures in Regulation E, and Regulation Z does not apply. Regulation E 12 CFR 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in § 1026.61, a financial institution must comply with Regulation E's error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

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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

52(a) Limitations During First Year After Account Opening

52(a)(1) General Rule

1. *Application.* The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account, including a prepaid account as defined in § 1026.61, to the card issuer or from another credit account provided by the card issuer). For example:

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iii. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay $50 in fees for the issuance or availability of credit at account opening. At credit account opening on March 1 of year one, the credit limit for the account is $200. Section 1026.52(a)(1) permits the card issuer to charge the $50 in fees to the credit account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the credit account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open an additional credit feature with the card issuer to fund the payment of additional non-exempt fees during the first year after the covered separate credit feature is opened.

iv. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to 5 percent of any cash advance and a late payment fee of $15 if the required minimum periodic payment is not received by the payment due date (which is the 25th of the month). At credit account opening on March 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On April 1 of year one, the consumer uses the account for a $100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a $5 cash advance fee to the account. On April 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account, because the total amount of non-exempt fees reached the 25 percent limit with the $5 cash advance fee on April 1 (the $15 late fee on April 26 is exempt pursuant to § 1026.52(a)(2)(i)). Furthermore, § 1026.52(a)(1) prohibits the card issuer from

collecting the $2.50 cash advance fee from the consumer by other means.

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52(a)(2) Fees Not Subject to Limitations

1. *Covered fees.* Except as provided in § 1026.52(a)(2) and except as provided in comments 52(a)(2)–2 and–3, § 1026.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening, other than charges attributable to periodic interest rates. For example, § 1026.52(a) applies to:

* * * * *

2. *Fees in connection with a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(a) applies to the following fees:

i. Except as provided in § 1026.52(a)(2), any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature, and

ii. Except as provided in § 1026.52(a)(2), any fee or charge imposed on the asset feature of the prepaid account, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is a charge imposed as part of the plan under § 1026.6(b)(3).

3. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

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52(b) Limitations on Penalty Fees

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3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the covered separate credit feature becomes delinquent or if a payment is not received by a particular date. This fee is subject to § 1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the separate credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

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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

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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(a)(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 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(a) General Rule

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3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in § 1026.55(b). This is true regardless of whether these fees or annual percentage rates are imposed on the asset feature of the prepaid account or on the credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

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Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit

57(a) Definitions

57(a)(1) College Student Credit Card

1. *Definition.* The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards. A college student credit card includes a college affinity card within the meaning of TILA section 127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card. The definition of college student credit card includes a hybrid prepaid-credit card as defined by § 1026.61 that is issued to any college student where the card can access a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan. The definition of college student credit card also includes a prepaid account as defined in § 1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 may be added in the future to the prepaid account.

57(a)(5) College Credit Card Agreement

1. *Definition.* Section 1026.57(a)(5) defines ''college credit card agreement'' to include any business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the issuance of credit cards to full-time or part-time students. Business, marketing or promotional agreements may include a broad range of arrangements between a card issuer and an institution of higher education or affiliated organization, including arrangements that do not meet the criteria to be considered college affinity card agreements as discussed in TILA section 127(r)(1)(A). For example, TILA section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled (either full-time or part-time) at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 to prepaid accounts previously issued to full-time or part-time students. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the agreement provides for the issuance of prepaid accounts as defined in § 1026.61 to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 may be added in the future to the prepaid account.

57(b) Public Disclosure of Agreements

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3. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 to prepaid accounts previously issued to full-time or part-time students; or (2) new prepaid accounts as defined in § 1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

57(c) Prohibited Inducements

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7. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(c) applies to (1) the application for or opening of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 that is being added to a prepaid account previously issued to a full-time or part-time student as well as (2) the application for or opening of a prepaid account as defined in § 1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in § 1026.61 may be added in the future to the prepaid account.

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Section 1026.60 Credit and Charge Card Applications and Solicitations

1. *General.* Section 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See § 1026.60(a)(5) and (e)(2) for exceptions; see § 1026.60(a)(1) and accompanying commentary for the definition of solicitation; see also § 1026.2(a)(15) and accompanying commentary for the definition of charge card and § 1026.61(c) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.)

* * * * *

60(b) Required Disclosures

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3. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, a card issuer is required to disclose under § 1026.60(b) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under § 1026.6(b)(3) to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under § 1026.60(b). For example, assume that a card issuer imposes a $1.25 per transaction fee on the asset feature of a prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and the card issuer charges $0.50 per transaction for purchases that access funds in the asset feature of the prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under § 1026.6(b)(3) and must be disclosed under § 1026.60(b)(4).

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* A card issuer is not required under § 1026.60(b) to disclose any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

* * * * *

60(b)(4) Transaction Charges

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3. *Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) to make a purchase where this fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a transaction charge described in § 1026.60(b)(4). *See* comments 60(b)–3 and –4. This is so whether the fee is a per transaction fee to make a purchase, or a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions.

ii. A fee for a transaction will be treated as a fee to make a purchase under § 1026.60(b)(4) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. A per transaction fee imposed for the $15 credit transaction must be disclosed under § 1026.60(b)(4).

iii. On the other hand, a fee for a transaction will be treated as a cash advance fee under § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant

and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, a per transaction fee for the $15 credit transaction must be disclosed under § 1026.60(b)(8).

* * * * *

60(b)(8) Cash Advance Fee

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4. *Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance, such as a cash withdrawal at an ATM, where the fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a cash advance fee. *See* comments 60(b)–3 and –4. In addition, a fee for a transaction will be treated as a cash advance fee under § 1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. *See* comment 60(b)(4)–3.iii.

ii. If the cash advance fee is the same dollar amount as the transaction charge for purchases described in § 1026.60(b)(4), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Examples of how fees for purchase transactions described in § 1026.60(b)(4) and fees for cash advances described in § 1026.60(b)(8) must be disclosed are as follows. Assume that all the fees in the examples below are charged on the covered separate credit feature.

A. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as described in comment 60(b)(4)–3.ii. The card issuer assesses a $25 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer must disclose separately a purchase transaction charge of $15 and a cash advance fee of $25.

B. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as discussed in comment 60(b)(4)–3.ii. The card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer may disclose the $15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, the card issuer may disclose the $15 fee on two separate rows, one row indicating that a $15 fee applies to purchase transactions, and a second row indicating that a $15 fee applies to ATM cash advances.

C. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of $1.50 for out-of-network ATM cash withdrawals and $1.00 for in-network ATM cash withdrawals. The card issuer must disclose the cash advance fee as $16.50 for out-of-network ATM cash withdrawals, indicating that $1.50 is for the out-of-network ATM withdrawal fee, such as ''$16.50 (including a $1.50 out-of-network ATM withdrawal fee).'' The card issuer also must disclose the cash advance fee as $16.00 for in-network ATM cash withdrawals, indicating that $1.00 is for the in-network ATM withdrawal fee, such as ''$16 (including a $1.00 in-network ATM cash withdrawal fee).''

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Section 1026.61 Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

1. *Scope of § 1026.61.* Section 1026.61 sets forth the definition of hybrid prepaid-credit card, and several requirements that only apply to covered separate credit features accessible by hybrid prepaid-credit cards as defined in § 1026.61(a)(2)(i). Hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards are also subject to other rules in this regulation, and some of those rules and related commentary contain specific guidance related to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. For example, as discussed in §§ 1026.2(a)(15)(i) and 1026.61(a), a hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to a covered separate credit feature. A covered separate credit feature accessible by a hybrid prepaid-credit card also will be a credit card account under an open-end (not home-secured) consumer credit plan as defined in § 1026.2(a)(15)(ii) if the covered separate credit feature is an open-end credit plan. Thus, the provisions in this regulation that apply to credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan generally will apply to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards as applicable (*see generally* subparts B and G). Some of those rules and related commentary contain specific guidance with respect to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. *See, e.g.,* §§ 1026.2(a)(15)(i) and (ii), 1026.4(b)(11), (c)(3) and (4), 1026.6(b)(3)(iii)(D) and (E), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), 1026.13(i)(2), 1026.60(a)(5)(iv) and (b), and related commentary to these and other rules in the regulation.

61(a)(1) In General

1. *Credit.* Under § 1026.61(a)(1), except as provided in § 1026.61(a)(4), a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature as described in § 1026.61(a)(2)(i) or if it can access credit extended through a negative balance on the asset feature of the prepaid account as described in § 1026.61(a)(3). When § 1026.61 references credit that can be accessed from a separate credit feature or credit that can be extended through a negative balance on the asset feature, it means credit that can be accessed or can be extended even if, for example:

i. The person that can extend the credit does not agree in writing to extend the credit;

ii. The person retains discretion not to extend the credit, or

iii. The person does not extend the credit once the consumer has exceeded a certain amount of credit.

2. *Prepaid card that is solely an account number.* A prepaid card that is solely an account number is a hybrid prepaid-credit card if it meets the conditions set forth in § 1026.61(a).

3. *Usable from time to time.* In order for a prepaid card to be a hybrid prepaid-credit card under § 1026.61(a), the prepaid card must be capable of being used from time to time to access credit as described in § 1026.61(a). Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not hybrid prepaid-credit cards. With respect to a preauthorized check that is issued on a prepaid account for which credit is extended through a negative balance on the asset feature of the prepaid account, or credit is drawn, transferred or authorized to be drawn or transferred from a separate credit feature, the credit is obtained using the prepaid account number and not the check at the time of preauthorization using the prepaid account number. The prepaid account number is a hybrid prepaid-credit card if the account number meets the conditions set forth in § 1026.61(a). *See* comment 61(a)(1)–2.

4. *Prepaid account that is a digital wallet.* i. A digital wallet that is capable of being loaded with funds is a prepaid account under Regulation E, 12 CFR 1005.2(b)(3). *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)–6. A prepaid account number that can access such a digital wallet would be a hybrid prepaid-credit card if it meets the conditions set forth in § 1026.61(a). To illustrate:

A. A prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card where it can be used from time to time to access a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction

conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in § 1026.61(a)(2)(i).

B. A prepaid account number that can access such a digital wallet also is a hybrid prepaid-credit card where it can be used from time to time to access the stored credentials for a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in § 1026.61(a)(2)(i).

C. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii) that is not offered by the prepaid account issuer, its affiliate, or its business partner, even if the prepaid account number can access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers.

D. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in § 1026.61(a)(2)(ii) where the prepaid account number cannot access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if such credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

ii. A digital wallet is not a prepaid account under Regulation E, 12 CFR 1005.2(b)(3), if the digital wallet can never be loaded with funds, such as a digital wallet that only stores payment credentials for other accounts. *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)–6. An account number that can access such a digital wallet would not be a hybrid prepaid-credit card under § 1026.61(a), even if it stores a credential for a separate credit feature that is offered by the digital wallet provider, its affiliate, or its business partner and can be used in the course of a transaction involving the digital wallet.

5. *Prepaid account that can be used for bill payment services.* Where a prepaid account can be used for online bill payment services offered by the prepaid account issuer, the prepaid card (including a prepaid account number) that can access that prepaid account is a hybrid prepaid-credit card if it meets the requirements set forth in § 1026.61(a). For example, if a prepaid account number can be used from time to time to initiate a transaction using the online bill payment service offered by the prepaid account issuer to pay a bill, and credit can be drawn, transferred, or authorized to be drawn or transferred, to the prepaid account from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing that transaction as described in § 1026.61(a)(2)(i), the prepaid account number would be a hybrid prepaid-credit card under § 1026.61(a). In this case, the prepaid account number can be used to draw or transfer credit, or authorize the draw or transfer of credit, from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of completing a transaction to pay for goods or services through the online bill payment service.

61(a)(2) Prepaid Card Can Access Credit From a Covered Separate Credit Feature

1. *Draws or transfers of credit.* i. For a prepaid card to be a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to a separate credit feature, the prepaid account must be structured such that the draw or transfer of credit, or authorizations of either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner is capable of occurring in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct person-to-person transfers. See comment 61(a)(2)–2 for guidance on when draws or transfers of credit can occur in the course of authorizing, settling, or otherwise completing a transaction described in § 1026.61(a)(2)(i). In this case, the separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i).

ii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether:

A. The credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; or

B. The credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

iii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways.

2. *Credit that can be accessed from a separate credit feature in the course of authorizing, settling, or otherwise completing a transaction.* i. Under § 1026.61(a)(2)(i), a prepaid card is a hybrid prepaid-credit card when the card can be used from time to time to access a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner and can be used to access credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. A draw, transfer, or authorization of a draw or transfer from a separate credit feature is deemed to be in the ''course of authorizing, settling, or otherwise completing'' a transaction if it occurs during the authorization phase of the transaction as discussed in comment 61(a)(2)–2.ii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(2)–2.iii.

ii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred from a separate credit feature in the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction.

B. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account.

iii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred, in the course of settling a transaction.

A. A transaction initiated using a prepaid card when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

B. A transaction that was not authorized in advance where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

3. *Accessing credit when the asset feature has sufficient funds.* Section 1026.61(a)(2)(i) applies where the prepaid card can be used from time to time to draw funds from a covered separate credit feature that is offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if there are sufficient or available funds in the asset feature of the prepaid account to complete the transaction. For example, the following separate credit feature would meet the conditions of § 1026.61(a)(2)(i).

i. The prepaid card can be used from time to time both to access the asset feature of a

prepaid account and to draw on the covered separate credit feature in the course of a transaction independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has $50 available funds in her prepaid account. The consumer initiates a $25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the credit feature, the card will draw on credit from the credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds the prepaid account to complete the transaction.

4. *Covered separate credit features.* i. Under § 1026.61(a)(2)(i), a separate credit feature that meets the conditions of § 1026.61(a)(2)(i) is defined as a covered separate credit feature. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. Section 1026.61 and other provisions in the regulation and commentary related to hybrid prepaid-credit cards refer to this credit feature either as a covered separate credit feature or a covered separate credit feature accessible by a hybrid prepaid-credit card. *See, e.g.,* §§ 1026.4(c)(4), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), and 1026.60(a)(5)(iv) and (b). In addition, several provisions in the regulation and commentary also describe this arrangement as one where a covered separate credit feature and an asset feature on a prepaid account are both accessible by a hybrid prepaid-credit card as defined in § 1026.61. *See, e.g.,* §§ 1026.4(b)(11), 1026.6(b)(3)(iii)(D), and 1026.13(i)(2).

ii. If a prepaid card is capable of drawing or transferring credit, or authorizing either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a person-to-person transfer, the credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card, even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, with respect to a covered separate credit feature, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This credit transaction is considered a credit transaction on a covered separate credit feature accessible by a hybrid prepaid-credit card, even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

5. *Non-covered separate credit features.* A separate credit feature that does not meet the conditions set forth in § 1026.61(a)(2)(i) is defined as a non-covered separate credit feature as described in § 1026.61(a)(2)(ii). A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature. To illustrate:

i. A prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to a separate credit feature if the credit feature is not offered by the prepaid account issuer, its affiliate, or its business partner. This is true even if the draw or transfer of credit, or authorization of either, occurs during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume a consumer links her prepaid account to a credit card issued by a card issuer that is not the prepaid account issuer, its affiliate, or its business partner so that credit is drawn automatically into the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the asset feature. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third-party card issuer.

ii. Even if a separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, a prepaid card is not a hybrid prepaid-credit card under § 1026.61(a)(2)(i) with respect to that separate credit feature if the separate credit feature cannot be accessed within the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct person-to-person transfers. In this case, the separate credit feature is a non-covered separate credit feature under § 1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to this non-covered separate credit feature.

iii. The person offering the non-covered separate credit feature does not become a card issuer under § 1026.2(a)(7) and thus does not become a creditor under § 1026.2(a)(17)(iii) or (iv) because the prepaid card can be used to access credit from the non-covered separate credit feature. The person offering the non-covered separate credit feature, however, may already have obligations under this regulation with respect to that separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer under § 1026.2(a)(7) and a creditor under § 1026.2(a)(17)(iii). Nonetheless, in that case, the person does not need to comply with the provisions in the regulation applicable to hybrid prepaid-credit cards even though the prepaid card can access credit from the non-covered separate credit feature. The obligations under this regulation that apply to a non-covered separate credit feature are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature. *See* § 1026.6(b)(3)(iii)(E) and comments 4(b)(11)–1.ii, 6(b)(2)–2, 6(b)(3)(iii)(E)–1, 12(d)(3)–2.iii, 52(a)(2)–3, 52(b)–4, 55(a)–4, and 60(b)–4.

6. *Prepaid card that can access multiple separate credit features.* i. Even if a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, it is not a hybrid prepaid-credit card with respect to any non-covered separate credit features.

ii. For example, assume that a prepaid card can access "Separate Credit Feature A" where the card can be used from time to time to access credit from a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. In addition, assume that the prepaid card can also access "Separate Credit Feature B" but that credit feature is being offered by an unrelated third-party creditor that is not the prepaid account issuer, its affiliate, or its business partner. The prepaid card is a hybrid prepaid-credit card with respect to Separate Credit Feature A because it is a covered separate credit feature. The prepaid card, however, is not a hybrid prepaid-credit card with respect to Separate Credit Feature B because it is a non-covered separate credit feature.

61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance on the Asset Feature

61(a)(3)(i) In General

1. *Credit accessed on an asset feature of a prepaid account.* i. See comment 2(a)(14)–3 for examples of when transactions authorized or paid on the asset feature of a prepaid account meet the definition of credit under § 1026.2(a)(14).

ii. Except as provided in § 1026.61(a)(4), a prepaid card would trigger coverage as a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit that can be extended through a negative balance on the asset feature of the prepaid account. (However, unless the only credit offered meets the requirements of § 1026.61(a)(4), such a product structure would violate the rules under § 1026.61(b).) A credit extension through a negative balance on the asset feature of a prepaid account can occur during the authorization phase of the transaction as discussed in comment

61(a)(3)(i)–1.iii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(2)(i)–1.iv.

iii. The following example illustrates transactions where a credit extension occurs during the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is extended through a negative balance on the asset feature of the prepaid account when the transaction is authorized.

iv. The following examples illustrate transactions where a credit extension occurs at settlement.

A. Transactions that occur when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

B. Transactions that settle even though they were not authorized in advance where credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

61(a)(3)(ii) Negative Asset Balances

1. *Credit extended on the asset feature of the prepaid account.* Section 1026.61(a)(3)(i) determines whether a prepaid card triggers coverage as a hybrid prepaid-credit card under § 1026.61(a), and thus, whether a prepaid account issuer is a card issuer under § 1026.2(a)(7) subject to this regulation, including § 1026.61(b). However, § 1026.61(b) requires that any credit feature accessible by a hybrid prepaid-credit card must be structured as a separate credit feature using either a credit subaccount of the prepaid account or a separate credit account. In that case, a card issuer would violate § 1026.61(b) if it structures the credit feature as a negative balance on the asset feature of the prepaid account, unless the only credit offered in connection with the prepaid account satisfies § 1026.61(a)(4). A prepaid account issuer can use a negative asset balance structure to extend credit on a prepaid account if the prepaid card is not a hybrid prepaid-credit card as described in § 1026.61(a)(4).

61(a)(4) Exception

1. *Prepaid card that is not a hybrid prepaid-credit card.* i. A prepaid card that is not a hybrid prepaid-credit card as described in § 1026.61(a) is not a credit card under this regulation. A prepaid card is not a hybrid prepaid-credit card if:

A. The card cannot access credit from a covered separate credit feature under § 1026.61(a)(2)(i), though it is permissible for it to access credit from a non-covered separate credit feature as described under § 1026.61(a)(2)(ii); and

B. The card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in § 1026.61(a)(4)(ii)(A) and (B).

ii. Below is an example of when a prepaid card is not a hybrid prepaid-credit card because the conditions set forth in § 1026.61(a)(4) have been met.

A. The prepaid card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in § 1026.61(a)(4)(ii)(A) and (B). The card can access credit from a non-covered separate credit feature as defined in § 1026.61(a)(2)(ii), but cannot access credit for a covered separate credit feature as defined in § 1026.61(a)(2)(i).

iii. Below is an example of when a prepaid card is a hybrid prepaid-credit card because the conditions set forth in § 1026.61(a)(4) have not been met.

A. When there is insufficient or unavailable funds in the asset feature of the prepaid account at the time a transaction is initiated, the card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account. The card is a hybrid prepaid-credit card because it can be used to draw, transfer, or authorize the draw or transfer of credit from a separate credit feature in the circumstances set forth in § 1026.61(a)(2)(i).

iv. In the case where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions set forth in § 1026.61(a)(4):

A. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(iii) or (iv) because it is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) as a result of imposing fees on the prepaid account because those fees are not finance charges. *See* comment 4(b)(11)–1.iii.

