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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

Docket No. CFPB- 2014-0031

RIN 3170-AA22

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

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act (EFTA); Regulation Z, which implements the Truth in Lending Act (TILA); and the official interpretations to the regulations. The proposal would create comprehensive consumer protections for prepaid financial products. The proposal would expressly bring such products within the ambit of Regulation E as prepaid accounts and create new provisions specific to such accounts. The proposal would generally cover those prepaid accounts that are cards, codes, or other devices capable of being loaded with funds and usable at unaffiliated merchants or for person-to-person transfers, and are not gift cards (or certain other related types of cards). The proposal would modify Regulation E to establish disclosure requirements specific to prepaid accounts that would require financial institutions to provide certain disclosures to consumers prior to and after the acquisition of a prepaid account. The proposal would also include an option for an alternative to Regulation E's periodic statement requirement that would permit prepaid product providers to make available to consumers certain methods for access to account information in lieu of sending periodic

statements. Additionally, the proposal would apply Regulation E's limited liability and error resolution provisions to prepaid accounts, with certain modifications, including applying these provisions after account registration. Moreover, the proposal would require prepaid account issuers to provide the Bureau with terms and conditions for prepaid accounts, which it would post on a website maintained by the Bureau. Relatedly, issuers would also be required to post the terms and conditions on their own websites or make them available upon request. Finally, the proposal would also contain amendments to Regulations Z and E to regulate prepaid accounts with overdraft services or credit features. Among other things, prepaid cards that access overdraft services or credit features for a fee would generally be credit cards subject to Regulation Z and its credit card rules. Moreover, the proposal would require that consumers consent to overdraft services or credit features and give them at least 21 days to repay the debt incurred in connection with using such services or features. Further, Regulation E would be amended to include disclosures about overdraft services or credit features that could be linked to prepaid accounts. The compulsory use provision under Regulation E would also be amended so that prepaid account issuers would be prohibited from requiring consumers to set up preauthorized electronic fund transfers to repay credit extended through an overdraft service or credit feature.

DATES: Comments must be received on or before **[INSERT DATE 90 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2014-0031 or RIN 3170-AA22, by any of the following methods:

- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments.

- *E-mail*: FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2014-0031 and/or RIN 3170-AA22 in the subject line of the email.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE, Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1275 First Street NE, Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kristine Andreassen, Morgan Harper, and Jane Raso, Counsels; Krista Ayoub, Joseph Baressi, and Eric Goldberg, Senior Counsels, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Bureau of Consumer Financial Protection (Bureau) is issuing this notice to propose comprehensive consumer protections for prepaid financial products (or prepaid products). Such products are among the fastest growing types of payment instruments in the United States. However, with certain limited exceptions, prepaid products have not been subject to the existing Federal consumer regulatory regimes that provide consumer disclosures, error resolution and protection from unauthorized transfers. *See generally* 12 CFR part 1005.

The Bureau is proposing to establish a new definition of "prepaid account" within Regulation E and adopt comprehensive consumer protection rules for such accounts. The proposal would extend Regulation E protections to prepaid products that are cards, codes, or other devices capable of being loaded with funds, not otherwise accounts under Regulation E and redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at either automated teller machines or for person-to-person (P2P) transfers; and are not gift cards (or certain other types of limited purpose cards), by bringing these products under the proposed definition of "prepaid account."

The Bureau is also proposing to modify Regulation E, as it would pertain to prepaid accounts, in several key respects. First, the Bureau proposes to require financial institutions to make certain disclosures available to consumers before a consumer agrees to acquire a prepaid account. These disclosures would take two forms, whether provided in oral, written, or electronic form. The first would be a short form highlighting key fees that the Bureau believes are most important for consumers to know about prior to acquisition. The second would be a long form that would set forth all of the prepaid account's fees and the conditions under which those fees could be imposed. When certain conditions are met, the proposed rule would provide

an exception for financial institutions that offer prepaid cards for sale over the phone or in retail stores that would allow such institutions to provide consumers with access to the long form disclosure by telephone or internet, but otherwise not make the long form available until a consumer has acquired the prepaid account. To facilitate compliance, the Bureau is additionally proposing model forms and sample forms. The use of the model forms would establish a safe harbor for compliance with the short form disclosure requirement. The Bureau is also proposing revisions to existing Regulation E model forms and model clauses to provide model language.

In addition, with certain modifications, the Bureau is proposing to extend to all prepaid accounts the existing Regulation E requirements regarding the provision of transaction information to accountholders that currently apply to payroll card accounts, Federal government benefit accounts, and non-needs tested State and local government benefit accounts. These provisions would allow financial institutions to either provide periodic statements or, alternatively, make available to the consumer: (1) the account balance, through a readily-available telephone line; (2) an electronic history of account transactions that covers at least 18 months; and (3) a written history of account transactions that covers at least 18 months upon request. For all prepaid accounts, the Bureau proposes to require financial institutions to disclose monthly and annual summary totals of all fees imposed on a prepaid account, as well as the total amount of all deposits to and debits from a prepaid account when providing a periodic statement or electronic or written account history.

Further, the Bureau is proposing to modify Regulation E to adopt error resolution and limited liability provisions specific to prepaid accounts. Currently, Regulation E limits consumers' liability for unauthorized transfers, provided that the consumer gives timely notice to the financial institution, and requires financial institutions to resolve certain errors in covered

accounts. The Bureau proposes to extend this regime to prepaid accounts, with modification to the timing requirements for reporting unauthorized transfers and errors when a financial institution follows the periodic statement alternative described above. The Bureau is also proposing not to apply the limited liability and error resolution requirements of Regulation E to unregistered prepaid accounts. Moreover, the proposed rule would include provisions that would require prepaid account issuers to post prepaid account agreements on the issuers' websites (or make them available upon request in limited circumstances) and to submit those agreements to the Bureau for posting on a website maintained by the Bureau.

The Bureau is also proposing to revise various other provisions in subparts A and B of Regulation E. With respect to subpart A, the proposed amendments include a revision that would provide that, similar to payroll card accounts, a consumer cannot be required to establish an account for receipt of government benefit. Additionally, the Bureau proposes to revise official interpretations to Regulation E to incorporate a preemption determination the Bureau made regarding certain State laws related to unclaimed gift cards. With respect to subpart B, which applies to remittance transfers, the Bureau proposes a conforming change to the official interpretations.

Overdraft Services and Credit Features

The Bureau is also proposing to modify Regulations Z and E to address the treatment of overdraft services and other credit features offered in connection with prepaid accounts.

Regulation Z. The Bureau is proposing changes to Regulation Z so that prepaid account issuers that offer overdraft services or other credit features in connection with such accounts and charge a fee for the service (such as interest, transaction fees, annual fees, or other participation fees) generally would be subject to Regulation Z's credit card rules and disclosure requirements

for open-end (not home-secured) consumer credit plans. In addition, the Bureau proposes to revise Regulation Z so that its credit card rules would apply to separate lines of credit linked to prepaid accounts. The proposal would also require an issuer to obtain a consumer's consent before adding overdraft services and credit features to a prepaid account and would prohibit the issuer from adding such features until at least 30 calendar days after a consumer registers the prepaid account. Moreover, the proposal would amend Regulation Z as it pertains to credit on prepaid accounts to provide that a consumer would receive a periodic statement not more often than once per month and then have at least 21 days to repay the debt the consumer incurred in connection with using the overdraft service or credit feature. The proposal would also prevent an issuer from requiring, as terms of the credit feature, that it could immediately take incoming payments to a prepaid account, such as cash loads or direct deposits, to repay and replenish the credit line.

