[ORAL ARGUMENT NOT YET SCHEDULED]

**No. 21-5057**

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**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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PAYPAL, INC.,
Plaintiff-Appellee,

*v.*

CONSUMER FINANCIAL PROTECTION BUREAU, *et al.*,
Defendants-Appellants.

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On Appeal from the United States District Court
for the District of Columbia
Case No. 1:19-cv-03700

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# OPENING BRIEF OF APPELLANTS

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

### A. Parties and Amici

Defendants-Appellants are the Consumer Financial Protection Bureau and David Uejio, in his official capacity as Acting Director. Plaintiff-Appellee is PayPal, Inc. There are no intervenors and no amici at this time.

### B. Rulings Under Review

Appellants seek review of the memorandum opinion and accompanying order of the Honorable Richard Leon in *PayPal, Inc. v. Consumer Financial Protection Bureau*, Civ. No. 1:19-cv-3700, entered on December 30, 2020. Joint Appendix (J.A.) ___. The opinion and order have no official citations at this time.

### C. Related Cases

This case has not previously been before this Court or any other court, aside from the district court where it originated. There are no related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

August 16, 2021

s/ Kristin Bateman
Kristin Bateman
*Attorney for Defendants-Appellants Consumer Financial Protection Bureau and David Uejio*

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# GLOSSARY

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| **Bureau** | Consumer Financial Protection Bureau |
| **EFTA** | Electronic Fund Transfer Act |
| **GPR card** | General-purpose reloadable card |

## INTRODUCTION

Prepaid products are among the fastest growing consumer financial products, as more and more consumers use them in a wide variety of transactions. Yet, for years, it had been difficult for consumers to make informed decisions about which prepaid products were right for them. In some cases, companies did not disclose key account information upfront at all, and when they did, variations in how account terms were described and displayed made it challenging for consumers to quickly find and evaluate the information. Consumers often did not get full information about accounts' fees and features until they started using the accounts—at which point it could be hard to change course.

To address these problems, the Consumer Financial Protection Bureau (Bureau) endeavored to create clear disclosure rules for this rapidly expanding market. It developed and continually refined different prototype disclosures, conducted focus groups, interviewed individual consumers, and solicited online feedback, all with the goal of developing a disclosure regime that would better inform consumers of their options. The end result was a rule (the Prepaid Rule or Rule) that, for the first time, requires prepaid account providers to disclose the specific terms of prepaid accounts before consumers sign up for them.

Under the Rule, companies now must give consumers two disclosures before they open an account—a "short form" that provides a quick, easy-to-use overview

of the account's key fees and features, and a "long form" that consumers can reference for comprehensive details about the account. Together, the disclosures ensure that consumers have the information they need to pick the products that best suit their needs and to avoid unexpected charges. The short form is particularly important for consumers first signing up for an account. That disclosure provides a consistent and manageable set of information, using simple language, in an uncluttered and relatively standardized format—all to make it easier for consumers to quickly find and understand key account information, and to make apples-to-apples comparisons of different prepaid products.

PayPal, Inc., brought suit against the Bureau to challenge the Prepaid Rule's short-form disclosure requirements. The district court granted summary judgment to PayPal, holding that those requirements exceed the Bureau's statutory authority. That holding is wrong.

There is no dispute that both the Electronic Fund Transfer Act (EFTA) and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) authorize the Bureau to promulgate rules governing disclosures for prepaid accounts. EFTA requires financial institutions to make disclosures "in accordance with regulations of the Bureau" and also more generally empowers the Bureau to "carry out the purposes" of the Act. 15 U.S.C. §§ 1693c(a), 1693b(a). And the Dodd-Frank Act authorizes the Bureau to adopt rules to ensure that the features of

consumer financial products and services are "effectively disclosed." 12 U.S.C. § 5532(a). The short-form disclosure requirements fit comfortably within those grants of authority.

The district court concluded otherwise for one principal reason: In its view, the short-form disclosure requirements conflict with a provision of EFTA that requires the Bureau to "issue model clauses for optional use by financial institutions," 15 U.S.C. § 1693b(b). Memorandum Opinion ("Op.") at 9 (J.A. ___). According to the district court, this requirement unambiguously prohibits the Bureau from adopting "mandatory disclosure clauses"—a prohibition it found the short-form disclosure requirements to transgress. Op. at 13-14 (J.A. ___). But the Rule does not make any disclosure clauses mandatory. Although the Rule specifies particular plain-English wording that companies can use to disclose the required information, it also in every instance permits companies to instead use substantially similar clauses of their own choosing.

Nor is there any merit to the district court's suggestion that the requirement for the Bureau to issue optional model clauses reflects Congress's intent (let alone its unambiguous intent) to bar the Bureau from adopting mandatory rules for the content and formatting of disclosures. The short-form disclosure provisions require companies to make disclosures with consistent content displayed in a clean and relatively uniform format—all to make prepaid accounts' terms easier for

consumers to find, understand, and compare. Nothing in EFTA's model-clause provision (or any other statutory provision) restricts the Bureau from making disclosures more effective in that way.

## STATEMENT OF JURISDICTION

Plaintiffs assert claims under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, and invoked the district court's jurisdiction under 28 U.S.C. § 1331. J.A. ___. The district court entered final judgment for plaintiffs on December 30, 2020. J.A. ___. The Bureau filed a timely notice of appeal on March 1, 2021. J.A. ___; Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

## STATEMENT OF THE ISSUE

Whether the Bureau has statutory authority to adopt mandatory rules for the content and formatting of prepaid account disclosures.

## PERTINENT STATUTES AND REGULATIONS

Pertinent statutes and regulations are reproduced in the addendum to this brief.

## STATEMENT OF THE CASE

### A. Statutory Background

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in response to the 2008 financial

crisis. Pub. L. No. 111-203, 124 Stat. 1376. Title X of that law, known as the Consumer Financial Protection Act, 12 U.S.C. § 5481 *et seq.*, created the Consumer Financial Protection Bureau and gave it primary authority for "regulat[ing] the offering and provision of consumer financial products or services under the Federal consumer financial laws." *Id.* § 5491(a). Congress directed the Bureau to use this authority to ensure that consumers have access to markets for consumer financial products and services and that those markets are "fair, transparent, and competitive." *Id.* § 5511(a). The Act identifies several ways the Bureau should pursue those goals, the first of which is to ensure that "consumers are provided with timely and understandable information to make responsible decisions about financial transactions." *Id.* § 5511(b)(1).

The Act gives the Bureau various tools to accomplish its mandate. For one, Congress transferred to the Bureau the authority to implement 18 preexisting consumer financial statutes that govern a host of consumer financial products. *Id.* §§ 5581, 5481(12), (14). Those laws provide a broad range of protections for consumers, including many specific requirements that companies disclose the terms and conditions of their products. *See, e.g.*, 15 U.S.C. §§ 1631, 1637a, 1638, 1639; 12 U.S.C. § 4304. In addition to assigning responsibility for those 18 preexisting laws to the Bureau, the Dodd-Frank Act also grants the Bureau various new authorities to improve the fairness and transparency of the consumer financial

marketplace, including the authority to write rules to prevent unfair, deceptive, and abusive practices and to ensure that products' terms are effectively disclosed. *See, e.g.*, 12 U.S.C. §§ 5531, 5532. This case involves the Bureau's authority under two statutes—the Electronic Fund Transfer Act (EFTA) and section 1032 of the Dodd-Frank Act, 12 U.S.C. § 5532.

### *1. Electronic Fund Transfer Act*

Congress enacted EFTA in 1978 for the "primary" purpose of providing "individual consumer rights" in connection with electronic fund transfer (EFT) systems, a then-new type of banking and payment service that uses electronic technology (rather than checks or other paper instruments) to transfer money. Pub. L. No. 95-630, § 902(b) (1978); *see also* S. Rep. No. 95-1273, at 8 (1978). The Act accordingly provides a broad suite of consumer protections for electronic fund transfers and the accounts from which consumers can make such transfers. *See generally* 15 U.S.C. § 1693 *et seq.* For instance, EFTA requires financial institutions to provide consumers contemporaneous documentation of electronic fund transfers to or from their accounts and periodic statements setting forth transactions made and fees charged, *id.* § 1693d(a), (c); limits consumers' liability for unauthorized transfers, *id.* § 1693g; and allows consumers to stop payment of preauthorized electronic transfers from their accounts, *id.* § 1693e(a).