Paragraph 61(a)(4)(ii)(A)

1. *Authorization not required for every transaction.* The prepaid account issuer is not required to receive an authorization request for each transaction to comply with § 1026.61(a)(4)(ii)(A). Nonetheless, the prepaid account issuer generally must establish an authorization policy as described in § 1026.61(a)(4)(ii)(A) and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. In that case, a prepaid account issuer is deemed to satisfy § 1026.61(a)(4)(ii)(A) even if a negative balance results on the prepaid account when a transaction is settled.

2. *Provisional credit.* A prepaid account issuer may still satisfy the requirements set forth in § 1026.61(a)(4)(ii)(A) even if a negative balance results on the asset feature of the prepaid account because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account as specified in Regulation E, 12 CFR 1005.11, so long as the prepaid account issuer otherwise complies with the conditions set forth in § 1026.61(a)(4). For example, under § 1026.61(a)(4), a prepaid account issuer may not impose a fee or charge enumerated under § 1026.61(a)(4)(ii)(B) with respect to this negative balance.

3. *Delayed load cushion.* i. *Incoming fund transfers.* For purposes of § 1026.61(a)(4)(ii)(A)(*2*), cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account include a direct deposit of salary from an employer and a direct deposit of government benefits.

ii. *Consumer requests.* For purposes of § 1026.61(a)(4)(ii)(A)(*2*), cases where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account include where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the asset feature of the prepaid account to pay for the transaction.

4. *Permitted authorization circumstances are not mutually exclusive.* The two circumstances set forth in § 1026.61(a)(4)(ii)(A)(*1*) and (*2*) are not mutually exclusive. For example, assume a prepaid account issuer has adopted the $10 cushion described in § 1026.61(a)(4)(ii)(A)(*1*), and the delayed load cushion described in § 1026.61(a)(4)(ii)(A)(*2*). Also, assume the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account but the prepaid account issuer has not received the funds from the separate asset account. In this case, a prepaid account issuer satisfies § 1026.61(a)(4)(iii)(A) if the amount of a transaction at authorization will not cause the prepaid account balance to become negative at the time of the authorization by more than the requested load amount plus the $10 cushion.

Paragraph 61(a)(4)(ii)(B)

1. *Different terms on different prepaid account programs.* Section 1026.61(a)(4)(ii)(B) does not prohibit a prepaid account issuer from charging different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

Paragraph 61(a)(4)(ii)(B)(1)

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(1).* To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic

basis. Section 1026.61(a)(4)(ii)(B)(*1*) does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

i. The types of fees or charges prohibited by § 1026.61(a)(4)(ii)(B)(*1*) include:

A. A daily, weekly, monthly, or other periodic fee assessed each period a prepaid account has a negative balance or is in "overdraft" status; and

B. A daily, weekly, monthly or other periodic fee to hold the prepaid account where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(*2*) during that period. For example, assume that a consumer will pay a fee to hold the prepaid account of $10 if the consumer is not enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(*2*) during that month, and will pay a fee to hold the prepaid account of $15 if the consumer is enrolled in a purchase cushion or delayed load cushion that period. The $15 charge is a charge described in § 1026.61(a)(4)(ii)(B)(*1*) because the amount of the fee to hold the prepaid account is higher based on whether the consumer is participating in the payment cushion or delayed load cushion during that period.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. A daily, weekly, monthly, or other periodic fee to hold the prepaid account where the amount of the fee is not higher based on whether the consumer is enrolled in a purchase cushion as described in § 1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in § 1026.61(a)(4)(A)(ii)(*2*) during that period, whether or how much credit has been extended during that period, or the amount of credit that is available during that period.

Paragraph 61(a)(4)(ii)(B)(2)

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(2).* To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature.

i. These types of fees or charges include:

A. A fee imposed because the balance on the prepaid account becomes negative;

B. Interest charges attributable to a periodic rate that applies to the negative balance;

C. Any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in "overdraft" status, except that the actual costs to collect the credit may be imposed if otherwise permitted by law; and

D. Late payment fees.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. Fees for actual collection costs, including attorney's fees, to collect any credit extended on the prepaid account if otherwise permitted by law. Late payment fees are not considered fees imposed for actual collection costs. *See* comment 61(a)(4)(ii)(B)(*2*)–1.i.D.

Paragraph 61(a)(4)(ii)(B)(3)

1. *Fees or charges covered by § 1026.61(a)(4)(ii)(B)(3).* i. To qualify for the exception in § 1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. These types of fees or charges include:

A. Transaction fees where the amount of the fee is higher based on whether the transaction accesses only asset funds in the asset feature or accesses credit. For example, a $15 transaction charge is imposed on the asset feature each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset feature at the time of the authorization or settlement. A $1.50 fee is imposed each time a transaction only accesses funds in the asset feature. The $15 charge is a charge described in § 1026.61(a)(4)(ii)(B)(*3*) because the amount of the transaction fee is higher when the transaction accesses credit than the amount of the fee that applies when the transaction accesses only asset funds in the asset feature; and

B. A fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges a higher fee for an ATM balance inquiry requested on the prepaid account if the balance inquiry is requested when there is a negative balance on the asset feature than the amount of fee imposed when there is a positive balance on the asset feature, the balance inquiry fee is a fee described in § 1026.61(a)(4)(ii)(B)(*3*) because the amount of the fee is higher based on whether it is imposed when there is a negative balance on the asset feature.

ii. Fees or charges described in § 1026.61(a)(4)(ii)(B) do not include:

A. Transaction fees on the prepaid account where the amount of the fee imposed when the transaction accesses credit does not exceed the amount of the fee imposed when the transaction only accesses asset funds in the prepaid account. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. The $1.50 transaction charge imposed on the prepaid account is not a fee described in § 1026.61(a)(4)(ii)(B); and

B. A fee for a service on the prepaid account where the amount of the fee is not higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges the same amount of fee for an ATM balance inquiry regardless of whether there is a positive or negative balance on the asset feature, the balance inquiry fee is not a fee described in § 1026.61(a)(4)(ii)(B).

Paragraph 61(a)(4)(ii)(C)

1. *Fees or charges not covered by § 1026.61(a)(4)(ii)(B).* Under § 1026.61(a)(4)(ii)(C), a prepaid account issuer may still satisfy the exception in § 1026.61(a)(4) even if it debits fees or charges from the prepaid account when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in § 1026.61(a)(4)(ii)(B). A fee or charge not otherwise covered by § 1026.61(a)(4)(ii)(B) does not become covered by that provision simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. For example, assume that a prepaid account issuer imposes a fee for an ATM balance inquiry and the amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. Also assume that when the fee is imposed, there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee does not become a fee covered by § 1026.61(a)(4)(ii)(B) because the fee is debited from the prepaid account balance when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the fee at the time it is imposed.

61(a)(5) Definitions

Paragraph 61(a)(5)(iii)

1. *Arrangement.* A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature is a business partner of a prepaid account issuer where the person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate. A person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature or the person's affiliate has an arrangement with a prepaid account issuer or its affiliate for purposes of § 1026.61(a)(5)(iii) if the circumstances in either paragraph i or ii are met:

i. A person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate has an agreement with the person that can extend credit or its affiliate that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. However, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network.

ii. A person that can extend credit or its affiliate has an arrangement with a prepaid

account issuer or its affiliate if the prepaid account issuer or its affiliate:

A. Has a business, marketing, or promotional agreement or other arrangement with the person that can extend credit or its affiliate where the agreement or arrangement provides that:

1. Prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or

2. The credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account to be used as an overdraft credit feature); and

B. At the time of the marketing agreement or arrangement described in comment 61(a)(5)(iii)–1.ii.A, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement, as described in comment 61(a)(5)(iii)–1.i, between the parties that the card can access the credit feature. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the credit feature is effectuated through a card network or payment network.

2. *Relationship to prepaid account issuer.* A person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider such as a program manager, or the issuer's affiliate. In that case, the person that can extend credit will be a business partner of the prepaid account issuer. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the business partner of the prepaid account issuer.

Paragraph 61(a)(5)(iv)

1. *Applicability of credit feature definition.* The definition of credit feature set forth in § 1026.61(a)(5)(iv) only defines that term for purposes of this regulation in relation to credit in connection with a prepaid account or prepaid card. This definition does not impact when an account, subaccount or negative balance is a credit feature under the regulation with respect to credit in relation to a checking account or other transaction account that is not a prepaid account, or a debit card. *See, e.g.,* comments 2(a)(15)–2.ii.A and 4(b)(2)–1 for where the term credit feature is used in relation to a debit card or asset account other than a prepaid account.

2. *Asset account other than a prepaid account.* A credit feature for purposes of § 1026.61(a)(5)(iv) does not include an asset account other than a prepaid account that has an attached overdraft feature. For example, assume that funds are loaded or transferred to a prepaid account from an asset account (other than a prepaid account) on which an overdraft feature is attached. The asset account is not a credit feature under § 1026.61(a)(5)(iv) even if the load or transfer of funds to the prepaid account triggers the overdraft feature that is attached to the asset account.

Paragraph 61(a)(5)(vii)

1. *Definition of prepaid card.* The term ''prepaid card'' in § 1026.61(a)(5)(vii) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code.

61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards

1. *Credit subaccount on a prepaid account.* If a credit feature that is accessible by a hybrid prepaid-credit card is structured as a subaccount of the prepaid account, the credit feature must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance.

2. *Credit extended on a credit subaccount or a separate credit account.* Under § 1026.61(b), with respect to a credit feature that is assessed by a hybrid prepaid-credit card, a card issuer at its option may structure the credit feature as a separate credit feature, either as a subaccount on the prepaid account that is separate from the asset feature or as a separate credit account. The separate credit feature would be a covered separate credit feature accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i). Regardless of whether the card issuer is structuring its covered separate credit feature as a subaccount of the prepaid account or as a separate credit account:

i. If at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred or authorized to be drawn or transferred, from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply with the applicable provisions of this regulation with respect to the credit extension from the time the prepaid card transaction is authorized.

ii. For transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover that transaction at the time it settles and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of this regulation from the time the transaction is settled.

iii. If a negative balance would result on the asset feature in circumstances other than those described in comment 61(b)–2.i and ii, credit must be drawn from the covered separate credit feature to avoid the negative balance. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions in this regulation from the time credit is drawn from the covered separate credit feature. For example, assume that a fee for an ATM balance inquiry is imposed on the prepaid account when there are insufficient or unavailable funds to cover the amount of the fee when it is imposed. Credit must be drawn from the covered separate credit feature to avoid a negative balance.

61(c) Timing Requirement for Solicitation or Application With Respect to Hybrid Prepaid-Credit Cards

1. *Meaning of registration of a prepaid card or prepaid account.* A prepaid card or prepaid account is registered, such that the 30-day timing requirement required by § 1026.61(c) begins, when the prepaid account issuer successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and state law. The beginning of the required 30-day timing requirement is triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card. With respect to a prepaid account for which customer identification and verification are completed before the account is opened, the 30-day timing requirement begins on the day the prepaid account is opened.

2. *Unsolicited issuance of credit cards and disclosures related to applications or solicitations for credit or charge card accounts.* See § 1026.12(a)(1) and comment 12(a)(1)–7.ii for additional rules that apply to the addition of a credit card or charge card account to a previously-issued prepaid account. See also § 1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

3. *Replacement or substitute cards.* A card issuer is not required to comply with § 1026.61(c) when a hybrid prepaid-credit card is permitted to be replaced, or substituted, for another hybrid prepaid-credit card without a request or application under § 1026.12(a)(2) and related commentary. For example, § 1026.61(c) does not apply to situations where a prepaid account or credit feature that is accessible by a hybrid prepaid-credit card is replaced because of security concerns and a new hybrid prepaid-credit card is issued to access the new prepaid account or covered separate credit feature without a request or application under § 1026.12(a)(2).

* * * * *

Dated: October 3, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–24503 Filed 11–21–16; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

[Docket No. CFPB–2017–0008]

RIN 3170–AA69

Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing to delay the October 1, 2017 effective date of the rule governing Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) by six months, to April 1, 2018.

DATES: Comments must be received on or before April 5, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2017–0008 or RIN 3170–AA69, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2017–0008 or RIN 3170–AA69 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Thomas L. Devlin or Yaritza Velez, Counsels, or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On October 5, 2016, the Bureau released a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA) (Prepaid Accounts Final Rule).[1] The Prepaid Accounts Final Rule has an effective date of October 1, 2017. Through its efforts to support industry implementation of the Prepaid Accounts Final Rule, the Bureau has learned that some industry participants believe they will have difficulty complying with certain provisions of the Prepaid Accounts Final Rule that go into effect October 1, 2017. In order to facilitate compliance with the Prepaid Accounts Final Rule, and to allow an opportunity for the Bureau to assess whether any additional adjustments to the Rule are appropriate, the Bureau is proposing to extend the effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. The Bureau believes that such an extension would, among other things, help industry participants address certain packaging-related logistical issues for prepaid accounts that are sold at retail locations.

This proposed rule seeks comment on whether the Bureau should extend the effective date of the Prepaid Accounts Final Rule, and if so, whether six months is an appropriate length of time for such an extension. The Bureau is also proposing to make conforming amendments to certain regulatory text and commentary adopted in the Prepaid Accounts Final Rule to reflect the proposed effective date delay.

II. Background

A. The Prepaid Accounts Rulemaking

In the Prepaid Accounts 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 credit features that may be offered in conjunction with prepaid accounts.[2] The Bureau released a proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014,[3] and released the Prepaid Accounts Final Rule on October 5, 2016.

Upon issuing the Prepaid Accounts Final Rule, the Bureau initiated robust efforts to support industry implementation.[4] Information regarding the Bureau's Prepaid Accounts Final Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation Web site at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.*

B. Proposed Effective Date

As published, the Prepaid Accounts Final Rule has a general effective date of October 1, 2017. As part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. As a result of these discussions, the Bureau has learned that some industry participants are concerned that they will have difficulty in complying with the Prepaid Accounts Final Rule while also ensuring continued availability of their prepaid products and with minimal disruption to consumers by October 1, 2017 for a variety of reasons. For example, the Bureau put in place an exception in Regulation E § 1005.18(h)(2) pursuant to which financial institutions are not

[1] 81 FR 83934 (Nov. 22, 2016).

[2] 81 FR 83934 (Nov. 22, 2016).

[3] 79 FR 77102 (Dec. 23, 2014) (Prepaid Accounts NPRM). *See also* Press Release, CFPB, *CFPB Proposes Strong Federal Protections for Prepaid Products* (Nov. 13, 2014), *available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-strong-federal-protections-for-prepaid-products/.* 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).

[4] These on-going efforts include: (1) The publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Final Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Final 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, and a summary of the rule's effective date provisions; (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 Final 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.

required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017. Nonetheless, the Bureau understands that because of concerns about legal and regulatory exposure at both the Federal and State level due to potential product changes, and in particular due to developments following release of the Prepaid Accounts Final Rule, some industry participants believe that they should in fact pull and replace non-compliant packaging. Industry has also raised related concerns regarding the production capacity of packaging manufacturers and other supply chain limitations leading up to the October 1, 2017 effective date due to increased demand by industry on a limited number of manufacturers.

In addition, in the course of working to implement the Prepaid Accounts Final Rule, some industry participants have raised concerns about what they describe as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices (including recent changes thereto) that they did not fully address in their comment letters on the Prepaid Accounts NPRM, which may lead to additional complexities for implementation and negative implications for consumers.

The Bureau continues to believe that the Prepaid Accounts Final Rule will provide significant benefits to consumers and that, therefore, expeditious implementation remains essential to provide comprehensive consumer protections to users of prepaid accounts. The Bureau also appreciates the concerns raised by some industry participants that they may have difficulty in complying with the rule by October 1, 2017. Accordingly, for the reasons stated herein, the Bureau is proposing to delay the effective date of the Prepaid Accounts Final Rule for a period of six months, to April 1, 2018. In order to effect this change, the Bureau is also proposing to amend Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary, to reflect the delayed effective date.

Furthermore, delaying the effective date will allow the Bureau to more closely evaluate concerns raised by industry participants regarding certain substantive aspects of the Prepaid Accounts Final Rule that they assert are posing particular complexities for implementation or may have negative consequences for consumers that were not anticipated or fully explained by commenters in response to the Prepaid Accounts NPRM, and to propose revisions to those provisions of the Prepaid Accounts Final Rule if it determines that amendments are necessary and appropriate.

The Bureau believes that, based on its initial outreach to industry, a six-month delay would be sufficient for industry participants to ensure that they can comply with the Prepaid Accounts Final Rule with minimal disruption to consumers. In particular, a six-month extension would both allow more time for package printing and allow pull-and-replace processes at retail locations to occur after the winter holiday season, which is a particularly busy time for retailers. Indeed, the Bureau understands that industry often effectuates pull-and-replace processes in the spring for precisely this reason. The Bureau also believes that a six-month delay will allow the Bureau adequate opportunity to consider possible additional amendments to the Prepaid Accounts Final Rule, and for industry to implement any such changes, without unnecessary disruption to consumers' access to, and use of, prepaid accounts.

The Bureau solicits comment on whether it should delay the effective date for the Prepaid Accounts Final Rule, and if so, whether six months is an appropriate length of time. The Bureau also solicits comment on the potential consequences of not extending the effective date. In particular, the Bureau asks commenters to provide specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on industry, consumers, and other stakeholders. Finally, the Bureau solicits comment about the impact of the proposed delay on consumers who use prepaid accounts.

The Bureau is not proposing to delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018. The Bureau expects to have its agreement submission process in place by October 1, 2018, and the Bureau's outreach has not indicated that industry participants are concerned that they will not be able to meet the agreement submission effective date. The Bureau nonetheless solicits comment on whether it should delay the effective date of the agreement submission requirement, and if so, for what length of time.

The Bureau is not proposing to amend any substantive requirements of the Prepaid Accounts Final Rule at this time. The purpose of this notice is not to seek comment generally on policy decisions made in the Prepaid Accounts Final Rule that industry or other stakeholders might wish the Bureau to reconsider. The Bureau will continue its outreach to industry and other stakeholders to understand their experiences in implementing the Prepaid Accounts Final Rule. If the Bureau determines that amendments to the substantive provisions of the Prepaid Accounts Final Rule are warranted, it will do so through a separate rulemaking.

III. Legal Authority

The Bureau is proposing to exercise its rulemaking authority pursuant to EFTA section 904(a) and (c), Dodd-Frank Act sections 1022(b)(1) and 1032(a), and TILA section 105(a) to delay the effective date of the Prepaid Accounts Final Rule.

The legal authority for the Prepaid Accounts Final Rule is described in detail in the Prepaid Accounts Final Rule's **SUPPLEMENTARY INFORMATION**.[5] As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)[6] 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 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. As amended by the Dodd-Frank Act, TILA section 105(a)[7] 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.[8] Section 1032(a)

[5] *See, e.g.*, 81 FR 83934, 83958–60 (Nov. 22, 2016).

[6] 15 U.S.C. 1593b(a).

[7] 15 U.S.C. 1604(a).

[8] 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

Continued

of the Dodd-Frank Act[9] 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 Dodd-Frank Act section 1022(b)(1),[10] 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 proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)[11] 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[12] prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

IV. Provisions Affected by the Proposal

1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(b) Pre-Acquisition Disclosure Requirements

18(b)(2) Short Form Disclosure Content

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

Regulation E § 1005.18(b)(2) describes the short form disclosure requirements for prepaid accounts. Section 1005.18(b)(2)(ix) contains requirements specifically regarding additional fee types. 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 proposing to revise the dates in the regulatory text and headings in § 1005.18(b)(2)(ix)(D)(*1*) through (*3*) and in comments 18(b)(2)(ix)(D)(*1*)–1, 18(b)(2)(ix)(D)(*2*)–1, 18(b)(2)(ix)(E)(*2*)–1.i through iii, and 18(b)(2)(ix)(E)(*3*)–1 to reflect the proposed revised effective date of April 1, 2018. The Bureau is not, however, proposing to change 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 inconvenience financial institutions who have already prepared their additional fee types calculations in reliance on that date.

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

Regulation E § 1005.18(h) sets forth several provisions to make clearer the Prepaid Accounts Final Rule's general October 1, 2017 effective date. The Bureau is proposing to revise the dates in the regulatory text and headings throughout § 1005.18(h) and in comments 18(h)–1, 2, 6.i and 6.ii to reflect the proposed revised effective date of April 1, 2018.

1005.19 Internet Posting of Prepaid Account Agreements

19(f) Effective Date

19(f)(1) Effective Date

Regulation E § 1005.19(f)(1) sets forth the general effective date for the prepaid account agreement posting requirements in § 1005.19, other than the delayed requirement to submit prepaid account agreements to the Bureau pursuant to § 1005.19(b), as addressed in § 1005.19(f)(2). The Bureau is proposing to revise the date in the regulatory text of § 1005.19(f)(1) to reflect the proposed revised effective date of April 1, 2018. As discussed above, the Bureau is not proposing to delay the October 1, 2018 date for submission of agreements to the Bureau.