Regulation E. The Bureau is proposing to revise Regulation E to include disclosures about overdraft services or credit features that could be linked to prepaid accounts in the short and long form disclosures. The Bureau is also proposing to provide that the compulsory use provision would apply to overdraft services or other credit features linked to prepaid accounts. As proposed, prepaid account issuers would be prohibited from requiring consumers to set up preauthorized electronic fund transfers to repay credit extended through an overdraft service or credit feature. Lastly, the Bureau proposes to amend Regulation E to restrict issuers from applying to a consumer's prepaid account different terms and conditions such as charging different fees for accessing funds in a prepaid account, depending on whether the consumer elects to link the prepaid account to an overdraft service or credit feature.

Effective Date

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

II. Background

A. Prepaid Financial Products

As noted above, prepaid products—in various forms—are among the fastest growing types of payment instruments in the United States. A 2013 study by the Board of Governors of the Federal Reserve System (the Board) reported that compared with noncash payments such as credit, debit, automated clearing house (ACH), and check, prepaid card payments increased at the fastest rate from 2009 to 2012.[1] Among other things, the report found that the number of prepaid card payments reached 9.2 billion transactions in 2012 (up from 5.9 billion in 2009).[2]

There is significant variation among prepaid products. For example, some prepaid products are "reloadable," meaning that a consumer or other authorized party can add funds to the account after the account is issued, while others are not. Additionally, some prepaid products, such as certain gift cards, are "closed-loop," meaning that a consumer can only use the product at a specific merchant or group of merchants. Regulation E currently regulates closed-

[1] Fed. Reserve Sys., *The 2013 Federal Reserve Payments Study, Recent and Long-Term Payment Trends in the United States: 2003-2012, Detailed Report and Updated Data Release* (2014), *available at* https://www.frbservices.org/files/communications/pdf/general/2013_fed_res_paymt_study_detailed_rpt.pdf.

[2] *Id.* at 37.

loop gift cards and similar products. *See* § 1005.20. Other prepaid products are "open-loop." Like gift cards, these products are used to store funds. However, unlike closed-loop prepaid products, they can be used on payment and automated teller machine (ATM) networks.[3]

Consumers may acquire prepaid products in a variety of ways. Prepaid products may be sold directly to consumers in retail locations, over the telephone, or online. They may also be provided at no charge through an entity that uses the prepaid product to distribute funds to a recipient, such as an employer that distributes wages to an employee on a payroll card. Further, as discussed in greater detail below, prepaid products may not be tied to a physical card or device, and instead may be accessible and usable online or at a physical location through a mobile device such as a smartphone.

Typically, consumers may not spend more than the total amount of funds loaded onto a prepaid product, although some products permit consumers to access additional funds for a fee in a manner similar to overdraft services or credit features offered with checking accounts. As discussed below, a "general purpose reloadable" (GPR) card is one type of reloadable, open-loop prepaid product. Others include prepaid products onto which third parties distribute funds, also as discussed in greater detail below. These include payroll cards and cards for the disbursement of student loan proceeds or insurance proceeds, and cards used to disburse Federal and non-needs based State and local government benefits.[4]

[3] Payment networks include Visa, MasterCard, American Express, and Discover; ATM networks include NYCE, PULSE, STAR and Cirrus.

[4] As described in more detail below, payroll card accounts and cards used to distribute certain government benefit payments are currently regulated by Regulation E.

GPR Cards

A GPR card is one of the most common and widely-available forms of open-loop, reloadable prepaid products. A financial institution generally issues a GPR card for an amount paid to load the card by a consumer less the purchase price of the card, if any. A GPR card can be reloaded by the consumer, meaning that once the card is registered, the consumer can add funds to the card. Based on the Bureau's research, it understands that currently, the top five GPR card programs (as measured by load volume) identified by the Aite Group have maximum load amounts generally ranging from approximately $2,500 to $15,000, with some exceptions made for large tax refunds. The prevalence of GPR cards has grown rapidly. According to projections by the Mercator Advisory Group, the amount loaded onto GPR cards grew from less than $1 billion in 2003 to nearly $65 billion in 2012. This makes GPR cards among the fastest-growing forms of prepaid products over that decade, growing from less than 8 percent of prepaid load to over 36 percent during that same period. The growth rate has continued. According to Mercator's projections, the total dollar value loaded onto GPR cards is expected to continue to grow to over $98 billion in 2014.[5]

Virtual GPR cards. As noted above, prepaid products may not be tied to a physical card or device, and instead may be accessible and usable online or at a physical location through a mobile device such as a smartphone. The Bureau understands that the use of GPR prepaid products not linked to a physical card or device to store and transfer funds via the internet, text, or mobile phone application is growing. To use these "virtual GPR cards" ("virtual" because

[5] Mercator Advisory Grp., *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014-2017* at 13 (Nov. 2014).

these accounts are not linked to a physical card or device), consumers may receive account information such as the account number that they can then use to make purchases.

GPR Card Functionality

As noted above, consumers generally purchase GPR cards at retail locations, over the telephone, or online. When buying a GPR card at a retail location, consumers typically pay an upfront purchase fee. Program managers may waive this fee for GPR cards that consumers purchase online. A newly-purchased GPR card is usually loaded by the retailer at the time of purchase with funds provided by the consumer. However, in order to take advantage of all of the GPR card's features, consumers are often required to contact the GPR card's program manager and register the card, or at least to activate it. Indeed, the Bureau understands that it is common that unless a consumer registers the consumer's newly-purchased GPR card, the consumer only has a "temporary card," because program managers do not send a "permanent card" embossed with the consumer's name until the consumer registers the card. Further, the Bureau understands that unless a GPR card is registered, there is typically a cap on the amount of funds a consumer can load onto the card and restrictions on the consumer's use of the card (*e.g.*, the consumer might not be able to use the card at ATMs or reload funds onto the card).

Registration typically requires the consumer to provide specific identifying information (*i.e.*, full name, domestic residential address, date of birth, and a Social Security Number or Taxpayer Identification Number, or, in some instances, another government-issued identification number). The information is used by the program manager or issuing bank to verify the consumer's identity. If the consumer's identity cannot be verified, the card is not considered registered. As noted above, customers with unregistered GPR cards are generally able to spend

their initial load but will not be able to reload the card or use it at an ATM. Activation may require a consumer to provide less identifying information than registration.

