

A-11 through A-30 [Reserved]

10. In Supplement I to part 1005:

a. Under *Section 1005.2 Definitions*:

i. Under subheading *2(b) Account*, paragraph 2 is revised and paragraph 3 is removed.

ii. *New subheadings* Paragraph 2(b)(3)(i), Paragraph 2(b)(3)(ii), and Paragraph 2(b)(3)(iv) are added

b. Under *Section 1005.10 Preauthorized Transfers*:

i. under subheading *10(e) Compulsory Use*:

A. under subheading *10(e)(1) Credit*, paragraphs 1 and 2 are revised and paragraphs 3 and 4 are added.

B. under subheading *10(e)(2) Employment or Government Benefit*, paragraph 2 is added.

c. Under *Section 1005.12—Relation to Other Laws*:

i. Under subheading *12(a) Relation to Truth in Lending*, paragraphs 1, 2, and 3 are revised and paragraphs 4 and 5 are added.

ii. under subheading *12(b) Preemption of Inconsistent State Laws*, paragraph 2 is revised and paragraphs 3 and 4 are added.

d. *New Section 1005.15 Electronic Fund Transfer of Government Benefits* is added and under that new heading:

i. *New subheading 15(c) Pre-Acquisition Disclosure Requirements* and paragraphs 1, 2, and 3 under that subheading are added.

ii. *New subheading 15(d) Access to Account Information* and paragraph 1 under that subheading are added.

iii. New subheading *15(e) Modified Disclosure Requirements* and paragraph 1 under that subheading are added.

e. Under *Section 1005.18 Requirements for Financial Institutions Offering Payroll Card Accounts*, the heading is revised

f. Under revised *Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts*:

i. Under subheading *18(a) Coverage*, paragraphs 1 and 2 are revised.

**ii. The subheading *18(b) Alternative to Periodic Statements*, and paragraphs 1 and 2 under that subheading, are removed

iii. The subheading *18(c) Modified Requirements* and paragraphs 1, 2, and 3 under that subheading are removed.

iv. New subheading *18(b) Pre-Acquisition Disclosure Requirements* is added.

iv. New subheading *18(c) Access to Account Information* is added.

v. New subheadings *18(e) Modified Limitations on Liability and Error Resolution Requirements* is added.

vi. New subheadings *18(g) Credit Card Plans Linked to Prepaid Accounts* is added.

g. New heading *Section 1005.19 Internet Posting of Prepaid Account Agreements* is added.

h. Under *Section 1005.30 Remittance Transfer Definitions*:

i. Under subheading *30(g) Sender*, paragraph 3 is revised.

The revisions, additions, and removals read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.2 – Definitions

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2(b) Account

1. * * *

2. Examples of accounts not covered by Regulation E (12 CFR part 1005) include:

i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under § 1005.2(b)(2).

ii. Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.

iii. Accounts for accumulating funds to purchase U.S. savings bonds.

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Paragraph 2(b)(3)(i)

1. *Debit card includes prepaid card.* For purposes of subpart A, except for § 1005.17, the term debit card also includes a prepaid card.

2. *Established primarily for personal, family, or household purposes.* Section 1005.2(b)(3) applies only to cards, codes, or other devices that are acquired by or provided to a consumer primarily for personal, family, or household purposes. For additional guidance, see comments 20(a)-4 and -5.

3. *Issued on a prepaid basis.* To be issued on a prepaid basis, a prepaid account must be loaded with funds when it is first provided to the consumer for use. For example, if a consumer purchases a prepaid account and provides funds that are loaded onto a card at the time of

purchase, the prepaid account is issued on a prepaid basis. A prepaid account offered for sale in a retail store is not issued on a prepaid basis until purchased by the consumer.

4. *Capable of being loaded with funds.* A prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance. This does not include a product that can never store funds, such as a digital wallet that only holds payment credentials for other accounts.

5. *Issued on a prepaid basis or capable of being loaded with funds.* To satisfy § 1005.2(b)(3)(i)(A), a prepaid account must either be issued on a prepaid basis or be capable of being loaded with funds. This means that the prepaid account must be capable of holding funds, rather than merely acting as a pass-through vehicle. For example, if a product is only capable of storing a consumer's payment credentials for other accounts but is incapable of having funds stored on it, such a product is not a prepaid account. However, if a product allows a consumer to transfer funds, which can be stored before the consumer designates a destination for the funds, the product satisfies § 1005.2(b)(3)(i)(A).

6. *Not required to be reloadable.* Prepaid accounts need not be reloadable by the consumer or a third party.

7. *Redeemable upon presentation at multiple, unaffiliated merchants.* For guidance, see comments 20(a)(3)-1 and -2.

8. *Person-to-person transfers.* A prepaid account capable of person-to-person transfers is an account that allows a consumer to send funds by electronic fund transfer to another consumer or business. An account may qualify as a prepaid account if it permits person-to-person transfers even if it is neither redeemable upon presentation at multiple, unaffiliated merchants for goods or

services, nor usable at automated teller machines. A transaction involving a store gift card would not be a person-to-person transfer if it could only be used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

9. *Marketed and labeled as a gift card or gift certificate.* Section 1005.2(b)(3)(i)(C) excludes, among other things, reloadable general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates, whereas § 1005.20(b)(2) excludes such products that are marketed or labeled as gift cards or gift certificates. Comment 20(b)(2)-2 describes, in part, a network-branded general purpose reloadable card that is principally advertised as a less-costly alternative to a bank account but is promoted in a television, radio, newspaper, or internet advertisement, or on signage as “the perfect gift” during the holiday season. For purposes of § 1005.20, such a product would be considered marketed as a gift card or gift certificate because of this occasional holiday marketing activity. For purposes of § 1005.2(b)(3)(i)(C), however, such a product would not be considered to be both marketed and labeled as a gift card or gift certificate and thus would be covered by the definition of prepaid account.

Paragraph 2(b)(3)(ii)

1. *Certain employment-related cards not covered as payroll card accounts.* The term “payroll card account” does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer’s primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final

payments or in emergency situations when other payment methods are unavailable. While such cards would not be payroll card accounts, such cards could constitute prepaid accounts generally, provided the other conditions of the definition of that term in § 1005.2(b)(3) are satisfied. In addition, all transactions involving the transfer of funds to or from a payroll card account or prepaid account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

Paragraph 2(b)(3)(iv)

1. *Excluded health care and employee benefit related prepaid products.* For purposes of § 1005.2(b)(3)(iv), “health savings account” means a health savings account as defined in 26 U.S.C. 223(d); “flexible spending account” means a cafeteria plan which provides health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; “medical savings account” means an Archer MSA as defined in 26 U.S.C. 220(d); and “health reimbursement arrangement” means a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106.

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Section 1005.10 Preauthorized Transfers

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10(e) Compulsory Use

10(e)(1) Credit

1. *General rule for loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis.

2. *Overdraft credit plans not tied to prepaid accounts.* Section 1005.10(e)(1) provides an exception from the general rule for overdraft credit plans other than for a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z, or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See Regulation Z 12 CFR 1026.2(a)(15)(i) and related commentary for the definition of credit card. A financial institution may therefore require the automatic repayment of an overdraft credit plan not tied to a prepaid account even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

3. *Applicability to credit accessed by access devices for prepaid accounts.* Under § 1005.10(e)(1), creditors must not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z or by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See Regulation Z 12 CFR 1026.2(a)(15)(i) and related commentary for the definition of credit card. The prohibition in § 1005.10(e)(1) applies to any credit extended under a credit card plan as described above, including credit arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses a credit card plan as discussed above, the resulting credit is subject to the prohibition in § 1005.10(e)(1) since it is incurred through a credit card plan, even though the consumer did not use an associated credit card. An access device is not a credit card under

Regulation Z 12 CFR 1026.2(a)(15)(i), comment 2(a)(15)-2.i.F if the access device only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. Thus, the prohibition in § 1005.10(e)(1) does not apply to credit extended under an overdraft credit plan that is not a credit card account. An overdraft credit plan is not a credit card account if it is accessed only by a prepaid card that only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments.

i. *Automatic periodic repayment plans for credit accessed by access devices for prepaid accounts.* Under Regulation Z 12 CFR 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under Regulation Z 12 CFR 1026.12(d)(3), with respect to credit card accounts that are accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor, a card issuer generally is not prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of Regulation Z 12 CFR 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. A card issuer for such credit card accounts is prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account

(such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account. Section 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (including a prepaid account) of credit card balances by electronic means on a preauthorized, recurring basis where the credit card account is accessed by an access device for a prepaid account, or is accessed by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

4. *Incentives.* A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge

10(e)(2) Employment or Government Benefit

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2. *Government benefit.* A government agency may not require consumers to receive government benefits by direct deposit to any particular institution. A government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit. Alternatively, a government agency may give

recipients the choice of having their benefits deposited at a particular institution (designated by the government agency) or receiving their benefits by another means.

Section 1005.12 Relation to Other Laws

12(a) Relation to Truth in Lending

1. *Issuance rules for access devices other than access devices for prepaid accounts.* For access devices that also constitute credit cards (other than access devices for prepaid accounts), the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in § 1005.17(a). Regulation Z (12 CFR part 1026) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

2. *Overdraft services (other than for access devices for prepaid accounts).* The addition of an overdraft service, as that term is defined in § 1005.17(a), to an accepted access device (other than an access device for a prepaid account) does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§ 1005.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (§ 1005.17).

3. *No initial issuance of prepaid access devices with credit card accounts subject to Regulation Z.* An access device for a prepaid account may not access a credit card account under Regulation Z when the access device is issued. Section 1005.18(g)(1)(ii) prohibits a financial institution from allowing an access device for a prepaid account to access a credit plan subject to Regulation Z (12 CFR part 1026) that would make the access device into a credit card at any time prior to 30 calendar days after the prepaid account is registered. Further, § 1005.18(g)(1)(i)

also prohibits a financial institution from opening a credit card account subject to Regulation Z (12 CFR part 1026) for a holder of a prepaid account, or providing a solicitation or application to open a credit card account to the holder of a prepaid account, prior to 30 calendar days after the prepaid account has been registered, that would be accessed by the access device for a prepaid account that is a credit card. Regulation Z, 12 CFR § 1026.12(h), also requires a credit card issuer to wait at least 30 calendar days from prepaid account registration before opening a credit card account for a holder of the prepaid account, or providing a solicitation or application to the holder of the prepaid account to open a credit card account, that would be accessed by the access device for a prepaid account that is a credit card.

4. Addition of a credit card account to an access device for a prepaid account.

Regulation Z governs the addition of any credit feature or plan to an access device for a prepaid account where the access device also would be a credit card under Regulation Z (12 CFR part 1026). Regulation Z (12 CFR 1026.2(a)(20), comment 2(a)(20)-2.ii) provides guidance on whether a program constitutes a credit plan. Regulation Z (12 CFR 1026.2(a)(15)(i), comment 2(a)(15)-2) defines the term credit card and provides examples of cards or devices that are and are not credit cards.

5. Determining applicable regulation related to liability and error resolution. i. For an account other than a prepaid account where credit is extended incident to an electronic fund transfer under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply, in addition to § 1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the asset account). With respect to an account other than a prepaid account, incidental credit that is not extended under an agreement between the

consumer and the financial institution where the financial institution agrees to extend credit is governed solely by the error resolution procedures in Regulation E and Regulation Z § 1026.13(d) and (g) do not apply. With respect to a prepaid account where credit is extended under a credit plan that is subject to Regulation Z subpart B, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). A credit plan is subject to Regulation Z Subpart B if it is accessed by an access device that is a credit card under Regulation Z or if it is open-end credit under Regulation Z. An access device for a prepaid account is not a credit card if the access device only accesses credit that is not subject to any finance charge described in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. See Regulation Z comment 2(a)(15)-2.i.F. Incidental credit under a credit plan that only can be accessed by an access device for a prepaid account that is not a credit card is not subject to Regulation Z Subpart B and is governed solely by the error resolution procedures in Regulation E because the credit plan is not accessed by a credit card and the plan is not open-end credit. In this case, Regulation Z § 1026.13(d) and (g) do not apply.

ii. For transactions involving access devices that also function as credit cards under Regulation Z, whether Regulation E or Regulation Z (12 CFR part 1026) applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a consumer asset account, such as a checking account or prepaid account, the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits an asset account but also draws on an overdraft credit plan

subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to § 1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the asset account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from an asset account, but also is used to obtain unauthorized cash advances directly from a credit plan that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

iii. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or an access device that draws on the consumer's checking account. When used as a credit card, the card does not first access any funds in the checking account but draws only on a separate credit card account subject to Regulation Z. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as an access device to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as an access device for the checking account and as a credit card; for example, the thief makes some purchases using the card to access funds in the checking account and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as an access device for the checking

account, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft credit plan subject to Regulation Z attached to the checking account. The overdraft credit plan associated with the card is accessed only when the consumer uses the card to make a purchase (or other transaction) for which there are insufficient or unavailable funds in the checking account. In this situation, if the card is stolen and used to make purchases funded entirely by available funds in the checking account, the liability limits and the error resolution provisions of Regulation E apply. If the use of the card results in an extension of credit that is incident to an electronic fund transfer – *i.e.*, if the transaction is funded partially by funds in the consumer's asset account and partially by credit extended under the overdraft credit plan – the error resolution provisions of § 1026.13(d) and (g) of Regulation Z apply in addition to the Regulation E provisions, but the other liability limit and error resolution provisions of Regulation Z do not. Relatedly, if the use of the card is funded entirely by credit extended under the overdraft credit plan, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z. *See* § 1026.13(i).

E. The same principles in comment 12(a)-5.iii.A, B, C, and D apply to an access device for a prepaid account that also is a credit card under Regulation Z.

12(b) Preemption of Inconsistent State Laws

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2. *Preemption determinations generally.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination.