V. Effective Date

The Bureau is proposing to delay the effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. Additionally, the Bureau is proposing to make conforming amendments to Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary. After considering comments received on the proposal, the Bureau will publish a final rule with respect to the effective date of the Prepaid Accounts Final Rule. The Bureau proposes that the final rule with respect to the effective date of the Prepaid Accounts Final Rule will become effective 30 days after publication in the **Federal Register**, as required under section 553(d) of the Administrative Procedure Act.[13]

VI. Section 1022(b) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has considered the potential benefits, costs and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with 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 administered by these agencies.

The Bureau previously considered the costs, benefits, and impacts of the Prepaid Accounts Final Rule's major provisions.[14] Compared to the baseline established by the Prepaid Accounts Final Rule,[15] the proposed delay of the effective date of the Prepaid Accounts Final Rule would generally benefit covered persons by facilitating initial compliance with the Prepaid Accounts Final Rule's requirements and delaying the start of ongoing compliance costs. Because covered persons retain the option of complying with the Prepaid Accounts Final Rule's effective date, any delay in the effective date will not increase costs to providers because they retain the option of complying with the original effective date. If a delay in the effective date would help to preserve consumer access to covered products by minimizing industry disruption, both

permitted for creditors or lessors to adjust their forms to accommodate new requirements." Although the Bureau desires to have the rule take effect as soon as feasible given its value for consumers, the Bureau is proposing to use its discretion under TILA section 105(d) to lengthen the period in this instance. The Bureau believes the changes the Prepaid Accounts Final Rule will require to disclosures pursuant to Regulation Z warrant a delayed effective date that conforms to the rest of the rule.

[9] 12 U.S.C. 5532(a).

[10] 12 U.S.C. 5512(b)(1).

[11] 12 U.S.C. 5512(b).

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

[13] 5 U.S.C. 553(d).

[14] 81 FR 83934, 84269 (Nov. 22, 2016).

[15] 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.

consumers and covered persons would benefit. The Bureau believes that delaying the effective date may also delay consumers' realization of benefits arising from the protections provided by the Prepaid Accounts Final Rule. In addition, the Bureau does not expect the proposed 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 or on consumers in rural areas. The Bureau does not believe that the proposed delay in the effective date would reduce consumer access to consumer financial products and services, and it may increase consumer access by decreasing the possibility of industry disruption arising from the Prepaid Accounts Final Rule's implementation.

The Bureau requests comment on this discussion as well as submission of additional information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposed rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act [16] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 [17] (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.[18] 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.[19]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[20] 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.[21]

In the Prepaid Accounts NPRM, 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.[22] That conclusion remained unchanged for the Prepaid Accounts Final Rule.[23] The Bureau concludes that an IRFA is not required for this proposed rule because the proposed rule, which would delay the effective date of a rule that will not have a significant economic impact on a substantial number of small entities, would not have a significant economic impact on a substantial number of small entities if adopted.

As discussed above, the proposal would delay the effective date of the Prepaid Accounts Final Rule to April 1, 2018. The proposed six-month delay in the effective date would benefit small entities by providing additional flexibility with respect to the timing of the Prepaid Accounts Final Rule's implementation. In addition to generally providing increased flexibility, the delay in the effective date would permit small entities to delay the commencement of any ongoing costs that result from complying with the Prepaid Accounts Final Rule. Because small entities retain the option of complying with the Prepaid Accounts Final Rule's original effective date, the proposed rule's delay of the effective date will not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Final Rule. Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 [24] (PRA), 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 Final Rule have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 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 has determined that this proposed rule would not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

Dated: March 8, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–05060 Filed 3–14–17; 8:45 am]

BILLING CODE 4810–AM–P

[16] Public Law 96–354, 94 Stat. 1164 (1980).

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

[18] 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).

[19] 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.*

[20] 5 U.S.C. 601 through 612.

[21] 5 U.S.C. 609.

[22] 79 FR 77102, 77283 (Dec. 23, 2014).

[23] 81 FR 83934, 84308 (Nov. 22, 2016).

[24] 44 U.S.C. 3501 *et seq.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2016–0723]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, St. Augustine, FL

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is seeking comments and information concerning a proposal to change the operating schedule for the Bridge of Lions across the Atlantic Intracoastal Waterway, St. Augustine, Florida. The City of St. Augustine is concerned that vehicle traffic is becoming exponentially worse with each passing season and that on-demand bridge openings are contributing to vehicle traffic backups. The proposed modification would extend the twice an hour draw opening period from 7 a.m. to 9 p.m. daily, and preclude the bridge draw from opening at 3:30 p.m. on weekends and Federal holidays.

Rules and Regulations

Federal Register
Vol. 82, No. 78
Tuesday, April 25, 2017

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

[Docket No. CFPB–2017–0008]

RIN 3170–AA69

Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Delay of Effective Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation; delay of effective date.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is issuing this final rule to delay the October 1, 2017 effective date of the rule governing Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z) by six months, to April 1, 2018.

DATES: The amendments in this final rule are effective on April 1, 2018. The effective date of the final rule published on November 22, 2016 (81 FR 83934) is delayed from October 1, 2017, to April 1, 2018. The effective date for the addition of § 1005.19(b) remains October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Thomas L. Devlin and Yaritza Velez, Counsels, and Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202–435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

On October 5, 2016, the Bureau released a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA) (Prepaid Accounts Final Rule).[1] When it was issued, the Prepaid Accounts Final Rule had a general effective date of October 1, 2017. Through its efforts to support industry implementation of the Prepaid Accounts Final Rule, the Bureau learned that some industry participants believed that they would have difficulty complying with certain provisions of the Prepaid Accounts Final Rule that would have gone into effect on October 1, 2017. In order to facilitate compliance with the Prepaid Accounts Final Rule, and to allow an opportunity for the Bureau to assess whether any additional adjustments to the Rule are appropriate, the Bureau proposed to extend the general effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018 (Effective Date NPRM).[2]

Based on comments received, the Bureau is issuing this final rule to delay the October 1, 2017 effective date for the Prepaid Accounts Final Rule by six months, to April 1, 2018. The Bureau is also making conforming amendments to certain regulatory text and commentary adopted in the Prepaid Accounts Final Rule to reflect the effective date delay.

The Bureau plans to release a notice of proposed rulemaking address at least two issues that have been identified as areas where the Prepaid Accounts Final Rule may be posing particular complexities for implementation. When the Bureau does so it will also seek comment on whether any further extension of the effective date is needed in light of the specific changes proposed.

II. Background

A. The Prepaid Accounts Rulemaking

In the Prepaid Accounts 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 credit features that may be offered in conjunction with prepaid accounts.[3] Upon issuing the Prepaid Accounts Final Rule, the Bureau initiated robust efforts to support industry implementation.[4] Information regarding the Bureau's Prepaid Accounts Final Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation Web site at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.*

B. Effective Date Delay

As published, the Prepaid Accounts Final Rule had a general effective date of October 1, 2017. As discussed in the Effective Date NPRM, as part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. As a result of those discussions, the Bureau learned that some industry participants were concerned for a variety of reasons that they would have difficulty in complying with certain aspects of the Prepaid Accounts Final Rule by October 1, 2017 while also ensuring continued availability of their prepaid products and with minimal disruption to consumers. For example, although the Bureau put in place an exception in Regulation E § 1005.18(h)(2) pursuant to which financial institutions are not required to pull and replace prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to October 1, 2017, some industry participants indicated that they believed that they should in fact pull and replace non-compliant packaging due to concerns about legal and regulatory

[1] 81 FR 83934 (Nov. 22, 2016).

[2] 82 FR 13782 (Mar. 15, 2017).

[3] 81 FR 83934 (Nov. 22, 2016). The Bureau released a 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) (Prepaid Accounts NPRM). 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).

[4] These on-going efforts include: (1) The publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Final Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Final 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 Final 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.

exposure at both the Federal and State level, and in particular due to developments following release of the Prepaid Accounts Final Rule. Industry had also raised related concerns regarding the constrained production capacity of packaging manufacturers and other supply chain limitations resulting from increased industry demand leading up to the October 1, 2017 effective date.

In addition, in the course of working to implement the Prepaid Accounts Final Rule, some industry participants raised concerns about what they describe as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices, including those newly adopted, that they did not fully address in their comment letters on the Prepaid Accounts NPRM, which may complicate implementation and affect consumers.

Based on its initial outreach to industry before issuing the Effective Date NPRM, the Bureau believed that a six-month delay would be sufficient for industry participants to ensure that they can comply with the Prepaid Accounts Final Rule with minimal disruption to consumers. The Bureau explained that, in particular, a six-month extension would both allow more time for package printing and allow pull-and-replace processes at retail locations to occur after the winter holiday season, which is a particularly busy time for retailers. Indeed, the Bureau understands that industry often effectuates pull-and-replace processes in the spring for precisely this reason. The Bureau also believed that a six-month delay would allow the Bureau adequate opportunity to consider possible additional amendments to the Prepaid Accounts Final Rule, and for industry to implement any such changes, without unnecessary disruption to consumers' access to, and use of, prepaid accounts.

The Bureau did not propose to delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018. The Bureau expected to have its agreement submission process in place by October 1, 2018, and, as discussed in the Effective Date NPRM, the Bureau's pre-proposal outreach had not indicated that industry participants were concerned that they would not be able to meet the agreement submission effective date.

In the Effective Date NPRM, the Bureau did not propose to amend any other substantive requirements of the Prepaid Accounts Final Rule. The purpose of that notice was not to seek comment generally on policy decisions made in the Prepaid Accounts Final Rule that industry or other stakeholders might wish the Bureau to reconsider. Rather, the Bureau stated that it would continue its outreach to industry and other stakeholders to understand their experiences in implementing the Prepaid Accounts Final Rule.

III. Summary of the Rulemaking Process, Comments Received, and the Final Rule

A. Summary of the Rulemaking Process

On March 9, 2017, the Bureau released the Effective Date NPRM with a request for public comment. It was published in the **Federal Register** on March 15, 2017.[5] The Bureau solicited comment on all aspects of the Effective Date NPRM. In particular, the Bureau asked commenters to provide specific detail and any available data regarding current and planned practices, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts on industry, consumers, and other stakeholders of the Effective Date NPRM. The Bureau also solicited comment about the impact of the Effective Date NPRM on consumers who use prepaid accounts. The Bureau solicited comment regarding the proposed extension of the general effective date to April 1, 2018, as well as alternative dates for extension.

B. Comments Received

The comment period for the Effective Date NPRM closed on April 5, 2017. The Bureau received 28 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; several think tanks; an association of State financial regulators; a group of State attorneys general; and several commenters who did not identify their affiliations.[6]

Industry and trade association commenters all supported the Bureau's proposal to delay the effective date of most provisions of the Prepaid Accounts Final Rule; many expressly supported the Bureau's proposed six-month delay. A number of commenters cited the Bureau's concerns that some industry participants may need additional time to comply with the rule, in particular stating that providers might need to pull and replace non-compliant packaging notwithstanding the exception in the Prepaid Accounts Final Rule for prepaid account access devices and packaging materials with non-compliant disclosures that were produced in the normal course of business prior to the effective date of the rule.

A prepaid issuer, a digital wallet provider, and a trade association each expressed support for a six-month delay of the effective date, contingent on the Bureau also revisiting the Prepaid Accounts Final Rule to address certain substantive provisions of the rule that they argued required changes to disclosures and business models that could not be implemented by April 1, 2018. The provisions that they cited relate to the linking of credit cards with digital wallets that are capable of storing funds and to error resolution and limitations on liability for prepaid accounts where the financial institution has not completed its consumer identification and verification process with respect to the account. These commenters requested a 12-month delay to the Prepaid Accounts Final Rule's general effective date if the Bureau were unwilling to revisit those issues.

Some industry and trade association commenters argued that the Bureau should delay the effective date further by 12 months; two trade associations advocated for an 18-month delay. The commenters who requested a delay longer than six months cited a variety of reasons, including, for example, the time needed to develop and review new and updated disclosures and related materials; time required to retool J-hook card packaging to accommodate disclosures required by the rule; limitations in production capacity to print new prepaid card collateral; and the time needed to coordinate system updates with processors, vendors, and other service providers. A few commenters cited other reasons as well, such as the need to develop new systems and operational processes related to providing longer account transaction histories and calculating summary totals of fees. One trade association stated that providers need to develop an automated process to track cardholder agreements for purposes of submitting those agreements to the Bureau, which it stated would need to be in place as of the October 1, 2017 effective date in order to adequately track agreements. Another trade association commenter urged the Bureau to delay the effective date for longer than six months so that the Bureau could conduct a comprehensive study on the effects that the Prepaid Accounts Final Rule will have on consumers, specifically related to availability of prepaid accounts and their costs to consumers.

[5] 82 FR 13782 (Mar. 15, 2017).

[6] These comment letters are publicly available at *https://www.regulations.gov/*.

One credit union trade association commenter, requesting an 18-month extension, cited concerns that the proposed delayed effective date would coincide with the effective date of other regulations promulgated by the Bureau, in particular the provisions of the Bureau's mortgage servicing rule pertaining to successors-in-interest and the provision of periodic statements to consumers who have filed for bankruptcy. An association of State financial regulators also stated the compliance investments necessitated by other regulations such as the increased data collection/reporting requirements under the Home Mortgage Disclosure Act and additional identification requirements under the Bank Secrecy Act/Customer Due Diligence rule promulgated by another federal agency as a reason for its support of a six-month delay.

A coalition of 27 consumer advocacy groups urged the Bureau to implement the Prepaid Accounts Final Rule as soon as possible, citing the benefits of the rule for consumers who use prepaid accounts, and expressing concern that further delays in the effective date would cause harm to consumers. They stated that, if an extension is warranted, the Bureau should give the minimum extension necessary—which in their view would be no longer than the proposed six months—and not provide any further extensions. Another consumer advocacy group supported the Bureau's proposal to delay the rule's effective date by six months while reiterating that expeditious implementation of the Prepaid Accounts Final Rule remains essential to providing comprehensive consumer protections to users of prepaid accounts.

Two think tanks urged the Bureau to consider the possible negative effects on consumers of any delay in the effective date of the rule. Another think tank supported the six-month delay, stating that otherwise there is a risk that providers might pull cards without replacing them, thus hampering consumers' access to those products.

The commenters who did not identify their affiliation varied in their comments, either expressing support for the proposed delay in effective date or arguing that the effective date should not be extended to ensure that consumers receive the protections of the Prepaid Accounts Final Rule. A group of State attorneys general expressed support for the rule generally but did not comment specifically on the effective date of the rule.

Safe harbor for early compliance. Two trade association commenters urged the Bureau to establish a safe harbor for prepaid providers that comply with the Prepaid Accounts Final Rule (or portions of it) prior to the rule's effective date. These commenters expressed concerns that prepaid providers may be exposed to potential liability if they comply with the rule prior to the effective date, as they suggested the possibility that there may be some conflict between the Prepaid Accounts Final Rule and current requirements for payroll card accounts and government benefit accounts, though they did not provide any specific examples. One commenter stated that early compliance would benefit consumers and should not be discouraged.

Section 1005.19(f)(2). The Bureau did not propose to delay the October 1, 2018 effective date of the requirement that prepaid account issuers submit prepaid account agreements to the Bureau, which is set forth in Regulation E § 1005.19(f)(2). The Bureau did, however, solicit comment on whether it should also delay that effective date. Commenters generally did not express concerns that the October 1, 2018 agreement submission effective date would create compliance issues. One of the trade association commenters advocating for an 18-month delay of the Prepaid Accounts Final Rule's general effective date suggested that the Bureau contemplate a proportional delay for § 1005.19(f)(2), stating that it would help relieve pressure on credit unions that may need to submit credit card agreements pursuant to Regulation Z § 1026.58 for covered separate credit features accessible by hybrid prepaid-credit cards. Another trade association expressed concerns pertaining to general compliance with the requirement to submit prepaid account agreements to the Bureau, but did not suggest a delay to the effective date in § 1005.19(f)(2).

A program manager expressed concerns about the challenges it is facing in complying with the agreement posting requirement in § 1005.19, which appears to be due, at least in part, to the number of prepaid account agreements it manages. This commenter suggested making the effective dates set forth in § 1005.19(f)(1) and (2) consistent, but did not request that the Bureau delay the effective date for the agreement submission requirement. A commenter who did not identify his or her affiliation supported the Bureau's proposal not to delay the effective date of the agreement submission requirement, but suggested that the Bureau revisit that decision six months in advance of the effective date.

Substantive changes to the Prepaid Accounts Final Rule. As noted above, the Bureau did not propose in the Effective Date NPRM to amend any other substantive provisions of the Prepaid Accounts Final Rule, nor was the purpose of the Effective Date NPRM to seek comment generally on policy decisions made in the Prepaid Accounts Final Rule that industry or other stakeholders might wish the Bureau to reconsider. Nonetheless, many commenters used their comment letters to advocate for retaining, modifying, or eliminating various provisions of the rule. Commenters also suggested that the Bureau could use the additional time provided by delaying the effective date of the Prepaid Accounts Final Rule to revisit these issues.

C. The Final Rule

For the reasons set forth herein, the Bureau is finalizing as proposed a six-month delay of the October 1, 2017 effective date of the Prepaid Accounts Final Rule. In order to effect this change, the Bureau is also amending Regulation E §§ 1005.18(b)(2)(ix) and (h), and 1005.19(f)(1), and related commentary, to reflect the delayed effective date.

The Bureau continues to believe that the Prepaid Accounts Final Rule will provide significant benefits to consumers and that, therefore, expeditious implementation remains essential to provide comprehensive consumer protections to users of prepaid accounts. Having reviewed the comments received, the Bureau continues to believe that a six-month delay of the effective date, when added to the nearly 12 months previously provided for in the Prepaid Accounts Final Rule, allows sufficient time for industry to implement the rule and provides for an appropriate balance between the interests of the consumers who will receive the benefits of the rule and the needs of industry for an adequate implementation period. The Bureau appreciates the issues raised by commenters advocating for a longer delay to the Prepaid Accounts Final Rule's effective date, but does not believe that a longer delay is in fact warranted at this time.

Based on industry outreach efforts and the comments received in response to the Effective Date NPRM, the Bureau has determined that it should revisit at least two substantive issues through a separate notice and comment rulemaking process. Those issues relate to the linking of credit cards into digital wallets that are capable of storing funds and to error resolution and limitations on liability for prepaid accounts that

cannot be registered, have not yet been registered, or for which consumers have attempted but have not successfully completed the registration process. The Bureau is continuing to evaluate other concerns raised by industry and other stakeholders, including those discussed in comments on the Effective Date NPRM, and may address a limited number of other topics as well in its forthcoming proposal. The Bureau also will seek comment on whether any further extension of the effective date is needed in light of the specific changes proposed.

Safe harbor for early compliance. The Bureau agrees with commenters that early compliance with the Prepaid Accounts Final Rule could benefit both industry and consumers. The Bureau is not aware of any conflicts between the requirements of the Prepaid Accounts Final Rule and the current regulations applying to accounts that will be covered by the rule, nor were any specified by commenters. To the extent that financial institutions are engaged in consumer-friendly practices that are not specifically required under current regulations, the Bureau encourages those institutions to continue those practices, whether or not those practices are required by the Prepaid Accounts Final Rule. For example, financial institutions that already provide access to more than 60 days of account history to all current accountholders, or that provide full Regulation E error resolution and limited liability protections to their accountholders, are encouraged to continue to do so in advance of the effective date. However, financial institutions should ensure that their disclosures do not suggest to consumers that they are engaged in a consumer-friendly practice that they have not yet implemented.

The Bureau notes that the Prepaid Accounts Final Rule already contemplates that some aspects of the rule will be phased in, particularly with respect to the exception that does not require financial institutions to pull and replace non-compliant packaging that was manufactured, printed, or otherwise produced in the normal course of business prior to the effective date of the rule. Thus, the Bureau is not adding an explicit safe harbor for early compliance, although the Bureau does not believe that the absence of one will prevent financial institutions from implementing practices that are required by the Prepaid Accounts Final Rule prior to the effective date. The Bureau will seek comment in its forthcoming proposal on whether there are in fact any conflicts between requirements of the Prepaid Accounts Final Rule and the current regulations applying to accounts that will be covered by the rule that would merit a more formal safe harbor.

Section 1005.19(f)(2). The Bureau is maintaining the October 1, 2018 effective date set forth in Regulation E § 1005.19(f)(2) for the agreement submission requirement, as proposed. In the Effective Date NPRM, the Bureau indicated that its industry outreach had not indicated that the effective date of this provision was causing significant compliance concerns in and of itself, and the comments to the Effective Date NPRM support that conclusion. The Bureau does not believe that the few concerns raised by commenters warrant a delay to the October 1, 2018 effective date.