GPR cards can generally be reloaded through direct deposit of wages, pensions, or government benefits; a cash purchase of a reload product; direct cash reload; transfer from another prepaid product or a deposit account; or deposit of a check at a participating check-cashing outlet or via remote deposit capture.[6] Consumers can typically obtain cash from their prepaid products via ATM withdrawals, bank teller transactions, or by electing to obtain cash back on a personal identification number (PIN) transaction at a merchant. Additionally, consumers can typically make purchases with their GPR cards wherever the payment network brand appearing on the card is accepted. A number of programs also offer an online bill pay function, which sometimes has a fee associated with it. Consumers can typically obtain updates regarding their GPR card's account balance (and, for some programs, recent transaction activity) via toll-free telephone calls, text messages, email alerts, the card program's website, or written account histories. Some GPR card providers charge consumers to speak to a customer service agent or to receive a written copy of their account history. Consumers may incur fees to obtain balance information at an ATM.

In fact, the Bureau understands that GPR cards can vary substantially with respect to the fees and charges assessed to consumers, both in terms of their total volume as well as in the number and type of fees assessed. Based on its review of the 2012 FRB Philadelphia Study, the Bureau believes average cardholder costs for GPR and payroll cards range from approximately

[6] The Bureau understands that in limited circumstances, a consumer can reload a GPR card via paper check.

$7.00 to $11.00 per month, depending on the type and distribution channel of the account.[7] In a 2014 paper, the Pew Charitable Trusts estimated that the median consumer using one of the 66 major GPR cards it examined would be charged approximately $10.00 to $30.00 every month for use of the cards, on average, depending on the consumer's understanding of the card's fee structure and ability to alter behavior to avoid fees.[8] The 2012 FRB Philadelphia Study also found that in terms of total value, maintenance and ATM withdrawal fees are among the most significant fees incurred by users of open-loop prepaid products.[9]

Consumers' Use of GPR Cards

The 2012 FRB Philadelphia Study found that most of the prepaid products in its study are used for both cash withdrawals and purchases of goods and services. In particular, it found that depending on the product, cash withdrawals account for about one-third to one-half of the value taken off the product. The study also reported that it believed that prepaid cards are used primarily to purchase nondurable goods and noted that many of the products studied are also used to pay bills.[10]

Further, as discussed in greater detail below, both the type of consumers who use GPR cards and the reasons for which they use them vary. Although it has been reported that the majority of users of open-loop prepaid products have had checking accounts at some point and

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

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

[9] 2012 FRB Philadelphia Study, at 6.

[10] *Id.*

that most users also have experience using credit cards,[11] it also has been observed that for some consumers, the lack of access to checking accounts and other types of more established financial products and services such as credit cards appear to be the key driver of their use of GPR cards.[12] The 2014 Pew Survey found that 58 percent of consumers that use prepaid products are currently without checking accounts, but indicated they want to have a checking account in the future. [13] The survey also found that 26 percent of prepaid product users without checking accounts indicated that they use prepaid products because, among other reasons, they would not be approved for a checking account.[14]

When consumers open a checking or savings account, they must satisfy the depository institution or credit union's customer identification program (CIP) obligations, which is part of the institution's Bank Secrecy Act (BSA) and anti-money laundering compliance program.[15] In addition, banks and credit unions generally review information about prospective customers obtained from specialized reporting agencies that can reveal prior history of involuntary account closure, unsatisfied balances, and other issues with prior checking account use.

Customer identification and verification procedures (other than those related to credit or similar inquiries) are largely identical between checking and GPR accounts. First, the customer identification and verification requirements for providers and sellers of prepaid access issued by the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury

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[11] The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders' Motivations and Views*, at 7(Feb. 2014) (2014 Pew Survey). It appears that the prepaid products discussed in the report included GPR cards, payroll cards, and government benefit cards. The study excluded closed-loop prepaid products.

[12] 2014 Pew Survey, at 7-8, 11.

[13] *Id.* at 10-11.

[14] *Id.* at 14.

[15] *See e.g.*, Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering InfoBase, http://www.ffiec.gov/bsa_aml_infobase/pages_manual/olm_011.htm.

Department (Treasury), are largely similar to the CIP requirements for depository institutions and credit unions. Second, the Bureau understands that for most prepaid products, the issuer (*i.e.*, the depository institution or credit union providing access to the networks and holding the funds) sets the minimum standards for the CIP.[16] However, there are differences. The primary difference is usually with respect to the method of customer verification. Checking and savings accounts are more frequently opened in person at a financial institution's branch location (and thus use "documentary" forms of identification, such as a driver's license or passport, to verify identity). Prepaid products, however, even those purchased at retail locations, are usually registered via telephone or online (and thus use "non-documentary" forms of verification such as using information obtained from consumer reporting agencies).

When consumers apply for credit cards, a card issuer will generally rely on a rigorous process to determine whether an applicant is an appropriate credit risk. In contrast, most GPR cards do not contain similar requirements. The 2014 Pew Survey found that 33 percent of monthly users of open-loop prepaid products have never had a credit card.[17] GPR cards may also be more accessible to consumers than debit cards that require the cardholder to have opened a traditional transactional account such as a checking account as a prerequisite. The 2014 Pew Survey found that 41 percent of monthly users of open-loop prepaid products currently do not have a checking account.[18] Similarly, a 2013 survey by the Federal Deposit Insurance Commission (FDIC) found that of those people whom it surveyed, approximately 33 percent of

[16] Mercator Advisory Grp., *Customer Identification Programs in Prepaid: Best Practices*, at 2 (July 2013).

[17] *See* 2014 Pew Survey, at 7. The Bureau recognizes that this figure may include consumers that have never tried opening a credit card account, as well as those that tried to open a credit card account, but had their application denied.

[18] *Id.*

those who reported using a prepaid card in the 30 days prior to being surveyed were unbanked.[19] Additionally, debit card issuers may evaluate potential customers for credit risk more closely than prepaid card issuers. The Bureau understands that debit card issuers often provide faster fund availability than prepaid card issuers and thus may bear greater depositor credit risk such as the risk that a deposited check never clears.

The 2013 FDIC Survey also suggests that unbanked and underbanked consumers are more likely than the general population to use open-loop prepaid products such as GPR cards. It found that there are approximately 30 million unbanked and underbanked households in the United States.[20] It also found that these households tend to be disproportionate users of GPR cards and payroll cards. It observed that 19.7 percent of underbanked and 27.1 percent of unbanked households, as well as 33 percent of previously banked households, reported having used such cards (compared with 12 percent reported use in the entire population).[21] The FDIC also found that while usage among all households remained relatively stable since 2009, the proportion of unbanked households that had used a prepaid card increased from 12.2 percent in 2009 to 17.8 percent in 2011 and 27.1% in 2013.[22] In addition to the lack of access to traditional financial products and services as a shared characteristic of some of the consumers that use GPR cards, the FDIC study shows that prepaid card users were more likely than the general population

[19] *See also* Fed. Deposit Ins. Corp., *Appendix to 2013 FDIC National Survey of Unbanked and Underbanked Households* (Oct. 2014) (2013 FDIC Survey), at 46, *available at* https://www.fdic.gov/householdsurvey/2013report.pdf.

[20] 2013 FDIC Survey, at 4.