As most relevant here, § 1693c of the statute requires financial institutions to disclose "[t]he terms and conditions of electronic fund transfers involving a consumer's account … in accordance with regulations of the Bureau." *Id.* § 1693c(a). Section 1693c further specifies that the disclosures "shall be in readily understandable language" and "shall include" ten enumerated items, including the type of electronic fund transfers that the consumer may initiate and any charges that apply. *Id.*

In addition to authorizing the Bureau to issue regulations governing the disclosures required by § 1693c, EFTA also more generally empowers the Bureau to "prescribe rules to carry out the purposes of" the Act. *Id.* § 1693b(a)(1). Congress intended for regulations to "add flexibility to the act" by "modify[ing] the act's requirements to suit the characteristics of individual [electronic fund transfer] services" and "keep[ing] pace with new services" that emerge. S. Rep. No. 95-1273, at 26. Congress accordingly drew the rulemaking authority particularly broadly, specifically providing that rules under the Act "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions" that the Bureau judges to be "necessary or proper" to "effectuate the purposes" of EFTA, "to prevent circumvention or evasion," or "to facilitate compliance." 15 U.S.C. § 1693b(c).

EFTA further requires the Bureau to "issue model clauses for optional use by financial institutions." *Id.* § 1693b(b). As the provision itself specifies, this requirement serves two purposes: "to facilitate compliance with the disclosure requirements of section 1693c" and "to aid consumers in understanding" the disclosed information "by utilizing readily understandable language." *Id.* In issuing model clauses, the Bureau must follow the notice-and-comment procedures of the Administrative Procedure Act, and must, for certain information that must be disclosed, "take account of variations in the services and charges under different [EFT] systems and, as appropriate, … issue alternative model clauses for disclosure of these differing account terms." *Id.* Using a model clause provides a safe harbor from liability: If a financial institution uses an appropriate model clause, it will not be held liable for "failure to make disclosure in proper form." *Id.* § 1693m(d)(2).

EFTA initially gave the Board of Governors of the Federal Reserve System (Federal Reserve Board) authority to promulgate rules and otherwise implement the Act, Pub. L. No. 90-321, § 904, *as added by* Pub. L. No. 95-630, § 2001 (1978), and the Dodd-Frank Act transferred most of that authority to the Bureau in 2011, Pub. L. No. 111-203, §§ 1061(b)(1), 1084(3) (2010); *see also* 15 U.S.C. § 1693b. Pursuant to this authority, the Federal Reserve Board issued so-called "Regulation E" in 1979, and amended it several times over the years to provide

additional protections and cover additional types of accounts involved in electronic fund transfers. *See* 81 Fed. Reg. 83934, 83946 (Nov. 22, 2016) (J.A. ___).

***2. Section 1032 of the Dodd-Frank Act***

In the Dodd-Frank Act, Congress also granted the Bureau new authority to ensure effective disclosures about consumer financial products and services. Specifically, section 1032 of the Act authorizes the Bureau to adopt rules "to ensure that the features of any consumer financial product or service … are fully, accurately, and effectively disclosed" so that consumers can "understand the costs, benefits, and risks associated with the product or service." 12 U.S.C. § 5532(a). Any rule "requiring disclosures" that the Bureau promulgates under section 1032 "may include a model form that may be used at the option of the covered person for provision of the required disclosures." *Id.* § 5532(b)(1). Such model forms must "be validated through consumer testing" and must "contain a clear and conspicuous disclosure" that "uses plain language"; has "a clear format and design, such as an easily readable type font"; and "succinctly explains the information" that must be disclosed. *Id.* § 5532(b)(2)-(3). As with EFTA's model-clause provision, using a model form adopted under section 1032 provides a safe harbor: If a covered person "uses [such] a model form," it "shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form." *Id.* § 5532(d).

Section 1032 also provides a means for regulated entities to provide disclosures of their own design pursuant to a "trial disclosure program[]." *Id.* § 5532(e). In particular, section 1032(e) authorizes the Bureau to permit regulated entities to provide "trial disclosures … that are designed to improve upon any model form" that the Bureau has issued under section 1032 or under any of the 18 preexisting "enumerated statute[s]" that the Bureau now administers. *Id.* § 5532(e)(1). To encourage entities to try out such trial disclosures, the Act empowers the Bureau to "establish a limited period during which" an entity may use its own "trial disclosure" and "be deemed to be in compliance with"—or "be exempted from"—the applicable regulatory or statutory requirements. *Id.* § 5532(e)(2).

**B. Prepaid Products**

Prepaid products are among the fastest-growing methods for American consumers to make payments, and they are used for billions of transactions annually. J.A. ___. Those products take various forms, including physical general-purpose reloadable (GPR) cards, virtual GPR "cards" that consumers use through a smartphone application or similar means, and various products that third parties use to distribute to consumers funds such as wages, student loan disbursements, insurance proceeds, or certain government benefits. 81 Fed. Reg. at 83936 (J.A. ___). Those products also include the asset accounts that come with

some "digital wallets"—products that enable consumers to store and use various payment credentials to make purchases and conduct other transactions. *Id.* at 83943 (J.A. ___). All these different types of "prepaid" products have one thing in common: They allow consumers to load and store funds and then access the funds to make online and in-store purchases, ATM withdrawals, and/or person-to-person transfers. *Id.* (J.A. ___).

**C. The Prepaid Rule**

Shortly after assuming its authorities under the federal consumer financial laws, the Bureau began considering whether and how to regulate products in the fast-growing prepaid market. Regulation E (the rule implementing EFTA) has covered payroll cards and certain government benefit prepaid products for many years. *Id.* at 83936. (J.A. ___). But, before the Bureau's Prepaid Rule, it was less clear what rules applied to other types of prepaid products, such as GPR cards and digital wallets with asset accounts. *Id.* In assessing how to resolve this regulatory uncertainty, the Bureau issued an advance notice of proposed rulemaking in 2012 and considered comments responding to it; met with industry, consumer groups, and advocacy organizations; undertook market research and monitoring; and studied 325 publicly available prepaid account agreements. *Id.* at 83954, 83956 (J.A. ___). One focus of these efforts was to evaluate how the terms and fees of prepaid products should be disclosed. *Id.* at 83953 (J.A. ___). The Bureau

developed prototype disclosures for informing consumers about these products and conducted focus groups, interviewed consumers one-on-one, and solicited online feedback to assess what kind of disclosures would be most effective. *Id.* at 83954-56 (J.A. ___).

Based on those activities, in November 2016 the Bureau finalized a rule to govern prepaid accounts—titled "Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)." 81 Fed. Reg. 83934 (Nov. 22, 2016) (J.A. ___). In January 2018, before the Rule took effect, the Bureau issued another final rule modifying several aspects of the original rule. 83 Fed. Reg. 6364 (Feb. 13, 2018) (J.A. ___). After that rule and an earlier one delayed the effective date to give industry more time to come into compliance, the Prepaid Rule took effect on April 1, 2019. 82 Fed. Reg. 18975 (Apr. 25, 2017) (J.A. ___). Under the Rule, Regulation E's preexisting protections, such as limits on consumers' liability in the event of fraud, now unambiguously apply to all prepaid accounts. *See* 81 Fed. Reg. at 83965 (J.A. ___).

The Prepaid Rule also creates a few specific requirements just for prepaid accounts—including, as most relevant in this case, tailored requirements to disclose a prepaid account's fees and other terms before the consumer acquires the account, which the Bureau adopted pursuant to its authority under both EFTA and

section 1032 of the Dodd-Frank Act. The Rule generally requires that financial institutions provide consumers both a "short form" and "long form" disclosure. 12 C.F.R. § 1005.18(b). The two disclosures are designed to work together: The short form provides a snapshot of key fees and information in a relatively standardized format that lends itself to quick review and comparison, while the companion long-form disclosure provides comprehensive information about all the fees and features of the account. 81 Fed. Reg. at 84007-08 (J.A. ___). PayPal challenges only the short-form disclosure. *See* Op. at 3 (J.A. ___).

The Rule's disclosure requirements aim to ensure that consumers get the information they need to make informed decisions about what products are best for them. In crafting those requirements, the Bureau recognized that even the most complete and accurate disclosures will not serve this goal unless consumers actually read and understand them. And, of course, a standardized format can make reviewing and comparing disclosures more straightforward. 81 Fed. Reg. at 84013 (J.A. ___). So, the Bureau developed and continually refined different prototype disclosures, and it conducted multiple rounds of consumer testing that studied consumers' engagement with, and comprehension of, those disclosures. *Id.* at 83954 (J.A. ___). Based on that testing, the Bureau developed requirements that ensure that the short-form disclosure provides accurate and useful information in a form that consumers are likely to read and understand. *See, e.g.*, 81 Fed. Reg. at

84013-14, 84276, 84278 (J.A. ___). Those requirements are codified in 12 C.F.R. § 1005.18(b) and address the content, formatting, and wording of the disclosures.

***Content Requirements.*** As for content, the Rule ensures that the short form provides a consistent and manageable set of information by specifying what must be included. First, the Rule requires the short-form disclosure to list seven specific fees that tend to be the most important for assessing the cost of a prepaid account—any periodic fee and per purchase fee, as well as any fees for ATM withdrawals, cash reloads, ATM balance inquiries, customer service, and account inactivity. 12 C.F.R. § 1005.18(b)(2)(i)-(vii); 81 Fed. Reg. at 84024-31 (J.A. ___). To maintain the uniformity that makes it easier for consumers to quickly read and understand the disclosures, these entries must appear on the short-form disclosure even if the account does not offer the particular service or does not charge for it. 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(2)-1; 81 Fed. Reg. at 84025 (J.A. ___). (In that event, the disclosure must simply note that the service is non-applicable or the cost is $0. 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(2)-1.)