IV. Legal Authority

The Bureau is exercising its rulemaking authority pursuant to EFTA section 904(a) and (c), Dodd-Frank Act sections 1022(b)(1) and 1032(a), and TILA section 105(a) to delay the effective date of the Prepaid Accounts Final Rule.

The legal authority for the Prepaid Accounts Final Rule is described in detail in the Prepaid Accounts Final Rule's **SUPPLEMENTARY INFORMATION**.[7] As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)[8] authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provide 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 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. As amended by the Dodd-Frank Act, TILA section 105(a)[9] 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.[10] Section 1032(a) of the Dodd-Frank Act[11] 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 Dodd-Frank Act section 1022(b)(1),[12] 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)[13] 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[14] prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

V. Provisions Affected by the Final Rule

1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(b) Pre-Acquisition Disclosure Requirements

18(b)(2) Short Form Disclosure Content

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

Regulation E § 1005.18(b)(2) describes the short form disclosure content requirements for prepaid accounts. Section 1005.18(b)(2)(ix) contains requirements specifically regarding additional fee types. Section

[7] *See, e.g.,* 81 FR 83934, 83958–60 (Nov. 22, 2016).

[8] 15 U.S.C. 1593b(a).

[9] 15 U.S.C. 1604(a).

[10] 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." Although the Bureau desires to have the rule take effect as soon as feasible given its value for consumers, the Bureau is using its discretion under TILA section 105(d) to lengthen the period in this instance. The Bureau believes that the changes the Prepaid Accounts Final Rule will require to disclosures pursuant to Regulation Z warrant a delayed effective date that conforms to the rest of the rule.

[11] 12 U.S.C. 5532(a).

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

[13] 12 U.S.C. 5512(b).

[14] 12 U.S.C. 5512(b)(2).

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 the dates in the regulatory text and headings in § 1005.18(b)(2)(ix)(D)(*1*) through (*3*) and in comments 18(b)(2)(ix)(D)(*1*)–1, 18(b)(2)(ix)(D)(*2*)–1, 18(b)(2)(ix)(E)(*2*)–1.i through iii, and 18(b)(2)(ix)(E)(*3*)–1 to reflect the new April 1, 2018 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 inconvenience financial institutions that have already prepared their additional fee types calculations in reliance on that date.

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

Regulation E § 1005.18(h) sets forth several provisions to make clearer the Prepaid Accounts Final Rule's general October 1, 2017 effective date. The Bureau is revising the dates in the regulatory text and headings throughout § 1005.18(h) and in comments 18(h)–1, 2, 6.i and 6.ii to reflect the new April 1, 2018 effective date.

1005.19 Internet Posting of Prepaid Account Agreements

19(f) Effective Date

19(f)(1) Effective Date

Regulation E § 1005.19(f)(1) sets forth the general effective date for the prepaid account agreement posting requirements in § 1005.19, other than the delayed requirement to submit prepaid account agreements to the Bureau pursuant to § 1005.19(b), as addressed in § 1005.19(f)(2). The Bureau is revising the date in the regulatory text of § 1005.19(f)(1) to reflect the new April 1, 2018 effective date. As discussed above, the Bureau is not delaying the October 1, 2018 date for submission of agreements to the Bureau.

VI. Effective Date

The Bureau is delaying the October 1, 2017 effective date of the Prepaid Accounts Final Rule by six months, to April 1, 2018. Additionally, the Bureau is making conforming amendments to Regulation E §§ 1005.18(b)(2)(ix) and (h) and 1005.19(f)(1), and related commentary, as described above, which will also become effective April 1, 2018. This final rule with respect to the effective date of the Prepaid Accounts Final Rule will become effective 30 days after publication in the **Federal Register**, as required under section 553(d) of the Administrative Procedure Act.[15]

VII. Dodd-Frank Act Section 1022(b) Analysis

In developing the final rule, the Bureau has considered the potential benefits, costs, and impacts required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with 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 administered by these agencies.

The Bureau previously considered the benefits, costs, and impacts of the Prepaid Accounts Final Rule's major provisions.[16] The Bureau also previously considered the benefits, costs, and impacts of delaying the effective date in the Effective Date NPRM and solicited comment regarding that discussion.[17] Where comments discuss the benefits or costs of delaying the effective date in the context of commenting on the merits of the provision, the Bureau has addressed those comments above. In this respect, the Bureau's section 1022(b)(2) discussion is not limited to the discussion in this part of the final rule.

In considering the relevant potential benefits, costs, and impacts, the Bureau has applied its knowledge and expertise concerning consumer financial markets and information received in response to its request for comment. Compared to the baseline established by the Prepaid Accounts Final Rule,[18] the delay of the effective date of the Prepaid Accounts Final Rule will generally benefit covered persons by facilitating initial compliance with the Prepaid Accounts Final Rule's requirements and delaying the start of ongoing compliance costs. Because covered persons retain the option of complying with the Prepaid Accounts Final Rule's original effective date, any delay in the effective date will not increase costs to providers.

Consumers may experience both benefits and costs from a delay in the effective date. If a delay in the effective date helps to preserve consumer access to covered products by minimizing industry disruption, both consumers and covered persons will benefit. However, the Bureau believes that delaying the effective date may also delay consumers' realization of benefits arising from the protections provided by the Prepaid Accounts Final Rule, thereby potentially imposing a cost on consumers. One think tank commenter stated that, although prepaid providers often offer some protections voluntarily, providers may alter or remove protections so long as the rule is not in effect. Another think tank commenter stated that the primary cost of the delay would be that consumers would not have the information needed to make appropriate choices among card products. However, the commenter also stated that providers have made improvements with respect to disclosure recently and that it believed that the risk of consumers not having adequate information for decision-making during the intervening period was low.

The Bureau does not expect the 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, or on consumers in rural areas. The Bureau does not believe that the delay in the effective date will reduce consumer access to consumer financial products and services, and it may increase consumer access by decreasing the possibility of industry disruption arising from the Prepaid Accounts Final Rule's implementation.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act[19] as amended by the Small Business Regulatory Enforcement Fairness Act of

[15] 5 U.S.C. 553(d).

[16] 81 FR 83934, 84269 (Nov. 22, 2016).

[17] 82 FR 13782, 13785 (Mar. 15, 2017).

[18] 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.

[19] Public Law 96–354, 94 Stat. 1164 (1980).

1996 [20] (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.[21] 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.[22]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[23] 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.[24]

The undersigned certified that the Effective Date NPRM would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required. The Bureau arrived at this conclusion because the Effective Date NPRM would delay the effective date of the Prepaid Accounts Final Rule, which itself would not have a significant economic impact on a substantial number of small entities.[25] Upon considering relevant comments, the Bureau's conclusion that the rule will not have a significant economic impact on a substantial number of small entities is unchanged. Therefore, a FRFA is not required.[26]

As discussed above, this final rule delays the effective date of the Prepaid Accounts Final Rule to April 1, 2018. The six-month delay in the effective date will benefit small entities by providing additional flexibility with respect to the timing of the Prepaid Accounts Final Rule's implementation. In addition to generally providing increased flexibility, the delay in the effective date will permit small entities to delay the commencement of any ongoing costs that result from complying with the Prepaid Accounts Final Rule. Because small entities retain the option of complying with the Prepaid Accounts Final Rule's original effective date, the final rule's delay of the effective date will not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Final Rule.

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),[27] 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 Final Rule have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 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 has determined that this final rule will not have any new or revised information collection requirements (recordkeeping, reporting, or disclosure requirements) on covered entities or members of the public that would constitute collections of information requiring OMB approval under the PRA.

List of Subjects in 12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings Associations.

Authority and Issuance

For the reasons set forth above, Regulation E, 12 CFR part 1005, as amended November 22, 2016, at 81 FR 83934, is further amended 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, 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

§ 1005.18 Requirements for financial institutions offering prepaid accounts.

■ 2. Section 1005.18 is amended by revising all references to ''October 1, 2017'' to read ''April 1, 2018'' in paragraphs (b)(2)(ix)(D)(*1*) through (*3*) and (h).

§ 1005.19 Internet posting of prepaid account agreements.

■ 3. Section 1005.19 is amended by revising the reference to ''October 1, 2017'' to read ''April 1, 2018'' in paragraph (f)(1).

■ 4. In Supplement I to part 1005:

■ a. Under *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts:*

■ i. In subsection *18(b)(2)(ix)(D)(1) Existing Prepaid Account Programs as of October 1, 2017,* the subsection heading and paragraph 1 are amended by revising all references to ''October 1, 2017'' to read ''April 1, 2018''.

■ ii. In subsection *18(b)(2)(ix)(D)(2) Existing Prepaid Account Programs as of October 1, 2017 with Unavailable Data,* the subsection heading and paragraph 1 are amended by revising all references to ''October 1, 2017'' to read ''April 1, 2018''.

■ iii. In subsection *18(b)(2)(ix)(E)(2) Periodic Reassessment,* paragraphs 1.i through iii are amended by:

■ A. Revising all references to ''October 1, 2017'' to read ''April 1, 2018''.

■ B. Revising all references to ''October 1, 2019'' to read ''April 1, 2020''.

■ C. Revising the reference to ''January 1, 2020'' to read ''July 1, 2020''.

■ iv. In subsection *18(b)(2)(ix)(E)(3) Fee Schedule Change,* paragraph 1 is amended by revising the reference to ''October 1, 2017'' to read ''April 1, 2018''.

■ v. In subsection *18(h) Effective Date and Special Transition Rules for Disclosure Provisions,* paragraphs 1 and 2 are amended by revising all references to ''October 1, 2017'' to read ''April 1, 2018''.

■ vi. In subsection *18(h) Effective Date and Special Transition Rules for Disclosure Provisions,* paragraph 6 introductory text and paragraph 6.i are amended by:

■ A. Revising all references to ''October 1, 2017'' to read ''April 1, 2018''.

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

[21] 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).

[22] 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.*

[23] 5 U.S.C. 601 through 612.

[24] 5 U.S.C. 609.

[25] 81 FR 83934, 84308 (Nov. 22, 2016).

[26] 5 U.S.C. 605(b).

[27] 44 U.S.C. 3501 *et seq.*

■ B. Revising the reference to "November 1, 2017" to read "May 1, 2018".

■ C. Revising the reference to "October 1, 2018" to read "April 1, 2019".

■ D. Revising the reference to "October 1, 2019" to read "April 1, 2020".

■ vii. In subsection *18(h) Effective Date and Special Transition Rules for Disclosure Provisions,* paragraph 6.ii is revised to read as follows:

Supplement I to Part 1005—Official Interpretations

* * * * *

Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts

* * * * *

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

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■ 6. *Account information not available on April 1, 2018.* * * *

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, 2018. If, on April 1, 2018, 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, 2018 for the month of April, and the year-to-date fee total beginning on April 1, 2018, provided the financial institution discloses that it is displaying the year-to-date total beginning on April 1, 2018 rather than for the entire calendar year 2018. On January 1, 2019, financial institutions must begin displaying year-to-date fee totals for calendar year 2019.

* * * * *

Dated: April 19, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–08341 Filed 4–24–17; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0054; Airspace Docket No. 17–ANM–2]

Amendment of Class D and Class E Airspace; Aspen, CO; and Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends the legal description of the Class E airspace designated as an extension, at Aspen Pitkin County/Sardy Field, Aspen, CO, and Pueblo Memorial Airport, Pueblo, CO, eliminating the Notice to Airmen (NOTAM) part-time status. This action also updates the geographic coordinates of these airports in the associated Class D and E airspace areas to match the FAA's current aeronautical database. This action does not affect the charted boundaries or operating requirements of the airspace.

DATES: Effective 0901 UTC, June 22, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it removes NOTAM information in Class D extension airspace and amends the airport's geographic coordinates in associated Class D and Class E airspace for the above noted airports in Aspen, CO, and Pueblo, CO.

History

The FAA Aeronautical Information Services branch found the Class E airspace designated as an extension for Aspen Pitkin County/Sardy Field, Aspen, CO, and Pueblo Memorial Airport, Pueblo, CO, as published in FAA Order 7400.11A, Airspace Designations and Reporting Points, does not require part-time status. Also, after a review, the FAA found the geographic coordinates referenced in the airspace legal descriptions under Class D and Class E airspace areas for Aspen Pitkin County/Sardy Field, Aspen, CO, and Pueblo Memorial Airport, Pueblo, CO do not match the FAA's current aeronautical database. This rulemaking makes these updates.

Class D and Class E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas,

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

[Docket No. CFPB–2017–0015]

RIN 3170–AA72

Amendments to 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: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing to amend 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 proposal 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. This proposal requests comment on potential modifications to several aspects of that rule, including error resolution and limitations on liability for prepaid accounts where the financial institution has not 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; and two issues relating to the effective date of the rule.

DATES: Comments must be received on or before August 14, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2017–0015 or RIN 3170–AA72, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2017–0015 or RIN 3170–AA72 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Thomas L. Devlin and Yaritza Velez, Counsels; and Kristine M. Andreassen and Krista Ayoub, Senior Counsels, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On October 5, 2016, the Bureau released a final rule to create 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 in recent months 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.

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 is proposing herein to amend several provisions of the Prepaid Accounts Rule. These proposed revisions 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),[5] and are intended to facilitate compliance and relieve burden on those issues. In particular, the Bureau is proposing to:

- Revise the error resolution and limited liability provisions of the Prepaid Accounts Rule in Regulation E to provide that financial institutions would not be required to resolve errors or limit consumers' liability on unverified prepaid accounts. However, for accounts where the consumer's identity is later verified, financial institutions would be required to limit liability and resolve errors with regard to disputed transactions that occurred prior to verification, consistent with the timing requirements of the Prepaid Accounts Rule.
- Create 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.
- Make clarifications or minor adjustments to provisions of the Prepaid Accounts Rule 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, as described in detail below.

Finally, the Bureau is soliciting comment on whether a further delay of the Prepaid Accounts Rule's effective date would be necessary and appropriate in light of the amendments proposed herein, and whether a specific provision addressing early compliance

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

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

[3] 81 FR 83934 (Nov. 22, 2016).

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

[5] 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).

would be necessary and appropriate for compliance with the Prepaid Accounts Rule prior to its effective date.

II. Background

A. The Prepaid Accounts Rulemaking and Implementation Initiatives

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.[6] Information regarding the Bureau's Prepaid Accounts Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation Web site at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.*

B. Effective Date Delay

As published, the 2016 Final Rule had a general effective date of October 1, 2017. As discussed in the 2017 Effective Date Proposal and 2017 Effective Date Final Rule, as part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. Through those discussions, the Bureau learned that some industry participants were concerned, for reasons relating to printing of new packaging materials and other considerations, that they would have difficulty in complying with certain aspects of the 2016 Final Rule by October 1, 2017 while also ensuring continued availability of their prepaid products and with minimal disruption to consumers.

In addition, in the course of working to 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.[7] In that proposal, the Bureau proposed to delay the general 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 rule. These comments are discussed in more detail in part III below, as well as 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.[8] 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.

III. Outreach and Comments on the 2017 Effective Date Proposal

As described above, the Bureau has engaged in extensive efforts to support industry implementation since the 2016 Final Rule was issued. As a part of those efforts, the Bureau has received input from a number of stakeholders regarding various provisions in the 2016 Final Rule. This input has included both concerns about financial institutions' ability to comply with the rule and about the broader effects of various substantive provisions of the 2016 Final Rule. As described in part V below and in the 2017 Effective Date Proposal and 2017 Effective Date Final Rule, some of the issues on which the Bureau seeks comment in this proposal were initially brought to the Bureau's attention through that outreach.

In addition, while the Bureau did not seek comment in the 2017 Effective Date Proposal on amending the 2016 Final Rule other than with respect to its effective date, many commenters nonetheless advocated for retaining, modifying, or eliminating various provisions of the rule. Some of the comment letters focused on very specific challenges that have taken on a new significance as industry has been working through the implementation process. Other comments urged the Bureau to revisit specific provisions that underpin substantial elements of the 2016 Final Rule. For example, some commenters asked the Bureau to revisit the definition of prepaid account, such as to clarify the treatment of so-called checkless checking accounts, or exclude certain products (such as digital wallets that can store funds or person-to-person (P2P) payment products). Other commenters suggested modifications to the Bureau's treatment of overdraft and other credit products associated with prepaid accounts, arguing variously that the Bureau should prohibit overdraft and other credit features on prepaid accounts entirely, or that the Bureau should apply the overdraft regulations applied to deposit accounts under Regulation E § 1005.17 instead. Commenters also suggested that the Bureau modify certain disclosure requirements in the rule, by, for example, eliminating the requirement that financial institutions provide both a short form and a long form disclosure prior to account acquisition, revising or reducing the number and types of fees in the short form disclosure, or eliminating the requirement that financial institutions submit prepaid account agreements to the Bureau. A few commenters urged other undertakings, such as requesting that the Bureau reassess the impact of the rule prior to its becoming effective, exclude certain entities from coverage of the rule, or rescind the rule entirely.

In developing this proposal, the Bureau has taken into account both the input it has received from stakeholders through its efforts to support industry implementation of the 2016 Final Rule as well as comments received in response to the 2017 Effective Date Proposal. The issues that the Bureau has determined are appropriate to revisit are discussed in detail below. The Bureau continues to believe that the Prepaid Accounts Rule will provide significant benefits to consumers and is not, in this proposal, seeking comment generally on decisions made in the Prepaid Accounts Rule that industry or other stakeholders might wish the Bureau to reconsider. The purpose of this proposal is to seek comment on the proposed modifications to specific provisions of the Prepaid

[6] These on-going 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.

[7] 82 FR 13782 (Mar. 15, 2017).

[8] 82 FR 18975 (Apr. 25, 2017). The 2017 Effective Date Final Rule did not delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018.

Accounts Rule and not to revisit the rule wholesale.

Along with this proposal, the Bureau is releasing an updated version of its small entity compliance guide for the Prepaid Accounts Rule. That update reflects the 2017 Effective Date Final Rule's change to the Prepaid Accounts Rule's effective date, and also includes clarifications on several other issues that industry has asked questions about or suggested might be unclear, for which the Bureau does not believe changes to regulatory text or commentary are necessary in order to provide additional clarity. The revised guide, which includes a summary of the updates, can be found on the Bureau's regulatory implementation Web site for the Prepaid Accounts Rule at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.*

IV. Legal Authority

The Bureau is proposing to exercise 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),[9] 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 analyses in part V below.

The legal authority for the Prepaid Accounts Rule is described in detail in the 2016 Final Rule's **SUPPLEMENTARY INFORMATION**.[10] As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)[11] 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.[12] As amended by the Dodd-Frank Act, TILA section 105(a)[13] 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.[14]

Section 1032(a) of the Dodd-Frank Act[15] 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,[16] 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 proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)[17] 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[18] prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

V. Section-by-Section Analysis

Overview of the Proposed Amendments to Regulations E and Z

As discussed above, the Prepaid Accounts Rule amends 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, the Bureau is proposing to amend several provisions of the Prepaid Accounts Rule. This overview provides a summary of the proposed amendments; each, along with its rationale, is discussed in detail in the section-by-section analyses that follow.

Error resolution and limited liability. The Bureau is proposing to amend Regulation E §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii), 1005.18(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). However, for accounts where the consumer's identity is later verified, financial institutions would be required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification, consistent with the general timing limitations in the Prepaid Accounts Rule. The Bureau is also proposing related changes to model language and to require that, for programs where there is no verification process, financial institutions explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there is none, and comply with the process (if any) that they disclose.

Credit card accounts linked to prepaid accounts. The Bureau is proposing to create 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.

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

[10] *See, e.g.,* 81 FR 83934, 83958–60 (Nov. 22, 2016).

[11] 15 U.S.C. 1693b(a) and (c).

[12] 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.

[13] 15 U.S.C. 1604(a).

[14] 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 or her and avoid the uninformed use of credit. 15 U.S.C. 1601(a). Moreover, this stated purpose is tied to Congress' finding that economic stabilization would be enhanced and 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.*

[15] 12 U.S.C. 5532(a).

[16] 12 U.S.C. 5512(b)(1).

[17] 12 U.S.C. 5512(b).

[18] 12 U.S.C. 5512(b)(2).

Specifically, the Bureau is proposing to amend 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 would apply only to traditional credit card accounts that are linked to a prepaid account. The conditions include that the parties could not 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, and could not condition the acquisition or retention of either account on whether the consumer authorizes such a linkage. In addition, the exception would only apply where the parties do not vary certain terms and conditions based on whether the two accounts are linked. Under this proposed exception, the linked credit card account would 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 would not apply.

Exclusion from coverage for certain loyalty, award, or promotional gift cards. The proposed revisions to Regulation E § 1005.2(b)(3)(ii)(D)(*3*) and proposed new comment 2(b)(3)(ii)–4 would 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 proposed revisions to comment 18(a)–1 and to § 1005.18(b)(1)(i) and comment 18(b)(1)(i)–1 would clarify how the provisions regarding unsolicited issuance of access devices and the timing of pre-acquisition disclosures would apply to prepaid products where a financial institution or third party making a disbursement via a prepaid account does not offer any alternative means to receive the funds.