[21] 2013 FDIC Survey, at 35-36.

[22] 2013 FDIC Survey, at 29.

to be young, single mothers, disabled, or have sub-$50,000 incomes, and less likely to be homeowners, white, have college degrees, or be employed.[23]

Further, the 2014 Pew Survey noted that the desire to avoid fee-based overdraft services associated with checking accounts appear to motivate some consumers to choose open-loop prepaid products over checking accounts. Indeed, the survey concluded that 41 percent of users have closed or lost a checking account due to overdraft fees.[24] Checking accounts can become costly. For instance, Bureau staff has determined that the median checking account overdraft fee charged as of July 2014 among the largest fifty U.S. depository institutions ranked by consumer checking balances is $35 per item.[25] By contrast, except for a few exceptions discussed below, GPR cards are generally not offered with an overdraft service nor other credit features.[26] Moreover, GPR card providers that offer such services or features charge lower fees than the fees depository institutions or credit unions charge for checking account overdraft.[27] Thus, for consumers who do not want to, or cannot open a checking account, the Bureau believes that a GPR card could be a viable substitute. Indeed, the Bureau observes that many GPR cards are advertised as a "safe" or "secure" alternative to a checking account.[28]

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[23] 2013 FDIC Survey appendix, at 46-47.

[24] 2014 Pew Survey, at 8; *see also id*. at 13-14 (explaining that 46 percent of respondents indicated that one of the major reasons they use prepaid cards is to "Avoid overdraft fees;" 51 percent of respondents said one of their major reasons is "Helping you not spend more money than you actually have").

[25] Nearly all depository institutions the Bureau considered assess overdraft fees on a per-item basis. Among those that do, both the median and modal lowest-tier overdraft fee is $35. Some depository institutions have higher overdraft fees that apply after a certain number of overdraft occurrences. However, the Bureau's analysis considers only the lowest-tier fees a consumer would encounter if de minimis or other policies do not preclude a fee. For depository institutions that charge different amounts in different regions, Bureau staff considered pricing for the region where the depository institution is headquartered.

[26] *See, e.g.*, 2014 Pew Study, at 4, 9-10.

[27] *Id.*

[28] *See, e.g.*, NBCPA Website, *What are Prepaid Cards*, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx ("[With prepaid cards] … [avoid] the risk of over-spending or overdraft, thus

Consumers with access to traditional financial products and services use GPR cards as well.[29] The Bureau understands that one of the ways in which many consumers use such cards is for a limited purpose such as while traveling or making online purchases, because they may believe that using prepaid cards is safer than using cash, a credit card, or a debit card in those situations.[30] These consumers may not ever register and reload the card. Instead, they may let the card become dormant or discard it after spending down the initial balance, and then purchase another GPR card at a later date if new needs arise. The Bureau understands that another popular way in which consumers use GPR cards is as a budgeting tool. For example, a family might budget a fixed amount each month for dining out and put that money on a GPR card, or parents may provide a GPR card to a child at college to control the child's spending.

Further, based on the Bureau's market research and analysis, the Bureau believes that additional consumers will continue to adopt GPR cards. It also believes that consumers that currently use GPR cards may increasingly find that they no longer want to have traditional financial products and services such as a checking account or a credit card in addition to their GPR card. The Bureau notes that GPR card functionality has been expanding. For example, some GPR card programs have started to offer checking account-like features such as check-writing using pre-authorized checks, the ability to send direct deposits via an ACH to the GPR card, and, in some limited cases, the ability of third parties to debit and credit the GPR card account via ACH (*e.g.*, crediting the card account through direct deposit). Additionally, many GPR card programs have offered consumers ways to access their account online, including

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avoiding the interest, fees and potential negative credit score implications of traditional credit cards. [For parents], prepaid cards [help] maintain control over [children's spending].")

[29] 2014 Pew Survey, at 7 (59 percent of prepaid card users also have a checking account.)

[30] *See, e.g.*, 2014 Pew Survey, at 1, 13.

through mobile devices such as smartphones. For example, oftentimes consumers can use mobile phone applications to closely monitor their GPR card transactions, balances, and fees; to load funds to their GPR cards; and to transfer funds between accounts. Lastly, like credit and debit cards, GPR cards provide access to payment networks. Consumers may find this to be an important feature of GPR cards in that some merchants may only accept payment through a card that provides access to one of these networks.

Marketing and Sale of GPR Cards

In recent years, the GPR card segment has grown increasingly competitive, which has resulted in a decrease in prices, coupled with an increase in transparency for many products.[31] Nevertheless, GPR card providers market the cards in ways that may negatively affect consumers' ability to make meaningful comparisons.[32] Card packaging is often limited in size. Because many of them are designed to be sold in retail stores, the card package, also known as a J-hook package, is no larger than 4 inches by 5.25 inches.[33] Thus, card packages have limited space in which to explain their product and disclose key features. It has also been reported that fee information for prepaid products is sometimes hard to find and difficult to understand, thus making comparison shopping challenging.[34] However, the Bureau believes that consumers

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

[32] 2014 Pew Survey, at 5, 6.

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

[34] *See, e.g.*, Consumer Reports, *Prepaid Cards: How They Rate on Value, Convenience, Safety and Fee Accessibility and Clarity*, (July 2013), at 24, *available at* http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/.

benefit from comparison shopping. For example, the 2012 FRB Philadelphia Study found that total cardholder costs vary by the type of open-loop prepaid product. [35]

In addition to the size limitations to GPR card packaging related to the fact that many GPR cards are sold through the retail channel on J-hooks, certain aspects of purchasing GPR cards in retail settings may pose additional issues. For instance, some retail locations may only offer one or a handful of products. Retailers may not always have a broad selection of GPR cards that consumers can compare while in a particular store, because prepaid card providers can establish exclusive marketing arrangements that may prevent competitors' cards from being sold in the same store.[36] The Bureau acknowledges that the lack of choice is not necessarily unique to GPR cards sold in certain retail locations. For example, any one bank or credit union may only offer a limited range of transactional accounts. Further, in some stores, prepaid products including GPR cards may be displayed behind a register, requiring a consumer to ask to see each product packaging individually. The Bureau believes that this process likely makes comparison-shopping more time-consuming, even when choice among products exists. Lastly, in a retail setting, GPR cards may be displayed near closed-loop prepaid products such as gift cards. This could contribute to consumer confusion. For the above reasons, the Bureau believes that a consumer looking to comparison shop among different GPR cards in a retail setting may incur high search costs.

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[35] 2012 FRB Study, at 6, 39, 72; Fumiko Hayashi & Emily Cuddy, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees and Fraud Risks*, at 33-35 (Fed. Reserve Bank of Kansas City, Working Paper No. RWP 14-01, 2014) (Kansas City Fed Study), *available at* https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-01.pdf.

[36] For example, earlier this year Blackhawk Network Holdings, Inc. extended its exclusive distribution arrangement with Safeway Inc. through 2019. *See* Press Release, Blackhawk Network, *Safeway and Blackhawk extend exclusive prepaid card distribution agreement through 2019* (Mar. 7, 2014), *available at* http:// blackhawknetwork.com/blackhawk-comments-on-parent-company-safeways-spin-off-announcement/.