Because accounts may also (or alternatively) charge *other* types of fees, the short form must also disclose how many other types of fees the account charges and list the two that generate the most revenue from consumers (if they exceed a de minimis threshold). 12 C.F.R. § 1005.18(b)(2)(viii)-(ix). This "dynamic" section of the disclosure reduces incentives for companies to obscure a product's true costs

by reducing the fees that must appear on every disclosure while increasing others, and it helps ensure that the disclosure will remain relevant as the market evolves and companies begin charging new types of fees. 81 Fed. Reg. at 84041 (J.A. ___). The Bureau also deemed this part of the disclosure particularly important for prepaid products that already had different fee structures, such as digital-wallet asset accounts (which typically did not charge the seven fees that must be disclosed on every short form). *Id.* (J.A. ___).

Finally, the Rule also requires the short-form disclosure to include other, non-fee information that could be particularly relevant to consumers. In particular, the short form must disclose whether overdraft may be offered on the account and whether the account is eligible for FDIC or NCUA insurance, and it must (where appropriate) direct the consumer to register the account to obtain that insurance and other protections. 12 C.F.R. § 1005.18(b)(2)(x)-(xi). The short form must also provide the URL for the Bureau's website where the consumer can obtain general information about prepaid accounts, and must direct consumers to the long-form disclosure that provides comprehensive details about the account. *Id.* § 1005.18(b)(2)(xii)-(xiii).

For payroll card accounts (prepaid accounts that an employer establishes to pay employees) and prepaid accounts used to distribute government benefits, the short form must also disclose that consumers need not accept the account and can

instead receive their wages or benefits another way. *Id.* §§ 1005.18(b)(2)(xiv)(A); 1005.15(c)(2)(i). For these types of accounts, the short form may also (but is not required to) include a line directing consumers to information on ways they can access their funds or look up their balance for free or for a reduced fee. *Id.* §§ 1005.18(b)(2)(xiv)(B); 1005.15(c)(2)(ii).

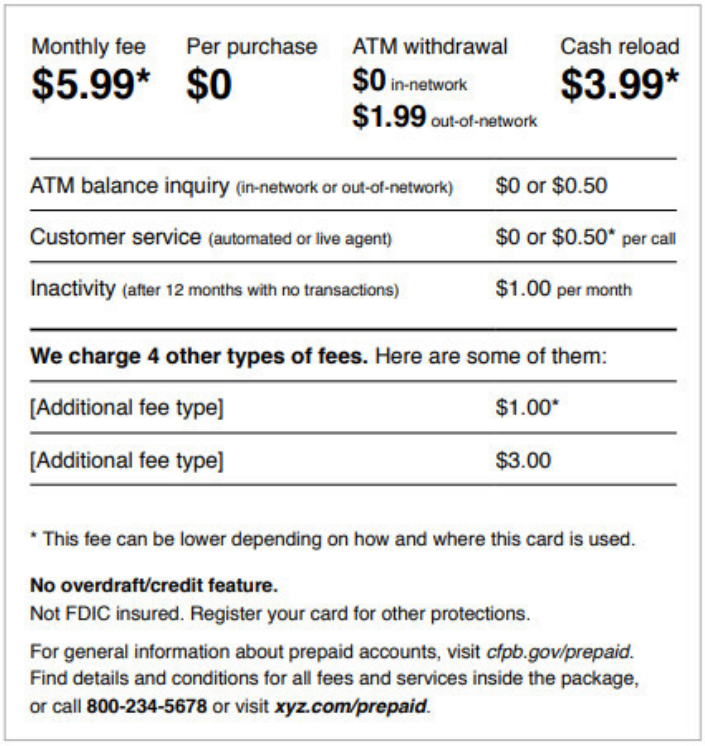
To avoid information overload and maintain an uncluttered design that consumers will be more likely to read, the Rule also limits footnotes and caveats within the short form. 81 Fed. Reg. 84063-64 (J.A. ___). This is particularly relevant where a fee could be waived or otherwise vary. In those instances, the Rule generally requires the disclosure to list the highest fee that could be charged, followed by an asterisk or other symbol linked to a statement that "This fee can be lower depending on how and where this card is used," or something substantially similar. 12 C.F.R. § 1005.18(b)(3)(i). The short-form disclosure itself generally cannot describe the specific conditions under which the fee may be lower or waived, but the financial institution can provide those details anywhere else it wants, including immediately outside the short-form disclosure box or elsewhere on the same webpage, mobile screen, or packaging. *See id.* pt. 1005, Supp. I, ¶ 18(b)(3)(i)-1; *see also* 81 Fed. Reg. at 84064 (J.A. ___). (And a full explanation of when the fee may be lower or waived must appear on the companion long-form disclosure. 12 C.F.R. § 1005.18(b)(4)(ii).)

***Formatting Requirements.*** To ensure that the short-form disclosure appears in a relatively standardized format like that proven effective in the Bureau's testing, the Rule requires the disclosure to be made "in a form substantially similar to" model forms adopted by the Rule. *Id.* § 1005.18(b)(6)(iii)(A). Although companies need not use the model forms, there are several specific formatting requirements that they must follow. For instance, the disclosure must use a single, easy-to-read type in a single color, printed on a background that provides a clear contrast. *Id.* § 1005.18(b)(7)(ii)(A). The Rule also specifies minimum type sizes for each piece of information. *Id.* § 1005.18(b)(7)(ii)(B)(*1*). In addition, the disclosed information must generally be displayed in a specified order that maintains consistency and facilitates easy comparison. *Id.* § 1005.18(b)(7)(i)(A). The Rule also requires certain information to be bolded and prohibits certain terms from being in larger type than others. *Id.* § 1005.18(b)(7)(ii)(B)(*1*). This creates a visual hierarchy of information designed to more effectively draw consumers' attention to what are often the most important terms, and to make all the information easier to digest. *See* 81 Fed. Reg. at 84011, 84013 (J.A. ___).

***Wording Requirements.*** The Rule also provides guidelines for clear and concise phrasing designed to be easy for consumers to understand. *See, e.g.*, 12 C.F.R. § 1005.18(b)(2)(i)-(viii). For most information that must be disclosed, the Rule requires companies to convey the required information using specified

wording or "substantially similar" language. *Id.* For instance, the Rule specifies that companies may use the phrase "ATM withdrawal" for any fee to withdraw money from an ATM, "Customer service" for any fee to contact the financial institution about the account, or "Inactivity" for any fee for nonuse of the account. *Id.* § 1005.18(b)(2)(iii), (vi), (vii). To disclose the additional fees charged, the disclosure may state "We charge [x] other types of fees. Here are some of them:," *id.* § 1005.18(b)(2)(viii)(A)-(B), and to direct consumers to the long-form disclosure, the disclosure may say "Find details and conditions for all fees and services in [location]," *id.* § 1005.18(b)(2)(xiii). For a few items, the Rule does not provide any specific wording. *See id.* § 1005.18(b)(2)(ix), (b)(2)(xiv)(B), (b)(3)(ii). But in every instance where the Rule specifies particular wording for a disclosure, the Rule permits companies to use either the specified clause or "substantially similar" language of the company's own choosing. *Id.* § 1005.18(b)(2)(i)-(xiv). The Bureau determined that that this would suffice to ensure that the disclosed information was easy to understand and compare. 81 Fed. Reg. at 84089-90 (J.A. ___).

***Model Forms.*** The Rule includes several model forms that offer a safe harbor to institutions that use them appropriately. *See* 81 Fed. Reg. at 84340-44 (J.A. ___); 12 C.F.R. pt. 1005, Appx. A-10(A)-(E). As an example, one such model form looks like this:



| Monthly fee | Per purchase | ATM withdrawal | Cash reload |
|---|---|---|---|
| **$5.99*** | **$0** | **$0** in-network<br>**$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***.

The model forms are optional—any financial institution may, in its discretion, create and use short-form disclosures that differ from the model forms, provided they meet the requirements of § 1005.18(b). 12 C.F.R. pt. 1005, Supp. I, ¶ A-1. Such an institution does not enjoy the safe harbor afforded by EFTA or the Dodd-Frank Act, but still complies with the Rule. *See* 15 U.S.C. § 1693m(d)(2); 12 U.S.C. § 5532(d).

**D. Prior Proceedings**

Plaintiff PayPal, Inc., is an online payments company that offers various prepaid products, including a GPR card and a digital wallet with a prepaid asset account. J.A. ___, ___, ___. PayPal brought this suit in December 2019 to

challenge two provisions of the Prepaid Rule—the short-form disclosure requirements in 12 C.F.R. § 1005.18(b) and a provision (not at issue in this appeal) requiring providers to wait 30 days before linking credit to a prepaid account, 12 C.F.R. § 1026.61(c). *See* J.A. ___. PayPal alleged that those provisions of the Rule exceed the Bureau's statutory authority, are arbitrary and capricious as applied to prepaid accounts that come with digital wallets, and rely on an arbitrary and capricious cost-benefit analysis as applied to such accounts, and that the short-form disclosure requirements violate the First Amendment. J.A. ___.