3. *Preemption determination – Michigan.* The Board of Governors determined that certain provisions in the state law of Michigan are preempted by the Federal law, effective March 30, 1981:

i. *Definition of unauthorized use.* Section 488.5(4) of the state law of Michigan, governing electronic fund transfers, is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

ii. *Consumer liability for unauthorized use of an account.* Section 488.14 of the state law of Michigan, governing electronic fund transfers, is inconsistent with § 1005.6 and is less protective of the consumer than the Federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the Federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

iii. *Error resolution.* Section 488.15 of the state law of Michigan, governing electronic fund transfers, is preempted because it is inconsistent with § 1005.11 and is less protective of the consumer than the Federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the Federal law generally requires errors to be resolved within 45 days.

iv. *Receipts and periodic statements.* Sections 488.17 and 488.18 of the state law of Michigan, governing electronic fund transfers, are preempted because they are inconsistent with § 1005.9, other than for transfers of \$15 or less pursuant to § 1005.9(e). The state provisions require a different disclosure of information than does the Federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

4. *Preemption determination – Tennessee.* The Bureau determined that the following provision in the state law of Tennessee is preempted by the Federal law, effective April 25, 2013:

i. *Gift certificates, store gift cards, and stored-value cards.* Section 66–29–116 of Tennessee’s Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and stored-value cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or stored-value cards and their underlying funds are permitted to expire under § 1005.20(e).

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Section 1005.15 Electronic Fund Transfer of Government Benefits

15(c) Pre-Acquisition Disclosure Requirements

1. *Model forms for pre-acquisition disclosures.* Model Form A-10(a) of Appendix A to this part contains a model form for the pre-acquisition short disclosure requirements for government benefit accounts pursuant to § 1005.15(c). Government agencies may use Sample Form A-10(e) of Appendix A to this part to comply with the pre-acquisition long form disclosure requirements of § 1005.15(c)(1).

2. *Disclosing the short and long form before acquisition.* Section 1005.15(c)(1) requires that, before a consumer acquires an account governed by § 1005.15, a government agency must comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in § 1005.18(b). Section 1005.18(b)(1)(i) generally requires delivery of both the short form disclosure required by § 1005.18(b)(2)(i) and the long form disclosure required by § 1005.18(b)(2)(ii) before a consumer acquires a prepaid account. The following example illustrates when a consumer receives disclosures before acquisition of an account for purposes of § 1005.15(c)(1):

i. A government agency informs a consumer that she can receive distribution of benefits via government benefit account in the form of a prepaid card. The consumer receives the short form and long form disclosures to review at the time the consumer receives benefits eligibility information from the agency. After receiving the disclosures, the consumer agrees to receive benefits via the government benefit account. These disclosures were provided to the consumer pre-acquisition, and the agency has complied with § 1005.15(c)(1). By contrast, if the consumer does not receive the short form and long form disclosures to review until the time at which the consumer receives the prepaid card, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with § 1005.15(c)(1).

3. *Enrollment and disclosures given during the same appointment.* The disclosures and notice required by § 1005.15(c)(1) and (2) may be given in the same process or appointment during which the consumer acquires or agrees to acquire a government benefit account. When a consumer receives benefits eligibility information and signs up or enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by § 1005.15(c)(1) and (2) before issuing a government benefit account complies with the timing requirements of § 1005.15(c).

15(d) Access to Account Information

1. *Access to account information.* For guidance, see comments 18(c)-1 through -5.

15(e) Modified Disclosure Requirements

1. *Modified limitations on liability and error resolution requirements.* For guidance, see comments 18(e)-1 through -3.

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

1. *Issuance of access device.* Consistent with § 1005.5(a) and except as provided, as applicable, in § 1005.5(b), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail store or acquires a prepaid account by making a request or submitting an application by telephone or online.

2. *Application to employers and service providers.* Typically, employers and third-party service providers do not meet the definition of a “financial institution” subject to the regulation because they neither hold prepaid accounts (including payroll card accounts) nor issue prepaid cards and agree with consumers to provide EFT services in connection with prepaid accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Pre-Acquisition Disclosure Requirements

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

1. *Disclosing the short form and long form before acquisition.* Section 1005.18(b)(1)(i) generally requires delivery of both a short form disclosure as described in § 1005.18(b)(2)(i) and a long form disclosure as described in § 1005.18(b)(2)(ii) before a consumer acquires a prepaid

account. The following examples illustrate when a consumer receives disclosures before acquisition for purposes of § 1005.18(b)(1)(i):

i. A consumer inquires about obtaining a prepaid account at a branch location of a bank. A consumer then receives printed short form and long form disclosures related to the prepaid account product. After receiving the disclosures, a consumer then agrees to open a prepaid account with the bank. This consumer received the short form and long form pre-acquisition in accordance with § 1005.18(b)(1)(i).

ii. A consumer learns that he or she can receive wages via a payroll card account, at which time a consumer is provided with the short form and long form disclosure to review. A consumer then agrees to receive wages via a payroll card account. These disclosures were provided in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the payroll card or other access device at the end of the first pay period two weeks later, at which time a consumer also receives the short form and long form disclosure to review for the first time, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with § 1005.18(b)(1)(i).

2. *Disclosures provided electronically.* When the short form and long form disclosures required under § 1005.18(b)(2)(i) and (ii) are presented after a consumer has initiated a purchase for a prepaid account on a financial institution's Web site, but before a consumer provides any personal identifying information and agrees to accept the prepaid account, such disclosures are made pre-acquisition in accordance with § 1005.18(b)(1)(i). The short form and long form disclosures required by § 1005.18(b)(2)(i) and (ii) that are provided electronically when a consumer acquires a prepaid account on a financial institution's Web site are considered to be given after a consumer acquires a prepaid account if a consumer can easily bypass the

disclosures before acquiring the prepaid account. A financial institution can present the short form and long form disclosures on the same Web page to fulfill the requirements of § 1005.18(b)(1)(i). A financial institution could also present the short form disclosure on a Web page and include a hyperlink to the long form disclosure on that same Web page, but, if doing so, a consumer must not have to review any unrelated links before viewing the long form disclosure.

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

1. *Retail stores.* Section 1005.18(b)(1)(ii) sets forth alternative disclosure requirements for prepaid accounts acquired in retail stores. For purposes of § 1005.18(b)(1)(ii), a retail store is a location where a consumer can obtain a prepaid account in person and that is operated by an entity other than the financial institution or by an agent of the financial institution. A bank or credit union branch is not a retail store. Drug stores and grocery stores at which a consumer can acquire a prepaid account may be retail stores. A retail store that offers one financial institution's prepaid account products exclusively would be considered an agent of the financial institution and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to § 1005.18(b)(1)(i).

2. Disclosures provided inside prepaid account access device packaging material.

Except when providing the long form disclosure post-acquisition in accordance with the retail store exception set forth in § 1005.18(b)(1)(ii), the short form and long form disclosures required by § 1005.18(b)(2)(i) and (ii) must be provided to a consumer pre-acquisition in compliance with § 1005.18(b)(1)(i). Disclosures are considered to have been provided post-acquisition if they are inside the packaging material accompanying a prepaid account access device that a consumer cannot see or access before acquiring the prepaid account, or if it is not readily apparent to a consumer that he or she has the ability to access the disclosures inside of the packaging material.

For example, if the packaging material is presented in a way that consumers would assume they must purchase the prepaid account before they can open the packaging material, the financial institution would be deemed to have provided disclosures post-acquisition.

3. *Consumers working in retail stores.* A payroll card account offered to and accepted by consumers working in retail stores would not be considered a prepaid account acquired in a retail store for purposes of § 1005.18(b)(1)(ii), and thus, a consumer must receive the short and long form disclosures pre-acquisition pursuant to the timing requirement set forth in § 1005.18(b)(1)(i).

4. *Providing the long form disclosures by telephone in a retail store.* Pursuant to § 1005.18(b)(1)(ii), a financial institution may provide the disclosures described in § 1005.18(b)(2)(ii) after a consumer acquires a prepaid account in a retail store, if the three conditions set forth in § 1005.18(b)(1)(ii)(A) through (C) are met. Pursuant to § 1005.18(b)(1)(ii)(C), a financial institution must make the long form accessible to a consumer by telephone and by a Web site when not providing a printed version of the long form disclosure to a consumer prior to acquisition of a prepaid account. A financial institution could, for example, provide the long form disclosure by telephone using an interactive voice response or similar system or by using a customer service agent.

18(b)(1)(iii) Disclosures for a Prepaid Account Acquired Orally by Telephone

1. *Prepaid accounts acquired by telephone.* Section 1005.18(b)(1)(iii) sets forth requirements for prepaid accounts acquired orally by telephone. For purposes of § 1005.18(b)(1)(iii), a prepaid account is considered to have been acquired orally by telephone when a consumer speaks to a customer service agent or communicates with an automated system, such as an interactive voice response system, to provide personal identifying payment

information to acquire a prepaid account. Prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system are not considered to have been acquired orally by telephone.

2. Disclosures for prepaid accounts acquired by telephone. Pursuant to § 1005.18(b)(1)(iii), a financial institution must disclose the information required by § 1005.18(b)(2)(i) orally before a consumer acquires a prepaid account orally by telephone. To comply with the pre-acquisition requirement set forth in § 1005.18(b)(1)(i) for prepaid accounts acquired orally by telephone, a financial institution may, for example, read the disclosures required under § 1005.18(b)(2)(i) over the telephone after a consumer has initiated the purchase of a prepaid account by calling the financial institution, but before a consumer agrees to acquire the prepaid account. Although the disclosures required by § 1005.18(b)(2)(ii) are not required to be given pre-acquisition when a consumer acquires a prepaid account orally by telephone, a financial institution must communicate to a consumer that the long form is available upon request, either orally by telephone or on a Web site. In addition, a financial institution must provide information on all fees in the terms and conditions as required by § 1005.7(b)(5), as modified by § 1005.18(f), before the first electronic fund transfer is made from a consumer's prepaid account.

18(b)(2) Content of Disclosures

18(b)(2)(i) Short Form Content Requirements

1. Disclosures that are inapplicable. Disclosures required by § 1005.18(b)(2)(i) must always be provided prior to prepaid account acquisition, even when a particular disclosure is not applicable to a specific prepaid account product. For example, if a financial institution does not charge a fee to a consumer for withdrawing money at an automated teller machine in the

financial institution's network or an affiliated network, which is a type of fee that is required to be disclosed pursuant to § 1005.18(b)(2)(i)(B)(3), the financial institution should list "ATM withdrawal (in network)" on the short form disclosure and list "\$0" as the fee. If, however, the financial institution does not allow a consumer to withdraw money from automated teller machines that are either in the financial institution's network or from those in an affiliated network, the financial institution should still list "ATM withdrawal (in-network)" and "ATM withdrawal (out-of-network)" on the short form disclosure but instead state "not offered" or "N/A."

2. *Number of fees disclosed per fee type.* No more than two fees may be disclosed for each fee type required to be listed by § 1005.18(b)(2)(i)(B)(2), (3), and (5) in the short form disclosure. Only one fee may be disclosed for each fee type required to be listed by § 1005.18(b)(2)(i)(B)(1), (4), (6), (7) and (8), however, § 1005.18(b)(2)(i)(B)(8) requires the disclosure of up to three additional fee types. For example, if a financial institution offers more than one method for loading cash into a prepaid account, only the fee for the method that will charge the highest fee should be disclosed, and the financial institution may use an asterisk or other symbol next to the cash reload fee disclosed to indicate that the fee may be lower. See comment 18(b)(2)(i)(C)-1.

18(b)(2)(i)(B) Fees and Other Information

18(b)(2)(i)(B)(3) ATM Withdrawal Fees

1. *Foreign ATM withdrawal fees.* Pursuant to § 1005.18(b)(2)(i)(B)(3), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine in the United States to initiate a withdrawal of cash, both within and outside of the financial institution's network or a network affiliated with the financial institution, from the prepaid

account. If the fee imposed on a consumer for using an automated teller machine in a foreign country to initiate a withdrawal of cash is different from the fee charged for using an automated teller machine in the United States within or outside the financial institution's network or a network affiliated with the financial institution, a financial institution must not disclose the foreign ATM fee pursuant to § 1005.18(b)(2)(i)(B)(3), but may be required to do so pursuant to § 1005.18(b)(2)(i)(B)(8), as part of the incidence-based fee disclosure.

18(b)(2)(i)(B)(4) Cash Reload Fee

1. *Cash reload fees.* Pursuant to § 1005.18(b)(2)(i)(B)(4), a financial institution must disclose a fee imposed when a consumer loads cash into a prepaid account. For example, the cash reload fee would include the cost of adding cash at a point-of-sale terminal, the cost of purchasing an additional card or other device on which cash is loaded and then transferred into a prepaid account, or any other method a consumer may use to load cash into a prepaid account. If the financial institution offers more than one method for a consumer to load cash into the prepaid account, § 1005.18(b)(2)(i)(C) requires that it must only disclose the highest fee on the short form.

18(b)(2)(i)(B)(5) ATM Balance Inquiry Fees

1. *Foreign ATM balance inquiry fees.* Pursuant to § 1005.18(b)(2)(i)(B)(5), a financial institution must disclose the two fees imposed when a consumer uses an automated teller machine in the United States to check the balance of a consumer's prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution. If the fee imposed on a consumer for using an automated teller machine in a foreign country to check the balance of a consumer's prepaid account is different from the fee charged for using an automated teller machine within or outside the financial institution's network or a

network affiliated with the financial institution in the United States, a financial institution would not disclose the foreign ATM balance inquiry fee pursuant to § 1005.18(b)(2)(i)(B)(5), but could do so by § 1005.18 (b)(2)(i)(B)(8).