Pre-acquisition disclosures. Several provisions in the proposal would provide additional clarity and flexibility with respect to the Prepaid Accounts Rule's pre-acquisition disclosure requirements. The proposed revisions to § 1005.18(b)(1)(ii)(D) and comment 18(b)(1)(ii)–4 would 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),[19] 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. Proposed revisions to § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)–1 and proposed new comment 18(b)(6)(i)–1 would 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 proposed revisions to § 1005.18(b)(2)(ix)(C) and comment 18(b)(2)(ix)(C)–1.ii would provide prepaid account issuers additional flexibility in disclosing additional fee types on the short form. Specifically, it would 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 proposing to amend this provision to state 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.

Submission of prepaid account agreements. The Bureau is proposing several changes to the rules governing submission of prepaid account agreements to the Bureau in § 1005.19. The proposed revisions to § 1005.19(b)(2) and comment 19(a)(2)–1.vii would allow prepaid account issuers to delay submitting a change in the names of other relevant parties to a prepaid account agreement (such as employers for a payroll card agreement) until such time as the issuer is submitting other agreement changes to the Bureau. The proposed revisions to § 1005.19(b)(6)(ii) and (iii) and comment 19(b)(6)–3 would 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 proposed revisions in § 1005.19(f)(2) and comment 19(f)–1 would change the term ''effective date'' to ''compliance date'' when referring to October 1, 2018, in order to avoid potential confusion with the Bureau's recent delay of the Prepaid Accounts Rule's general effective date, but would not alter the October 1, 2018 date by which prepaid account issuers must comply with the requirement to submit agreements to the Bureau.

Effective date. In response to the 2017 Effective Date Proposal, some commenters requested that the Bureau delay the effective date of the Prepaid Accounts Rule by longer than the six months proposed (and ultimately finalized) by the Bureau. While the Bureau is not proposing a further extension of the effective date of the Prepaid Accounts Rule, the Bureau is soliciting comment (see section VI below) on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments to the Prepaid Accounts Rule proposed herein.

Safe harbor for early compliance. Some commenters to the 2017 Effective Date Proposal stated that while early compliance with the Prepaid Accounts Rule would benefit consumers, they were also concerned that financial institutions may be exposed to potential liability if they comply with the rule prior to the effective date. As stated in the 2017 Effective Date Final Rule, the Bureau is not aware of any conflicts between the Prepaid Accounts Rule and current Federal regulations governing prepaid accounts, and thus is not proposing to add a safe harbor. However, the Bureau is soliciting comment (see section VI below) regarding whether there are in fact any such conflicts, and, to the extent such conflicts exist, whether a specific provision addressing early compliance with the Prepaid Accounts Rule would be necessary and appropriate.

[19] 15 U.S.C. 7001 *et seq.*

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 for ''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.[20] The exclusion for loyalty, award, or promotional gift cards refers to such products as defined in § 1005.20(a)(4) and (b).[21] 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.[22]

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. 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 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.[23] The Bureau also expressed concern that, were it to impose provisions for access to account information and error resolution and create limits on consumers' liability for unauthorized EFTs, the cost structure of gift cards could change dramatically because, unlike other types of prepaid products, many gift cards do not typically offer these protections.[24]

Through its outreach efforts to industry regarding implementation, the Bureau has become aware 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. 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, industry stakeholders requested clarification about the timing to add such disclosures in order to qualify for the exclusion under current § 1005.2(b)(3)(ii)(D), particularly for cards that have already been distributed to consumers for whom the financial institution does not have contact information.

The Bureau believes that, given the limited nature and use of such products, it would be appropriate to exclude loyalty, award, or promotional gift cards regardless of whether they provide disclosures pursuant to § 1005.20(a)(4)(iii). 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, the Bureau believes it is necessary and proper to propose 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. Therefore, the Bureau is proposing to clarify the scope of this exclusion by revising § 1005.2(b)(3)(ii)(D) to exclude loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4), or that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from § 1005.20 pursuant to § 1005.20(b)(4). The Bureau is also proposing to add comment 2(b)(3)(ii)–4, which would explain that proposed § 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). It further explains 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) to be excluded pursuant to proposed § 1005.2(b)(3)(ii)(D)(*3*).

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on whether, alternatively, 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 an exclusion for cards manufactured, printed, or otherwise produced in the normal course of business prior to the Prepaid Accounts Rule's effective date, or provided other accommodations to come into

[20] § 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 (Pub. L. 111–24, 123 Stat. 1734 (2009)) applicable to gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards (the Gift Card Rule).

For products marketed and sold as gift cards (and that meet certain other qualifications), the Gift Card Rule requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. The Gift Card Rule is distinct from the rest of subpart A of Regulation E, however, and does not provide consumers who use gift cards with the other substantive protections of Regulation E, such as error resolution and limited liability protections, or periodic statements.

[21] § 1005.2(b)(3)(ii)(D)(*3*).

[22] § 1005.20(b)(4).

[23] 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 may be inadvertently excluded due to occasional or incidental marketing activities, and that consumers would unwittingly think they carry the same protections are other prepaid accounts under the Prepaid Accounts Rule. 81 FR 83934, 83977 (Nov. 22, 2016).

[24] *Id.* at 83976–77.

compliance with § 1005.20(a)(4)(iii). Finally, the Bureau seeks comment on whether other exclusions under § 1005.20(b) should be made part of the exclusion for loyalty, award, or promotional gift cards in § 1005.2(b)(3)(ii)(D)(*3*).

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 proposing to make certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. Relatedly, the Bureau is proposing to delete § 1005.11(c)(2)(i)(C), which was added to § 1005.11 in the 2016 Final Rule to conform to that rule's requirements concerning error resolution.

Specifically, § 1005.11(c)(2)(i)(C) currently provides 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 current § 1005.18(e)(3)(ii). As discussed in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is proposing that a financial institution not be required 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 the Bureau's proposal would provide that such accounts are not subject to § 1005.11, § 1005.11(c)(2)(i)(C) would no longer be necessary. The Bureau's proposal would revert the text of § 1005.11(c)(2)(i) to its state prior to its amendment by the 2016 Final Rule. The Bureau seeks comment on this portion of the proposal.

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.[25] 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;[26] a corresponding provision for government benefit accounts appeared in § 1005.15(b).[27] In the 2016 Final Rule, the Bureau did not modify either of those provisions 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.[28]

As discussed in detail below, the Bureau has received questions about application of § 1005.5 to prepaid accounts since release of the 2016 Final Rule and believes that additional clarification may be warranted. In particular, industry stakeholders have 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 through 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.

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 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.

In response to the 2014 Proposal, some commenters noted that certain prepaid products distributed to consumers do not offer an alternate means of accessing the funds, but did not focus in detail on how the technical requirements of § 1005.5 would apply in such cases. Rather, the commenters focused in particular on whether a separate provision of Regulation E that prohibits compulsory use of payroll card accounts and government benefit accounts should be expanded to cover other types of prepaid products.[29] To the extent that commenters did focus on the unsolicited issuance provisions in § 1005.5, they requested clarifications on other issues.[30]

The Bureau has received through its outreach efforts to industry regarding implementation questions about how the unsolicited issuance rules set forth in § 1005.5(b) specifically 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,

[25] 15 U.S.C. 1693i.

[26] Comment 18(a)–1 stated that a consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. This portion of the comment was not changed by the 2016 Final Rule.

[27] 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.

[28] 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.

[29] In the 2016 Final Rule, the Bureau declined to expand application of the compulsory use prohibition in § 1005.10(e)(2) to other types of prepaid accounts, concluding that it would not be appropriate to take such a step at that time without additional public participation and information gathering about the specific product types at issue. 81 FR 83934, 83985 (Nov. 22, 2016).

[30] Some commenters on the 2014 Proposal requested, with respect to § 1005.18(a), that the Bureau clarify that distribution of cards for certain types of prepaid accounts (including payroll cards, student ID cards that also function as prepaid accounts, and disaster relief cards) would not constitute unsolicited issuance. Some other commenters requested that the Bureau clarify that distribution of an unactivated access device, where the consumer has a choice whether or not to activate it for use as a prepaid account (such as a student ID card that also functions as a prepaid account), would not be considered issuance of an unsolicited access device unless and until it is activated. As discussed in detail in the 2016 Final Rule, the Bureau declined to add an exception to the unsolicited issuance provisions in § 1005.5(b) or adopt related guidance in commentary to § 1005.18(a) for specific types of products as requested by commenters, believing that such exceptions and additional guidance were unwarranted at the time. 81 FR 83934, 84007 (Nov. 22, 2016).

such as prison release cards, jury duty cards, and certain types of refund cards. Specifically, the concern stems 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 have 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 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 at the time of the 2016 Final Rule.[31] Industry stakeholders have 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 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.

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.

Therefore, the Bureau is proposing 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 is proposing 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. For prepaid accounts where an alternative means for a consumer to receive those funds is not offered, the Bureau believes that 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. The Bureau believes that this proposed clarification should resolve any potential industry confusion and also avoid consumer confusion that might be caused by receiving an incomplete or inapplicable disclosure pursuant to § 1005.5(b)(2).

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on whether financial institutions face similar challenges regarding the validation prongs in § 1005.5(b)(1) and (4) for prepaid accounts where there is no consumer choice, and whether the Bureau should make any related clarifications with respect to those requirements.

As indicated in the 2016 Final Rule, the Bureau is continuing to monitor financial institutions' and other persons' practices relating to consumers' lack of choice (including with respect to prepaid accounts that are not subject to the compulsory use prohibition). 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.[32]

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),[33] and section 1032 of the Dodd-Frank Act,[34] 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 proposing to narrow the scope of several discrete provisions 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 could inform the way in which consumers decide to use the product once acquired. Relatedly, the Bureau believed that consumers often use their prepaid accounts for an extended period, and whatever disclosure information a consumer used when selecting the prepaid account could have a significant and potentially long-term impact.[35]

Through its outreach efforts to industry regarding implementation, the Bureau has received some questions regarding 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 have asked whether the financial institution would have to first mail the pre-acquisition disclosures to the consumer and then later send the card. The concern also exists for in-

[31] *Id.* at 83985.

[32] *Id.*

[33] 15 U.S.C. 1693b(a), (b), and (c), 1693c(a), and 1693k(2).

[34] 12 U.S.C. 5532.

[35] 81 FR 83934, 84017, 84022 (Nov. 22, 2016).

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, 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 does not believe that sending or otherwise providing the disclosures separately for prepaid accounts in this situation would be beneficial for consumers and acknowledges that, particularly if separate mailings were made, financial institutions could incur additional costs in delivering the pre-acquisition disclosures separately from the prepaid account itself.

The Bureau is therefore proposing revisions to § 1005.18(b)(1)(i) and its related commentary to clarify the timing requirements for delivery of pre-acquisition disclosures in this situation. Specifically, the Bureau is proposing 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 is also proposing 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. The Bureau is also proposing to renumber the paragraphs within comment 18(b)(1)(i)–1 for clarity.

The Bureau notes that the accommodation in proposed § 1005.18(b)(1)(i) would 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 current comment 18(b)(1)(i)–1.ii (proposed to be renumbered as comment 18(b)(1)(i)–1.i.B) address the timing of pre-acquisition disclosures for such accounts.

The Bureau seeks comment on this portion of the proposal.

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

Section 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 Web site; 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 current § 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.[36]

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).[37] 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.

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 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 of the packages in order to accommodate the long form disclosure, thus requiring retooling of their J-hook packaging used at retail. Because the 2016 Final Rule did not specify the method by which the long form disclosure must be provided pursuant to current § 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 this information, the Bureau is concerned about the potential increased costs financial institutions could face as a result of this requirement. The Bureau also believes that permitting the long form to be provided electronically post-acquisition would not diminish the consumer

[36] *Id.* at 84022.

[37] *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.

protections afforded by providing the long form inside the packaging material or by mail. Therefore, the Bureau is proposing 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 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.[38] The Bureau is also proposing 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.

The Bureau believes these proposed revisions would address the concerns raised regarding providing the long form disclosure after acquisition under the retail location exception without detriment to consumers. Financial institutions will be able to provide consumers with the long form disclosure after acquisition, in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7), either inside the packaging material, or by mail or electronically after the financial institution obtains the consumer's contact information. Moreover, where the long form disclosure itself is not contained inside the packaging material, the consumer will nonetheless 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.

The Bureau seeks comment on this aspect of the proposal. Specifically, the Bureau seeks comment on the feasibility of providing the long form disclosure through the various methods described herein—that is, inside the retail packaging, by mail, or electronically. The Bureau also seeks comment on whether financial institutions were, in fact, planning to include in their retail packaging the long form disclosure (in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7)) and whether a redesign of their packaging would be necessary to do so. The Bureau seeks comment on how often financial institutions mail or deliver written account-related communications to consumers within 30 days of obtaining the consumers' contact information, as well as the likelihood that financial institutions would choose, if the proposal were adopted, to provide the long form disclosure only by mail or electronically rather than including it inside the retail packaging. In addition, the Bureau seeks comment on whether there are other accommodations the Bureau might make to the retail location exception to facilitate financial institutions' inclusion of the long form disclosure inside the packaging. The Bureau also seeks comment on whether the proposed modification should be available only in limited situations, such as for prepaid accounts where the financial institution requires the consumer to provide identifying information before the prepaid account can be used. Finally, the Bureau seeks comment on whether it should expressly state a timing requirement for delivery of the long form disclosure pursuant to proposed § 1005.18(b)(1)(ii)(D) in general or specifically with respect to electronic disclosures provided without E-Sign consent.

Relatedly, current § 1005.18(b)(1)(iii)(C) includes a similar requirement for prepaid accounts acquired orally by telephone. The Bureau does not believe the same modification is necessary for this provision because, in this situation, financial institutions would already be mailing an access device and initial disclosures to consumers and, unlike J-hook packaging, that mailing would not face the same space constraints. Nonetheless, because of the similarities between § 1005.18(b)(1)(ii) and (iii), the Bureau seeks comment on whether the revision the Bureau is proposing in § 1005.18(b)(1)(ii)(D) should also be made in § 1005.18(b)(1)(iii)(C).

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 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, current § 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).[39] 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 otherwise listed on the short form. The Bureau believed that disclosing additional fee types creates a dynamic disclosure while reducing incentives for manipulating fee structures by, for example, lowering the price of the common fees listed on the short form 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 cost. 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,

[38] If the financial institution includes the long form disclosure inside the prepaid account packaging material, it would 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.

[39] 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*).

the Bureau believed that the 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.[40]

The Bureau continues to believe that disclosing additional fee types in the short form is necessary and appropriate for the reasons set forth in the 2016 Final Rule and as summarized above. However, the Bureau has heard concerns through its outreach efforts to industry regarding implementation with respect to 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 current § 1005.18(b)(2)(ix)(C) does not allow financial institutions to disclose fee variations within additional fee types when the additional fee type has more than two variations, some prepaid account providers have suggested that, rather than disclosing the highest fee in these situations, they are 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.

Although the Bureau believes that consumers generally would benefit from simplified fee structures, the purpose of requiring disclosure of additional fee types was not to encourage financial institutions to eliminate services that are useful for consumers. While it could add some additional complexity to the short form, the Bureau believes it may be appropriate to give financial institutions additional flexibility to provide more detail for additional fee types with multiple fee variations. The Bureau is therefore proposing 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 (vi) (customer service fees) and in accordance with § 1005.18(b)(3)(i) and (b)(7)(ii)(B)(*1*). The Bureau 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 would disclose the name of the additional fee type and the highest fee amount in the manner currently required, rather than avail itself of the proposed alternative. The Bureau is also proposing 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. The example and the first option reflect what currently exist in this comment; the second option reflects the proposed alternative.

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, with ACH and paper check together constituting regular 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".

The Bureau believes that its proposed modification would allow for more detail and certainty about fees that appear on the short form disclosure, which would provide consumers more information about a prepaid account prior to acquisition. The Bureau acknowledges 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.[41] 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 seeks comment on this aspect of the proposal.

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

18(b)(6)(i) General

Section 1005.18(b)(6)(i) currently 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, current § 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 Web site or mobile application, and must be viewable across all screen sizes. Current § 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.

[40] 81 FR 83934, 84041 (Nov. 22, 2016).

[41] *Id.* at 84024–25.

Furthermore, regarding oral disclosures, the Bureau believed that when a consumer acquires a prepaid account orally by telephone or when a consumer requests to hear the long form in a retail location by calling the telephone number disclosed on the short form pursuant to § 1005.18(b)(2)(xiii), 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 pre-acquisition disclosures.[42]

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 and orally for certain payroll card accounts and government benefit accounts. The issuing bank explained that in these situations consumers would first receive the pre-acquisition disclosures in writing from the employer or agency; in order to actually acquire the account, consumers must 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 Web sites to accommodate the requirements set forth in the 2016 Final Rule for electronic disclosures, particularly when written disclosures are already provided to the consumer in advance of acquisition.

The Bureau continues to believe that it is important for consumers to receive pre-acquisition disclosures via the method by which they are acquiring a prepaid account. As noted above, however, the Bureau also believes that consumers can best review the terms of a prepaid account before acquiring when seeing the terms in written form. The Bureau appreciates the concerns raised by the issuing bank regarding in providing electronic or oral disclosures in this context, and believes that if written pre-acquisition disclosures are provided then it is not necessary to also require electronic and oral disclosures. The Bureau is therefore proposing 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 is also proposing 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 give 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 Web site because the consumer has already received the disclosures pre-acquisition in written form. The Bureau believes 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.

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment regarding whether it should impose timing or other limitations on when a financial institution may provide pre-acquisition disclosures in writing followed by electronic or telephone acquisition of the prepaid account.

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 Web site 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.[43] The Bureau continues to believe 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.

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 bank expressed concern that use of these language interpretation services, although generally beneficial to affected consumers, may potentially pose difficulties 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.

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 that provide language interpretation services 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

[42] *Id.* at 84075–77.

[43] *Id.* at 84091–92.

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 intended the foreign language requirements to cover situations where the financial institution affirmatively targets consumers in a foreign language. The Bureau agrees that the situation described above appears somewhat distinct particularly to the extent that it involves providing real-time language interpretation services in the course of facilitating more general processes by an employer or government agency, such as the onboarding an employee or enrollment of a consumer in a benefits program. The Bureau is 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. Therefore, the Bureau is proposing revisions to § 1005.18(b)(9)(i)(C) to provide this exception. Specifically, proposed § 1005.18(b)(9)(i)(C) would state 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.

The Bureau seeks comment on this aspect of the proposal. In particular, the Bureau requests comment on whether this issue is unique to payroll card accounts and government benefit accounts, or whether it extends to other types of programs as well. The Bureau also seeks comment on whether, alternatively, it should completely exclude payroll card accounts or government benefit accounts from the requirement in § 1005.18(b)(9)(i)(C) to provide foreign language disclosures by telephone and whether, if adopted, such an exclusion should extend to any other types of prepaid accounts as well. In addition, the Bureau seeks comment on whether the requirement in § 1005.18(b)(9)(i)(C) poses any related issues for financial institutions offering prepaid accounts that are not addressed by the proposal. The Bureau also seeks comment on whether there are any other ways the Bureau might address this issue other than those discussed herein, such as by basing the exclusion on the number of foreign languages offered by the financial institution or via the third-party service.

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 proposing to make certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. Relatedly, the Bureau is proposing to amend § 1005.18(d)(1)(ii), which requires certain disclosures regarding error resolution.

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.[44] 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 that follow the periodic statement alternative in § 1005.18(c)(1) to modify their initial disclosures required by § 1005.7(b) 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 proposing to exercise its authority under EFTA section 904(c) to adopt an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), to permit notices for prepaid accounts as described in proposed § 1005.18(d)(1)(ii), in order to facilitate compliance with error resolution requirements. The Bureau is thus proposing to amend § 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 limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections. The proposed revisions to § 1005.18(e)(3), discussed below, would 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. This clarification 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. The Bureau seeks comment on this portion of the proposal.

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

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

The 2014 Proposal and 2016 Final Rule

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit.[45] EFTA section 909 governs consumer liability for unauthorized EFTs.[46] 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 section § 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 benefit accounts,[47] 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

[44] 15 U.S.C. 1693c(a)(7) and 1693f.

[45] 15 U.S.C. 1693f.

[46] 15 U.S.C. 1693g.