The district court granted summary judgment to PayPal on December 30, 2020. Op. at 20 (J.A. ___). The court concluded that neither EFTA nor the Dodd-Frank Act authorizes the Bureau to adopt the short-form disclosure requirements, and that the 30-day waiting period provision exceeds the Bureau's statutory authority as well.[1] Op. at 14, 19-20 (J.A. ___). The court did not reach PayPal's other claims.

In assessing the short-form disclosure requirements, the court did not question that the grants of rulemaking authority in both EFTA and section 1032 of the Dodd-Frank Act by their terms would authorize those disclosure rules. *See* Op. at 8-13 (J.A. ___). Nonetheless, the court concluded at *Chevron* step one that "the

[1] The Bureau does not appeal the court's decision on the 30-day waiting period provision.

plain language of the statute effectively precludes" the short-form disclosure requirements. Op. at 9 (J.A. ___). It based that conclusion on a single provision: EFTA's requirement that the Bureau "'issue *model* clauses for *optional* use by financial institutions.'" *Id.* (quoting 15 U.S.C. § 1693b(b)) (emphasis added by district court). According to the district court, that provision implicitly prohibits the Bureau from issuing "mandatory disclosure clauses" under either EFTA or the Dodd-Frank Act. Op. at 13 (J.A. ___); *accord id.* at 9 (J.A. ___).

The court then held that the short-form disclosure requirements "[u]ndoubtedly" run afoul of that prohibition. Op. at 13-14 (J.A. ___). In so holding, the court did not identify any disclosure clauses that the Rule makes mandatory, and instead faulted the Rule insofar as "it is *mandatory* and provides the specific form, structure, and contents of disclosures that providers *must* use." Op. at 14 (J.A. ___) (emphasis in original). The court accordingly held that the short-form disclosure provisions in 12 C.F.R. § 1005.18(b) exceed the Bureau's authority "to the extent [they] require[] providers to utilize the Bureau's disclosure clauses." *Id.* The court's decision does not articulate how it makes the jump from mandatory disclosure clauses to mandatory rules for disclosures' "form, structure, and contents," nor does it explain why the statutes can be interpreted to preclude those sorts of mandatory rules. *See id.* The opinion does note in passing, however, that the statute "does *not* require that providers adhere to a specific form" for

disclosures and that the Bureau had not "identif[ied] any prior regulation under EFTA in which it mandated the form of the disclosure clauses." Op. at 9, 12 n.3 (J.A. ___) (emphasis in original).

The court's order vacates 12 C.F.R. § 1005.18(b) "to the extent the short-form disclosure requirement provides mandatory disclosure clauses," but does not identify which portions of § 1005.18(b) are invalid. J.A. ___.

## SUMMARY OF ARGUMENT

The Prepaid Rule's short-form disclosure requirements fall comfortably within the bounds of the Bureau's authority under both EFTA and the Dodd-Frank Act.

1. By its plain terms, EFTA grants the Bureau authority to adopt rules detailing how disclosures for prepaid accounts must be made: It expressly requires financial institutions to disclose account terms and conditions "in accordance with regulations of the Bureau" and further empowers the Bureau to promulgate rules to "carry out the purposes of" EFTA. 15 U.S.C. §§ 1693c(a), 1693b(a)(1). The short-form disclosure provisions—including their requirements for the content and formatting of disclosures—are undeniably regulations "in accordance with" which entities must disclose the terms of the accounts they offer. And they "carry out the purposes" of EFTA by making the key terms of prepaid accounts easier to find, understand, and compare.

Nothing in EFTA limits the Bureau's authority to make disclosures more effective by regulating their content and formatting. The district court concluded otherwise for one principal reason: In its view, a provision of EFTA that requires the Bureau to "issue model clauses for optional use by financial institutions," 15 U.S.C. § 1693b(b), unambiguously bars the Bureau from adopting "mandatory disclosure clauses," which, the court held, the short-form disclosure provisions impermissibly create. But the Rule does not make any disclosure clauses—that is, any particular wording—mandatory. The Rule sets forth specific terms that companies may use in making the required disclosures, but in every instance permits companies to use substantially similar language of their own choosing instead.

Nor is there any merit to the district court's apparent conclusion that, in requiring the Bureau to adopt optional model clauses, EFTA implicitly prohibits mandatory rules for disclosures' content and formatting. Congress enacted the model-clause provision to ensure that financial institutions would have a surefire way to meet the statute's requirements when regulations leave details unspecified—not, as the district court surmised, to guarantee providers flexibility to make disclosures however they wish. Besides, the district court's (incorrect) impression of the purpose of the model-clause provision could not override the statute's text in any event. That text requires the Bureau to issue optional model

clauses—and no canon of construction supports reading that requirement to preclude mandatory content and formatting requirements. As this Court has repeatedly held, a requirement that an agency do one thing (here, adopt optional model clauses to give companies a straightforward way to comply) does not imply that the agency may not do something else (here, adopt mandatory content and formatting rules to make disclosures more effective). Nor does anything else in the statute's text or context suggest that Congress intended to exclude mandatory content and formatting requirements from the otherwise broad grant of authority. Rather, Congress left to the agency's judgment whether such requirements would advance the statute's goals.

Because nothing in the statute forecloses—let alone unambiguously forecloses—the Bureau from exercising its authority under EFTA to adopt requirements for the content and formatting of disclosures, the Bureau is entitled to deference for its entirely reasonable view that those requirements promote the statute's purposes by making disclosures easier to read, understand, and compare.

2. While the short-form disclosure requirements are valid under EFTA's grants of rulemaking authority alone, section 1032(a) of the Dodd-Frank Act also independently authorizes those requirements. By its plain terms, that provision authorizes the Bureau to "prescribe rules to ensure" that the terms of consumer financial products and services are "fully, accurately, and effectively disclosed."

12 U.S.C. § 5532(a). The short-form disclosure provisions fall squarely within that grant of authority. The district court concluded otherwise for the sole reason that section 1032 could not override EFTA's (purported) prohibition on mandatory rules for disclosures' content and formatting. But no such prohibition exists. And for similar reasons, section 1032's provision authorizing the Bureau to adopt optional model forms does not circumscribe how the Bureau may exercise its authority to make disclosures more "effective[]." Here, the Bureau adopted content and formatting rules to ensure that consumers receive a consistent and manageable set of information in a relatively standardized format that makes the disclosures easy to read, understand, and use. That choice, too, is entitled to deference.

## STANDARD OF REVIEW

This Court reviews the district court's grant of summary judgment de novo. *Arizona v. Thompson*, 281 F.3d 248, 253 (D.C. Cir. 2002).

When evaluating an agency's statutory authority, the Court must apply the familiar standards of *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Under the *Chevron* framework, a court first asks "whether Congress has directly spoken to the precise question at issue." *Id.* at 842. If it has, the court "must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. But if "the statute is silent or ambiguous with respect to

the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843. This framework applies equally to an agency's interpretation of the "scope of [its] statutory authority." *City of Arlington v. FCC*, 569 U.S. 290, 296-97, 300 (2013); *see also Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142 (2016) ("We interpret Congress' grant of rulemaking authority in light of our decision in *Chevron*.").

## ARGUMENT

Both EFTA and section 1032 of the Dodd-Frank Act grant the Bureau broad authority to prescribe rules governing disclosures about financial products. That authority permits the Bureau to make disclosures more effective by regulating their content (what information is disclosed), format (how the information is displayed), and wording (what language is used). In adopting the Prepaid Rule, the Bureau determined that disclosures with consistent content, simple language, and a clean, uniform design would be easier for consumers to read, understand, and use in comparing different options. So, after an extensive rulemaking process, the Bureau adopted the Prepaid Rule's short-form disclosure requirements, which provide for a relatively standardized disclosure that presents specified information in easy-to-understand language in a specified, uncluttered format. Those

requirements fit comfortably within the Bureau's authority to regulate disclosures under both EFTA and section 1032 of the Dodd-Frank Act.[2]

## I. EFTA Authorizes the Short-Form Disclosure Requirements.

In EFTA, Congress expressly granted the Bureau authority to promulgate rules governing disclosures under the Act, and the Bureau permissibly exercised that authority in adopting the Prepaid Rule's short-form disclosure requirements. The district court concluded otherwise for one principal reason: In its view, those requirements conflict with a provision of EFTA that requires the Bureau to issue "model clauses" for "optional use" by financial institutions, 15 U.S.C. § 1693b(b). Op. at 9-13 (J.A. ___). According to the district court, EFTA's model-clause provision unambiguously strips the Bureau of authority to adopt mandatory rules for the "form, structure, and contents of disclosures," and the short-form disclosure requirements therefore fail at *Chevron* step one. Op. at 14 (J.A. ___). That conclusion is incorrect. The model-clause provision simply ensures that institutions will always have a surefire way of complying with the statute, even

[2] The sole question presented by the decision below is whether the Bureau has statutory authority to adopt the short-form disclosure requirements. Although PayPal's complaint also raises arbitrary-and-capricious, cost-benefit, and First Amendment challenges to the short-form disclosure requirements, the district court did not reach those claims, and this Court need not address them in the first instance on appeal. If the Court agrees that the short-form disclosures are within the scope of the Bureau's rulemaking authority under EFTA, the Dodd-Frank Act, or both, PayPal is free to renew its other claims in any further proceedings on remand.

when the Bureau's regulations do not specify how information should be disclosed. Neither that provision nor anything else forecloses—let alone unambiguously forecloses—rules requiring disclosures to present specified content in a specified format so that consumers are better able to find, understand, and compare products' terms. The Bureau's decision to adopt such rules is entitled to deference.