18(b)(2)(i)(B)(7) Inactivity Fee

1. Relationship between inactivity fees and periodic fees. Section 1005.18(b)(2)(i)(B)(7) requires disclosure of any fee for non-use or inactivity on a prepaid account as well as the duration of inactivity that triggers a financial institution to impose such an inactivity fee. When disclosing this fee pursuant to § 1005.18(b)(2)(ii)(A) as part of the long form disclosure, a financial institution should specify whether this inactivity fee is imposed in lieu of or in addition to the periodic fee disclosed pursuant to § 1005.18(b)(2)(i)(B)(1).

18(b)(2)(i)(B)(8) Incidence-Based Fee Disclosures

18(b)(2)(i)(B)(8)(I) Generally

1. Incidence-based fee disclosures. Section 1005.18(b)(2)(i)(B)(8) requires the disclosure of up to three fees, other than any of those disclosed pursuant to § 1005.18(b)(2)(i)(B)(1) through (7), that were incurred most frequently in the prior 12-month period from that prepaid account product. If a prepaid account product only has one, two, or three fees not already disclosed pursuant to § 1005.18(b)(2)(i)(B)(1) through (7), § 1005.18(b)(2)(i)(B)(8) requires disclosure of those fees assuming they were incurred by a consumer at least once during the prior 12-month period. Conversely, if a prepaid account has four fees not already disclosed pursuant to § 1005.18(b)(2)(i)(B)(1) through (7), § 1005.18(b)(2)(i)(B)(8)(I) requires disclosure of the three fees most frequently incurred. If the disclosures made pursuant to § 1005.18(b)(2)(i)(B)(1) through (7) capture a prepaid account product's entire fee schedule, a financial institution has no

obligation to disclose additional information on the short form pursuant to § 1005.18(b)(2)(i)(B)(8)(I).

2. *Determining incidence-based fees.* Section 1005.18(b)(2)(i)(B)(8)(I) requires financial institutions at the same time each year, in accordance with the timing requirements of § 1005.18(h), to total the incidence for each type of fee incurred during the prior 12-month period by consumers using a particular prepaid account product. Incidence should be considered on a total basis across all consumers using a particular prepaid account product. For example, if a given consumer incurred one fee type ten times during the prior 12-month period, all ten instances of that individual consumer's paying such a fee must be factored into the total incidence calculation for that fee type. If a financial institution offers more than one prepaid account product, it must consider consumers' fee incidence for each product separately and not consolidate the fee incidence across all of its prepaid account products. The price for purchasing or activating a prepaid account could be an incidence-based fee for purposes of § 1005.18(b)(2)(i)(B)(8).

3. *Relationship between incidence-based fee assessment and § 1005.18(h).* Section 1005.18(b)(2)(i)(B)(8)(I) requires that a financial institution disclose up to three fees, other than any of the fees disclosed pursuant to § 1005.18(b)(3)(iii)(B)(1) through (7). Section 1005.18(h)(2) states that after twelve months, all prepaid accounts and related packaging material, access devices, and physical other materials, that are offered, sold, or otherwise made available to consumers in connection with a prepaid account must comply with the requirements of this § 1005.18(b). A financial institution must therefore make its first incidence-based fee assessment in time to ensure that all prepaid accounts and related packaging material, access devices, and physical other materials, that are offered, sold, or otherwise made available to

consumers in connection with a prepaid account include the incidence-based disclosure within 12 months in accordance with § 1005.18(h)(2). Section 1005.18(h)(1), however, states that within nine months any newly-created disclosures would have to comply with the disclosure requirements in § 1005.18(b)(2). Thus, if a financial institution creates new disclosures within nine months of the effective date, those disclosures would need to include the appropriate incidence-based fee disclosure in accordance with 1005.18(h)(1).

4. *Multiple service plan prepaid account products.* When disclosing multiple service plans on a short form disclosure as permitted by § 1005.18(b)(3)(iii)(B)(I), a financial institution must consider the frequency with which fees are incurred from all of those plans as a whole to determine which three additional fees to disclose pursuant to § 1005.18(b)(2)(i)(B)(8)(I). If, however, the financial institution is disclosing the fee schedule for only the service plan in which a consumer is enrolled by default upon acquiring the prepaid account, it would consider the fee incidence for that service plan. *See* comment 18(b)(3)(iii)(B)-1 for guidance on what constitutes multiple service plans.

5. *Updating disclosures for retail store packaging.* For prepaid accounts sold in retail stores, § 1005.18(b)(2)(i)(B)(8)(I) permits a financial institution to implement any necessary updates to the incidence-based fee disclosures at the time the institution prints new prepaid account packaging materials. Section 1005.18(b)(2)(i)(B)(8)(I) does not require that financial institutions immediately destroy existing inventory in retail stores or elsewhere in the distribution channel, to the extent the disclosures on such packaging materials are otherwise accurate, to comply with this requirement. For example, if a financial institution determines that an incidence-based fee listed on a short form disclosure in a retail store is no longer one of the most commonly incurred fees and makes the appropriate change when printing new disclosures, any

packages in retail stores that contain the previous incidence-based fee disclosure may still be sold and comply with § 1005.18(b)(2)(i)(B)(8)(I).

18(b)(2)(i)(B)(8)(II) New Prepaid Account Products

1. *New prepaid account products.* If a particular prepaid account product was not offered by the financial institution during the prior 12-month period, § 1005.18(b)(2)(i)(B)(8)(II) requires the financial institution to disclose up to three fees other than any of those fees disclosed pursuant to § 1005.18(b)(2)(i)(B)(1) through (7) that it reasonably anticipates will be incurred by consumers most frequently during the next 12-month period. The financial institution should use available data to reasonably anticipate what fees should be disclosed. For example, if a financial institution changes the name of its prepaid account product and develops a new marketing and distribution plan but does not alter the prepaid account's fee schedule, this would be considered a new prepaid account product for purposes of § 1005.18(b)(2)(i)(B)(8)(II). Insofar as the fee schedule remains unchanged, however, and the financial institution reasonably anticipates that the fees it previously disclosed pursuant to § 1005.18(b)(2)(i)(B)(8)(I) would remain unchanged, the financial institution should continue to disclose those fees for an additional 12-month period. See comment 18(b)(2)(i)(B)(8)(I)-1 for guidance on how to determine which three fees to disclose.

18(b)(2)(i)(B)(8)(III) Revised Prepaid Account Products

1. *Revised prepaid account products.* Section 1005.18(b)(2)(i)(B)(8)(III) requires that if the financial institution changes an existing prepaid account product's fee schedule at any point after assessing its incidence-based fee disclosure for the prior 12-month period pursuant to § 1005.18(b)(2)(i)(B)(8)(I) , it must determine whether, after making such changes, it reasonably anticipates that the existing incidence-based fee disclosure will represent the most commonly

incurred fees for the remainder of the 12-month period. For example, if a financial institution changes its card replacement fee from \$3.00 to \$4.00 in May after already assessing in January whether the incidence-based fees need to be updated for the current 12-month period, this change in the fee schedule would subject the prepaid account product to § 1005.18(b)(2)(i)(B)(8)(III). In this example, the financial institution would assess whether it reasonably anticipates that the existing incidence-based fee disclosure still lists what will be the most commonly incurred fees from May until the following January when the financial institution conducts its next, annual incidence-based fees assessment.

18(b)(2)(i)(B)(9) Overdraft Services and Other Credit Features

1. *Short form overdraft disclosure.* Section 1005.18(b)(2)(i)(B)(9) requires disclosure of a statement that credit-related fees may apply if, at any point, a credit plan may be offered in connection with the prepaid account. This statement would have to be provided on all short form disclosures, regardless of whether some consumers may never be solicited to enroll in such a plan, if such a plan could be offered.

18(b)(2)(i)(B)(10) Statement Regarding Other Fees

1. *Statement regarding other fees.* Section 1005.18(b)(2)(i)(B)(10) requires a financial institution to include a statement on the short form disclosing the number of fees, other than those listed on the short form § 1005.18(b)(2)(i)(B)(1) through (8), listed in the long form disclosure pursuant to § 1005.18(b)(2)(ii)(A). The following examples illustrate this concept:

i. A financial institution charges a fee for issuing a consumer a replacement card, but this fee is not among the top three fees its consumers incurred most frequently during the prior 12-month period and therefore would not be disclosed pursuant to § 1005.18(b)(2)(i)(B)(8). This is the only fee the financial institution imposes that is not required to be disclosed elsewhere on the

short form disclosure. The financial institution would include a statement on the short form disclosure that it may charge one other fee not otherwise listed, in a form substantially similar to the clause set forth in appendix A-10(a) of this part.

ii. A financial institution does not charge any fees other than those required to be disclosed pursuant to § 1005.18(b)(2)(i)(B)(1) through (8). The financial institution may, but is not required to, include a statement on the short form disclosure that it does not charge any other fees not listed on the short form disclosure.

2. *Counting the number of other fees.* If the fee a financial institution imposes might vary, even if the variation is based on a consumer's choice of how to utilize a particular service, the financial institution must count each variation of the fee that might be imposed as a separate fee. For example, if a financial institution imposes one fee to issue a replacement card to a consumer using a standard mail service, but charges a different (and perhaps higher) fee if a consumer requests expedited delivery of the replacement card, and neither of these fees are incurred frequently enough to be disclosed as an incidence-based fee pursuant to § 1005.18(b)(2)(i)(B)(8), then the financial institution would still count each of these fees separately when determining the total number of fees to disclose pursuant to § 1005.18(b)(2)(i)(B)(10). Even if a fee could be waived under certain conditions, it would still be counted in order to comply with § 1005.18(b)(2)(i)(B)(10).

18(b)(2)(i)(B)(11) Telephone Number and Web Site

1. *Financial institution's telephone number.* A financial institution must make the long form disclosure described in § 1005.18(b)(2)(ii) accessible to a consumer orally via a telephone number disclosed pursuant to § 1005.18(b)(2)(i)(B)(11) when a financial institution chooses not to provide a written form of those disclosures before a consumer acquires a prepaid account, as

described in § 1005.18(b)(1)(ii). For example, a financial institution could use a customer service agent, or an interactive voice response system, to provide this disclosure. A consumer must not incur a fee to call this telephone number before acquiring a prepaid account. The telephone number disclosed pursuant to § 1005.18(b)(2)(i)(B)(II) could be the same as the customer service number for which a financial institution may impose a fee on a consumer to use for other purposes, but a consumer could not incur any customer service or other transaction fees when calling this number to access the information set forth in § 1005.18(b)(2)(ii) before acquiring a prepaid account in a retail store.

2. *Financial institution's Web site.* Section 1005.18(b)(2)(i)(B)(II) requires disclosure of a unique URL that must take consumers to the Web page where disclosures described in § 1005.18(b)(2)(ii) may be viewed when a financial institution chooses not to provide a written form of those disclosures before a consumer acquires a prepaid account, as described in § 1005.18(b)(1)(ii). An entered URL that requires a consumer to navigate various other Web pages before viewing the long form disclosure would not comply with § 1005.18(b)(2)(i)(B)(II).

18(b)(2)(i)(C) Disclosing Variable Fees

1. *Disclosing variable fees in the short form.* Section 1005.18(b)(2)(i)(C) requires a financial institution to disclose the highest fee it could impose upon a consumer for each of the fee types listed on the short form pursuant to § 1005.18(b)(2)(i)(B)(I), along with a symbol, such as an asterisk, to indicate that a lower fee might apply, and text explaining that the fee may be lower, if applicable. For example, if a financial institution charges a monthly fee of \$4.95, but the financial institution waives this fee if a consumer receives direct deposit payments into the prepaid account, the financial institution would list a monthly fee of \$4.95 on the short form

disclosure with an asterisk (or other symbol) next to the dollar amount that refers to a statement that the fee may be lower. If a financial institution charges a cash reload fee of \$3.95 at reload networks that are not agents of the financial institution, but waives this fee if a consumer loads money at a point-of-sale terminal operated by a retailer that is an agent of the financial institution, the financial institution would disclose a cash reload fee of \$3.95 on the short form disclosure pursuant to § 1005.18(b)(2)(i)(C) with an asterisk (or other symbol) next to the dollar amount that refers to the same statement that the fee maybe lower. Section 1005.18(b)(2)(i)(C) does not permit a financial institution to explain the conditions under which fee may be lower, but a financial institution could use any other part of the prepaid account product's packaging material or may use its Web site to disclose that information. That information is also required to be disclosed in the long form pursuant to § 1005.18(b)(2)(ii)(A).

2. *Third party fees.* Section 1005.18(b)(2)(i)(C) states that a financial institution must not disclose any additional third party fees imposed in connection with any of the fees disclosed pursuant to § 1005.18(b)(2)(i)(B)(1) through (7). Third parties could include service providers and other entities, regardless of whether the entity is an agent of the financial institution.

18(b)(2)(ii) Long Form Content Requirements

18(b)(2)(ii)(A) Fees

1. *Fee disclosure.* Section 1005.18(b)(2)(ii)(A) requires a financial institution to disclose every fee that may be imposed on a consumer and the conditions, if any, under which the fee may be imposed, waived, or reduced. For example, if a financial institution charges a cash reload fee, the financial institution must list the amount of the cash reload fee and also specify any circumstances under which a consumer can qualify for a lower fee. Relevant conditions to disclose could also include, for example, if there is a limit on the amount of cash a consumer

may load into the prepaid account in a transaction or during a particular time period. Section 1005.18(b)(2)(ii)(A) also explains that a financial institution must not utilize any symbols to explain conditions under which any fee may be imposed.