[47] 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 maintained the same level of error resolution and limited liability protections that they had under existing Regulation E. 81 FR 83934, 84112 n.502 (Nov. 22, 2016). Furthermore, payroll card accounts and government benefit accounts generally require the financial institution to verify the identity of the consumer prior to acquisition to determine employment status or eligibility for benefits.

and 1005.11 for any prepaid account for which it had not completed its collection of consumer identifying information and identity verification.[48] The 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.[49] 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.[50]

The Bureau altered its approach for 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.[51] The second was comments received from both industry and consumer advocacy groups reflecting a wide spectrum of views on the 2014 Proposal. For instance, while some industry commenters expressed support for the Bureau's proposed approach, others predicted that it would increase their risk of fraud losses.[52] The latter group of commenters seemed most concerned with the proposed requirement to extend provisional credit on errors asserted prior to verification. Some commenters, including a number of trade associations, a program manager, and a payment processor, argued that applying error resolution and limited liability protections to pre-verification errors would greatly increase fraud losses because it was extremely difficult to investigate an error that occurs before the financial institution knows the identity of the cardholder. They also asserted, however, that requiring full error resolution and limited liability protections for pre-verification errors would not confer significant additional benefits on consumers, positing that it was unlikely that an unauthorized transfer or other error would occur prior to verification.

On the other hand, consumer advocates emphasized the importance of providing consumers—especially consumers who may have a hard time making ends meet—with recourse if their accounts are subject to error or fraud. Some consumer advocate commenters supported the proposal as striking a good balance between protecting consumers and ensuring that the rule does not encourage additional fraudulent activity, while others urged the Bureau to require full error resolution and limited liability protections for additional account or transaction types.[53]

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, financial institutions must provide error resolution and limited liability protections for all 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, the financial institution need not provide provisional credit while investigations are pending. The Bureau also added language to emphasize that financial institutions are not required to adopt a consumer identification and verification process for all prepaid accounts, which had been a point of concern with the 2014 Proposal for some industry commenters. In addition, the Bureau added commentary to clarify when a financial institution should be deemed to have completed its consumer identification and verification process for a particular prepaid account. The Bureau considered whether to require error resolution and limited liability protections for prepaid account programs that do not have a consumer identification and verification process, while excluding financial institutions that have a process in situations where a consumer has failed to complete the process successfully; however, the Bureau concluded that it would be preferable to treat all unverified accounts uniformly.[54]

Industry Outreach and Comments Received on 2017 Effective Date Proposal

Through the Bureau's outreach efforts to industry regarding implementation and in connection with the 2017 Effective Date Proposal, several industry stakeholders raised concerns with regard to how the treatment of unverified prepaid accounts in § 1005.18(e) will impact particular consumers and programs. While it appears that for a large number of prepaid account programs financial institutions already provide substantial error resolution and limited liability protections as a matter of contract, as explained above, these industry stakeholders have expressed general concern that mandating error resolution and limited liability protections as a matter of Federal law will increase fraudulent error claims in connection with prepaid programs by making the industry a bigger target or focus for fraudsters. They also offered more detailed explanations of their current practices regarding error resolution and limited liability protections for

[48] 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 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 understands that some providers allow consumers to use GPR cards purchased at retail immediately to make purchases. 79 FR 77102, 77185 (Dec. 23, 2014).

[49] 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.

[50] 79 FR 77101, 77185 (Dec. 23, 2014).

[51] CFPB, *Study of Prepaid Account Agreements,* at 13 tbl. 3 and 16 tbl. 4 (Nov. 2014), *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.*

[52] The discussion here focuses on comments received on the 2014 Proposal with respect to proposed § 1005.18(e)(3). As discussed in the 2016 Final Rule's section-by-section analysis of § 1005.18(e)(2), most industry commenters and all consumer group commenters generally supported the Bureau's proposal to extend to all prepaid accounts the same error resolution provisions that apply to payroll card accounts. At the same time, several industry commenters argued that prepaid accounts may have a higher incidence of fraudulently asserted errors than other accounts covered by Regulation E for a number of reasons, and urged the Bureau to limit application of the error resolution provisions in certain respects, such as by not requiring error resolution for certain types of prepaid products. As the Bureau noted in the 2016 Final Rule, these commenters did not provide any data or particular details in support of their assertions. 81 FR 83934, 84106–07 (Nov. 22, 2016).

[53] *Id.* at 84109–10.

[54] *Id.* at 84110–12.

unverified accounts and how they may modify such practices in response to the 2016 Final Rule.

The most widespread concern relates to situations where a consumer has attempted, but failed (or refused to complete) the financial institution's consumer identification and verification process.[55] Currently, financial institutions typically permit consumers in such situations to spend down the balances on their cards as if they were gift cards, but do not permit reloads and restrict other functionalities. To reduce the potential risk of fraud that they anticipate could occur under the 2016 Final Rule, a number of financial institutions have indicated that they may stop allowing consumers to spend down their remaining funds and instead issue refund checks to all such consumers. However, a refund check might take up to 10 business days to reach the consumer during which time he or she would not have access to his or her funds, and additional complications could arise for consumers without a fixed address. Further, unbanked consumers may incur costs to cash the refund check.

The Bureau also learned that some financial institutions are considering limiting the functionality of their prepaid accounts (in particular, accounts sold at retail) prior to completion of the verification process to reduce fraud exposure.[56] Where immediate use of the product is advertised on their retail packaging, these financial institutions asserted that they need to replace all of their retail packaging for those prepaid accounts to ensure that the packaging accurately reflects the functionality of the account, notwithstanding the Bureau's decision to allow financial institutions to continue selling prepaid accounts in non-compliant packaging manufactured in the normal course of business prior to the rule's effective date. The Bureau cited these concerns in the 2017 Effective Date Proposal as one of the reasons it was proposing to delay the 2016 Final Rule's effective date.

A number of industry stakeholders have also explained that they believe that full compliance with Regulation E error resolution and limited liability requirements would be more burdensome and difficult than the processes they are currently employing with regard to unverified accounts. For example, two prepaid account issuers, a trade association, and a think tank submitted comments in response to the 2017 Effective Date Proposal asserting that most financial institutions do not in fact currently provide full Regulation E error resolution and limited liability protections on unverified prepaid accounts. These commenters explained that financial institutions' error resolution procedures often require comparison of information provided by the consumer when alleging 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 where the identification and verification process has not been completed.[57]

Commenters also stated that the provision in the 2016 Final Rule excluding unverified accounts from the provisional credit requirement does not provide them 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 asserted that the rule would therefore increase financial institutions' fraud protection and mitigation costs. The Bureau is aware, however, that some financial institutions do provide full Regulation E limited liability and error resolution protections (though perhaps without provisional credit) even on unverified accounts.

Proposal

The Bureau believes that providing error resolution and limited liability rights to consumers even on unverified accounts would be beneficial to consumers but is concerned about the potential ramifications raised by industry stakeholders as described above. The Bureau therefore is proposing amendments that would return § 1005.18(e)(3) to approximately what it 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. However, as detailed further below, the Bureau also is considering whether more targeted approaches could be warranted, and specifically seeks comment on such alternatives.

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 propose to exercise its authority under EFTA section 904(c) to revise § 1005.18(e)(3) to except accounts that have not completed the consumer identification and verification process from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remain unverified.

Specifically, the Bureau is proposing 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, 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 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

[55] The Bureau understands that some prepaid issuers separate the registration and verification processes, allowing a consumer to activate some card functionality by providing at least some amount of personal information, while requiring additional information along with identity verification before providing access to full functionality on the account.

[56] As noted above, many GPR providers do not allow consumers to use prepaid accounts purchased at retail immediately.

[57] 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.

made the alternative disclosure described in proposed § 1005.18(d)(1)(ii), discussed above, and complies with the process it has disclosed.[58]

Proposed § 1005.18(e)(3)(iii) would 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 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. As noted above, some commenters on the 2014 Proposal expressed concern about having to provide provisional credit on pre-verification errors after an account is verified. In comments on the 2017 Effective Date Proposal and other recent feedback, however, industry stakeholders have acknowledged that the issue in fact lies with the obligation to resolve errors generally for unverified accounts, stating that, as noted above, the exception from the provisional credit requirement does not provide meaningful relief. In addition, the Bureau understands that many financial institutions do in fact currently provide error resolution and limited liability protections for pre-verification unauthorized transfers and other errors once the consumer's identity has been verified, and therefore does not believe that this provision should be problematic for financial institutions.[59]

The Bureau is also proposing changes to the commentary accompanying § 1005.18(e). The proposed revisions to comment 18(e)–4 would align it with the proposed text of § 1005.18(e)(3) as well as add 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 is 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 verification process. For an error asserted on a previously unverified 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 is proposing 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 continue 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.[60]

The Bureau remains concerned, as it expressed in adopting the 2016 Final Rule, that consumers with prepaid accounts that have not been or cannot be verified would not have a right to Regulation E error resolution and limited liability protections under this proposal. However, the Bureau appreciates the concerns raised by industry that applying those protections to unverified prepaid accounts may increase fraud losses that could, in turn, lead financial institutions to stop offering prepaid accounts at retail that allow for immediate access to funds, provide refunds for accounts that fail verification via paper check, or make other policy changes that would decrease the availability or utility of prepaid accounts to consumers.[61]

For example, the Bureau is concerned that consumers who are not able to complete the consumer identification and verification process successfully could experience days of serious financial disruption while waiting for a return of their funds by 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, for which there is not generally an identification and verification process, but in that case would not receive any of the other benefits of the Prepaid Accounts Rule. The Bureau seeks comment on the various tradeoffs to particular groups of consumers in these scenarios.

The Bureau has considered various alternatives to this proposal, and seeks comment on whether more tailored approaches would be workable. For example, 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. The Bureau is concerned, however, that adding a third category of accounts would increase the complexity of the rule, and in particular that it may be difficult for financial institutions to determine whether a consumer has definitely "failed to complete" the process, as opposed to a delay in providing information requested by the financial institution.

The Bureau seeks comment on all aspects of this part of its proposal. In particular, the Bureau seeks comment on financial institutions' existing practices with respect to error resolution and limited liability on unverified accounts, including how those practices align or diverge from what the Bureau is proposing, and how those practices are currently explained to consumers. Information or data regarding the number or percentage of accounts or consumers that do not attempt the consumer identification and verification process, that do not complete the process, and that fail the process, as well as projections for fraudulently

[58] Existing comment 18(e)–5 (to which the Bureau is proposing 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.

[59] Comments on the 2017 Effective Date Proposal describing this issue suggested that the primary concern about providing error resolution and limited liability protections on unverified accounts is the lack of available information regarding the consumer for use in confirming whether an EFT was in fact authorized. Upon successful verification of the consumer's identity, however, the Bureau believes that financial institutions should have sufficient information to investigate alleged errors.

[60] Under the proposed approach, the Bureau anticipates that when a consumer calls to assert an unauthorized transfer or other error on an unverified account that offers verification, the financial institution would inform the consumer of its policy regarding error resolution and limited liability on unverified accounts and would begin its consumer identification and verification process at that time. The Bureau also expects that the pre-acquisition disclosures regarding registration and deposit insurance, in § 1005.18(b)(2)(xi) and (b)(4)(iii), will help encourage consumers to register their prepaid accounts promptly.

[61] The Bureau also acknowledges that there is some risk that this proposal, if adopted, might increase the incentive for financial institutions to offer prepaid accounts for which there is no customer identification and verification process and are therefore excepted from error resolution and limited liability protections, although the Bureau believes that any such incentives would generally 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.

asserted errors and corresponding fraud losses under the 2016 Final Rule and the proposed approach, would be particularly useful. The Bureau also seeks comment on any disadvantages to the proposed approach, as well as the pros and cons of the alternatives discussed above. Relatedly, the Bureau seeks comment on whether there are any other alternative solutions that would better protect consumers with legitimate unauthorized transfers or other errors on unverified accounts while also limiting financial institutions' exposure to fraud.

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.[62] As discussed in the section-by-section analyses that follow, the Bureau is proposing to narrow 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).[63] 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 Web site quickly and more effectively.[64] Section 1005.19(b)(2) currently provides that, if a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change 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 of the agreement.

Through its outreach efforts to industry regarding implementation, the Bureau learned that some industry stakeholders are concerned about needing to notify the Bureau every time relevant parties to a prepaid account agreement are added or removed, particularly in the payroll card context. The Bureau understands that while some payroll card programs are customized for specific employers, payroll card issuers often use a standard account agreement with multiple employers, so that new employers may be added or removed although the agreement itself is not revised. These stakeholders explained that changes to these employers as relevant parties to the agreement might occur on a somewhat frequent basis, and they were thus concerned about continually needing to notify the Bureau of these changes.

While the Bureau continues to believe that information about other relevant parties to agreements will be useful to the Bureau, consumers, and others, the Bureau acknowledges that reporting frequent changes of relevant parties to an agreement for an otherwise unchanging agreement could be time consuming for certain issuers. Therefore, the Bureau is proposing 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 proposed § 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 is also proposing 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 seeks comment on this aspect of the proposal. The Bureau also seeks comment on how often changes are made to the relevant parties to a prepaid account agreement, such as an employer or government agency, as well as how often changes are made to such agreements themselves. In addition, the Bureau seeks comment on whether there are any 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.

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

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

Section 1005.19(b)(6)(ii) provides that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. It further provides 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.[65]

Upon further consideration, the Bureau is 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. 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, making the task of combining the documents into the agreement or a single addendum potentially unnecessarily complex. Therefore, the Bureau is proposing 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 provide 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

[62] 15 U.S.C. 1693b(c) and 1693c(a); 12 U.S.C. 5512(c)(4) and 5532(a).

[63] Specifically, § 1005.19(b)(1)(i) 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).

[64] 81 FR 83934, 84136 (Nov. 22, 2016).

[65] *Id.* at 84143.

§ 1005.18(b)(4). The agreement or addenda thereto must contain all of the fee information, as defined by § 1005.19(a)(3).

Relatedly, the Bureau is proposing 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).

The Bureau seeks comment on this aspect of the proposal. The Bureau additionally seeks comment on whether it should make further modifications to this requirement, such as requiring (rather than permitting) the short form disclosure to be provided as an addendum or as a separate document.

19(f) Effective Date

Section 1005.19(f)(1) establishes that the April 1, 2018 effective date of the Prepaid Accounts Rule [66] applies to the requirements of § 1005.19, with the exception of § 1005.19(b), which governs the requirements to submit prepaid account agreements to the Bureau on a rolling basis. Section 1005.19(f)(2) currently provides that the effective date for the submission requirements in § 1005.19(b) is October 1, 2018; issuers must submit to the Bureau any prepaid account agreements they are offering as of October 1, 2018 no later than October 31, 2018.

The Bureau continues to believe that the October 1, 2018 effective date for § 1005.19(b) is appropriate and is working to develop a streamlined electronic submission process, which it expects will be fully operational before the October 1, 2018 effective date. The Bureau is proposing to make clarifications related to how the October 1, 2018 effective date is 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 Bureau's recent six-month delay of the general effective date of the Prepaid Accounts Rule, to April 1, 2018.[67] Specifically, the Bureau is proposing to refer to the October 1, 2018 effective date in the regulatory text and commentary as a compliance date, instead of as a delayed effective date. The Bureau is also proposing to make other minor clarifying revisions to § 1005.19(f)(2) and comment 19(f)–1 to align with the regulatory text of § 1005.19(b)(1).

The Bureau seeks comment on this aspect of the proposal.

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

Current 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. The Bureau is proposing to revise that model language to reflect the proposed amendments to § 1005.18(d)(1)(ii) and (e)(3). This proposed language is 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.[68]

The proposed model language would read: "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. Once we have done so, we will address your complaint or question as set forth above."

The Bureau seeks comment on the proposed revisions to this model language.

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

61(a)(5) Definitions

61(a)(5)(iii)

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.[69] The Bureau was concerned about overdraft credit features that are 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 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. 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 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 a short list of tailored provisions established by the 2016 Final Rule to reduce the risk that consumers would experience problems in accessing and managing their prepaid accounts that are linked to such credit features.[70]

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 current § 1026.61(a)(2)(i). The Bureau designed this portion of the Prepaid Accounts Rule to ensure that these products would be treated consistently regardless of certain details about how the credit relationship was 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. Specifically, current § 1026.61(a)(5)(iii) defines the term

[66] The 2017 Effective Date Final Rule extended the original October 1, 2017 general effective date of the prepaid accounts final rule by six months, to April 1, 2018. 82 FR 18975 (Apr. 25, 2017).

[67] *Id.*

[68] The Bureau tested a version of this proposed model language with consumers as part of its pre-proposal disclosure testing. *See* 79 FR 77101, 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.*

[69] 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.

[70] 81 FR 83934, 84158–61 (Nov. 22, 2016).

"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. Current comment 61(a)(5)(iii)–1 explains that there are two types of arrangements that create a business partner relationship for purposes of current § 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 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 are likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related.[71]

Thus, the Bureau believed that it was appropriate to consider these entities to be business partners in this context, although it did not apply the rules related to hybrid prepaid-credit cards in situations in which there is less of a connection between the party 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.[72] 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.[73] 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 separate credit feature is deemed a "non-covered separate credit feature" as set forth in current § 1026.61(a)(2)(ii) and does not trigger the Prepaid Accounts Rule provisions governing hybrid prepaid-credit cards, though it generally will be subject to Regulation Z in its own right.

Since issuance of the 2016 Final Rule, the Bureau has received feedback indicating digital wallet providers were concerned that application of the substantive rules in certain circumstances would create a number of unique challenges for their products. Unlike a general purpose reloadable prepaid 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. Some digital wallets provide *both* types of functionality. Accordingly, even where a digital wallet provides the ability to hold 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 encourage consumers to use both functions, either by direct marketing to consumers or through joint arrangements with card issuers.

As detailed below, the Bureau has considered the feedback received through comments on the 2017 Effective Date Proposal and through its outreach efforts to industry regarding implementation, and believes that it is appropriate to consider creating a limited exception from the definition of "business partner" that would exclude certain arrangements between companies that offer credit card accounts and companies that offer prepaid accounts (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 products would already be subject to traditional credit card rules under Regulation Z and certain other safeguards are present, the Bureau believes that it may not be necessary to apply the Prepaid Accounts Rule's tailored provisions to such business arrangements. Rather, the Bureau is proposing to treat such products as "non-covered separate credit features," comparable to situations in which a prepaid account issuer allows a consumer to link a prepaid account to a credit card account offered by a company that does not have a business arrangement with the prepaid account issuer.

Comments Received on the 2017 Effective Date Proposal

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 raising several concerns about the account number for the digital wallet account becoming a hybrid prepaid-credit card where consumers link their digital wallet accounts to credit card accounts that are offered by companies with which the wallet provider has cross-marketing or other agreements that would create a business partner relationship under current § 1026.61(a)(5)(iii).

First, the commenter pointed to a requirement 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 entered into a business partner arrangement with Issuer A but not Issuer B, consumers could add Issuer B's credit card accounts to their digital wallet accounts immediately after opening the digital wallet accounts, but could not add Issuer A's credit card accounts for a period of 30 days after the digital wallet

[71] *Id.* at 84253 (Nov. 22, 2016).

[72] *See id* at 84252–53.

[73] The unaffiliated third party creditor might not realize that its credit feature is accessible by a prepaid card in the course of transaction, so that the creditor 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. 81 FR 83934, 84253 (Nov. 22, 2016).

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 indicated 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 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 an exception in § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit in the course of administering the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The Bureau created this provision 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 is allowed to complete transactions with his or her prepaid account while an incoming load of funds from an asset account is still being processed.[74] However, to limit evasion, the exception only applies 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 generally does not charge credit-related fees; and (3) 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). The commenter pointed out that it could not take advantage of the exception in situations in which a customer links a credit card account offered by a business partner of the digital wallet provider. Rather, the rule would prohibit negative balances and instead require that even the incidental credit be obtained using the covered separate credit feature 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.

To avoid these various concerns, the commenter suggested two changes to the provisions in Regulation Z and its commentary that were adopted as part of the 2016 Final Rule. First, the commenter suggested that the Bureau amend the commentary to the definition of "business partner" in current § 1026.61(a)(5)(iii) to restrict it to situations in which 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 where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. Second, the commenter suggested that the Bureau amend § 1026.61(a)(4) and its commentary to permit incidental credit to be provided via negative balances on a prepaid account even when a covered separate credit feature is connected to the prepaid account, as long as the other prerequisites contained in § 1026.61(a)(4)(ii) are satisfied.

Overview of the Regulation Z Proposal

In light of the feedback described above, the Bureau believes that it may be appropriate to narrow the definition of "business partner" in current § 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. Most importantly, these safeguards include restrictions to ensure that the prepaid and credit card accounts are priced independent of the linkage. As described further below, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to propose 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 proposed § 1026.61(a)(5)(iii)(D) would be excluded from the definition of "credit card" under TILA section 103(*l*)[75] and Regulation Z § 1026.2(a)(15)(i). Under the proposed exception, the prepaid account issuer and the card issuer would not be "business partners" under § 1026.61(a)(5)(iii) and thus the prepaid card would not be a "hybrid prepaid-credit card" under § 1026.61(a)(2)(i) with respect to the credit card account if certain conditions are met. The proposed exception would facilitate 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.[76]

To effectuate this potential exception, the Bureau is proposing several revisions to the definition of "business partner" in current § 1026.61(a)(5)(iii). First, the Bureau is proposing to make technical revisions to current § 1026.61(a)(5)(iii) by moving certain guidance on when there is an arrangement between business partners from current 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

[74] This exception is intended to except three types of incidental credit so long as the prepaid account issuer generally does not charge credit-related fees for the credit: (1) Credit related to "force pay" transactions; (2) a de minimis $10 payment cushion; and (3) a delayed load cushion where credit is extended while a load of funds from an asset account is pending.