Additionally, in a retail setting, consumers desiring to purchase GPR cards may only allot limited time to consider their purchases. The Bureau believes that consumers often purchase a GPR card while purchasing groceries and convenience items, and may not take the time to fully review and comprehend the terms of the card that they are acquiring. Moreover, the selling of GPR cards in convenience and other retail stores that do not otherwise sell financial products (as opposed to, for example, at a bank) may not be conducive to helping a consumer understand the terms and conditions of the GPR card or that the consumer may be starting a long-term financial relationship that could entail significant expense for the consumers. For example, the Bureau believes that a salesperson at a convenience store where a GPR card is sold may not be able to provide adequate information to a consumer about the product. In contrast, the Bureau expects that an employee at a bank or credit union would be better informed.

Further, once a consumer can review the full terms and conditions of a GPR card, the consumer has typically already purchased the card and loaded funds onto it, making returns difficult or impossible due to the inability of the retail store to refund the cash loaded onto a prepaid product including a GPR card. During outreach, several prepaid product providers have informed the Bureau that they provide refunds related to the purchase of a prepaid card, but the Bureau believes that few consumers realize that this is an option. The Bureau acknowledges that consumers who determine they do not want to establish a long term relationship with the GPR prepaid card they purchased may also end the relationship more easily (as compared to closing a checking or credit card account). Such consumers could spend down the funds initially loaded onto the card and then discard it. However, the Bureau believes that the consumer could still incur fees such as monthly maintenance fees for using the GPR card.

Structure of Typical GPR Card Programs

GPR card products are generally provided by combinations of entities working together rather than by a single, vertically-integrated entity operating all aspects of the program. In fact, the Bureau understands that the typical GPR card supply chain involves more parties than the supply chains for traditional checking or savings accounts or for credit cards. Although a consumer may only interact with a single entity or limited number of entities involved in the supply chain such as those entities whose logos are displayed on the GPR card or its packaging, the Bureau believes that the fact that many different entities can be involved in the supply chain could expose consumers as well as the entities themselves to greater risks such as potential losses resulting from the insolvency or malfeasance of other entities involved in the supply chain, when compared to the risks associated with a traditional checking or savings account. The Bureau discussed the various entities that may be involved in a typical GPR card program below.

Entities involved in a typical GPR card program. First, entities known in the industry as program managers may design, manage, market, and generally operate GPR card programs. Program managers may include depository institutions and credit unions, but are typically non-depository entities. Program managers typically establish or negotiate a GPR card program's terms and conditions, market the card, assume most of the financial risks associated with the program, and reap the bulk of the revenue from the program.[37] The program manager is also, in most cases, the primary consumer-facing party in connection with a GPR card, because it is typically the program manager's brand on the card as well as its packaging.[38] While a handful of

[37] *See* Kansas City Fed Study, at 6.

[38] *See* Aite Grp. LLC, *Prepaid Debit Card Realities: Cardholder Demographics and Revenue Models*, at 17 (Nov. 2013).

program managers appear to have had a large majority of the market share as recently as 2012, the Bureau notes that the GPR card industry is fast-changing. Indeed, it appears that new entrants—both start-ups and established financial institutions—have led to both increased competition and growth in the market over just the last few years.[39]

Program managers typically contract with various third-party service providers for various tasks. One of the most important entities involved in GPR card program is the prepaid card issuer, which is typically either a depository institution or credit union. Virtually all GPR cards must be issued by depository institutions or credit unions that are authorized by the retail electronic payment card networks. Issuers may manage the accounts that hold funds loaded onto the cards. Some depository institutions and credit unions are actively involved in the GPR cards they issue by serving as both issuer and program manager for their own programs. Other depository institutions may only act as an issuer and provide sponsorship into specific payment networks, but may work closely with the entity that is the program manager for a specific GPR card program to design, market and administer the program. In sum, the particular services that issuers provide and their degree of involvement in any GPR card program may vary.[40] The Bureau understands that variations can be due to the extent to which the program manager performs particular services by itself, as well as due to the particular features of a specific GPR card program.

[39] *Id.*

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

To produce, market and sell GPR cards, program managers work with, as applicable, manufacturers and distributors. The Bureau understands that distributors arrange for GPR cards to be sold through various channels including through retailers, money transfer agents, tax preparers, check cashers, and payday lenders. Further, in many cases, the Bureau understands that third-party processors may provide many of the back-office processing functions associated with initial account opening (including those related to transitioning from temporary to permanent cards), transaction processing, and account reporting. Lastly, the payment networks themselves also establish and enforce their own rules and security standards related to payment cards generally and prepaid products such as GPR cards specifically. The networks also facilitate card acceptance, routing, processing, and settling of transactions between merchants and card issuers.

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

in fact qualify depends on how the account is structured and whether certain other conditions are met. Also discussed in greater detail below, both the FDIC and NCUA have special rules, regarding how pool accounts may qualify for, as applicable, FDIC or NCUSIF pass-through insurance.

Revenue generation. The Bureau understands that GPR cards typically generate revenue through an up-front purchase price paid by the consumer, the assessment of various monthly maintenance and transactional fees, and interchange fees collected from merchants by the payment networks. The 2012 FRB Philadelphia Study found that "while not as important as cardholder fees, interchange revenues (fees paid by a merchant or acquiring bank for the purpose of compensating an issuer for its involvement in an electronic prepaid, debit, or credit card transaction) account for more than one-fifth of the issuer revenues in the general-purpose programs and almost half of revenues in the payroll programs."[41] Revenue is shared among some or all of the entities involved in the GPR card supply chain, although as also discussed above, program managers generally reap the bulk of the revenue from GPR card programs. Further, the Bureau notes that publicly-available details of how revenue is distributed and expenses are accounted for are sparse. Additionally, the Bureau believes that the distribution of revenue and the sharing of expenses among the entities involved the GPR card supply chain likely vary across programs.

Prepaid Products Loaded by Third Parties

The Bureau understands that consumers also receive network-branded open-loop prepaid products from third parties that disburse funds to consumers by loading the funds onto such

[41] 2012 FRB Philadelphia Study, at 6.

accounts. Previously, funds may have been distributed to the consumer via paper check, direct deposit into a traditional checking or saving account, or cash. Payroll cards are the most common example of prepaid products used by third parties to distribute funds to consumers. In 2013, over five million payroll cards were issued, and $30.6 billion was loaded onto them.[42] The Bureau understands that an employer may establish payroll cards for its employees, directly or indirectly, for the express purpose of delivering on an ongoing basis, recurring payments of an employee's wages, salary, or other compensation, and an employee may choose having his compensation distributed via a payroll card over other options for receiving compensation.