2. Disclosing a service or feature without a charge. A financial institution may, at its option, choose to disclose pursuant to § 1005.18(b)(2)(ii)(A), any service or feature it provides or offers even if it does not charge a fee for that service or feature. For example, a financial institution may choose to list “online bill pay service” and indicate that the fee is “\$0” or “free” when the financial institution does not charge consumers a fee for that service or feature. By contrast, where a service or feature is available without a fee for an introductory period, but where a fee may be imposed at the conclusion of the introductory period for that service or feature, the financial institution could not indicate that the fee is “\$0.” The financial institution should instead list the main fee and explain in the separate explanatory column how the fee could be lower during the introductory period, what that alternative fee would be, and when it will be imposed. Similarly, if a consumer must enroll in an additional service to avoid incurring a fee for another service, neither of those services should disclose a fee of “\$0,” but should instead list each fee amount imposed if a consumer does not enroll. For example, if the monthly fee is waived once a consumer receives direct deposit payments into the prepaid account, the monthly fee imposed upon a consumer if they do not receive direct deposit would be disclosed in the long form, and an explanation regarding how receiving direct deposit might lower the fee should be included in the explanatory column in the long form.

3. Third party fees. Section 1005.18(b)(2)(ii)(A) generally requires disclosure, to the extent known, of any third party fee amounts that may apply. For example, a financial institution that offers balance updates to a consumer via text message would disclose that mobile carrier

data charges may apply for each text message a consumer receives. Section 1005.18(b)(2)(ii)(A) also requires that a financial institution must always disclose in the long form any fees imposed by a third party who is acting as an agent of the financial institution for purposes of the prepaid account product. For example, any fees that the provider of a cash reload service who has a relationship with the financial institution may impose would be disclosed in the long form.

18(b)(2)(ii)(B) Overdraft Services and Other Credit Features

1. *Long form disclosure of overdraft services and other credit features.* Section 1005.18(b)(2)(ii)(B) requires that if, at any point, a credit plan may be offered in connection with the prepaid account, the disclosures described in Regulation Z, 12 CFR 1026.60(a), (b), and (c) must be provided. These disclosures must appear in the form required under 12 CFR 1026.60(a), (b), and (c), and, to the extent possible, on the same printed page or Web page as the rest of the information required to be listed pursuant to § 1005.18(b)(2)(ii).

18(b)(3) Form of Pre-Acquisition Disclosures

18(b)(3)(i) General

18(b)(3)(i)(B) Electronic Disclosures

1. *Disclosing short forms and long forms electronically.* Section 1005.18(b)(3)(i)(B) generally requires electronic delivery of the short form and long form disclosures required by § 1005.18(b)(2)(i) and (ii) when a consumer acquires a prepaid account through the Internet, including via a mobile application. A financial institution may, at its option, provide the short form and long form disclosures on the same Web page or two different Web pages as long as the disclosures are provided in accordance with the pre-acquisition disclosure requirements of § 1005.18(b)(1)(i).

2. *No requirement of E-Sign consent.* Section 1005.18(b)(3)(i)(B) allows financial institutions to provide disclosures electronically without regard to a consumer consent and other applicable provisions of the E-Sign Act, but specifies that disclosures must be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. For example, if a consumer is acquiring the prepaid account using a financial institution's Web site, it would be reasonable to expect that a consumer would be able to access pre-acquisition disclosures provided on a similar Web site.

3. *Machine-readable text.* Section 1005.18(b)(3)(i)(B) requires that disclosures provided to a consumer through a Web site where required by paragraph (b)(1)(ii)(C) and as described in § 1005.18(b)(2)(i)(B)(II) must be made in an electronic form using a machine-readable text format that is accessible via both Web browsers and screen readers. A disclosure would not comply with this requirement if it was not provided in a textual format that can be read automatically by Internet search engines or other computer systems.

18(b)(3)(ii) Retainable Form

1. *Retainable electronic disclosures.* Section 1005.18(b)(3)(ii) generally requires that, except for disclosures provided to a consumer through the telephone number described in § 1005.18(b)(2)(i)(B)(II) or disclosures provided orally pursuant to § 1005.18(b)(1)(iii) disclosures provided to consumers pursuant to § 1005.18(b)(2)(i) and (b)(2)(ii) be retainable. A financial institution may satisfy the requirement to provide electronic disclosures in a retainable form if it provides disclosures on its Web site in a format that is capable of being printed, saved or e-mailed to a consumer.

18(b)(3)(iii) Tabular Format

18(b)(3)(iii)(A) General

18(b)(3)(iii)(B) Disclosures for Prepaid Account Products Offering Multiple Service Plans

1. *Multiple service plans.* The multiple service plan disclosure provisions in § 1005.18(b)(3)(iii)(B) apply when a financial institution offers more than one service plan for a particular prepaid account product, and each plan has a different fee schedule. For example, a financial institution might offer a prepaid account product with one service plan where a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee. A financial institution may also offer a prepaid account product with one service plan for consumers who utilize another one of the financial institution's non-prepaid services (*e.g.*, a mobile phone service) and a different plan for consumers who only utilize a financial institution's prepaid account products. Each of these plans would be considered a "service plan" for purposes of § 1005.18(b)(3)(iii)(B).

18(b)(6) Prepaid Accounts Acquired in a Foreign Language

1. *Principally using a foreign language.* Section 1005.18(b)(6) requires that if a financial institution principally uses a foreign language on a packaging material, by telephone, in person, or on the Web site a consumer utilizes to acquire a prepaid account, then disclosures made pursuant to § 1005.18(b)(2)(i) of this section or § 1005.18 (b)(2)(ii) of this section must be provided in that same foreign language. For example, if a financial institution uses mostly Spanish on the packaging material of a prepaid account sold in a retail store, even though a few words appear in English, then the short form and long form disclosure provided to a consumer must also be in Spanish. Similarly, if the homepage of the Web site a consumer visits to acquire

a prepaid account is mostly in Spanish, the short form and long form disclosure a consumer receives pre-acquisition must also be in Spanish. A consumer who calls a telephone number to acquire a prepaid account and either speaks to a customer service agent in Spanish or interacts with an IVR system in Spanish must also receive the short form and long form disclosure information in Spanish, in accordance with § 1005.18(b)(2)(ii). Also, if a consumer speaks with a customer service agent in a foreign language in a bank branch or credit union location, this would be considered “in person,” and a consumer must receive the short form disclosure and the long form disclosure information in that foreign language to comply with § 1005.18(b)(6).

18(b)(7) Disclosures on a Prepaid Account Access Device

1. *Web site and telephone number.* Section 1005.18(b)(7) requires that the name of a financial institution and the URL of a Web site and a telephone number that a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. For example, a consumer might use this information to contact a financial institution with a question about a prepaid account’s terms and conditions, or to report when an unauthorized transaction has occurred involving a prepaid account.

18(c) Access to Prepaid Account Information

1. *Posted transactions.* A history of transactions provided under § 1005.18(c)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under § 1005.18(c)(1)(ii) must be provided in a form that the consumer may keep, as required under § 1005.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format

that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at a Web site in a format that is capable of being printed or stored electronically using a web browser.

3. *Access to account information.* Section 1005.18(c)(1) permits a financial institution, instead of furnishing periodic statements under § 1005.9(b), to make available to the consumer the consumer's account balance by telephone, an electronic history of the consumer's account transactions that covers at least 18 months preceding the date the consumer electronically accesses the account, and a written history of the consumer's account transactions upon the consumer's oral or written request that covers at least 18 months preceding the date the institution receives the consumer's request. Requests that exceed the requirements of § 1005.18(c)(1) for providing account information, for which a financial institution may charge a fee, include the following:

i. A financial institution may assess a fee or charge to a consumer for responding to subsequent requests for written account information made in a single calendar month. For example, if a consumer makes a request for 18 months of written account transaction history on June 1 and makes a request for 18 months of written history on August 5, the financial institution may not assess a fee or charge to the consumer for responding to either request. However, if the consumer requests 18 months of written history on June 1 and then makes the same request on June 15, the financial institution may assess a fee or charge to the consumer for responding to the request made on June 15, as this is the second request in the same month.

ii. If a financial institution maintains more than 18 months of account transaction history, it may assess a fee or charge to the consumer for providing a written history of the consumer's account information for transactions occurring more than 18 months prior to the date the

institution receives the consumer's request, provided the consumer specifically requests the account transaction history for that time period.

iii. If a financial institution offers a consumer the ability to request automatic mailings of written history on a monthly or other periodic basis, it may, at its option, assess a fee or charge for such automatic mailings but not for account history requested pursuant to § 1005.18(c)(1)(iii). *See* comment 18(c)-4.

4. *18 months of account information.* Section 1005.18(c)(1)(ii) requires a financial institution to make available at least 18 months of account transaction information electronically, and § 1005.18(c)(1)(iii) requires the financial institution to provide that information in writing upon the consumer's request. A financial institution may provide fewer than 18 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been open for fewer than 18 months, the financial institution need only provide account information pursuant to § 1005.18(c)(1)(ii) and (iii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution must continue to provide at least 18 months of account transaction information from the date the request is received. *See* comment 9(b)-3. When a prepaid account has been closed or inactive for 18 months, the financial institution is no longer required to make available any account or transaction information.

5. *Summary totals of amount of fees, deposits, and debits.* Section 1005.18(c)(4) requires a financial institution to disclose a summary total of the amount of all fees assessed against a prepaid account, the total amount of all deposits to the account, and the total amount of all debits from the account, for the prior calendar month and for the calendar year to date. The calendar month and annual fees, deposits, and debits information must be disclosed on any periodic

statement provided pursuant to § 1005.9(b), in any electronic history of account transactions whether provided pursuant to § 1005.18(c)(1)(ii) or otherwise, and on any written history of account transactions provided pursuant to § 1005.18(c)(1)(iii). If a financial institution provides periodic statements pursuant to § 1005.9(b), total fees, deposits, and debits may be disclosed for each statement period rather than each calendar month, if different. The fees that must be included in the summary total include those that are required to be disclosed pursuant to § 1005.18(b)(2)(ii)(A). For example, an institution must include the fee it charges a consumer for using an out-of-network ATM in the summary total of fees, but it need not include any fee charged by an ATM operator with whom the institution has no relationship for the consumer's use of that operator's ATM. The summary total of fees should be net of any fee reversals. The total amount of all debits from the account should be exclusive of fees assessed against the account. The total deposits and total debits must include all deposits to and debits from the prepaid account, not just those deposits and debits that are the result of electronic fund transfers.

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

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the model clause in paragraph (b) of appendix A-7 of this part). Specifically, an institution may disclose to prepaid account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an

institution's summary of the consumer's liability (as required under § 1005.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a prepaid account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity and to provide access to a Web site or mobile application through which account information can be viewed. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 1005.6 and 1005.11. A consumer is not deemed to have accessed a prepaid account electronically when the consumer receives an automated text message or other automated account alert, or checks the account balance by telephone.

3. *Untimely notice of error.* An institution that provides a transaction history under § 1005.18(c)(1) is not required to comply with the requirements of § 1005.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in § 1005.18(e)(2)(ii), an institution need not comply with the requirements of § 1005.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an

unauthorized EFT, however, the institution must comply with § 1005.6 (including the extension of time limits in § 1005.6(b)(4)) before it may impose any liability on the consumer.

4. *Limitations on liability and error resolution for unverified accounts.* Section 1005.18(e)(3) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, if a financial institution discloses to the consumer the risks of not registering a prepaid account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7 of this part, a financial institution is not required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account with respect to which it has not completed its collection of consumer identifying information and identity verification. Consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. Section 1005.18(e)(3) also provides that once a consumer's identity has been verified, a financial institution must limit the consumer's liability for unauthorized transactions and resolve any errors that occurred prior to verification that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. For an unauthorized transfer or an error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or alleged error is based on the date the consumer contacts the financial institution to report the unauthorized transfer or alleged error, not the date the financial institution completes its customer identification and verification process. For an error asserted on a previously unverified prepaid account, the time limits for a financial institution's investigation of errors pursuant to § 1005.11(c) begin on the day following the date the financial institution completed its customer identification and verification process. A financial institution may not delay completing its

customer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

18(g) Credit Card Plans Linked to Prepaid Accounts

1. *Credit card plan subject to Regulation Z.* Regulation Z (12 CFR 1026.2(a)(20), comment 2(a)(20)-2.ii) provides guidance on whether a program constitutes a credit plan. Regulation Z (12 CFR 1026.15(a)(i), comment 2(a)(15)-2.i.F provides guidance on when an access device for a prepaid account is a credit card, and comment 2(a)(15)-2.i.G provides guidance on when an account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

2. *Variation in account term or conditions.* i. Under § 1005.18(g)(2), a financial institution may offer different terms on different prepaid account products, where the terms may differ between a prepaid account product where a credit card plan subject to Regulation Z cannot be linked to the prepaid account, and a prepaid account product where a credit card plan subject to Regulation Z can be linked to the prepaid account. However, if with respect to a prepaid account a credit card plan subject to Regulation Z may be offered at any point to the consumer and the plan is accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z or is accessed by account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions that do not relate to an extension of credit, carrying a credit balance, or credit availability to a consumer's account, depending on whether the consumer elects to link such a credit card plan to the prepaid account. In addition, § 1005.18(g)(2) prevents a financial institution from waiving fees or reducing the amount of fees

that do not relate to an extension of credit, carrying a credit balance, or credit availability if the consumer elects to link the prepaid account to a credit card plan.

ii. Account terms and conditions subject to § 1005.18(g)(2) include, but are not limited to:

A. Interest paid on funds deposited into the prepaid account, if any;

B. Fees assessed on the prepaid account that do not relate to an extension of credit, carrying a credit balance, or credit availability, including any one-time or periodic fees imposed for opening or holding a prepaid account. *See* Regulation Z § 1026.4(b)(2), comment 4(b)(2)-1.iii and .iv for guidance on fees that relate to an extension of credit, carrying a credit balance, or credit availability;

C. The type of prepaid access card provided to the consumer. For instance, an institution may not provide to consumers a PIN-only card before a credit plan subject to Regulation Z is linked to the prepaid account, while providing a prepaid card with both PIN and signature-debit functionality to consumers who have elected to link such a credit plan to the prepaid account;

D. Minimum balance requirements; or

E. Account features such as online bill payment services.

iii. Account terms and conditions that relate to an extension of credit, carrying a credit balance, or credit availability and thus are not subject to § 1005.18(g)(2) include:

A. Fees or charges assessed on the prepaid account applicable to transactions that access the credit card plan subject to Regulation Z (12 CFR part 1026), including transactions that access both the prepaid account and the credit card plan;

B. Annual or other periodic fees assessed on the prepaid account imposed for the issuance or availability of the credit card plan subject to Regulation Z (12 CFR part 1026);

C. Any non-periodic fees that relate to the opening of the credit card plan subject to

Regulation Z (12 CFR part 1026); or

D. Other fees described in Regulation Z § 1026.4(b)(2), comment 4(b)(2)-1.iii.

iv. *Examples.* For all the examples below, assume that a consumer has selected a prepaid account where a credit card plan subject to Regulation Z may be offered to the consumer and the credit plan will be accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z or will be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

A. Assume also that the consumer uses the access device to make a purchase that only accesses the prepaid account and does not access a credit card plan. A financial institution is prohibited by § 1005.18(g)(2) from charging a \$2.00 fee for that transaction if the consumer has not elected to link the prepaid account to the credit card plan, and charging a \$1.00 fee for that transaction where the consumer has made such an election.