[75] 15 U.S.C. 1602(*l*).

[76] 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.

particular, this proposed change would include moving the descriptions of the two types of arrangements that trigger coverage as business partners to proposed § 1026.61(a)(5)(iii)(B) and (C).[77]

Second, in response to concerns raised by the digital wallet provider, the Bureau is proposing 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 provide 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.

The Bureau is not proposing to specifically tailor the proposed exception to digital wallet accounts because the Bureau believes 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 believes that the proposed exception will 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 is lacking sufficient funds, the Bureau believes that the potential risk to consumers if issuers were to do so would also be minimal if the conditions in proposed § 1026.61(a)(5)(iii)(D) were met.

If the exception in proposed § 1026.61(a)(5)(iii)(D) applies, 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 is that the credit feature be a credit card account under an open-end (not home-secured) consumer credit plan, as would be required by proposed § 1026.61(a)(5)(iii)(D)(*1*). 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).[78] In addition, when the exception in proposed § 1026.61(a)(5)(iii)(D) applies, 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) are met.

The Bureau believes that if the conditions of the proposed exception are met, an exception from coverage as a "covered separate credit feature" accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i) would be appropriate to facilitate compliance and is consistent with the consumer protection purposes of TILA. First, the 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 that the consumer can access with

[77] As noted above, the two types of arrangements are: (1) Agreements between the person that can extend credit or its affiliate with the prepaid account issuer or its affiliate 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) cross-marketing or other similar agreement between the person that can extend credit or its affiliate with the prepaid account issuer or its affiliate to cross-market the credit feature or the prepaid account, and at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card can from time to time draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

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

(1) Restriction in Regulation E § 1026.18(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).

a traditional credit card, pursuant to proposed § 1026.61(a)(5)(iii)(D)(*1*). Thus, the linked credit feature would 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.

Second, the Bureau believes that the conditions of the exception would 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.[79] 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 may not be 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 the proposed 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 proposed 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 linking the two accounts are less complex. As discussed in more detail below, the Bureau believes that when the conditions of the proposed exception are met, it may not be 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.[80]

The Bureau solicits comment generally on the proposed exception in § 1026.61(a)(5)(iii)(D).[81] The Bureau also solicits comment on the proposed scope of this exception to apply to all types of prepaid accounts, rather than limiting its applicability to digital wallets, and whether that general applicability would pose challenges for particular types of prepaid accounts. The Bureau further solicits comment on whether any alternative or additional conditions should be added in order to qualify for the proposed exception in § 1026.61(a)(5)(iii)(D).

The Bureau also considered the suggestion by the digital wallet provider that the Bureau amend the commentary accompanying the definition of "business partner" in § 1026.61(a)(5)(iii) to restrict it to situations in which 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 where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. The Bureau believes that the proposed exception would provide clearer guidance to industry regarding which credit features would qualify for the exception, thereby reducing potential confusion relative to this alternative. In addition, the Bureau's proposed approach, which provides for a more narrowly tailored exception to the definition of "business partner," would ensure that substantial safeguards are in place 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.

As discussed above, the digital wallet provider also requested that the Bureau amend § 1026.61(a)(4) and its commentary to permit incidental credit to be provided via negative balance on a prepaid account even when a covered separate credit feature is connected to the prepaid account, so long as the other prerequisites contained in § 1026.61(a)(4)(ii) are satisfied. The Bureau is not proposing such changes. As noted above, the Bureau believes that the proposed exception would address the commenter's concern by substantially narrowing the circumstances in which digital wallets would be likely to trigger these Regulation Z requirements. However, where the conditions of the proposed exception are not met, the Bureau believes that the structure and terms, conditions, or features of the prepaid account and the credit card account are sufficiently connected such that the protections set forth in the Prepaid Accounts Rule should apply, including the provisions in § 1026.61(a)(4) and (b) that prohibit incidental credit from being provided via negative balance on a prepaid account when a covered separate credit feature is connected. The Bureau believes that when the proposed exception does not apply, the prepaid account issuer and the card issuer will have a substantial relationship such that the parties can 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 the incidental credit is provided formally via the credit card account.

Nevertheless, the Bureau solicits comment on whether it should permit incidental credit to be provided via 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 solicits 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.

[79] 81 FR 83934, 84268 (Nov. 22, 2016).

[80] 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 interests, and other types of linkages may be present. Therefore the Bureau believes that the Prepaid Accounts Rule's tailored protections, including the 30-day waiting period, are warranted in such cases and is not proposing to apply the exception where the prepaid account issuer or its affiliate is offering the credit card account.

[81] In the section-by-section analyses that follow, the Bureau also solicits comment and poses questions about particular aspects of specific portions of the proposed exception.

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

Current § 1026.61(a)(5)(iii) defines the term ''business partner'' for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards generally to mean a person (other than the prepaid account issuer or its 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 is proposing 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).

Current comment 61(a)(5)(iii)–1 describes the two types of business arrangements that create a business partnership for purposes of the rule, separately provided in paragraphs i and ii. The Bureau is proposing to move most of this language into the 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 is also proposing to consolidate the language regarding membership in card networks or payment networks that appears in current comments 61(a)(5)(iii)–1.i and ii in a new proposed comment 61(a)(5)(iii)–1, which would explain 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 emphasize 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 is not proposing any changes to comment 61(a)(5)(iii)–2.

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

For the reasons set forth in the *Overview of the Regulation Z Proposal* above, the Bureau is proposing 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 provide 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 are met. The conditions are 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 provide that if the exception in proposed § 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 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 further note 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*).

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

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 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. Proposed comment 61(a)(5)(iii)(D)(*1*)–1 would explain that for purposes of the proposed exception, the term ''traditional credit card'' would mean 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 be 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.

As discussed in the *Overview of the Regulation Z Proposal* above, this proposed condition would ensure 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 instances in which and the amount of fees that issuers can charge as penalty fees 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 establishes 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.[82]

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

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 be 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 explain that any accountholder on

[82] 81 FR 83934, 84161 (Nov. 22, 2016).

either the prepaid account or the credit feature may make the written request.

The Bureau believes that this condition, in combination with others described further below, would help 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 would help 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 may not be necessary to apply these tailored provisions to a credit card account when the conditions of the proposed exception are met, given that detailed application and solicitation disclosures for the credit card account still would be required under § 1026.60 and the other conditions in proposed § 1026.61(a)(5)(iii)(D) would 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. Specifically, as described below, to satisfy the condition in proposed § 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 proposed § 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.

The Bureau solicits comment on the procedures that digital wallet providers currently use to obtain a consumer's consent to connect a credit card account to a digital wallet account. The Bureau also solicits comment on the procedures that prepaid account issuers use to connect a credit card to a prepaid account generally, if any. In addition, the Bureau solicits comment on whether there are alternative options that the Bureau should consider to ensure that consumers understand that the prepaid account and the credit card account are not required to be linked for the consumer to obtain or retain the two accounts, and to ensure that consumers are making a deliberate affirmative decision before authorizing such a link.

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

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 must 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 proposed § 1026.61(a)(5)(iii)(D)(*2*).

For the same reasons described above in connection with proposed § 1026.61(a)(5)(iii)(D)(*2*), the Bureau believes that this condition would help 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 proposed § 1026.61(a)(5)(iii)(D)(*2*), would help to obviate the need for the tailored protections adopted in the 2016 Final Rule concerning 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 § 1026.18(b)(4)(vii) required to be provided in the prepaid account's pre-acquisition long form disclosure in connection with covered separate credit features.

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

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 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 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 must 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 conditions is discussed in more detail below.

Proposed comment 61(a)(5)(iii)(D)(*4*)–1 would provide 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 applies 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 provide 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 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.

The Bureau believes that an appropriate comparison for purposes of proposed § 1026.61(a)(5)(iii)(D)(*4*) would be between the terms of the consumer's prepaid account when the two accounts are linked and the terms of the consumer's prepaid account when the consumer has not authorized such a linkage. This proposed approach would ensure that the pre-acquisition disclosures provided to the consumer with respect to his or her prepaid account 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 proposed standard also is consistent with the comparison standard proposed under § 1026.61(a)(5)(iii)(D)(*5*), where the card issuer would 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 the proposed approach for the comparison

of terms, conditions, and features on the consumer's prepaid account would 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 proposed § 1026.61(a)(5)(iii)(D)(*5*), discussed below).[83]

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(*4*) and comment 61(a)(5)(iii)(D)(*4*)–2 provide an appropriate standard for comparing account terms, conditions, and features offered on the prepaid account for purposes of the proposed exception, and if not, what alternative standard the Bureau should adopt. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard, and if so, what additional guidance is needed.

Same load fees. Proposed § 1026.61(a)(5)(iii)(D)(4) also would provide 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 provide an example to illustrate this proposed condition. Specifically, the proposed comment would provide 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.

The Bureau believes that the proposed standard would provide 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 proposed § 1026.61(a)(5)(iii)(A) through (C). The Bureau believes that this approach would facilitate compliance and is appropriate given that the proposed exception in § 1026.61(a)(5)(iii)(D) would 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.[84] 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 proposed § 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 would 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, thus, along with the other conditions, would help to obviate 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 would help to ensure that certain terms and conditions of the prepaid account and the credit card account operate independent 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.[85]

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(*4*) provides an appropriate standard for comparable load fees imposed on the prepaid account, and if not, what the appropriate standard for comparable load fees should be. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard,

[83] This proposed 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 § 1026.18(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 proposing to adopt an approach for comparing the terms, conditions, and features of the prepaid account that is consistent with the one proposed in § 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 proposed approach for comparing specified terms and conditions imposed on the credit card account.

[84] This standard for comparing load fees set forth in proposed § 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 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 proposed § 1026.61(a)(5)(iii)(D) from artificially inflating all load fees in this manner.

[85] 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 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 fees 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. Proposed § 1026.61(a)(5)(iii)(D)(*5*) would ensure that this type of activity does not occur when the proposed exception applies.

and if so, what additional guidance is needed.

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

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*5*), the card issuer must 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 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.

Proposed § 1026.61(a)(5)(iii)(D)(*5*) would specifically define "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 provides additional detail regarding this definition. Specifically proposed comment 61(a)(5)(iii)(D)(*5*)–1.i, would explain 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 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 explain 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 provide more detailed guidance on application of the two conditions, as discussed further below.

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 would 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, would help to obviate 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 proposed condition would help to ensure that the specified terms and conditions of the prepaid account and the credit card account operate independent 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. Third, this proposed condition would prevent 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.[86]

This proposed condition regarding credit card account terms and conditions is similar to the condition for prepaid account terms, conditions, and features set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*), although it applies to a smaller set of account terms. This smaller set of account terms would allow card issuers to make adjustments to credit limits or other metrics (other than the specified terms and conditions) to account for any increased 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 proposed § 1026.61(a)(5)(iii)(D)(*5*) applies would ensure that a card issuer would not lose the proposed exception because of these or similar differences in account features depending on whether the credit is accessed through the prepaid card or the traditional credit card itself.

Thus, a card issuer could satisfy proposed § 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 prepaid account were not linked, so long as the those terms or conditions are not "specified terms and conditions" as defined in proposed § 1026.61(a)(5)(iii)(D)(*5*) and proposed comment 61(a)(5)(iii)(D)(*5*)–1. For example, 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. Reward 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.[87]

The Bureau also believes that the proposed condition prohibiting the card issuer from varying specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card is important to address the

[86] 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). These provisions were designed 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 proposed condition would ensure that the card issuer could not engage in this type of manipulation of repayment terms when the prepaid account becomes linked to the credit card account under the proposed exception.

[87] The Bureau is aware that some card issuers have co-brand agreements with digital wallet providers where the reward points on the credit card account vary based on whether a transaction is made through the digital wallet or with the traditional credit card. The proposed condition in § 1026.61(a)(5)(iii)(D)(*5*) would not restrict a card issuer from varying the reward points on the credit card account based on whether the two accounts are linked, or whether the transactions are made with the prepaid card or the traditional credit card. Nonetheless, the Bureau does not believe in these situations that digital wallet providers typically will offer additional reward points on the prepaid account that vary based on whether a consumer has linked the two accounts. Thus, the proposed condition in § 1026.61(a)(5)(iii)(D)(*4*) does not permit the digital wallet provider to vary reward points on the prepaid account depending on whether the two accounts are linked. The Bureau solicits comment on whether the exception should permit a prepaid account issuer to vary reward points on the prepaid account depending on whether the two accounts are linked.

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.[88]

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 must 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 provide 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 provide that a card issuer does 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.[89] As another example, proposed comment 61(a)(5)(iii)(D)(5)–2.ii would provide 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.

The Bureau believes that an appropriate comparison standard for determining whether the same specified terms and conditions are being 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 proposed approach would ensure 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 proposed comparison approach would capture situations when the specified terms and conditions vary based on whether there is a link, but would avoid capturing situations where they vary due to risk based pricing based on consumers' creditworthiness.[90]

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(5) provides an appropriate standard for comparing specified terms and conditions offered on the credit card account for purposes of the proposed exception, and if not, what the appropriate standard should be. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard, and if so, what additional guidance is needed.

Same specified terms and conditions regardless of whether credit is extended through prepaid card or 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) provides 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.[91]

Proposed comment 61(a)(5)(iii)(D)(*5*)–3 would provide several examples illustrating the condition described above. Proposed comment 61(a)(5)(iii)(D)(*5*)–3.i would 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 provide 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 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 provide 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.

The Bureau solicits comment on this condition generally and whether card issuers would have any difficulty knowing the type of transaction that is being conducted on the prepaid account, such as whether it is a transaction to obtain goods or services, whether it is a P2P transaction, or whether it is a transfer of credit to the prepaid account outside the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transactions. The Bureau also requests comment on how likely there are to be circumstances where the prepaid card can be used for a particular type of transaction while the traditional credit card could not be used for those types of transactions (*e.g.,* the prepaid card

[88] 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 do not apply to credit accessed by use of a check. This proposed condition would ensure that a card issuer could not vary the specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card, which would 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.

[89] 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.

[90] See note 83 above for a discussion of how this proposed approach differs from the approach for comparing terms, conditions, and features on the prepaid account in connection with a covered separate credit features as adopted in the 2016 Final Rule.

[91] 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.

can be used to purchase goods or services at merchants but the traditional credit card can only be used to obtain cash advances at automated teller machines and cannot be used to purchase goods or services at merchants). The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition, and if so, what additional guidance is needed.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.ii would provide guidance on how a card issuer must comply with 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 explain 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.

The Bureau solicits comment on this proposed guidance for how to apply the same claims and defenses rights in § 1026.12(c) to extensions of credit with the prepaid card and with the traditional credit card and whether there are other options the Bureau should consider for how to ensure that the same rights under § 1026.12(c) are provided with respect to credit transactions made with the prepaid card and transactions made with the traditional credit card. The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.iii would provide guidance on how a card issuer must comply with 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 provide 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.

The Bureau solicits comment on this proposed guidance for how to apply the same limits on liability under § 1026.12(b) to extensions of credit with the prepaid card and with the traditional credit card and whether there are other options the Bureau should consider for how to ensure that the same rights under § 1026.12(b) are provided with respect to credit transactions made with the prepaid card and transactions made with the traditional credit card. The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition.

VI. Proposed Effective Date

The Bureau is proposing that this rule take effect at the same time as the general effective date of the Prepaid Accounts Rule, which is currently April 1, 2018. This rule thus would become effective more than 30 days after publication in the **Federal Register**, as required under section 553(d) of the Administrative Procedure Act.[92] The Bureau seeks comment on this aspect of the proposal.

A. General Effective Date of the Prepaid Accounts Rule

In response to the 2017 Effective Date Proposal, some commenters argued that the Bureau should delay the effective date of the 2016 Final Rule by longer than the six months proposed (and ultimately finalized) by the Bureau. These commenters generally argued that the Bureau should extend the effective date by 12 or 18 months, citing a number of concerns regarding their ability to comply with the rule by April 1, 2018. Some commenters supported a six-month delay of the effective date, contingent on the Bureau revisiting the rule to address certain substantive provisions that they asserted necessitated changes to disclosures and business models that could not be implemented by April 1, 2018. The Bureau believes that several of the amendments proposed herein would reduce compliance burden and address the concerns raised by commenters on the 2017 Effective Date Proposal related to the effective date of the rule.

[92] 5 U.S.C. 553(d).

While the Bureau is not proposing to further extend the effective date of the Prepaid Accounts Rule, the Bureau solicits comment on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments proposed herein. Specifically, the Bureau requests comment on which provisions in particular might cause financial institutions to need additional time, and whether any further modifications to any of the particular amendments proposed herein would reduce or eliminate that need. The Bureau also solicits comment on the appropriate length of such a further delay.

B. Safe Harbor for Early Compliance

Two trade association commenters on the 2017 Effective Date Proposal 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 expressed concerns that financial institutions may be exposed to potential liability if they comply with the rule prior to the effective date, as they suggested 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 they did not provide any specific examples. One commenter stated that early compliance would benefit consumers and should not be discouraged.

As noted in the 2017 Effective Date Final Rule, the Bureau agrees that early compliance with the Prepaid Accounts Rule could benefit both industry and consumers. The Bureau is 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.[93] Thus, the Bureau is not at this time proposing language for a specific provision addressing early compliance with the Prepaid Accounts Rule. Nonetheless, the Bureau seeks comment on whether a specific provision addressing early compliance with the Prepaid Accounts Rule is necessary and appropriate to address conflicts between the Prepaid Accounts Rule and current Federal requirements for accounts that

[93] 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).

will be covered by the rule. In particular, the Bureau solicits comment on whether specific provisions of current requirements for such accounts conflict with provisions of the Prepaid Accounts Rule. To the extent that a specific provision addressing early compliance is necessary and appropriate, the Bureau solicits comment on the proper scope of such a provision. The Bureau also solicits 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. If the latter, the Bureau solicits comment regarding which portions of the Prepaid Accounts Rule a financial institution should be required to comply with in order to be covered by a provision addressing early compliance.

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

In developing this proposed 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 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 administered by these agencies.

The Bureau previously considered the benefits, costs, and impacts of the 2016 Final Rule's major provisions [94] as well as those of the 2017 Effective Date Final Rule.[95] The baseline [96] for this discussion is the market for prepaid accounts as it would exist "but for" this proposed rule; that is, the Bureau considers the benefits, costs, and impacts of this proposed rule on consumers and covered persons relative to the baseline established by the 2016 Final Rule, as amended by the 2017 Effective Date Final Rule.[97] There are two major provisions in this proposed rule; the discussion below considers them both, as well as certain alternatives that the Bureau considered in the development of this proposed rule:

1. Amending the Prepaid Accounts Rule so that it would not require financial institutions to resolve errors or limit consumers' liability pursuant to Regulation E for prepaid accounts, other than payroll card accounts or government benefit accounts, for which a financial institution has not successfully completed its consumer identification and verification process; [98] and

2. Adding an exception to the Prepaid Accounts Rule's definition of "business partner" in Regulation Z, which would have the effect of not subjecting certain credit card accounts, or the prepaid accounts to which they are linked, to provisions of the Prepaid Accounts Rule that are applicable in connection with covered separate credit features accessible by hybrid prepaid-credit cards, provided certain conditions are met.[99]

The Bureau also is proposing to make clarifications and minor adjustments to certain discrete aspects of the Prepaid Accounts Rule. Similarly to the major provisions discussed, these clarifications and minor adjustments would 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 proposed rule's minor modifications to the Prepaid Accounts Rule's disclosure requirements would appreciably decrease transparency or have an adverse impact on informed consumer choice.[100]

In considering the relevant potential benefits, costs, and impacts of this proposed rule, the Bureau has used feedback received to date and has applied its knowledge and expertise concerning consumer financial markets. Because the Prepaid Accounts Rule is not yet in effect and this proposed rule addresses specialized issues encountered by some industry participants for a subset of 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. Nonetheless, the Bureau requests comment on this discussion generally as well as the submission of data or other information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposed rule.

The proposed rule's provisions generally decrease burden incurred by industry participants and provide more options for complying with the provisions of the Prepaid Accounts Rule. As is described in more detail below, the Bureau does not believe that the proposed rule's provisions would 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 proposing to amend §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), and Appendix A–7(c) to provide that Regulation E's error resolution and

[94] 81 FR 83934, 84269 (Nov. 22, 2016).