If an employee chooses a payroll card, the Bureau understands that the employer will provide the employee with a network-branded prepaid card that accesses a subaccount assigned to the individual employee. Moreover, on each payday, the employer will transfer the employee's compensation to the payroll card account, instead of providing the employee with a paper check or making a direct deposit of funds to the employee's checking or savings account. The employee can use the payroll card to withdraw funds at an ATM or over-the-counter via a bank teller. The employee can also use the payroll card to make purchases online and at physical retail locations. An employee may even be able to obtain cash back at the point-of-sale (POS). Some payroll cards may offer features such as convenience checks and electronic bill payment. The Bureau understands that employers market payroll cards as an effective means for employees who may lack a traditional banking relationship to receive wages. Indeed, the Bureau believe that payroll cards may provide some consumers a more suitable, cheaper, and safer

[42] Mercator Advisory Grp., *Eleventh Annual U.S. Prepaid Cards Market Forecasts, 2014-2017*, at 32 (Nov. 2014).

method of receiving their wages, as compared to other methods, such as receiving a check and going to a check-cashing store, if the consumer does not have a checking account.

Within the last ten years, however, there have been increasing concerns raised about payroll cards, with specific focus on potentially harmful fees and practices associated with payroll cards. As explained in greater detail below, the Board extended a modified form of Regulation E coverage to payroll cards in 2006, but did not extend these rules to GPR cards and other prepaid products. Among the relevant provisions of Regulation E that apply to payroll cards is the provision on compulsory use. Pursuant to this provision, no financial institution or other person can mandate that a consumer receive an electronic fund transfer into an account at a particular institution as a condition of employment. 12 CFR 1005.10(e)(2).

The Bureau issued a guidance bulletin in September 2013 to clarify the application of § 1005.10(e)(2) to payroll card accounts.[43] The bulletin reminded employers that they cannot require their employees to receive wages on a payroll card. It also explained some of the Regulation E protections that apply to payroll card accounts, such as those pertaining to fee disclosure, access to account history, limited liability for unauthorized use, and error resolution rights. Since the Bureau issued the bulletin, it understands that certain industry stakeholders have worked to develop industry standards incorporating and building upon the guidance given in it.[44] Nevertheless, the Bureau believes that concerns persist as to whether and how employers and financial institutions are complying with the compulsory use provision and other provisions

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

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

of Regulation E, as well as related State laws applicable to the distribution of wages.[45] For example, employees may not always be aware of the ways in which they may receive their wages, because States may have differing and evolving requirements.[46]

The Bureau additionally believes that payroll card accounts raise disclosure issues beyond those addressed by its payroll card accounts guidance bulletin, discussed above. Employers may offer a payroll card account when an employee starts employment, and the issue of how the employee is to be paid is likely to be one among the many and varied human resource issues confronting the employee during orientation. An employee may be provided with a stack of forms to complete and may not have the time or opportunity to review them. It is also possible that the employee may be unaware that receiving wages via a payroll card account is optional, particularly if the employer does not present the options clearly. These forms the employee may receive from the employer may not always include all of the relevant information regarding the terms and conditions of the payroll card account, such as fees associated with the card and how cardholders can withdraw funds on the card. Separately, some have raised concerns about the extent to which payroll card providers share program revenue with employers and, if so, whether that revenue sharing has negative consequences for cardholders.

Payroll cards are just one type of network-branded open-loop prepaid products consumers may receive from third parties that disburse funds to consumers by loading the funds onto such accounts. For example, institutions of higher education may partner with certain entities to disburse student financial aid proceeds into network-branded open-loop prepaid

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[45] *See, e.g.*, N. Y. State Attorney Gen., Labor Bureau, *The Impact of Payroll Cards on Low-Wage Workers*, *available at* http://www.ag.ny.gov/pdfs/Pinched%20by%20Plastic.pdf.

[46] *See, e.g.*, http://paycard.americanpayroll.org/compliance-regulations (listing the various State regulations that apply to payroll cards).

products endorsed by those institutions. *See* 34 CFR 668.164(c)(2) (setting forth that certain Federal student aid payments disbursed via "an account that underlies a stored-value card" is considered a direct payment to a student or parent). Like with payroll card accounts, some have raised concerns about revenue sharing in connection with prepaid cards provided to students.

A 2014 Government Accountability Office (GAO) report found that of the U.S. colleges and universities participating in Federal student aid programs for the 2011-2012 school year that had agreements with financial firms to provide debit and prepaid card services for students, approximately 80 percent of such agreements were for debit cards, with the remainder for prepaid cards.[47] The report also stated that more than 80 percent of the schools identified in the report with card agreements indicated that students could use their cards to receive financial aid and other funds from the school.[48] Further, the report found instances where certain third-party providers involved in college card programs work with a bank partner.[49]

Among other things, the GAO noted concerns about the fees on student debit and prepaid cards, as well as the lack of ATM access and the lack of the schools' neutrality toward the card programs.[50] It found instances in which schools appeared to encourage students to enroll in the school's specific prepaid card program, rather than present neutral information about disbursement options for financial aid.[51] Relatedly, the Department of Education is in the

[47] U.S. Gov't Accountability Office, GAO-14-91, *College Debit Cards Actions Needed to Address ATM Access, Student Choice and Transparency*, at 8 (Feb. 2014) (GAO 2014 College Card Report), *available at* http://www.gao.gov/assets/670/660919.pdf.

[48] GAO 2014 College Card Report, at 9.

[49] *Id.* at 15.

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

[51] *Id.*

process of a negotiated rulemaking regarding the use of third-party entities to disburse Federal student aid, including those that may distribute funds via prepaid products.[52]

Further, the Bureau understands that prepaid cards are also used by some insurance providers to pay certain insurance claims such as claims related to a property or casualty loss.[53] During outreach, some insurance providers informed the Bureau that, where permitted by State law, it is faster and more economical to provide workers compensation payments on prepaid cards relative to mailing paper checks. Additionally, after a natural disaster, the disbursement of funds from insurance claims onto prepaid cards may allow funds to be delivered to consumers that may be unable to use or access traditional checking or savings accounts.

Similarly, taxpayers may direct tax refunds onto prepaid cards provided by tax preparers or government entities. These prepaid cards are typically open-loop cards. Other disbursements onto prepaid cards include disbursement of mass transit or other commuting-related funds, which are typically onto restricted closed loop cards. However, the Bureau understands that new transit payment models are emerging, and these models tend to involve open-loop prepaid cards.[54] Aid distributed by relief organizations or government agencies in response to natural disasters is usually loaded onto open-loop cards. In some of these cases, the cards may be reloaded by the entity that initially disbursed funds onto the card.

Finally, government entities also distribute various funds onto prepaid products. In addition to distributing tax refunds onto such products, the Federal government and various State

[52] 78 FR 69612 (Nov. 20, 2013).

[53] Mercator Advisory Grp., *Tenth Annual U.S. Prepaid Cards Market Forecasts, 2013-2016*, at 42-43 (Oct. 2013).