B. Assume instead the consumer has elected to link the prepaid account to the credit card plan, and the consumer makes a purchase transaction at point of sale where the transaction using the access device is either entirely funded from the credit card plan, or partially funded from the credit card plan. A financial institution is not prevented by § 1005.18(g)(2) from charging a different amount of fee for that type of transaction than would be charged for a transaction that is funded solely from the prepaid account. For example, a financial institution is not prevented by § 1005.18(g)(2) from charging a \$2.00 fee for that transaction, notwithstanding that only a \$1.00 fee would have applied if the transaction was solely funded from the prepaid account.

C. Assume a financial institution charges a \$10 annual fee for holding the prepaid account. Section 1005.18(g)(2) prevents a financial institution from charging a different monthly

fee for holding the prepaid account if the consumer elects to link the prepaid account to the credit card plan. For example, the financial institution may not waive or discount the annual fee for holding the prepaid account, if the consumer elects to link the prepaid account to the credit card plan. Section 1005.18(g)(2), however, does not prevent the institution from charging an additional fee to open the credit card plan or for the availability of the credit card plan.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(a) Definitions

19(a)(1) Agreement

1. *Provisions contained in separate documents included.* Section 1005.19(a)(1) defines a prepaid account agreement, for purposes of § 1005.19, as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement may consist of several documents that, taken together, define the legal obligation between the issuer and consumer.

19(a)(2) Amends

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 1005.19(a)(2) provides that any change in the fee information, as defined in § 1005.19(a)(3), is deemed to be substantive. Examples of other changes that generally would be considered substantive include:

i. Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement.

ii. Addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee.

iii. Changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated.

iv. Changes that may affect how the terms of the agreement are construed or applied, such as changes to a choice-of-law provision.

v. Changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

2. *Non-substantive changes.* Changes that generally would not be considered substantive include, for example:

i. Correction of typographical errors that do not affect the meaning of any terms of the agreement.

ii. Changes to the issuer's corporate name, logo, or tagline.

iii. Changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins.

iv. Changes to the name of the prepaid account to which the program applies.

v. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

vi. Adding, removing, or modifying a table of contents or index.

vii. Changes to titles, headings, section numbers, or captions.

19(a)(4) Issuer

1. *Issuer.* Section 1005.19(a)(4) provides that, for purposes of § 1005.19, issuer or prepaid account issuer means the entity to which a consumer is legally obligated, or would be

legally obligated, under the terms of a prepaid account agreement. For example, Bank X and Bank Y work together to issue prepaid accounts. A consumer that obtains a prepaid account issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states “This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Prepaid Account.” The prepaid account issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the prepaid account through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.

2. Use of third-party service providers. An issuer has a legal obligation to comply with the requirements of § 1005.19. However, an issuer generally may use a third-party service provider to satisfy its obligations under § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of § 1005.19 on the issuer's behalf. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition, Bank is the prepaid account issuer for purposes of § 1005.19. However, Program Manager services the prepaid accounts, including mailing to consumers account opening materials and providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii). While Bank is responsible for ensuring compliance with § 1005.19, Bank may arrange for Program Manager (or another appropriate third-party service provider) to submit prepaid account agreements to the Bureau under § 1005.19 on Bank's behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

3. *Partner institution Web sites.* As explained in comment 19(c)-2, if an issuer provides consumers with access to specific information about their individual accounts, such as providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii), through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of § 1005.19. Such a Web site is deemed to be maintained by the issuer for purposes of § 1005.19 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of § 1005.19. For example, Program Manager and Bank work together to issue prepaid accounts. Under the § 1005.19(a)(4) definition, Bank is the issuer that issues these prepaid accounts for purposes of § 1005.19. Bank does not maintain a Web site specifically related to prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic history of consumers' account transactions, through a Web site maintained by Program Manager. Program Manager designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of § 1005.19. Bank therefore may comply with § 1005.19(c) or (d)(1) by ensuring that agreements offered to the public are posted on Program Manager's Web site in accordance with § 1005.19(c) or (d)(1), respectively. Bank need not create and maintain a Web site branded and held out to the public as belonging to Bank in order

to comply with § 1005.19(c) and (d) as long as Bank ensures that Program Manager's Web site complies with these sections.

19(a)(5) Offers

1. *Prepaid accounts offered to limited groups.* An issuer is deemed to offer a prepaid account agreement to the public even if the issuer solicits applications for or otherwise makes available prepaid accounts only to a limited group of persons. For example, an issuer may market affinity cards only to students and alumni of a particular educational institution, or may solicit only residents of a specific geographic location for a particular prepaid account; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for prepaid accounts issued by a credit union are considered to be offered to the public even though such prepaid accounts are available only to credit union members. Agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs are also considered to be offered to the public.

19(a)(6) Open Account

1. *Open account.* The definition of open account includes a prepaid account if (i) there is an outstanding balance in the account; (ii) the consumer can load more funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit through a credit plan that would be a credit card account under Regulation Z, 12 CFR 1026, that is offered in connection with a prepaid account. Under this definition, an account that meets either of these criteria is considered to be open even if the account is considered inactive by the issuer.

19(a)(7) Prepaid Account

1. *Prepaid account.* Section 1005.19(a)(7) provides that, for purposes of § 1005.19, the term prepaid account means a prepaid account as defined in § 1005.2(b)(3). Therefore, for purposes of § 1005.19, a prepaid account includes, among other things, a payroll card account as defined in § 1005.2(b)(3)(iii) and an account established by a government agency for distributing government benefits to a consumer electronically as defined in § 1005.2(b)(3)(iv) and § 1005.15(a)(2).

19(b) Submission of Agreements to the Bureau

19(b)(1) Quarterly Submissions

1. *Quarterly submission requirement.* Section 1005.19(b)(1) requires issuers to send quarterly submissions to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. For additional guidance as to the quarterly submission timing requirement, see Regulation Z (12 CFR 1026.58) comment 58(c)(1)-1.

2. *No quarterly submission required.* i. Under § 1005.19(b)(1), an issuer is not required to make any submission to the Bureau at a particular quarterly submission deadline if, during the previous calendar quarter, the issuer did not take any of the following actions:

A. Offering a new prepaid account agreement that was not submitted to the Bureau previously.

B. Amending an agreement previously submitted to the Bureau.

C. Ceasing to offer an agreement previously submitted to the Bureau.

ii. For additional guidance as to when a quarterly submission is not required, see Regulation Z (12 CFR 1026.58) comment 58(c)(1)-2.ii.

3. *Quarterly submission of complete set of updated agreements.* Section 1005.19(b)(1) permits an issuer to submit to the Bureau on a quarterly basis a complete, updated set of the prepaid account agreements the issuer offers to the public. For additional guidance regarding quarterly submission of a complete set of updated agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(1)-3.

19(b)(2) Amended Agreements

1. *No requirement to resubmit agreements not amended.* Under § 1005.19(b)(2), if a prepaid account agreement has been submitted to the Bureau, the agreement has not been amended, and the issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For additional guidance regarding the lack of a requirement to resubmit agreements that have not been amended, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)-1.

2. *Submission of amended agreements.* If an issuer amends a prepaid account agreement previously submitted to the Bureau, § 1005.19(b)(2) requires the issuer to submit the entire amended agreement to the Bureau. The issuer must submit the amended agreement to the Bureau by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. However, the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective. *See* comment 19(b)(2)-3. For additional guidance on the submission of amended agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)-2.

3. *Agreements amended but no longer offered to the public.* An issuer should submit an amended agreement to the Bureau under § 1005.19(b)(2) only if the issuer offered the amended

agreement to the public as of the last business day of the calendar quarter in which the amendment became effective. Agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau. For additional guidance on agreements that have been amended but are no longer offered to the public, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)-3.

4. *Change-in-terms notices not permissible.* Section 1005.19(b)(2) requires that if an agreement previously submitted to the Bureau is amended, the issuer must submit the entire revised agreement to the Bureau. An issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the optional addendum described in § 1005.19(b)(6)), not provided as separate riders. For additional guidance as to submission of revised agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(3)-4.

19(b)(3) Withdrawal of Agreements

1. *Notice of withdrawal of agreement.* Section 1005.19(b)(3) requires an issuer to notify the Bureau if any agreement previously submitted to the Bureau by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement. For additional guidance as to notice of withdrawal of agreements, see Regulation Z (12 CFR 1026.58) comment 58(c)(4)-1.

19(b)(4) De Minimis Exception

1. *Relationship to other exceptions.* The de minimis exception in § 1005.19(b)(4) is distinct from the product testing exception under § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing

exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

2. *De minimis exception.* Under § 1005.19(b)(4), an issuer is not required to submit any prepaid account agreements to the Bureau under § 1005.19(b)(1) if the issuer has fewer than 3,000 open prepaid accounts as of the last business day of the calendar quarter. For additional guidance on the de minimis exception, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)-2.

3. *Date for determining whether issuer qualifies.* Whether an issuer qualifies for the de minimis exception is determined as of the last business day of each calendar quarter. For additional guidance on the date for determining whether an issuer qualifies for the de minimis exception, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)-3.

4. *Date for determining whether issuer ceases to qualify.* Whether an issuer has ceased to qualify for the de minimis exception under § 1005.19(b)(4) is determined as of the last business day of the calendar quarter. For additional guidance on the date for determining whether an issuer ceases to qualify for the de minimis exception, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)-4.

5. *Option to withdraw agreements.* Section 1005.19(b)(4) provides that if an issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the issuer must continue to make quarterly submissions to the Bureau as required by § 1005.19(b)(1) until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. For additional guidance on an issuer's option to withdraw its agreements submitted to the Bureau, see Regulation Z (12 CFR 1026.58) comment 58(c)(5)-5.

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

1. “*As of*” date. Agreements submitted to the Bureau must contain the provisions of the agreement and fee information in effect as of the last business day of the preceding calendar quarter. For example, on June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers to the public. The change in that fee will become effective on August 1. If the issuer submits the agreement to the Bureau on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower out-of-network ATM withdrawal fee because that lower fee was not in effect on June 30, the last business day of the preceding calendar quarter.

2. *Fee agreement variations do not constitute separate agreements.* Fee information that may vary from one consumer to another depending on the consumer’s state of residence or other factors must be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the fee information do not constitute separate agreements for purposes of this section. For example, an issuer offers two types of prepaid accounts that differ only with respect to the monthly fee. The monthly fee for one type of account is \$4.95, while the monthly fee for the other type of account is \$0 if the consumer regularly receives direct deposit to the prepaid account. The provisions of the agreement and fee information for the two types of accounts are otherwise identical. The issuer should not submit to the Bureau one agreement with fee information listing a \$4.95 monthly fee and another agreement with fee information listing a \$0 monthly fee. Instead, the issuer should submit to the Bureau one agreement with fee information listing possible monthly fees of \$4.95 or \$0, including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

3. *Integrated agreement requirement.* Issuers may not provide provisions of the agreement or fee information in the form of change-in-terms notices or riders. The only addendum that may be submitted as part of an agreement is the optional fee information addendum described in § 1005.19(b)(6)(ii). Changes in provisions or fee information must be integrated into the body of the agreement or the optional fee information addendum described in § 1005.19(b)(6)(ii). For example, it would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document dated January 1, 2015, four subsequent change in terms notices, and 2 addenda showing variations in fee information. Instead, the issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single optional addendum displaying variations in fee information.

19(c) Posting of Agreements Offered to the Public

1. *Requirement applies only to agreements submitted to the Bureau.* Issuers are only required to post and maintain on their publicly available Web site the prepaid account agreements that the issuer must submit to the Bureau under § 1005.19(b). This posting requirement is distinct from that of § 1005.7, which requires an issuer to provide certain disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account, as well as the change in terms notice required under § 1005.8(a). This requirement is also distinct from that of § 1005.18(b)(2)(ii), which requires issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, may require posting of the long form disclosure on the issuer's Web site. If, for example, an issuer is not required to submit any agreements to the

Bureau because the issuer qualifies for the de minimis exception under § 1005.19(b)(4), the issuer is not required to post and maintain any agreements on its Web site under § 1005.19(c). The issuer is still required to provide each individual consumer with access to his or her specific prepaid account agreement under § 1005.19(d) by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the consumer's request. The issuer may also be required to post the long form fee disclosure required by § 1005.18(b)(2)(ii) online as well, depending on the methods by which the issuer offers prepaid accounts to consumers.