### A. EFTA's rulemaking provisions authorize rules governing the content and formatting of disclosures.

EFTA grants the Bureau authority to promulgate rules governing disclosures under the Act, whether those rules relate to disclosures' content, formatting, or both. That authority is found in two separate statutory provisions. First, § 1693c(a) explicitly grants the Bureau authority to regulate disclosures by requiring financial institutions to disclose "[t]he terms and conditions of electronic fund transfers involving a consumer's account …, in accordance with regulations of the Bureau." 15 U.S.C. § 1693c(a). The statute specifies that disclosures "shall be in readily understandable language" and lists certain information that disclosures "shall include[] to the extent applicable," but otherwise leaves the details of the disclosures to "regulations of the Bureau." *Id.*

Second, § 1693b(a) also more generally grants the Bureau broad authority to "prescribe rules to carry out the purposes of" EFTA. *Id.* § 1693b(a)(1). To ensure that the responsible agency (originally the Federal Reserve Board, now the Bureau) would be able to modify requirements as electronic fund transfer services evolved,

Congress further specified that regulations under the Act "may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions," that the Bureau judges to be "necessary or proper" to "effectuate the purposes" of EFTA, to "prevent circumvention or evasion," or to "facilitate compliance." *Id.* § 1693b(c).

By their plain terms, these provisions grant the Bureau authority to adopt rules detailing how disclosures for prepaid accounts must be made.[3] There can be no serious dispute that the short-form disclosure requirements, including their rules governing the disclosures' content and formatting, are regulations "in accordance with" which entities "shall disclose" the terms and conditions of prepaid accounts. They therefore fit squarely within § 1693c(a)'s express grant of authority to adopt regulations governing disclosures.

The short-form disclosure requirements also straightforwardly fall within § 1693b(a)'s grant of authority to write rules to "carry out the purposes" of EFTA. Congress intended for disclosures under EFTA to "inform[] [consumers] as to their options" so that they "can make meaningful choices." S. Rep. No. 95-1273, at 29. It is hardly controversial that the content and formatting of a disclosure can have a significant impact on how effectively the disclosure serves that goal. Too much

[3] There is no dispute that prepaid accounts can be used in "electronic fund transfers" whose terms and conditions must be disclosed under EFTA. *See* 15 U.S.C. § 1693a(7) (defining "electronic fund transfer").

information can result in information overload; technical language can be hard to understand; tiny print can be hard to even read; a cluttered design can discourage consumers from engaging with the disclosure in the first place; and, when consumers do engage, variations in layout can make it difficult to find and compare like features and fees.

The detailed content and formatting requirements in the short-form disclosure provisions make the disclosures more effective by avoiding problems like those—and thereby undeniably "carry out the purposes" of EFTA's disclosure requirement. For instance, to make the disclosures easy to read, the Rule prescribes minimum type sizes and requires providers to use a single, easy-to-read type in a single color, against a background that provides a clear contrast. 12 C.F.R. § 1005.18(b)(7)(ii)(A); 81 Fed. Reg. at 84085-86 (J.A. ___). To make it easier for consumers to find and compare different products' terms, the disclosed information must appear in a standardized format—a table that lists the required information in a specified order, with certain information displayed more prominently through bolding or larger type. *Id.* § 1005.18(b)(6)(iii)(A), (b)(7)(i)(A), (ii)(A)-(B); 81 Fed. Reg. at 84078, 84087 (J.A. ___). And, to avoid information overload, the short form may include only a reduced, manageable set of information—extra information cannot be included on the short form itself (though institutions may provide additional details anywhere else they want,

including immediately outside the short-form disclosure box or elsewhere on the same webpage, mobile screen, or packaging). 12 C.F.R. pt. 1005, Supp. I, ¶ 18(b)(3)(i)-1; 81 Fed. Reg. at 84089 (J.A. ___). Together, these content and formatting requirements make the short-form disclosures easier to read, understand, and compare—and make it more likely that consumers will look at them in the first place. They therefore "carry out [EFTA's] purpose[]" of effectively informing consumers about the terms and conditions of electronic fund transfers involving their accounts.

### B. Nothing in EFTA limits the Bureau's authority to adopt content and formatting requirements that make disclosures more effective.

The district court nevertheless invalidated the short-form disclosure provisions because it concluded that they conflict with "the plain language of the statute" and therefore fail at *Chevron* step one. Op. at 9 (J.A. ___). That was mistaken. EFTA's model-clause provision does not foreclose the Bureau from making disclosures more effective by adopting requirements for their content and formatting, nor does anything else in the statute's text or context.

#### *1. The short-form disclosure requirements do not conflict with EFTA's model-clause provision.*

The district court held that the short-form disclosure provisions exceed the Bureau's authority for one principal reason: In the district court's view, they conflict with EFTA's model-clause provision. *See* Op. at 9-13 (J.A. ___). That

provision aims to "facilitate compliance" with the Act's disclosure requirements by directing the Bureau to "issue model clauses for optional use by financial institutions." 15 U.S.C. § 1693b(b). Using such a "model clause" provides a safe harbor from liability: If a financial institution uses an appropriate model, it will not be held liable for "failure to make disclosure in proper form." *Id.* § 1693m(d)(2). According to the district court, this provision for "optional" model clauses unambiguously prohibits "mandatory disclosure clauses"—and it found the short-form disclosure requirements to transgress this prohibition by prescribing mandatory rules for "the specific form, structure, and contents of disclosures." Op. at 13-14 (J.A. ___). This was erroneous. The short-form disclosure provisions do not prescribe mandatory disclosure clauses, and EFTA's model-clause provision in no way implies that the Bureau may not make disclosures more effective by adopting mandatory rules for their formatting and content.

*a. The short-form disclosure provisions do not prescribe mandatory disclosure clauses.*

The district court's conclusion that the short-form disclosure provisions impermissibly create "mandatory disclosure clauses" can be dispensed with quickly. *See* Op. at 13-14 (J.A. ___); *accord id.* at 4 (J.A. ___) ("[T]he specific … language of the disclosures … is mandatory."). The Rule does not make any disclosure "clauses"—that is, any specific wording—mandatory. The Rule specifies what information companies must disclose on the short form, including

various fees as well as other information, like the availability of overdraft and FDIC insurance. But it does not make any particular clauses mandatory. In every instance, the Rule permits companies to disclose the required information by using *either* a clause that the Rule specifies *or* "substantially similar" language. 12 C.F.R. § 1005.18(b)(2)(i)-(viii), (x)-(xiv), (b)(3)(i).

So, for example, to meet the Rule's requirement to disclose whether an account is eligible for FDIC insurance, a company could use the specified clause—"Your funds are not FDIC insured"—or could instead say something like "Not covered by FDIC insurance" or "No FDIC insurance." *See id.* § 1005.18(b)(2)(xi)(D). To meet the requirement to disclose that an account does not offer overdraft, a company could use the specified clause—"No overdraft/credit feature"—or could instead say "No overdraft" or "You can't overdraft on this account." *See id.* § 1005.18(b)(2)(x). And in disclosing the various fees that must appear on the short form, companies may use either the specified terms or other appropriate terms of their choosing: They could list the "nonuse fee" or "dormancy fee" instead of "inactivity fee" (the specified phrase); "ATM balance look-up" or "Check balance at ATM" instead of "ATM balance inquiry"; "client service" instead of "customer service"; "real person" instead of "live agent"; or "reload with cash" instead of "cash reload." *See id.* § 1005.18(b)(2)(iv)-(vii). The Rule does not make any specific disclosure clauses

mandatory—companies can use different language in all these (and countless other) ways.