[54] *See e.g.*, https://www.ventrachicago.com/ (The city of Chicago's mass transit card has reloadable open-loop features). *See also* http://www.septa.org/key/ (The city of Philadelphia announced that its mass transit card will also have reloadable open-loop features).

governments may use prepaid products to distribute government benefits such as Social Security Payments,[55] unemployment insurance benefits,[56] child support payments, and other types of disbursements including needs-tested benefits. Needs-tested benefits include funds related to Temporary Assistance for Needy Families (TANF), Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Supplemental Nutrition Assistance Program (SNAP). State and local government programs for distributing needs-tested benefits are typically referred to as electronic benefit (EBT) programs. Most States offer a choice between at least direct deposit to a traditional checking or savings account or a prepaid product for the receipt of unemployment insurance benefits. However, the Bureau understands that several States require the distribution of such benefits onto prepaid products.[57] With respect to other government benefits, as noted below in the discussion of relevant law, Regulation E does not apply to EBT programs.[58] In addition, Treasury's Bureau of the Fiscal Service, on behalf of the United States military, provides both closed-loop and open-loop prepaid cards for use by servicemembers and contractors in the various branches of the armed forces.[59] The features of and fees charged in connection with these cards may vary.

[55] Treasury has established the Direct Express program for the distribution of government benefits such as Social Security payments.

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

[57] *Id.* at 1.

[58] *See* EFTA section 904(d)(2)(B); Regulation E § 1005.15(a)(2).

[59] *See, e.g.*, Navy Cash / Marine Cash, http://fms.treas.gov/navycash/index.html and Eagle Cash, http://fms.treas.gov/eaglecash/index.html. As discussed further below, the Navy Cash and Marine Cash products may have multiple "purses" such that one "purse" can only be used at a limited number of linked merchants (such as various places on a Naval vessel) while the other "purse" can be linked to a payment card network that provides global acceptance to unaffiliated merchants.

The Bureau believes that as a general matter, prepaid products loaded by third parties present some of the same consumer protection issues as GPR cards such as the lack of clear disclosures about fees and other important terms and conditions, and the lack of opportunity for consumers to compare and evaluate different products before acceptance. Consumers may use these products as their primary transaction account, particularly when the product is loaded with all of the consumer's incoming funds (*e.g.*, wages, unemployment benefits, student loan proceeds, etc.). In accepting the product, a consumer may not fully grasp all of its fees and terms and how those fees and terms might impact the consumer over time. In addition and as previously noted, consumers may be offered these products in situations that make comparison shopping difficult. However, the Bureau believes that many prepaid accounts with funds loaded by third parties may present distinct set of issues as well. The Bureau understands many types of these accounts are distributed to very specific segments of consumers such as college-age students or very low-income consumers, and accordingly, there may be distinct consumer protection issues associated with these prepaid products.

Digital Wallets

In recent years, there has been increasing industry interest in developing "digital wallets" and "mobile wallets." A consumer may keep cash, debit and credit cards, GPR cards, and gift cards in a physical wallet or purse. Digital wallets have been marketed as a viable alternative to a physical wallet, because a number of digital wallets currently available can store one or more of the consumer's payment credentials electronically.[60] For example, a digital wallet may allow a consumer to store the consumer's bank account, debit card, credit card, and/or prepaid card

[60] Aite Grp. LLC, *Money Goes Mobile*, (May 2014), *available at* http://www.aitegroup.com/report/money-goes-mobile.

credentials in the wallet, which may be accessed by the consumer through a website. Digital wallets that a consumer could access using a mobile device such as a smartphone have been described as mobile wallets.[61] Further, some, but not all, digital wallets currently available to consumers allow a consumer to store funds in it directly or by funding a prepaid product, and draw down the stored funds.[62]

Digital wallets have been marketed as allowing consumers to electronically transmit funds in multiple settings. Currently, digital wallets can be used by a consumer for online purchases,[63] payments at brick-and-mortar retailers through, for example, contactless communication at the point of sale,[64] as well as person-to-business (*i.e.* bill pay) and P2P transfers.[65] The Bureau understands that there may be significant variations in how funds are held in digital wallets and how payments are processed by digital wallets and that payment processing by digital wallets is evolving quickly. For instance, some digital wallets provide methods for accessing the ACH system to make a payment. In this case, a consumer might use a digital wallet to pay for an online purchase, and the digital wallet facilitates the transfer of funds from the consumer's checking account to fund the transaction. In other cases, the consumer's

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[61] *Id.*

[62] *See e.g.*, http://www.google.com/wallet/index.html (last accessed on Oct. 28, 2014) ("The Wallet Balance is the money in your Google Wallet … [money will be stored in the wallet]. [Use] your Wallet Balance to send money to friends [and shop], or transfer money to your bank account. You can also add money to your Wallet Balance … from a credit card, debit card or linked bank account."); *see also*, https://www.serve.com/ (last accessed on Oct. 28, 2014) ("Use the American Express Serve Mobile App to check your balance and recent transactions, pay bills on the go, add checks, and send money to family or friends who have a Serve Account. Download the American Express Serve Mobile App for iOS or Android.").

[63] *See e.g.*, Visa Checkout Terms of Service, https://secure.checkout.visa.com/pages/terms?country=US&locale=en (last accessed on Oct. 28, 2014).

[64] *See e.g.*, Google Wallet Terms of Service, https://wallet.google.com/termsOfService?type=BUYER&gl=US (last accessed on Oct. 28, 2014).

[65] *See e.g.*, Boost Mobile Wallet Terms of Service, (https://boostmobile.wipit.me/legal/terms.aspx (last accessed on Oct. 28, 2014).

funds are first transferred to the digital wallet either by the consumer or by the digital wallet provider, and then transferred to ultimate payee. For example, it may be possible for a consumer to maintain a positive balance in the wallet through transfers from sources such as a bank account, a credit, debit, or prepaid card, or a P2P transfer. The consumer's digital wallet balance may be held in the name of the digital wallet provider in a pooled account that is not further divided into subaccounts that are held in the name of any individual consumer.

A mobile wallet may act as a pass-through that enables consumers to pay for goods at a store using payment credentials for other accounts, such as credentials for a consumer's credit card, debit, or prepaid card that the consumer has stored on the mobile wallet. For example, a consumer could use a mobile wallet on a smartphone to select the consumer's debit card to fund a payment for a good or service, and then use near field communication to tap the phone at a point-of-sale terminal to pay. The Bureau expects that variations of digital wallets will continue to grow and observes that the methods described herein are a few of the funding options available in the current market.

Credit Features, Overdraft Programs & Prepaid Products

As currently offered and marketed, most prepaid products do not allow consumers to spend more money than is loaded onto the product. Although there are a few exceptions, most providers of prepaid products do not currently offer overdraft services,[66] a linked line of credit,[67]

[66] As discussed further below, overdraft services evolved from ad hoc, discretionary programs in which financial institutions would sometimes cover particular transactions that would otherwise overdraw an account as a courtesy to the consumer rather than return the transaction and subject the consumer to a non-sufficient-funds (NSF) fee, merchant fees, and other negative consequences from bounced checks. Overdraft services fees are imposed on a per transaction basis, and the financial institution takes the balance owed as soon as additional funds are deposited into the account. Further, as explained below, the Board exempted overdraft services from regulation under TILA and Regulation Z, as long as they are provided pursuant to an agreement that does not obligate the financial institution to cover any particular transaction. In addition, these programs are not typically subject to traditional underwriting processes used for other credit products. Under Regulation E, financial institutions must obtain an opt-in by the

access to a deposit advance product[68] or other method of accessing credit in connection with a prepaid product.[69] Instead, prepaid products, including many GPR cards, are actively marketed as "safe" alternatives to checking accounts with opt-in overdraft services, credit cards, or other credit options.[70]

As the Bureau observed above, it appears that a desire to avoid fee-based overdraft services motivates a sizeable portion of consumers to choose prepaid products, such as GPR cards, over checking accounts.[71] Further, a slight majority of consumers that participated in the 2014 Pew Survey stated that one of the major reasons that they use prepaid products is that they

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consumer before imposing overdraft fees on ATM and one-time point of sale transactions by debit card. *See* Regulation E, § 1005.17(b).