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

19(d) Agreements for All Open Accounts

1. *Requirement applies to all open accounts.* The requirement to provide access to prepaid account agreements under § 1005.19(d) applies to all open prepaid accounts, unless the agreements are required to be submitted to the Bureau pursuant to § 1005.19(b) and posted on the issuer's Web site pursuant to § 1005.19(c). For example, an issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under § 1005.19(b)(4) would still be required to provide consumers with access to their specific agreements under § 1005.19(d). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Bureau under § 1005.19(b), but would still need to be provided to the consumer to whom it applies under § 1005.19(d).

* * * * *

Section 1005.30 Remittance Transfer Definitions

* * * * *

30(g) Sender

* * * * *

3. *Non-consumer accounts.* A transfer that is requested to be sent from an account that was not established primarily for personal, family, or household purposes, such as an account that was established as a business or commercial account or an account held by a business entity such as a corporation, not-for-profit corporation, professional corporation, limited liability company, partnership, or sole proprietorship, is not requested primarily for personal, family, or household purposes. A consumer requesting a transfer from such an account therefore is not a sender under § 1005.30(g). Additionally, a transfer that is requested to be sent from an account held by a financial institution under a bona fide trust agreement pursuant to § 1005.2(b)(2) is not

requested primarily for personal, family, or household purposes, and a consumer requesting a transfer from such an account is therefore not a sender under § 1005.30(g).

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

12. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603-2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15

U.S.C. 1601 *et seq.*

Subpart A—General

11. Section 1026.2 is amended by revising paragraph (a)(15) to read as follows:]]

§ 1026.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this part, the following definitions apply:

* * *

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit.

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account that is accessed by a credit card, except:

(A) A home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card;

(B) An overdraft line of credit that is accessed by a debit card;

(C) An overdraft line of credit that is accessed by an account number, except if

(1) The account number is a prepaid card that is a credit card; or

(2) The account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

(iii) *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(iv) *Debit card* means any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account. The term *debit card* does not include a prepaid card.

(v) *Prepaid card* means any card, code, or other device that can be used to access a prepaid account.

(vi) *Prepaid account* means a prepaid account as defined in 12 CFR 1005.2(b)(3).

(vii) *Account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor* means an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor.

* * *

12. Section 1026.4 is amended by revising paragraphs (b)(2), (c)(3), and (c)(4) to read as follows:

§ 1026.4 Finance charge.

* * *

(b) *Examples of finance charges.* * * *

(2) Service, transaction, activity, and carrying charges, including:

(i) Except as provided for prepaid accounts in paragraph (b)(2)(ii) of this section, any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature; and

(ii) Any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card or accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended.

* * *

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

* * *

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. This exception does not apply to credit accessed by a prepaid card or to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. This exception does not apply to credit accessed by a prepaid card or to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

* * *

Subpart B—Open-End Credit

13. Section 1026.7 is amended by revising paragraph (b)(11)(ii) to read as follows:

§ 1026.7 Periodic statement.

* * *

(b) *Rules affecting open-end (not home-secured) plans.* * * *

(11) *Due date; late payment costs.* * * *

(ii) *Exception.* The requirements of paragraph (b)(11)(i) of this section do not apply to the following:

(A) Periodic statements provided solely for charge card accounts except:

(1) A charge card account accessed by a charge card that is a prepaid card; or

(2) A charge card account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor; and

* * *

14. Section 1026.12 is amended by revising paragraph (d) and adding paragraph (h) to read as follows:

§ 1026.12 Special credit card provisions.

* * *

(d) *Offsets by card issuer prohibited.* (1) *General rule.* A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) *Rights of the card issuer.* This paragraph does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) *Periodic deductions.* (i) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

(ii) With respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, for purposes of this paragraph (d)(3), "periodically" means no more frequently than once per calendar month, such as on a monthly due date disclosed on the applicable periodic statement in accordance with the requirements of § 1026.7(b)(11)(i) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer.

* * *

(h) *Timing requirement for solicitation or application with respect to a prepaid cardholder.* (1) A card issuer shall not open a credit card account for a consumer holding a prepaid account, or make a solicitation or provide an application to a consumer holding a prepaid card to open a credit or charge card account, accessed by the prepaid card or by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, until at least 30 calendar days after the

consumer has registered the prepaid account. If a card issuer has established an existing credit or charge card account with a holder of a prepaid card that is accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the card issuer shall not allow an additional prepaid card obtained by the consumer from the card issuer to access the credit or charge card account, or permit credit from the credit or charge card account to be deposited into an additional prepaid account, until at least 30 calendar days after the consumer has registered the additional prepaid account.

(2) For purposes of paragraph (h) of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A “firm offer of credit” as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of paragraph (h) of this section.

15. Section 1026.13 is amended by revising paragraph (i) to read as follows:

§ 1026.13 Billing error resolution.

* * *

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* A creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11 governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section if:

(1) With respect to an asset account other than a prepaid account, an extension of credit that is incident to an electronic fund transfer occurs under an agreement between the consumer and a financial institution to extend credit when the consumer’s account is overdrawn or to maintain a specified minimum balance in the consumer’s account; or

(2) With respect to a credit plan in connection with a prepaid account, an extension of credit incident to an electronic fund transfer when the consumer's prepaid account is overdrawn if the credit plan is subject to subpart B of this regulation.

* * *

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

17. Section 1026.52 is amended by revising paragraph (a) to read as follows:

§ 1026.52 Limitations on fees.

(a) *Limitations during first year after account opening.* * * *

* * * * *

18. Section 1026.60 is amended by revising paragraph (a)(5)(iv) to read as follows:

§ 1026.60 Credit and charge card applications and solicitations.

(a) *General rules.* * * *

(5) *Exceptions.* * * *

(iv) Lines of credit accessed solely by account numbers except where the account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor;

* * *

19. In Supplement I to Part 1026:

a. Under *Section 1026.2—Definitions and Rules of Construction*:

i. Under subheading *2(a)(7) Card Issuer*, paragraph 1 is revised and paragraph 2 is added.

ii. Under subheading *2(a)(14) Credit*, paragraph 3 is added.

iii. Under subheading *Paragraph 2(a)(15)*:

- A. Paragraph 1 is revised.
- B. Paragraph 2.i.B is revised.
- C. Paragraphs 2.i.F and 2.i.G are added.
- D. Paragraph 2.ii.C is revised.
- E. Paragraphs 3 and 4 are revised.
- F. Paragraphs 5 and 6 are added.
- iv. Under subheading *Paragraph 2(a)(17)(iii)*, paragraph 2 is added.
- v. Under subheading *2(a)(20) Open-End Credit*, paragraphs 2 and 4 are revised.
- b. Under *Section 1026.4—Finance Charge*:
 - i. Under subheading *4(a) Definition*, paragraphs 4.iii and 4.iv are added.
 - ii. Under subheading *Paragraph 4(b)(2)*, paragraph 1 is revised.
 - iii. Under subheading *Paragraph 4(c)(3)*, paragraph 1 is revised.
 - iv. Under subheading *Paragraph 4(c)(4)*, paragraph 1 is revised.
- c. Under *Section 1026.5—General Disclosure Requirements*:
 - i. Under the subheading *5(b) Time of disclosures*:
 - A. Under Subheading *5(b)(2)(ii) Timing Requirements*, paragraph 4 is revised.
- d. Under *Section 1026.8—Identifying Transactions on Periodic Statements*:
 - i. Under subheading *8(a) Sale Credit*, paragraph 2 is revised.
 - ii. Under subheading *8(b) Nonsale Credit*, paragraphs 1 and 2 are revised.
- e. Under *Section 1026.10—Payments*:
 - i. Under subheading *10(a) General Rule*:
 - A. Under subheading *paragraph 2*, paragraph 2.ii is revised.
 - ii. Under subheading *10(b) Specific Requirements for Payments*, paragraph 1 is revised.

- f. Under *Section 1026.12—Special Credit Card Provisions*:
 - i. Under subheading *12(a) Issuance of Credit Cards*:
 - A. Under subheading *Paragraph 12(a)(1)*, paragraphs 2 and 7 are revised.
 - B. Under subheading *Paragraph 12(a)(2)*, paragraph 6 is revised.
 - ii. Under subheading *12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer*, paragraph 5 is added.
 - iii. Under subheading *12(c)(1) General Rule*, paragraph 1 is revised.
 - iv. Under subheading *12(d) Offsets by Card Issuer Prohibited*, paragraph 1 is added.
 - A. Under subheading *Paragraph 12(d)(1)*, paragraph 2 is revised.
 - B. Under subheading *Paragraph 12(d)(2)*, paragraph 1 is revised.
 - C. Under subheading *Paragraph 12(d)(3)*, paragraph 3 is added.
 - v. The subheading *12(h) Timing Requirement for Solicitation or Application With Respect to a Prepaid Cardholder* and paragraphs 1 and 2 under that subheading are added.
 - g. Under *Section 1026.13—Billing Error Resolution*:
 - i. Under subheading *13(a) Definition of a Billing Error*:
 - A. Under subheading *Paragraph 13(a)(3)*, paragraph 2 is revised
 - ii. Under subheading *13(i) Relation to Electronic Fund Transfer Act and Regulation E*, paragraphs 1, 2, and 3 are revised and paragraphs 4 and 5 are added.
 - h. Under *Section 1026.52—Limitations on Fees*:
 - i. Under subheading *52(a) Limitations During First Year After Account Opening*
 - A. Under subheading *52(a)(1) General Rule*, paragraph 1 is revised and paragraphs 1.iii and 1.iv are added.
 - ii. Under subheading *52(a)(2) Fees Not Subject to Limitations*, paragraphs 2 and 3 are

revised and paragraphs 4 and 5 are added.

iii. Under subheading *52(b) Limitations on Penalty Fees*:

A. Under subheading *52(b)(2)(i) Fees that Exceed Dollar Amount Associated with Violation*, paragraph 7 is added.

i. Under *Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit*:

i. Under subheading *57(a) Definitions*:

A. Under subheading *57(a)(1) College Student Credit Card*, paragraph 1 is revised.

B. Under Subheading *57(a)(5) College Credit Card Agreement*, paragraph 1 is revised.

ii. Under subheading *57(b) Public Disclosure of Agreements*, paragraph 3 is added.

iii. Under subheading *57(c) Prohibited Inducement*, paragraph 7 is added.

j. Under *Section 1026.60—Credit and Charge Card Applications and Solicitations*:

i. Paragraph 1 is revised.

ii. Under subheading *60(b)(4) Transaction Charges*, paragraph 3 is added.

iii. Under subheading *60(b)(8) Cash Advance Fee*, paragraph 4 and 5 is added.

The revisions and additions read as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

SUBPART A—GENERAL

* * * * *

Section 1026.2 Definitions and Rules of Construction

* * * * *

2(a)(7) Card Issuer

1. *Agent.* i. An agent of a card issuer is considered a card issuer. Except as provided in comment 2(a)(7)-1.ii, because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

ii. Under § 1026.2(a)(7), with respect to a prepaid card that is a credit card where the card accesses a credit plan that is offered by a third party, a party offering the credit plan that is accessed by the prepaid card would be an agent of the person issuing the prepaid card and thus, would be a card issuer with respect to the prepaid card that is a credit card.

2. *Prepaid cards.* With respect to credit accessed by a prepaid card, a person is not a card issuer if the card only accesses credit that is not subject to any finance charge or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. For example, a person is not a card issuer if (1) the prepaid card only accesses credit where the person does not impose any finance charge or any fee described in § 1026.4(c) for the credit or for participation in a credit plan; and (2) the person expects repayment when funds are deposited into the prepaid account. In this case, the prepaid card is not a credit card and therefore the person issuing the card is not a card issuer. *See* comment 2(a)(15)-2.i.F.

* * * * *

2(a)(14) Credit

* * * * *

3. *Transactions on prepaid accounts when there are insufficient funds.* Credit includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also includes a paid transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. This includes a transaction where the consumer has sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid.

Paragraph 2(a)(15)

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards. With respect to a preauthorized check that is issued on a prepaid account for which the funds are withdrawn at the time of preauthorization using the prepaid account number, the credit is obtained using the prepaid account number and not the check. See comment 2(a)(15)-2.i.F for discussion of when a prepaid account number is a credit card.

2. *Examples.* i. Examples of credit cards include: * * *

B. A debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). See comment 2(a)(15)-2.ii.C for guidance on whether a debit card that is solely an account number is a credit card.

C. * * *

F. A prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments.

G. An account number described in § 1026.2(a)(15)(vii). For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number and funds from that line of credit are permitted to be deposited directly only into particular prepaid accounts identified by the creditor (such as a prepaid account with the same creditor), the account number is a credit card for purposes of § 1026.2(a)(15)(i). See also § 1026.2(a)(15)(vii) and related commentary for additional guidance on these account numbers.

ii. In contrast, credit card does not include, for example: * * *

C. Except as provided in comment 2(a)(15)-2.i.F and G, an account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 1026.2(a)(15)(i).

3. *Charge card.* i. Charge cards are credit cards where no periodic rate is used to compute the finance charge. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in Subparts B and G generally include charge cards. The term *charge card* is, however, distinguished from credit card or credit card account under an open-end (not home-secured) consumer credit plan in §§ 1026.60, 1026.6(b)(2)(xiv), 1026.7(b)(11) (except as described in comment 2(a)(15)-3.ii below), 1026.7(b)(12), 1026.9(e), 1026.9(f), 1026.28(d), 1026.52(b)(1)(ii)(C), and Appendices G-10 through G-13.

ii. A prepaid card is a charge card if it also is a credit card where no periodic rate is used to compute the finance charge. See comment 2(a)(15)-2.i.F for when a prepaid card is a credit card. Likewise, an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor is a charge card if it is a credit card where no periodic rate is used to compute the finance charge. See § 1026.2(a)(15)(vii) and comment 2(a)(15)-2.i.G for when such an account number is a credit card. Unlike other charge cards, such a prepaid card or account number that accesses a credit card account under an open-end (not home-secured) consumer credit plan is subject to the requirements in § 1026.7(b)(11). Thus, under § 1026.5(b)(2)(ii), for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer of a prepaid card or account number that meets the definition of a charge card because it does not impose a finance charge structured as a periodic rate must adopt reasonable procedures designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A), and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer

within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

4. *Credit card account under an open-end (not home-secured) consumer credit plan.* i.