*b. The model-clause provision does not bar mandatory content and formatting requirements.*

The Rule does, however, contain mandatory requirements for disclosures' contents (what information must be disclosed) and some aspects of their formatting (how the information is displayed)—those requirements ensure that the disclosures provide a consistent set of key information in the clean, uniform design that makes it easier for consumers to find and understand account terms and to compare different options. The district court apparently interpreted the provision for "optional" model clauses to implicitly preclude not just mandatory clauses, but these sorts of mandatory content and formatting requirements as well. *See* Op. at 14 (J.A. ___) (concluding that short-form disclosure provisions exceed the Bureau's authority because they "provide[] the specific form, structure, and contents of disclosures that providers *must* use" (emphasis in original)). That inferential leap finds no support in the statute.

i. According to the district court, the model-clause provision shows that "Congress intended to provide flexibility to the providers" to make disclosures their own way. Op. at 10 (J.A. ___). This gestalt impression of Congress's intent provides no basis to disregard the plain text of EFTA's rulemaking provisions—and it is mistaken in any event.

Congress enacted the model-clause provision to give financial institutions certainty about how to comply, not to guarantee them flexibility to make disclosures however they wish. The provision's text states its purpose expressly: The Bureau must issue model clauses "to facilitate compliance" with the Act's disclosure requirements (and "to aid consumers in understanding" the disclosed information). 15 U.S.C. § 1693b(b). This was desirable because some lawmakers had expressed concern that the "vague" statutory requirement for disclosures to use "readily understandable" language could become "the subject … of constant litigation about whether every word or phrase meets that inexact standard." *EFT Consumer Protection Legislation: Markup on S. 2546 and S. 2470 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 95th Cong., at 125-26 (Apr. 10, 1978). The model-clause provision "deals with that" by requiring the agency "to enact model clauses" that provide a safe harbor from liability: If a financial institution uses "the [agency's] language, then, by definition the disclosures would be understandable and they would have complied with the Act"; "there would be no uncertainty." *Id.* at 132-33; *accord, e.g.*, S. Rep. No. 95-915, at 9 (1978) ("[A] financial institution which utilized the proper model clause would be assured of compliance with the act.").

Contrary to the district court's assertion (Op. at 9 (J.A. ___)), nothing in the legislative history supports its view that Congress intended to guarantee providers

"flexibility" in choosing the content and format of their disclosures. The district court cites a Senate Report explaining that "use of [model] clauses would be optional." *Id.* (quoting S. Rep. No. 95-915, at 4). But that only repeats what the statute already tells us—that Congress required the Bureau to adopt "optional" model clauses. That in no way implies that Congress intended for all other aspects of disclosures to be optional as well, even if the agency determined that mandatory rules for disclosures' content and formatting would make disclosures more effective. Indeed, if that were Congress's goal, granting the Bureau broad authority to regulate disclosures and otherwise "carry out the purposes" of EFTA would have been a strange way to go about it.[4]

Nor does the drafting history that the district court cites support its view. An initial version of the bill that became EFTA would have only authorized, and not required, the agency to issue model clauses. S. 2546, 95th Cong. § 904(b) (1978) ("The Board *may* issue model forms and clauses to facilitate compliance by financial institutions with the requirements of section 905." (emphasis added)). In response to "objections … raised by financial institutions," the Senate then amended the bill to *require* model clauses. 95 Cong. Rec. 8283 (Mar. 23, 1978);

[4] Another version of the legislation would have expressly provided that the agency "may not prescribe regulations to carry out any provisions of this title other than" three specific provisions that did not include the disclosure requirement. H.R. 12193, 95th Cong. § 918 (1978). That, of course, is not the text that Congress enacted.

Electronic Fund Transfer Consumer Protection Act, Amdt. No. 1747, S. 2546, 95th Cong. (1978) ("The Board *shall* issue model forms and clauses to facilitate compliance by financial institutions with the requirements of section 905 and to aid consumers in understanding…." (emphasis added)); *Electronic Funds Transfer System Consumer Protection Legislation: Markup on S. 2546 and S. 2470 Before the S. Comm. on Banking, Housing, and Urban Affairs*, 95th Cong., at 102 (Apr. 7, 1978). This shows that the drafters wanted to protect financial institutions by ensuring they would have certainty about what language would comply with the statute. It does not follow that Congress also meant to ensure that financial institutions would never have to follow requirements governing disclosures' content and formatting, even if the responsible agency determined that such requirements would make disclosures more effective. Indeed, the short-form disclosure provisions' detailed content and formatting requirements are wholly consistent with Congress's desire to "facilitate compliance" by giving companies a surefire way to comply.

ii. The district court's conclusion that the model-clause provision forecloses mandatory content and formatting requirements also fails for a more fundamental reason: It has no foundation in the provision's text. The model-clause provision requires only that the Bureau issue optional "model clauses," *i.e.*, specific wording

for making disclosures; it does not limit the Bureau's authority under §§ 1693b(a) and 1693c(a) to adopt rules governing disclosures' content and formatting.

In concluding otherwise, the district court read the instruction that the Bureau "shall issue" optional model clauses to mean that the Bureau "shall not" adopt mandatory rules governing the content and formatting of disclosures. But as the D.C. Circuit pointed out in an analogous context, this argument "rests on a logical fallacy." *CSX Transp., Inc. v. Surface Transp. Bd.*, 754 F.3d 1056, 1063 (D.C. Cir. 2014) (rejecting argument that by requiring agency to use simplified method for reviewing railroad rates in certain cases, Congress precluded agency from using simplified method in other cases). The "fact that [an agency] *must*" do something (here, issue optional model clauses to give institutions a surefire way to comply) does not imply "that it *must not*" do something else (adopt mandatory content and formatting requirements to make disclosures more effective). *Id.* (emphases in original); *accord, e.g.*, *FTC v. Tarriff*, 584 F.3d 1088, 1090-91 (D.C. Cir. 2009) ("We know of no usage … that suggests that the use of 'shall' mandating one act implies a corresponding 'shall not' forbidding other acts not inconsistent with the mandated performance.").

Rather, as this Court has "consistently recognized," a "congressional mandate in one section and silence in another often suggests not a prohibition but simply a decision *not to mandate* any solution in the second context, i.e., to leave

the question to agency discretion." *Catawba Cnty., NC v. EPA*, 571 F.3d 20, 36 (D.C. Cir. 2009) (emphasis in original; quotations omitted); *accord CSX Transp.*, 754 F.3d at 1064 (explaining that such a statute "represents a floor, not a ceiling for the [agency's] discretion"). Case after case confirms this. This Court has held, for example, that an "express mandate" for the EPA to apply a particular presumption in certain contexts did not "prove[] that Congress intended to preclude its use" in others. *Catawba Cnty.*, 571 F.3d at 36. Similarly, a statutory provision "establish[ing] that [certain] payments … *must* be considered" when an agency calculates certain hospital costs does not imply that "those are the only payments that *may* be considered." *Children's Hosp. Ass'n of Tex. v. Azar*, 933 F.3d 764, 770 (D.C. Cir. 2019) (emphasis in original). Nor does an express direction for an agency to simultaneously consider competing applications in a particular context preclude the agency from simultaneously considering such applications in another context. *Cheney R.R. Co. v. ICC*, 902 F.2d 66, 68-69 (D.C. Cir. 1990).

The fact that "Congress spoke in one place" (here, by requiring optional model clauses) "but remained silent in another" (here, by not expressly addressing optional or mandatory content and formatting requirements) will "rarely if ever" reveal Congress's unambiguous intent at *Chevron* step one. *Catawba Cnty.*, 571 F.3d at 36. EFTA is hardly that "rare[]" case. By mandating optional model clauses while remaining silent about content and formatting requirements,

Congress did not "circumscribe[] the [agency's] discretion" to adopt such requirements. *CSX Transp.*, 754 F.3d at 1064. Rather, whether to adopt content and formatting requirements is left "to agency discretion." *Catawba Cnty.*, 571 F.3d at 36.

Nor does any other canon of construction support the district court's interpretation. *Contra* Op. at 11-12 (J.A. ___). The district court invoked the specific-controls-the-general canon to conclude that EFTA's specific model-clause provision supersedes the general grants of rulemaking authority in §§ 1693b(a) and 1693c(a). Op. at 11-12 (J.A. ___). But that canon provides that a general statutory provision "will not be held to apply to a matter specifically dealt with in another part of the same enactment." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 646 (2012) (alteration and quotations omitted). Content and formatting requirements are not "specifically dealt with" in the model-clause provision: The provision addresses only the wording ("clauses") of disclosures and says nothing about content and formatting requirements at all. So, that provision does not displace the general rulemaking authority, which by its terms authorizes content and formatting requirements like those at issue here.

The canon against superfluity likewise does not support the district court's interpretation. *Contra* Op. at 12 (J.A. ___). Construing EFTA's broad grant of rulemaking authority to permit mandatory content and formatting rules in no way

renders the requirement for optional model clauses superfluous. That requirement was given full effect here: The Bureau issued optional model clauses. The model forms set forth in Appendix A contain model clauses that entities may use as a safe harbor to comply with the regulation. 12 C.F.R. pt. 1005, Appx. A-10(A)-(E). The short-form disclosure provisions' mandatory content and formatting requirements did not render the model-clause provision superfluous.