[95] 82 FR 18975, 18979 (Apr. 25, 2017).

[96] 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.

[97] 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 in this proposed rule.

[98] However, for prepaid accounts that are later verified, financial institutions would be required to resolve errors and limit liability with regard to unauthorized transfers or other errors that occurred prior to verification.

[99] Although a credit card account would be 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 would not be subject to the provisions in Regulations 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 would not be subject to the provisions in Regulation E that apply only to prepaid accounts connected to covered separate credit features.

[100] For example, proposed § 1005.18(b)(1)(ii)(D) would 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 long form disclosures after acquisition by allowing such disclosures to be delivered electronically without receiving consumer consent under the E-Sign Act if the financial institution does not provide it inside the prepaid account packaging material and is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

limited liability requirements do not extend to prepaid accounts held by consumers who have not successfully completed the financial institution's consumer identification and verification process (*i.e.,* consumers who have not concluded the process, consumers who have completed the process but whose identity could not be verified, and consumers holding accounts belonging to prepaid account programs for which there is no such process).[101] In addition, the Bureau is proposing related changes to model language in Appendix A–7(c) and is proposing to require that 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 they do offer (or, if applicable, that no such protections are offered) and comply with any error resolution and limited liability protections that are disclosed to consumers.

If adopted, covered persons would benefit from avoiding 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.[102] 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.[103] 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.

These proposed changes would also permit covered persons to avoid any additional burdens that could result from providing these protections for unverified accounts in particular. During the Bureau's outreach efforts to industry regarding implementation, industry participants have expressed concern that offering these consumer protections for holders of unverified accounts would significantly increase fraud risk. To mitigate this risk, financial institutions that currently have verification processes in place may choose to issue check refunds, rather than allow the consumer to spend down the account balance, for those accounts that fail the consumer identification and verification process. Other financial institutions that currently do not have such processes in place may choose to institute one to avoid the additional fraud risk arising from providing these protections for unverified accounts. Some financial institutions have suggested that they may further limit the functionality offered to holders of unverified accounts; they therefore believe that they may 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. Covered persons would avoid incurring these costs were the proposed changes adopted.

Consumers holding unverified prepaid accounts may both incur costs and derive benefits from these proposed provisions relative to the baseline requirements established by the Prepaid Accounts Rule. Under this proposed rule's approach, consumers holding unverified accounts would no longer benefit from the error resolution and limited liability protections offered by the Prepaid Accounts Rule.[104] However, if financial institutions were to attempt to mitigate potential fraud losses arising from the Prepaid Accounts Rule by not offering unverified prepaid accounts, consumers desiring to hold unverified accounts would lose the benefits from the error resolution and limited liability protections as they would no longer have access to unverified accounts. Alternatively, if financial institutions were to respond to the Prepaid Accounts Rule's requirement to provide error resolution and limited liability protections for unverified accounts by decreasing the functionality associated with unverified accounts, this proposed rule would enable current and future holders of such accounts to retain that functionality, though they would not have the error resolution and limited liability protections they would have enjoyed under the Prepaid Accounts Rule. Therefore, consumers holding unverified prepaid accounts (or those desiring to hold unverified accounts) may experience increased product access or functionality relative to the baseline established by the Prepaid Accounts Rule's requirements.

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. Financial institutions may pass through some portion of the cost savings arising from not providing error resolution and limited liability protections on unverified accounts to holders of verified accounts in the form of lower prices, or they may invest cost savings into innovation efforts to create higher quality products.

Credit card accounts linked to prepaid accounts. As adopted in the 2016 Final Rule, the term "business partner" means 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 is proposing to move most of the current guidance in comment 61(a)(5)(iii)–1 on when there is an arrangement to proposed § 1026.61(a)(5)(iii)(A) through (C) and to revise it for clarity. The Bureau is also proposing to add an exception to the definition of "business partner." Specifically, proposed § 1026.61(a)(5)(iii)(D) would provide 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 a credit card account so long as certain conditions are met. For example, under these conditions, the credit card account would remain subject to Regulation Z's credit card requirements in its own right, and both the credit card and prepaid accounts' pricing terms would be independent of whether the two accounts were linked. So long as they meet certain conditions, prepaid account issuers would be able to enter into certain business arrangements with credit card issuers without subjecting the credit card accounts and the prepaid accounts to coverage by those provisions of the Prepaid Accounts Rule that apply only to covered separate credit features accessible by hybrid prepaid-credit

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

[102] Covered persons that choose not to offer Regulation E's error resolution and limited liability protections for unverified prepaid accounts would need to disclose which protections they do offer or that they do not offer such protections.

[103] 81 FR 83934, 84292 (Nov. 22, 2016).

[104] For prepaid accounts that are later verified, financial institutions would be required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification.

cards and prepaid accounts with such credit features.

Although the Bureau believes that few industry participants would qualify for this exception at present, the proposed exception would relieve burden for those industry participants that currently qualify and would decrease the cost incurred by industry participants entering into qualifying relationships in the future. For example, under the Prepaid Accounts Rule's current definition of "business partner," a provider of a digital wallet that can store funds that has a cross-marketing arrangement with a credit card issuer could be 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 can access credit from the credit card account in the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transactions. Among other things, the digital wallet provider would be required to wait 30 days after the digital wallet account is registered before allowing the consumer to add a credit card account issued by a "business partner" of the provider to his or her digital wallet, 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, such a requirement applies even if the credit card account is subject to the provisions of Regulation Z that apply to credit card accounts in its own right.

Because the Bureau has narrowly tailored the proposed exception to the definition of "business partner," consumers likely will not incur many costs as a result of this exception. For example, proposed § 1026.61(a)(5)(iii)(D)(*1*) would provide that for the credit card account to be eligible for the exception, 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 would still enjoy the credit card protections provided by Regulation Z with respect to the linked credit card account.

The Bureau also believes that when the conditions of the proposed exception are met, consumers would be further protected. For example, proposed § 1026.61(a)(5)(iii)(D)(*3*) would prohibit 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 proposed § 1026.61(a)(5)(iii)(D)(*4*) and (*5*), both the prepaid account issuer and card issuer generally would be prohibited from varying the prepaid and credit card account terms and conditions based on whether the consumer chooses to link the accounts.[105] These provisions would help to ensure that 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 ensuring that the pricing structures do not depend on the individual consumer's choice to link the accounts, the proposed provisions would help to give the consumer the opportunity to independently identify and appreciate the costs associated with each product. Proposed § 1026.61(a)(5)(iii)(D)(*2*) would require 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 to and represent the deliberate choice of the consumer.

Further, absent the proposed exception, there would be more instances in which the Prepaid Accounts Rule's provisions would apply to some, but not all, credit card accounts provisioned to a digital wallet. This uneven application could result in increased consumer confusion because credit card payment credentials stored within the same digital wallet would be subject to different disclosure regimes and use restrictions with greater frequency than would be experienced under the proposed exception. By helping to foster uniformity in application, the proposed exception could benefit consumers relying on digital wallet products.

In terms of alternatives, the Bureau also considered amending the definition of "business partner" in current § 1026.61(a)(5)(iii) to restrict it to situations in which 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 where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. The Bureau believes that the proposed exception would provide clearer guidance to industry regarding which credit features would qualify for the exception, thereby reducing potential confusion relative to this alternative. In addition, the Bureau's approach, which provides for a more narrowly tailored exception to the definition of "business partner," would help to ensure that consumers retain the benefits of the protections offered by provisions of the Prepaid Accounts Rule applicable to covered separate credit features and prepaid accounts with those credit features in more situations potentially presenting risk to consumers.

Potential specific impacts of the proposed rule. The requirements of the proposed rule would apply uniformly across covered financial institutions without regard to their asset size. The Bureau does not expect the proposed 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 solicits comment regarding the proposed rule's impact 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 has no reason to believe that the additional flexibility offered to covered persons by this proposed rule would differentially impact consumers in rural areas. The Bureau requests comment regarding the impact of the proposed provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

[105] More specifically, proposed § 1026.61(a)(5)(iii)(D)(*4*) would ensure 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 would be 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, proposed § 1026.61(a)(5)(iii)(D)(*5*) would require that the card issuer apply the same specified terms and conditions to the credit card account regardless of whether the consumer authorizes its linkage to the prepaid account and additionally would require that the same specified terms and conditions apply to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act,[106] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[107] (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.[108] 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.[109]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[110] 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.[111]

This proposed rule would be the second rule promulgated 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 rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.[112] That conclusion remained unchanged for the 2016 Final Rule.[113] In addition, the Bureau determined that 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.[114]

Similarly, the Bureau concludes that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and therefore an IRFA is not required. As discussed above, the proposed rule would amend certain provisions of the Prepaid Accounts Rule. Specifically, the Bureau is proposing to amend the Prepaid Accounts Rule so that it does not require financial institutions to resolve errors or limit consumers' liability on prepaid accounts (other than payroll card accounts or government benefit accounts) which are unverified. In addition, the Bureau is proposing to except certain prepaid account issuers and unaffiliated card issuers with business arrangements from coverage under the tailored provisions of the Prepaid Accounts Rule applicable only to covered separate credit features accessible by hybrid prepaid-credit cards and prepaid accounts with those credit features. The Bureau is also proposing to make clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule.

As discussed below, the proposed amendments would generally benefit small entities by providing additional flexibility with respect to their implementation of the Prepaid Accounts Rule and would not increase burden on small entities. The Bureau seeks comment on the methodology for estimating burden described in this analysis and requests any relevant data, including information regarding the implementation costs and ongoing costs associated with the proposed rule, especially as they pertain to small entities.

Error resolution and limited liability for unverified accounts. The Bureau is proposing to amend §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), and Appendix A–7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts held by consumers who have not successfully completed the financial institution's consumer identification and verification process. If adopted, small entities would benefit from avoiding 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. 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 would be limited if small entities tend not to distribute prepaid accounts that can be used before verification or that offer significant pre-verification functionality and thus may not have the same concerns regarding increased fraud risk associated with offering error resolution and limited liability protections for unverified prepaid accounts.

Credit card accounts linked to prepaid accounts. The Bureau is proposing to add an exception in proposed § 1026.61(a)(5)(iii)(D) to the definition of ''business partner.'' If the conditions of the proposed exception are met, an unaffiliated credit card issuer and a prepaid account issuer with a business arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C) would not be business partners with respect to the credit card account even if the credit card account is linked to a prepaid account to access credit during the course of a transaction. The linked credit card account would not be considered to be a ''covered separate credit feature'' accessible by a hybrid prepaid-credit card and therefore would not be subject to the provisions of the Prepaid Accounts Rule that only apply to those credit features or prepaid accounts with those credit features. Under this proposed exception, the consumer holding the linked credit card account would 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 applicable to covered separate credit features or prepaid accounts with those credit features would not apply. The proposed amendment would facilitate compliance with the Prepaid Accounts Rule by digital wallet providers 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 by excepting such providers from the tailored provisions in the Prepaid Accounts Rule applicable only to covered separate credit features or prepaid accounts with those features so long as they meet the conditions described above. The Bureau believes that, at present, this exception would apply to few entities.

[106] Public Law 96–354, 94 Stat. 1164 (1980).

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

[108] 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).

[109] 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.*

[110] 5 U.S.C. 601 *et seq.*

[111] 5 U.S.C. 609.

[112] 79 FR 77102, 77283 (Dec. 23, 2014).

[113] 81 FR 83934, 84308 (Nov. 22, 2016).

[114] 82 FR 18975, 18979 (Apr. 25, 2017).

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

In summary, this proposed rule would not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Rule because small entities retain the option of complying with the Prepaid Accounts Rule as it currently exists. Therefore, small entities would not experience a significant economic impact as a result of this proposed rule.

Certification

Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would 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),[115] 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 has determined that this proposed rule would provide firms with additional flexibility and clarity with respect to what must be disclosed under the Prepaid Accounts Rule; therefore, it would have only minimal impact on the industry-wide aggregate PRA burden relative to the baseline. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

[115] 44 U.S.C. 3501 *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 proposes to further amend 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. Section 1005.2 is amended 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. Section 1005.11 is amended by removing paragraph (c)(2)(i)(C) and revising paragraphs (c)(2)(i)(A) and (B) 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. Section 1005.18 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii)(D), (b)(2)(ix)(C), (b)(6)(i)(B), (b)(6)(i)(C), (b)(9)(i)(C), (d)(1)(ii), and (e)(3) as follows:

§ 1005.18 Requirements for financial institutions offering prepaid accounts.

* * * * *

(b) * * *

(1) * * *

(i) *General.* Except as provided in paragraphs (b)(1)(ii) or (iii) of this section, a financial institution shall provide the disclosures required by paragraph (b) of this section before a consumer acquires a prepaid account. 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) * * *

(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.*).

* * * * *

(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, disclosures required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(B) or (b)(1)(iii)(B) of this section also must be made orally.

* * * * *

(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, 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.

* * * * *

(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 pre-verification 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 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 this paragraph (e), as applicable.

* * * * *

■ 5. Section 1005.19, is amended by revising paragraphs (b)(2), (b)(6)(ii), (b)(6)(iii), and (f)(2) as follows:

§ 1005.19 Internet posting of prepaid account agreements.

* * * * *

(b) * * *

(2) *Amended agreements.* If a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective. An issuer may delay submitting a change in the names of other relevant parties to the agreement until such time as the issuer is submitting an amended agreement pursuant to this paragraph or changes to other identifying information about the

issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section, in lieu of submitting such a change no later than 30 days after the change becomes effective.

* * * * *

(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) * * *

(2) *Compliance date for the agreement submission requirement.* The compliance date for the requirement to make submissions of prepaid account agreements to the Bureau on a rolling basis pursuant to paragraph (b) of this section is October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018.

* * * * *

■ 6. In Appendix A to part 1005, Model Clause A–7 is amended by revising paragraph (c), including the heading, 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))

* * * * *

(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. Once we have done so, we will address your complaint or question as set forth above.

* * * * *

■ 7. In Supplement I to part 1005:

■ a. Under *Section 1005.2—Definitions,* in subsection *Paragraph 2(b)(3)(ii),* paragraph 4 is added.

■ b. Under *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts:*

■ i. In subsection *18(a) Coverage,* paragraph 1 is revised.

■ ii. In subsection *18(b)(1)(i) General,* paragraph 1 is revised.

■ iii. In subsection *18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations,* paragraph 4 is revised.

■ iv. In subsection *18(b)(2)(ix)(C) Fee Variations in Additional Fee Types,* paragraph 1.ii is revised.

■ v. In subsection *18(b)(6)(i) General,* paragraph 1 is added.

■ vi. In subsection *18(b)(6)(i)(B) Electronic Disclosures,* paragraph 1 is revised.

■ vii. In subsection *18(e) Modified Limitations on Liability and Error Resolution Requirements,* paragraphs 4, 5, and 6 are revised.

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

■ i. In subsection *19(a)(2) Amends,* paragraph 1.vii is revised.

■ ii. In subsection *19(b)(6) Form and Content of Agreements Submitted to the Bureau,* paragraph 3 is revised.

■ iii. In subsection *19(f) Effective Date,* paragraph 1 is revised.

The revisions and additions 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)(ii)

* * * * *

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 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.

* * * * *

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.

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

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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.

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18(b)(2) Short Form Disclosure Content

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

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18(b)(2)(ix)(C) Fee Variations in Additional Fee Types

* * * * *

1. * * *

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".

* * * * *

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.

* * * * *

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

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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, a 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. 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 is 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 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) begin on the day following the date the financial institution successfully completed its consumer identification and verification process.

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 completed its consumer identification and verification process with respect to those accounts.

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Section 1005.19 Internet Posting of Prepaid Account Agreements

19(a) Definitions

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19(a)(2) Amends

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1. * * *

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

* * * * *

19(b) Submission of Agreements to the Bureau

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

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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.

* * * * *

19(f) Effective Date

1. *Compliance date for the agreement submission requirement.* Section 1005.19(f)(2) provides that the compliance date for the requirement to make submissions of prepaid account agreements to the Bureau on a rolling basis pursuant to § 1005.19(b) is October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. After October 1, 2018, issuers must submit on a rolling basis prepaid account agreements or notifications of withdrawn agreements to the Bureau no later than 30 days after offering, amending, or ceasing to offer the agreements.

* * * * *

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.*

■ 9. Section 1026.61 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 1026.61 Hybrid prepaid-credit cards.

* * * * *

(a) * * *

(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 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 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.

(*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.

(*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 from the credit card account made with the prepaid card as with 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—Official Interpretations:

■ a. Under *Section 1026.61—Hybrid Prepaid-Credit Cards:*

■ i. In subsection *Paragraph 61(a)(5)(iii),* paragraph 1 is revised.

■ ii. Subsections *61(a)(5)(iii)(D) Exception For Certain Credit Card Account Arrangements, Paragraph 61(a)(5)(iii)(D)(1), Paragraph 61(a)(5)(iii)(D)(2), Paragraph 61(a)(5)(iii)(D)(4),* and *Paragraph 61(a)(5)(iii)(D)(5)* are added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

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

* * * * *

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.

* * * * *

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 reward 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 reward 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 extended through 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 made with the prepaid card or with 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 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.

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 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.

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 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.

* * * * *

Dated: June 15, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–12845 Filed 6–28–17; 8:45 am]

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.

FOR FURTHER INFORMATION CONTACT: Yaritza Velez, Counsel, and Kristine M. Andreassen, Krista Ayoub, and Thomas L. Devlin, Senior Counsels, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/.*

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.

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 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]

[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).

[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).

[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

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 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 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.

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

Final Rule, or this final rule, the rules themselves, as published in the **Federal Register**, are the controlling documents.

[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).

[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).

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

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]

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).

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

[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 "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).

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 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

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

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] 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 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 § 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

[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 (Pub. L. 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*).

[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 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.

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 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.

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

[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 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 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 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 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 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

[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.

[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).

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

[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).

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.

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 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 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 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

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

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

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

[43] *Id.*

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.

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]

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 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

[44] *Id.* at 84022.

[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.

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 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.

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

[46] *Id.* at 84022.

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

[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.

[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.

financial institution may charge with respect to a 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 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 (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

[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*).

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

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] 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, 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

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

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

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.

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

[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.

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]

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]

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)

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

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

[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).

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

[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).

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 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 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 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]

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

[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.

[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

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]

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 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 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

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).

[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).

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

[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.

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 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 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.

[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.

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

[73] The Bureau acknowledges that there is some risk that changing the approach of the 2016 Final Rule may increase the incentive for financial

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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 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 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 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.

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.

[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.

[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.

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 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 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

[78] *See* 31 CFR 1022.210.

[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.

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 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 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 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 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

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

[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).

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

[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.

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 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, 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. 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

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

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

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

[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.

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.

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..

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

[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).

[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.

[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.*

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."

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").
- 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 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

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

[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).

[96] *Id.* at 84158–61.

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 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 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 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 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

[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.

[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.

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

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 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

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

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]

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 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

[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 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*).

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 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

[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).

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.

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 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

[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.

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

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

[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.

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 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 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

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

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 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

[111] *Id.* at 84161.

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]

[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

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 § 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]

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]

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

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.

[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.

[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 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).

percentage rates (APRs), and fees and charges imposed on the credit account; (b) any security interests 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 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

[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.

[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.

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 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, 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

[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.

[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.

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, 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 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

[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.

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 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

[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.

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

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 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 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 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–

[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.

[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.

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

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 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 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 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

[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.

[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.

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 § 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.

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.)

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

[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 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.

[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).

[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

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, 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 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 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

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.

[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.

[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).

[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).

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; [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. 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 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-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

[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.

[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.

[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).

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 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 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

[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 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.

[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.

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 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 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

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

[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.*

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 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 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 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

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

[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.

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

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.

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

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).

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

* * * * *

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

■ 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 website.

(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 website or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a website when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in 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

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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 website 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 website 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 website 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 website.* 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 website 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 website 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 website 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 website 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 website 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 website 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 website 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 website. On that website, 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 website 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 website 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 website 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 website, 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 website. 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 website, the financial institution must display the monthly and annual fee totals on the periodic statement and on the consumer's electronic account transaction history made available on its website. Likewise, a financial institution that follows the periodic statement alternative in § 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 website 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.

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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 website 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 websites.* 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 website, the issuer is deemed to maintain that website for purposes of § 1005.19. Such a website is deemed to be maintained by the issuer for purposes of § 1005.19 even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's website is an example of a third-party website 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 website specifically related to prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic account transaction history, through a website maintained by Program Manager. Program Manager designs the website and owns and maintains the information technology infrastructure that supports the website. The website is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this website, the website 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 website in accordance with § 1005.19(c) or (d)(1), respectively. Bank need not create and maintain a website 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 website 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

* * * * *

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 website to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct 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

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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 2–12–18; 8:45 am]

BILLING CODE 4810–AM–P