An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 1026.2(a)(15)(ii) if:

A. The account is accessed by a credit card, as defined in § 1026.2(a)(15)(i); and

B. The account is not excluded under § 1026.2(a)(15)(ii)(A), (a)(15)(ii)(B) or (a)(15)(ii)(C).

ii. As noted in § 1026.2(a)(15)(ii)(C), the exclusion from credit card account under an open-end (not home-secured) consumer credit plan provided by that paragraph does not apply to:

A. An overdraft line of credit that is accessed by a prepaid card (including a prepaid card that is solely an account number) that is a credit card; and

B. An overdraft line of credit accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

5. *Account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.* As defined in § 1026.2(a)(15)(vii), this phrase means an account number that is not a prepaid account that can be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. A credit plan that permits a consumer to deposit directly extensions of credit into a checking account would not constitute a credit plan where extensions of credit are permitted to be deposited

directly only into particular prepaid accounts specified by the creditor. A credit plan where a consumer could access the credit plan by use of checks or in-person withdrawals would constitute a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, so long as the credit plan allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit into asset accounts other than particular prepaid accounts specified by the creditor. These account numbers would be credit cards as discussed in comment 2(a)(15)-2.i.G.

6. *Definition of prepaid card.* The term “prepaid card” in § 1026.2(a)(15)(v) includes any card, code or other device that can be used to access a prepaid account, including a prepaid account number or other code. The phrase “credit accessed by a prepaid card” means any credit that is accessed by any card, code or other device that also can be used to access a prepaid account.

* * * * *

2(a)(17) Creditor

* * * * *

Paragraph 2(a)(17)(iii)

* * * * *

2. *Prepaid cards.* With respect to credit accessed by a prepaid card, § 1026.2(a)(17)(iii) does not apply if the card only accesses credit that is not subject to any finance charge or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. In this case, the prepaid card is not a credit card and the person issuing the card is not a card issuer. *See* comments 2(a)(15)-2.i.F. For example, a person is not a creditor if (1) the prepaid

card only accesses credit where the person does not impose any finance charge or any fee described in § 1026.4(c) for the credit or for participation in a credit plan; and (2) the person expects repayment when funds are deposited into the prepaid account.

* * * * *

2(a)(20) Open-End Credit

* * * * *

2. *Existence of a plan.* i. The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer.

ii. With respect to credit accessed by a prepaid card, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Such a program constitutes a plan notwithstanding that the creditor retains discretion not to pay such transactions, the creditor does not pay transactions once the consumer has exceeded a certain amount of credit, or the creditor only pays transactions where there were sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction was authorized but not sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid. For example, a program constitutes a plan where a creditor will routinely pay a transaction when the consumer does not have adequate funds in the prepaid account to cover the full amount of the transaction and the consumer is obligated contractually to repay that transaction.

iii. With respect to credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor

extending the credit, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely will extend credit that is deposited directly into particular prepaid accounts specified by the creditor and the consumer is obligated contractually to repay the credit. Such a program constitutes a plan notwithstanding that the creditor retains discretion not to extend credit, or the creditor does not extend credit once the consumer has exceeded a certain amount of credit. For example, a program constitutes a plan where a creditor routinely will extend credit that is deposited directly into a particular prepaid account specified by the creditor when the consumer requests an extension because the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card and the consumer is obligated contractually to repay the credit.

iv. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

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4. *Finance charge on an outstanding balance.* i. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even

though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

ii. With respect to credit accessed by a prepaid card (including a prepaid card that is solely an account number) or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, any service, transaction, activity, or carrying charges imposed on a credit account, and any such charges imposed on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability, generally would be a finance charge. *See* § 1026.4(a), (b)(2), (c)(3) and (c)(4) and comments 4(a)-4 and 4(b)(2)-1. Such charges would include periodic participation fees for the credit plan and transaction charges imposed in connection with a credit extension. With respect to that credit, such service, transaction, activity or carrying charges constitute finance charges imposed from time to time on an outstanding unpaid balance if there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

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Section 1026.4 Finance Charge

4(a) Definition

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4. *Treatment of transaction fees on credit card plans.* Any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example: * * *

iii. Any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card is a finance charge regardless of whether the card issuer imposes the same, greater or lesser charge on the withdrawal of funds from a prepaid account.

iv. Any transaction charge imposed on a cardholder by a card issuer for credit accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor is a finance charge regardless of whether the card issuer imposes the same, greater or lesser charge on the withdrawal of funds from a prepaid account.

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4(b) Examples of Finance Charges

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Paragraph 4(b)(2)

1. *Checking or transaction account charges.* i. Except for prepaid accounts as provided in § 1026.4(b)(2)(ii) and in comment 4(b)(2)-1.ii, .iii and .iv below, a checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 1026.4(b)(2)(i) to the extent the charge exceeds the charge for a similar account without a

credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 1026.4(b)(2)(i). To illustrate:

A. A \$5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a \$3 service charge is imposed on an account without a credit feature; the \$2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 1026.4(c)(4).)

B. A \$5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a \$25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the \$5 charge is not a finance charge.

ii. Under § 1026.4(b)(2)(ii), the term finance charge includes any service, transaction, activity, or carrying charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability where that fee is imposed on a prepaid account in connection with credit accessed by a prepaid card or credit accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, regardless of whether the creditor imposes the same, greater or lesser charge on the withdrawal of funds from the prepaid account, to have access to the prepaid account, or when credit is not extended. To illustrate,

A. A \$15 transaction charge is imposed on the prepaid account each time a consumer uses a prepaid card or an account number described in § 1026.4(b)(2)(ii) to access an open-end credit plan. The \$15 charge is a finance charge regardless of whether the creditor imposes the same, greater or lesser charge to withdraw funds from the prepaid account.

B. A \$1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. The \$1.50 transaction charge is a finance charge when the prepaid card accesses credit, notwithstanding that a \$1.50 transaction charge also is imposed on transactions that solely access funds in the prepaid account.

C. A \$5 monthly service charge is imposed on the prepaid account for the availability of an open-end plan that is accessed by a prepaid card or an account number described in § 1026.4(b)(2)(ii). The \$5 monthly service charge is a finance charge regardless of whether the creditor imposes the same, greater or lesser monthly service charge to hold the prepaid account.

iii. For purposes of § 1026.4(b)(2)(ii), charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability include:

A. Transaction fees for credit extensions;

B. Fees for transferring funds from a credit account to a prepaid account;

C. A daily, weekly, or monthly (or other periodic) fee assessed each period a prepaid account is in “overdraft” status, or would be in overdraft status but for funds supplied by a linked line of credit;

D. A daily, weekly, or monthly (or other periodic) fee assessed each period a line of credit accessed by a prepaid card or account number described in § 1026.4(b)(2)(ii) has an outstanding balance; or

E. Participation fees or other fees that the consumer is required to pay for the issuance or availability of credit.

iv. Section § 1026.4(b)(2)(ii) does not apply to transaction fees imposed on the prepaid account that relate to transactions that only access funds in the prepaid account, fees for opening or holding the prepaid account, and other fees, such as cash reload fees and balance inquiry fees, that are not imposed on the prepaid account because the consumer engaged in a transaction that is funded in whole or in part by credit, for holding a credit plan, or for carrying a credit balance. These fees are not considered charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability even if there are not sufficient funds in the prepaid account to pay the fees at the time they are imposed on the prepaid account. Nonetheless, any negative balance on the prepaid account, whether from fees or other transactions, would be a credit extension and if a fee is imposed for such credit extension, the fee would be a finance charge under § 1026.4(b)(2)(ii). For example, if a cash-reload fee is imposed on the prepaid account, there are not sufficient funds in the prepaid account to pay the fee at the time it is imposed on the prepaid account, and an additional charge is imposed on the prepaid account for this credit extension, the additional charge would be a transaction charge imposed on a prepaid account in connection with an extension of credit and would be a finance charge under § 1026.4(b)(2)(ii).

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Paragraph 4(c)(3)

1. *Assessing interest on an overdraft balance.* Except with respect to credit accessed by a prepaid card or an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance

charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

Paragraph 4(c)(4)

1. *Participation fees—periodic basis.* The participation fees described in § 1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. Except as provided in § 1026.4(c)(4) for prepaid accounts, the provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis, and may not be treated as a participation fee.

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Section 1026.5 General Disclosure Requirements

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

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4. *Application of § 1026.5(b)(2)(ii) to charge card and charged-off accounts.* i. *Charge card accounts.* For purposes of § 1026.5(b)(2)(ii)(A)(1), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to § 1026.7(b)(11)(i)(A). Because § 1026.7(b)(11)(ii) provides that § 1026.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts other than charge card accounts accessed by prepaid cards or by account numbers where extensions of credit are permitted to be deposited directly

only into particular prepaid accounts specified by the creditor, § 1026.5(b)(2)(ii)(A)(I) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 1026.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. A card issuer that complies with § 1026.5(b)(2)(ii)(A) as discussed above with respect to a charge card account has also complied with § 1026.5(b)(2)(ii)(B)(2). Section 1026.5(b)(2)(ii)(B)(I) does not apply to charge card accounts because, for purposes of § 1026.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with § 1026.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

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Section 1026.8 Identifying Transactions on Periodic Statements

8(a) Sale Credit

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2. *Amount.* i. *Transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by § 1026.8(a) (such as the seller's name and address in a three-party situation) or other appropriate

identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

ii. *Prepaid cards.* The term “sale credit” includes a purchase in which the consumer uses a prepaid card that is a credit card to obtain goods or services from a merchant and the transaction is wholly or partially funded by credit, whether or not the merchant is the card issuer or creditor. If a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer’s prepaid account, and partially funded by credit, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction. For a transaction at point of sale where credit is accessed by a prepaid card that is a credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit such as cash back given to the cardholder, the creditor must disclose the entire amount of the credit as sale credit, including the part of the transaction that does not relate to the purchase of goods or services.

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8(b) Nonsale Credit

1. *Nonsale credit.* The term “nonsale credit” refers to any form of loan credit including, for example:

- i. A cash advance.
- ii. An advance on a credit plan that is accessed by overdrafts on an asset account other than a prepaid account.
- iii. The use of a “supplemental credit device” in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a

purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

v. An advance at an ATM on a credit plan that is accessed by a prepaid card that is a credit card. If a prepaid card that is a credit card is used to obtain an advance at an ATM and the transaction is partially funded by the consumer's prepaid account, and partially funded by a credit extension, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the ATM transaction.

vi. An advance on a credit plan accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to an asset account other than a prepaid account or by means of a debit card tied to an overdraft credit plan:

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

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Section 1026.10 Payments

10(a) General Rule

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ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. Section 1026.12(d)(3)(ii) defines “periodically” to mean no more frequently than once per calendar month for payroll deduction plans for prepaid cards that are credit cards or for account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In a payroll deduction plan in which funds are deposited to a prepaid account held by the creditor, and from which payments are made on a monthly basis to a credit card account held by the creditor that is accessed by a prepaid card that is a credit card, or by account numbers that are credit cards where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

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10(b) Specific Requirements for Payments

1. *Payment by electronic fund transfer.* A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. See Section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e).

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Section 1026.12 Special Credit Card Provisions

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12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

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2. *Addition of credit features.* If the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. For example, the following constitute issuance of a credit card:

i. Granting overdraft privileges on a checking account when the consumer already has a check guarantee card; or

ii. Allowing a prepaid card to access a credit plan that would make the card into a credit card under § 1026.2(a)(15)(i).

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7. Issuance of non-credit cards. i. Issuance of non-credit cards other than prepaid cards.

A. Under § 1026.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)-2 for examples of cards or devices that are and are not credit cards.) A non-credit card other than a prepaid card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card other than a prepaid card only upon the consumer's specific request.

B. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it

proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

ii. *Issuance of a prepaid card.* Section 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any credit plan that would make the prepaid card into a credit card at the time the card is issued and only opens a credit card account, or provides an application or solicitation to open a credit or charge card account, that would be accessed by that card in compliance with § 1026.12(h). A credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with § 1026.12(h). An issuer does not connect a prepaid card to a credit plan that would make the card into a credit card simply by providing the disclosures required by Regulation E 12 CFR 1005.18(b)(2)(i)(B)(9) and 18(b)(2)(ii)(B) with the prepaid card.

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Paragraph 12(a)(2)

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6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

- i. Replacing a single card that is both a debit card and a credit card with a credit card and a separate debit card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.
- ii. Replacing a single card that is both a prepaid card and a credit card with a credit card

and a separate prepaid card where the latter card is not a credit card.

iii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 1026.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

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12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

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5. *Prepaid cards.* Section 1026.12(c) applies to property or services purchased by a consumer using credit accessed by a credit card that also is a prepaid card. For a transaction at point of sale where a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account, and partially funded by credit, the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of § 1026.12(c). The amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

12(c)(1) General Rule

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are "purchased with the credit card." This would include when the goods or services are purchased by a consumer using credit accessed by a credit card that also is

a prepaid card. This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. This includes an advance on a credit plan accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Such a transaction would not involve “property or services purchased with the credit card.”

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to credit extended by the overdraft line on an asset account other than a prepaid account.)

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12(d) Offsets by Card Issuer Prohibited

1. *Meaning of funds on deposit.* For purposes of § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer’s prepaid account. In addition, for purposes of § 1026.12(d), deposit account includes a prepaid account.