***2. Nothing else in the statute's text or context suggests that Congress intended to prohibit rules governing the content and formatting of disclosures.***

The statutory context further confirms that EFTA grants the Bureau broad authority to adopt rules governing disclosures, including mandatory rules governing disclosures' content and formatting. The general grants of rulemaking authority in § 1693b(a) and § 1693c(a) grant the Bureau broad authority to adopt rules governing disclosures and contain no qualifiers limiting the Bureau's authority over disclosures' content and formatting.[5]

[5] To be clear, the Bureau does not suggest that it has authority to regulate the content and formatting of disclosures "just because Congress did not specifically prohibit [it] from doing so." *Contra* Op. at 10 (J.A. ___). The authority for the short-form disclosure requirements derives not from the absence of any such "specific[] prohibit[ion]," but from the statute's broad grant of authority to adopt rules governing disclosures and from the absence of any indication—express or implied—that Congress intended for that authority to exclude rules governing disclosures' content and formatting.

a. In finding such a limitation anyway, the district court pointed out that EFTA itself "does not require that providers adhere to a specific form for these disclosures." Op. at 9 (J.A. ___). But Congress's silence on what format disclosures must have is just that—silence. That Congress did not impose formatting requirements itself does not imply that it intended to foreclose the agency from adopting such requirements—particularly given that Congress conferred broad rulemaking authority to "effectuate the purposes" of EFTA, 15 U.S.C. § 1693b(c), and explicitly provided that disclosures must be made "in accordance with regulations of the Bureau," *id*. § 1693c(a). Indeed, "in an administrative setting ... Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved." *Cheney R.R. Co. v. ICC*, 902 F.2d 66, 69 (D.C. Cir. 1990). Any "negative implication" from the absence of formatting requirements in the statute "cannot carry the day over the text and structure of the statute, which confers specific and broad regulatory authority upon" the Bureau. *Farrell v. Blinken*, 4 F.4th 124, 2021 WL 2932152, at *9 (D.C. Cir. 2021) (holding that the fact that the statute imposed a requirement for applicants to appear in person in some contexts "does not mean that the [agency] lacks discretion to impose" an in-person requirement in other contexts).

Besides, even if it were "plausible" to read Congress's silence as evidence that formatting requirements were off-limits, that view could not prevail at

*Chevron* step one unless it was "the only possible interpretation." *See Regions Hosp. v. Shalala*, 522 U.S. 448, 460 (1998) (quotations omitted). It is not. Indeed, the far more plausible explanation is that Congress thought that prescribing requirements regarding disclosures' format was a task better suited for the administrative agency that could bring its expertise and research capacity to bear in determining whether and when formatting requirements would be useful and, if so, what those requirements should be. The absence of any formatting requirements in the statute therefore provides no basis to conclude at *Chevron* step one that Congress intended to foreclose the Bureau from adopting formatting requirements that would further the statute's purposes. Rather, "Congress may have meant that" whether to impose such requirements "should be up to the agency." *Clinchfield Coal Co. v. Fed. Mine Safety & Health Rev. Comm'n*, 895 F.2d 773, 779 (D.C. Cir. 1990).

b. Relatedly, the fact that other statutes impose formatting requirements does not imply that, by remaining silent on formatting requirements in EFTA, Congress intended to foreclose rules governing disclosures' format under that Act. As this Court has explained, the fact that "Congress imposes a duty in one circumstance does not mean that it has necessarily foreclosed the agency from imposing another duty in a different circumstance." *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 211 (D.C. Cir. 2013) (holding that Congress's decision

to require gun dealers to report certain sales of handguns but not of other types of firearms did not imply that agency lacked authority to require reporting for those other firearms); *cf. also Doe, 1 v. FEC*, 920 F.3d 866, 870 (D.C. Cir. 2019) (concluding that statute's requirement that agency disclose certain information did not "deprive[] the [agency] of authority to disclose anything else"); *Farrell*, 4 F.4th 124, 2021 WL 2932152, at *9 ("The fact that Congress in some instances imposed [a particular] requirement does not mean that the [agency] lacks discretion to impose [that] requirement in other contexts."). Rather, "the contrast between Congress's mandate in one context with its silence in another suggests not a prohibition but simply a decision *not to mandate* any solution in the second context, i.e., to leave the question to agency discretion." *Cheney R.R. Co.*, 902 F.2d at 69 (emphasis in original).

c. Nor does the statutory instruction for the Bureau to "take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, … issue alternative model clauses for disclosure of these differing account terms," 15 U.S.C. § 1693b(b), somehow suggest that the Bureau may not prescribe rules for disclosures' content and format. According to the district court, this provision shows that "Congress underscored the need for flexibility." Op. at 9 (J.A. ___). It is true that Congress wanted to "add flexibility to the act" by granting the Bureau broad rulemaking authority "to modify the act's

requirements to suit the characteristics of individual [electronic fund transfer] services" and to "keep pace with new services" that emerge. S. Rep. No. 95-1273, at 26. But it does not follow that Congress also wanted to guarantee providers "flexibility" to make disclosures however they wish, even when the Bureau determined that specific content and formatting requirements would make disclosures more effective.

d. Finally, the court also erred in finding it "telling[]" that the Bureau had not identified "any prior regulation" that "mandated the form" of disclosures under EFTA. Op. at 12 n.3 (J.A. ___). For starters, other regulations under EFTA *do* impose mandatory formatting requirements for disclosures: Regulation E imposes grouping, size, and other formatting requirements for disclosures regarding remittances, 12 C.F.R. § 1005.31(c), and mandates that overdraft notices and error resolution notices, like prepaid account disclosures, be "substantially similar" to the relevant model forms, *id.* §§ 1005.17(d), 1005.8(b). But even if the short-form disclosure provisions represented the first time the agency had regulated the format of disclosures, an agency's interpretation of its own authority "cannot be rejected simply because it is new." *Verizon v. FCC*, 740 F.3d 623, 636 (D.C. Cir. 2014) (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005)). That an agency did not previously exercise an authority may be "telling" where it confirms indications in "the text, history, structure, and context

of the statute" that the authority does not exist. *Loving v. IRS*, 742 F.3d 1013, 1021 (D.C. Cir. 2014); *cf. also Bankamerica Corp. v. United States*, 462 U.S. 122, 131-32 (1983) (finding agency inaction relevant where "[w]hen a court reaches the same reading of the statute" as the inaction would imply). Here, nothing in the statute's text, history, structure, or context suggests that Congress intended to remove regulations regarding disclosures' formatting from the Bureau's otherwise broad authority to regulate disclosures under the Act.

### C. The Bureau reasonably interpreted EFTA to permit rules governing the content and formatting of disclosures.

For the reasons described above, EFTA grants the Bureau broad authority to adopt rules governing disclosures for prepaid accounts, and nothing in the statute forecloses—much less unambiguously forecloses—the Bureau from using that authority to impose requirements for the content and formatting of disclosures. Because Congress has not "directly spoken to the precise question" whether the Bureau may regulate the content and formatting of disclosures, the Bureau's interpretation of the scope of its rulemaking authority is entitled to deference under step two of *Chevron*. *City of Arlington*, 569 U.S. at 296-300. To uphold the Rule at that step, this Court need only find that it represents a "'reasonable policy choice for the agency to make.'" *Brand X*, 545 U.S. at 986 (quoting *Chevron*, 467 U.S. at 845).

The Rule easily satisfies that standard. EFTA requires companies to disclose the terms and conditions of electronic fund transfers to meaningfully inform consumers and enable them to choose products that suit their needs. The short-form disclosure provisions' content and formatting requirements advance those goals. In particular, the Bureau determined that disclosures with clear, consistent content and a clean, uniform format make it easier for consumers to find, understand, and use key account information in comparing different options. *See, e.g.*, 81 Fed. Reg. at 84013, 84078 (J.A. ___). The Bureau's decision to make prepaid account disclosures more effective in these ways represents an entirely reasonable policy choice, and is therefore entitled to deference.

Contrary to PayPal's argument below (ECF No. 19-1 at 24 n.4), there is no basis to eschew deference here to avoid "First Amendment concerns." The "canon of constitutional avoidance trumps *Chevron* deference" only if "an agency's interpretation of a statute … presents *serious* constitutional difficulties." *Nat'l Mining Ass'n v. Kempthorne*, 512 F.3d 702, 711 (D.C. Cir. 2008) (emphasis added). That means there must be "a comparatively high likelihood of unconstitutionality, or at least some exceptional intricacy of constitutional doctrine." *Whitaker v. Thompson*, 353 F.3d 947, 952 (D.C. Cir. 2004). PayPal's First Amendment challenge does not come close to meeting that bar.

It is well established that the government can require disclosure of "purely factual and uncontroversial information" so long as the requirement is "reasonably related" to a government interest and is not so "unjustified or unduly burdensome" as to "chill[] protected commercial speech." *Zauderer v. Off. of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985); *see also Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 21-22, 27 (D.C. Cir. 2014) (en banc) ("*AMI*"). There can be no serious dispute that short-form disclosure provisions require disclosure of "purely factual" and "uncontroversial" information. And a reasonably crafted mandate to disclose purely factual and uncontroversial information will "almost always" satisfy the "reasonably related" prong of the *Zauderer* test. *AMI*, 760 F.3d at 26. The short-form disclosure requirements are no exception—those requirements are reasonably related to the government's interest in ensuring that consumers get easily-digestible information about the fees and other terms of prepaid accounts so that they can make better-informed financial decisions. The short-form disclosure requirements, moreover, are not so burdensome as to restrict or chill protected speech: Where, as here, a rule "simply regulates the manner of disclosure," it does not impose an impermissible "burden on speech." *Spirit Airlines, Inc. v. U.S. Dep't of Transp.*, 687 F.3d 403, 415 (D.C. Cir. 2012) (upholding rule requiring airlines to list one price most prominently). The short-form disclosure provisions' run-of-the-mill disclosure requirements do

not raise any First Amendment concerns, much less the type of "serious" concerns that could displace *Chevron*.

## II. Section 1032 of the Dodd-Frank Act Authorizes the Short-Form Disclosure Requirements.

Because EFTA authorizes the short-form disclosure requirements, the Court need not address whether section 1032 of the Dodd-Frank Act also authorizes those requirements. But if the Court does reach the question, it should hold that the short-form disclosure provisions are also independently authorized under that separate grant of rulemaking authority.

Section 1032(a) expressly authorizes the Bureau to "prescribe rules to ensure that the features of any consumer financial 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." 12 U.S.C. § 5532(a). By its plain terms, this provision authorizes the short-form disclosure requirements. There is no dispute that prepaid accounts are a "consumer financial product or service" within the meaning of this provision. *See* 12 U.S.C. § 5481(5)(A), (15)(v). Nor did the district court question that the short-form disclosure provisions "ensure that the features" of prepaid accounts are "effectively disclosed." As explained above, those provisions ensure that the disclosures provide a consistent set of key information in an uncluttered, relatively uniform

format that makes it easier for consumers to find and understand account terms and compare different options. *See supra* section I.A.

Nothing in section 1032 or any other statute suggests that Congress intended to preclude the Bureau from making disclosures effective in that particular way. The district court concluded otherwise solely because, in its view, section 1032 could not be interpreted to authorize the Bureau "to ignore" EFTA's prohibition on mandatory rules for the content and formatting of disclosures. Op. at 13 (J.A. ___). But, as explained above, EFTA contains no such prohibition. It therefore cannot be read to impliedly limit the kinds of rules that section 1032 authorizes.

Nor does section 1032's model-form provision limit the Bureau's authority under section 1032(a) to adopt the short-form disclosure requirements. That provision states that any rule "requiring disclosures" that the Bureau promulgates under section 1032 "may include a model form that may be used at the option of the covered person for provision of the required disclosures." 12 U.S.C. § 5532(b)(1). As with EFTA's model-clause provision, using a model form adopted under section 1032 provides a safe harbor: If a covered person "uses [such] a model form," it "shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form." *Id.* § 5532(d).

To the extent that PayPal might suggest that the short-form disclosure provisions impermissibly include model forms that are mandatory, not optional, it

is mistaken. The Rule's model short-form disclosure forms are optional. *See* 12 C.F.R. pt. 1005, Appx. A-10(A)-(E). Entities may use them to comply with the Rule's requirements, but they retain discretion to deviate from them in various ways. Entities may make their disclosures using different wording, *see supra* section I.B.1.a, a different font, larger type, or different text and background colors, for example. *See* 12 C.F.R. § 1005.18(b)(2)(i)-(viii), (x)-(xiv), (b)(3)(i), (b)(7)(ii)(A)-(B).

Nor does the model-form provision somehow imply that the Bureau may not adopt specific requirements for the content and formatting of disclosures like those in the short-form disclosure provisions. Section 1032's model-form provision, like EFTA's provision for model clauses, empowers the Bureau to give entities a straightforward way to comply when a regulation imposes requirements that might not be clear-cut. For instance, the Bureau could adopt a regulation under section 1032 requiring entities to disclose specified information "clearly and conspicuously." The model-form provision ensures that, in that event, the Bureau could also provide a model form that companies could rely on, at their option, to satisfy that "clear and conspicuous" requirement. That Congress empowered the Bureau to give entities a straightforward way to comply when regulations impose such inexact standards does not imply that Congress meant to foreclose more specific content and formatting rules that are themselves straightforward to follow.

Rather, section 1032(a) leaves to the Bureau's discretion how detailed disclosure requirements should be, and the model-form provision ensures that the Bureau may always give entities a guaranteed way to comply when regulations leave details unspecified.

With the short-form disclosure provisions, the Bureau determined that detailed content and formatting requirements would make disclosures more effective. That determination represented a "reasonable policy choice" and is entitled to deference under *Chevron*. *See supra* section I.C.

## CONCLUSION

The judgment of the district court should be reversed.

Dated: August 16, 2021

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 11,613 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared using Microsoft Word in Times New Roman 14-point font, a proportionally spaced typeface.

Dated: August 16, 2021 /s/ Kristin Bateman

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# STATUTORY ADDENDUM

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**12 U.S.C. § 5532. Disclosures**

(a) In general. 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.

(b) Model disclosures.

(1) In general. Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) Format. A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) Consumer testing. Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) Basis for rulemaking. In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) Safe harbor. Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form**.**

(e) Trial disclosure programs.

(1) In general. The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) Safe harbor. The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) Public disclosure. The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) Combined mortgage loan disclosure * * *

**15 U.S.C. §1693b. Regulations**

(a) Prescriptions by the Board and Bureau.

(1) In general. Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this subchapter.

(2) Authority of the Board. The Board shall have sole authority to prescribe rules—

(A) to carry out the purposes of this subchapter with respect to a person described in section 5519(a) of title 12; and

(B) to carry out the purposes of section 1693o–2 of this title.

In prescribing such regulations, the Board shall:

(1) consult with the other agencies referred to in section 1693o of this title and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) Issuance of model clauses. The Bureau shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 1693c of this title and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by

utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5. With respect to the disclosures required by section 1693c(a)(3) and (4) of this title, the Bureau shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Criteria; Modification of requirements. Regulations prescribed hereunder 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 this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Bureau shall by regulation modify the requirements imposed by this subchapter on small financial institutions if the Bureau determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter.

(d) Applicability to service providers other than financial institutions.
* * *

(e) Deference. No provision of this subchapter may be construed as altering, limiting, or otherwise affecting the deference that a court affords to—

(1) the Bureau in making determinations regarding the meaning or interpretation of any
provision of this subchapter for which the Bureau has authority to prescribe regulations; or

(2) the Board in making determinations regarding the meaning or interpretation of section 1693o–2 of this title.

**15 U.S.C. §1693c. Terms and conditions of transfers**

(a) Disclosures; time; form; contents. The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes than1 an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Bureau;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 1693d of this title;

(7) a summary, in a form prescribed by regulations of the Bureau, of the error resolution provisions of section 1693f of this title and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 1693h of this title;

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons; and

(10) a notice to the consumer that a fee may be imposed by—

(A) an automated teller machine operator (as defined in section 1693b(d)(3)(D)(i) of this title) if the consumer initiates a transfer from an automated teller machine that is not operated by the person issuing the card or other means of access; and

(B) any national, regional, or local network utilized to effect the transaction

* * *

**15 U.S.C. §1693m. Civil liability**

* * *

(d) Good faith compliance with rule, regulation, or interpretation.
No provision of this section or section 1693n of this title imposing any liability shall apply to –

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Board or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Bureau or the Board, notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

* * *

**12 C.F.R. §1005.18. Requirements for financial institutions offering prepaid accounts.**

* * *

(b) Pre-acquisition disclosure requirements-

(1) Timing of Disclosures –

(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) Disclosures for prepaid accounts acquired orally by telephone. 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 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 disclosure required by paragraph (b)(4) of this section is 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 nonuse, 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; 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.

(D) Timing of initial assessment of additional fee types disclosure—

(1) Existing prepaid account programs as of April 1, 2019. For a prepaid account program in effect as of April 1, 2019, 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 April 1, 2019 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 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.

(3) New prepaid account programs created on or after April 1, 2019. For a prepaid account program created on or after 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 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 disclosure, 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 disclosure, 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 an additional fee types disclosure 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 consumer identification/verification. If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and consumer 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 consumer identification/verification. If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and consumer 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 consumer identification/verification. If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and consumer 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 consumer identification/verification. If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and consumer 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 consumer identification/verification. If a prepaid account program is set up such that there is no consumer 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. * * *

(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. 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.

(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, a long form disclosure 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 disclosure 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 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.

(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. The long form disclosure 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. * * *

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system on August 16, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 16, 2021 /s/ Kristin Bateman

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