Paragraph 12(d)(1)

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2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example) or if the card issuer receives funds designated for the consumer’s prepaid account with the issuer, such as by means of an ACH deposit or an electronic transmittal of funds the consumer submits as cash at a non-bank location, the card issuer may not apply the funds to

repay indebtedness on the consumer's credit card account.

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Paragraph 12(d)(2)

1. *Security interest—limitations.* In order to qualify for the exception stated in § 1026.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under § 1026.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 1026.12(d)(2). For a security interest to qualify for the exception under § 1026.12(d)(2) the following conditions must be met:

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account.

ii. For deposit accounts other than prepaid accounts, indicia of the consumer's awareness and intent to grant a security interest include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

iii. For prepaid accounts, in order for a consumer to show awareness and intent to grant a security interest, all of the following conditions must be met:

A. In addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the prepaid account agreement and the credit card account agreement;

B. The separate document setting forth the security agreement must be signed by the consumer;

C. The separate document setting forth the security agreement must refer to the prepaid account number and to a specific amount of funds in the prepaid account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer;

D. The separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest and each of those conditions must be separately signed or initialed by the consumer.

iv. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 1026.12(d)(2).

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Paragraph 12(d)(3)

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3. *Prepaid accounts.* With respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, a card issuer is not

prohibited under § 1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer (subject to the limitations of § 1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account (such as a prepaid account) more frequently than once per calendar month, pursuant to such a plan. To illustrate, with respect to credit cards that are also prepaid cards or credit cards that are also account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25th day of each month. In this case,

i. The card issuer is not prohibited under § 1026.12(d) from automatically deducting the amount due on the periodic statement on the 25th of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in comment 12(d)(3)-1) and comply with the limitations in § 1026.13(d)(1).

ii. The card issuer is prohibited under § 1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made to the deposit account.

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12(h) Timing Requirement for Solicitation or Application With Respect to a Prepaid Cardholder

1. *Meaning of registration of a prepaid card or prepaid account.* A prepaid card or prepaid account is registered, such that the 30-day interval required by § 1026.12(h) begins, when the issuer of the prepaid card or prepaid account successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and state law. The beginning of the required 30-day interval is triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card.

2. *Unsolicited issuance of credit cards and disclosures related to applications or solicitations for credit or charge card accounts.* See § 1026.12(a)(1) and comment 12(a)(1)-7 for additional rules that apply to the addition of a credit or charge card account to a previously-issued prepaid account. See also § 1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

Section 1026.13 Billing Error Resolution

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13(a) Definition of a Billing Error

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Paragraph 13(a)(3)

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2. *Application to purchases made using a third-party payment intermediary and prepaid cards.* i. *Third-party intermediaries.* Section 1026.13(a)(3) generally applies to disputes about

goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, § 1026.13(a)(3) would not apply to purchases using a third party payment intermediary that is funded through use of a credit plan if:

A. The extension of credit is made to fund the third-party payment intermediary "account," but the consumer does not contemporaneously use those funds to purchase a good or service at that time; or

B. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

ii. *Prepaid cards.* Section 1026.13(a)(3) generally applies to disputes about goods and services that are purchased using a prepaid card funded through use of a consumer's credit plan accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is

not for funding the prepaid account, but rather for the good or service that the consumer has purchased using the prepaid account. Thus, for example, § 1026.13(a)(3) would not apply to purchases using a prepaid card that is funded through use of such a credit plan if:

A. The extension of credit is made to fund the prepaid account, but the consumer does not contemporaneously use those funds to purchase a good or service at that time; or

B. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

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13(i) Relation to Electronic Fund Transfer Act and Regulation E

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension. With respect to a credit account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, § 1026.13(i) does not apply to transfers from that plan to a prepaid account. The creditor for such transfers must comply with the billing error provisions in § 1026.13.

2. *Incidental credit using a debit card under an agreement.* With respect to an account that is not a prepaid account, for credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution, § 1026.13(i) provides that certain error resolution procedures in both this part and Regulation E apply. Incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund-transfer using a debit card, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution

procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions—examples.* If a consumer uses a debit card to withdraw money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

4. *Incidental credit under an overdraft credit plan subject to subpart B.* For transactions involving an overdraft credit plan subject to subpart B in connection with a prepaid account (such as a credit plan accessed by a prepaid card that is a credit card), whether Regulation E (12 CFR part 1005) or Regulation Z applies depends on the nature of the transaction. For example,

i. If the transaction solely involves an extension of credit under an overdraft plan, and does not include a debit to the prepaid account, the error resolution requirements of Regulation Z apply.

ii. If the transaction debits a prepaid account only (with no credit extended under the overdraft plan), the provisions of Regulation E apply.

iii. If the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B in connection with a prepaid account, a creditor must comply with the requirements of Regulation E, 12 CFR 1005.11 and 18(c) governing error resolution rather than those of § 1026.13 (a), (b), (c), (e), (f) and (h). In this case,

A. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

B. The creditor need not provisionally credit the consumer's account, under 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

C. The creditor must credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error.

D. The provisions of § 1026.13(d) and (g) apply only to the credit portion of the transaction.

5. *Incidental credit under a credit plan that is not subject to subpart B.* An overdraft credit plan is not subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. A prepaid card is not a credit card if the prepaid card only accesses credit that is not subject to any finance charge or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. See comment 2(a)(15)-2.i.F.

* * * * *

Section 1026.52 Limitations on Fees

52(a) Limitations During First Year After Account Opening

52(a)(1) General Rule

1. *Application.* The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer

charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account, including a prepaid account, to the card issuer or from another credit account provided by the card issuer). For example:

i. :* * *

ii. :* * *

iii. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a credit account accessed by the prepaid card that is a credit card on March 1 of year one. Assume that, under the terms of the credit account accessed by the prepaid card, a consumer is required to pay \$50 in fees for the issuance or availability of credit at account opening. At credit account opening on March 1 of year one, the credit limit for the account is \$200. Section 1026.52(a)(1) permits the card issuer to charge the \$50 in fees to the credit account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the credit account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees during the first year after the credit card account is opened.

iv. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a credit account accessed by the prepaid card that is a credit card on March 1 of year one. Assume that, under the terms of a credit card account accessed by the prepaid card, a consumer is required to pay \$120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal

to five percent of the cash advance and a late payment fee of \$15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At credit account opening on March 1 of year one, the credit limit for the account is \$500. Section 1026.52(a)(1) permits the card issuer to charge to the account the \$120 in fees for the issuance or availability of credit at account opening. On April 1 of year one, the consumer uses the account for a \$100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a \$5 cash-advance fee to the account. On April 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a \$15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a \$50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a \$2.50 cash advance fee to the account. Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the \$2.50 cash advance fee from the consumer by other means.

* * * * *

52(a)(2) Fees Not Subject to Limitations

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2. *Fees related to prepaid cards.* Except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by a prepaid card that is a credit card, including fees that are assessed on the prepaid account in connection with credit accessed by the prepaid card. This includes, but is not limited to:

- i. Per-transaction fees for “shortages” or “overdrafts;”
- ii. Fees for transferring funds from a credit account to a prepaid account that are both

accessed by the prepaid card;

iii. A daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a prepaid account is in “overdraft” status, or would be in overdraft status but for funds supplied by a linked line of credit accessed by the prepaid card; or

iv. A daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a line of credit accessed by the prepaid card has an outstanding balance.

3. *Fees on credit card accounts where extensions of credit are deposited directly only in particular prepaid accounts.* Except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any charge or fee, other than a charge attributable to a periodic interest rate, that the card issuer will or may require the consumer to pay in connection with a credit account accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, including fees that are assessed on the prepaid account in connection with the credit assessed by the account number. This includes, but is not limited to:

i. Per-transaction fees for “shortages” or “overdrafts;”

ii. Fees for transferring funds from the credit account to a prepaid account;

iii. A daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period the line of credit accessed by the account number has an outstanding balance.

4. *Fees the consumer is not required to pay.* Section 1026.52(a)(2)(ii) provides that § 1026.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, § 1026.52(a) generally does not apply to fees for making an expedited payment (to the extent permitted by § 1026.10(e)), fees for optional services (such as travel

insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.

5. *Security deposits.* A security deposit that is charged to a credit card account is a fee for purposes of § 1026.52(a). In contrast, however, a security deposit is not subject to the 25 percent limit in § 1026.52(a)(1) if it is not charged to the account. For example, § 1026.52(a)(1) does not prohibit a card issuer from requiring a consumer to provide funds at account opening pledged as security for the account that exceed 25 percent of the credit limit at account opening so long as those funds are not obtained from the account.

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52(b) Limitations on Penalty Fees

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52(b)(2)(i) Fees that Exceed Dollar Amount Associated with Violation

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7. *Declined transaction fees.* Section 1026.51(b)(2)(i)(B)(I) applies to declined transaction fees where an account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, with respect to a credit card that is a prepaid card, the prohibition in § 1026.52(b)(2)(i)(B)(I) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. Fees imposed for declining a transaction that would have only accessed the prepaid account and would not have accessed the credit card account would not be covered by § 1026.52(b)(2)(B)(i)(I).

* * * * *

Section 1026.57 Reporting and Marketing Rules for College Student Open-End Credit

57(a) Definitions

57(a)(1) College Student Credit Card

1. *Definition.* The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards. A college student credit card includes a college affinity card within the meaning of TILA section 127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card. The definition of college student credit card includes a prepaid card that is a credit card, or an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, that is issued to any college student under a credit card account under an open-end (not home-secured) consumer credit plan. The definition of college student credit card also includes a prepaid account that is issued to any college student where an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account and the credit account may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

57(a)(5) College Credit Card Agreement

1. *Definition.* Section 1026.57(a)(5) defines “college credit card agreement” to include any business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the issuance of credit cards to full-time or part-time students. Business, marketing or promotional agreements may include a broad range of arrangements between a card issuer and an institution of higher education or affiliated organization, including arrangements that do not meet the criteria to be considered college affinity card agreements as discussed in TILA section 127(r)(1)(A). For example, TILA section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled (either full-time or part-time) at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement. This definition also includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition of open-end (not home-secured) consumer credit plans to previously issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a

prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. This definition also includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

57(b) Public Disclosure of Agreements

* * * * *

3. *Credit card account in connection with prepaid account.* Section 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of an open-end (not home-secured) consumer credit account to previously issued prepaid accounts that were issued to full-time or part-time students or (2) new prepaid accounts where a credit account may be added in connection with the prepaid account, where, in either case, the credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under § 1026.57(b), an institution of higher education must publicly disclose such agreements.

57(c) Prohibited Inducements

* * * * *

7. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(c) applies to either (1) the application for or opening of a credit card account that is being added to previously issued prepaid accounts that were issued to full-time or part-time students or (2) the application for or opening of a prepaid account where a credit account may be added in connection with the prepaid account, where, in either case, the credit account would be accessed by a prepaid card that is a credit card, or may be accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

* * * * *

Section 1026.60 Credit and Charge Card Applications and Solicitations

1. *General.* Section 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See § 1026.60(a)(5) and (e)(2) for exceptions; see § 1026.60(a)(1) and accompanying commentary for the definition of solicitation; see also § 1026.2(a)(15) and accompanying commentary for the definition of charge card and § 1026.12(h) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.)

* * * * *

60(b)(4) Transaction Charges

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3. *Prepaid cards.* If a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for credit accessed by a credit

card that is a prepaid card to make a purchase, that fee is a transaction charge described in § 1026.60(b)(4). This is so whether the fee is a flat per-transaction fee to make a purchase, a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions, or a one-time fee for transferring funds from the consumer's credit account to the consumer's prepaid account to cover the shortfall in the prepaid account as a result of a purchase with the prepaid card.

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60(b)(8) Cash Advance Fee

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4. *Prepaid cards.* If a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance accessed by a credit card that is a prepaid card, such as a cash withdrawal at an ATM, that fee is a cash advance fee. If the cash advance fee is the same dollar amount as the transaction charge for purchases described in § 1026.6(b)(2)(iv), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Examples of how fees for purchase transactions described in § 1026.60(b)(4) and fees for cash advances described in § 1026.60(b)(8) must be disclosed are as follows:

i. A card issuer assesses a \$15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer assesses a \$25 fee for credit accessed by a prepaid card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer must disclose separately a purchase transaction charge of \$15 and a cash advance fee of \$25.

ii. A card issuer assesses a \$15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer assesses a \$15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer may disclose the \$15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, the card issuer may disclose the \$15 fee on two separate rows, one row indicating that a \$15 fee applies to purchase transactions, and a second row indicating that a \$15 fee applies to ATM cash advances.

iii. A card issuer assesses a \$15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of \$1.50 for out-of-network ATM cash withdrawals and \$1.00 for in-network ATM cash withdrawals. The card issuer must disclose the cash advance fee as \$16.50 for out-of-network ATM cash withdrawals, indicating that \$1.50 is for the out-of-network ATM withdrawal fee, such as “\$16.50 (including a \$1.50 out-of-network ATM withdrawal fee). The card issuer also must disclose the cash advance fee as \$16.00 for in-network ATM cash withdrawals, indicating that \$1.00 is for the in-network ATM withdrawal fee, such as “\$16 (including a \$1.00 in-network ATM cash withdrawal fee).”

5. Credit card accounts where extensions of credit are deposited directly only in particular prepaid accounts. With respect to a credit card account accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, if a card issuer assesses a fee (other than a periodic

rate that may be used to compute the finance charge on an outstanding balance) for an extension of credit that will be deposited into a prepaid account that fee is a cash advance fee.

* * * * *

**[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED
“PREPAID ACCOUNTS UNDER THE ELECTRONIC FUND TRANSFER ACT
(REGULATION E) AND THE TRUTH IN LENDING ACT (REGULATION Z)”]**

Dated: November __, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.