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

[68] A deposit advance product (DAP) is a small-dollar, short-term loan or line of credit that a financial institution makes available to a customer whose deposit account reflects recurring direct deposits. The customer obtains a loan, which is to be repaid from the proceeds of the next direct deposit. DAPs typically do not assess interest and are fee-based products. Repayments are typically collected from ensuing deposits, often in advance of the customer's other bills. (See CFPB Whitepaper on Payday and Deposit Advance Products: Initial Data Findings, Apr. 30, 2013, *see also* OCC and FDIC Final Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 Fed. Reg. 70552, 70624 (Nov. 26, 2013). Publication of the Bureau's White Paper and the guidance issued by the FDIC and OCC has caused many financial institutions to reevaluate their DAP programs.

[69] For example, a financial institution could offer a product whereby consumers with a credit account access that account and "push" the credit into their prepaid accounts where it can be spent.

[70] *See, e.g.*, NBCPA, *What are Prepaid Cards?*, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx (last visited Oct. 28, 2014) ("For many Americans, prepaid cards serve as a tool with which to more effectively budget their spending. With a prepaid card, consumers avoid the risk of over-spending or overdraft, thus avoiding the interest, fees and potential negative credit score implications of traditional credit cards. And for parents, prepaid cards provide tools to maintain control over their teens' or college students' spending.") ; *see also* Examining Issues in the Prepaid Card Market: Hearing before the Subcomm. On Fin. Inst. and Consumer Prot., S. Comm. on Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Dan Henry, Chief Executive Officer, NetSpend Holdings, Inc.) ("Our customers are typically working Americans who want control… .").

[71] 2014 Pew Survey, at 14 ex.12 (noting that the top two reasons consumers claim to use prepaid cards related to avoiding credit card debt (67 percent) and helping them not spend more money than they actually have (66 percent).

help those consumers control their spending.[72] Similarly, the Bureau's own focus groups also found that many consumers choose prepaid products because they help them control their spending.[73] Unlike deposit accounts with an overdraft feature or linked lines of credit, credit cards, and other credit products, consumers that use prepaid products without credit features (*i.e.*, most prepaid consumers) cannot spend funds that have not been loaded into the account.

It also appears that many consumers specifically seek to acquire prepaid products that do not offer overdraft services or credit features because they have had negative experiences with credit products, including checking accounts with overdraft features or want to avoid fees related to such products. For example, the 2014 Pew Survey found that many prepaid consumers previously had a checking account and either lost that account (due to failure to repay overdrafts or related issues) or gave up the checking account due to overdraft or bounced check fees.[74] Relatedly, prepaid products are often used by consumers who cannot obtain a checking account due to bad credit or other issues.[75] GPR cards – which are sometimes marketed as involving "no credit check" – provide consumers with access to electronic payment networks, the ability to make online purchases, and increased security and convenience over alternatives such as cash.[76] Prepaid consumers often are unable to open credit card accounts and cannot get a traditional

[72] 2014 Pew Survey, at 13-14.

[73] ICF Report, at 5.

[74] 2014 Pew Survey, at 7-8 (noting both that "Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage" and that "Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees").

[75] *Id.* at 8 (noting that one-third of prepaid consumers who have ever had a checking account say they have closed a bank checking account themselves because of overdraft or bounced check fees and 21 percent who say they have had a financial institution close their account because of overdraft or bounced check fees).

[76] *See* ICF Report, at 5; 2014 Pew Survey, at 14 ex.12 (noting that 72 percent of prepaid consumers say that a reason they have a prepaid card is to make purchases online and other places that do not accept cash).

checking account with a debit card due to negative reports with credit reporting agencies focusing on checking-account related credit issues.

Apart from consumers' reasons for favoring prepaid products, regulatory factors may also have discouraged prepaid product providers from offering overdraft services or credit features in connection with their products. The Bureau understands that some prepaid product issuers have received guidance from their prudential regulators that has deterred those financial institutions from allowing prepaid products they issue to offer overdraft services or credit features. Relatedly, the Bureau believes that a 2011 Office of Thrift Supervision enforcement action regarding a linked deposit advance feature may also have had a chilling effect on the growth of DAPs.[77] Finally, while a number of industry commenters to the Bureau's Advance Notice of Proposed Rulemaking (Prepaid ANPR) expressed interest in offering overdraft services or credit features in connection with prepaid products, some industry commenters also expressed their reluctance to proceed until there is greater certainty as to whether this rulemaking would alter the permissible bounds of such a program.

The Bureau understands that the only credit features being offered on prepaid accounts currently are structured as overdraft services.[78] To date, overdraft services on prepaid accounts have been generally structured similar to overdraft services offered by financial institutions on

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

[78] *See* CFSI Prepaid Industry Scorecard (noting that only two in a survey of 18 GPR programs representing 25% of the market currently offers an opt-in overdraft service); CFPB Overdraft Whitepaper, at 14 (summarizing data showing that most banks and credit unions offer opt-in overdraft programs). Apart from actual overdraft programs, some prepaid programs, according to their terms and conditions, reserve the right to impose a fee for a negative balance on a prepaid account. (These programs' agreements typically state that the cardholder is not permitted to spend beyond the balance in the prepaid account, but if circumstances were to occur that cause the balance to go negative, a fee will or may be imposed. Some agreements state that repeated attempts to spend beyond the card balance will or may result in the prepaid account being closed). Roughly 10 percent of reviewed agreements noted such a charge.

checking accounts, but in some ways, are more consumer-friendly. For example, the programs charge a per-transaction fee each time the consumer incurs an overdraft (*e.g.*, one program charges $15) although the fee tends to be lower than fees typically charged for checking accounts (median fee as of July 2014 is $35).[79] In addition, issuers of certain prepaid products with overdraft services will waive the overdraft fee if the consumer repays the overdraft quickly (*e.g.*, within 24 hours) or if the overdraft is only for a nominal amount (*e.g.*, $5 or $10). Further, these terms and conditions also limit the number of overdrafts that will be permitted in a given month and the amount by which the account balance can go negative, and contain "cooling off" periods after a consumer has incurred more than a certain number of overdrafts. During the cooling off period, the consumer is typically prohibited from using the overdraft service.

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

[79] Bureau staff determined the median figure for checking account overdraft fees through an analysis of the overdraft fees charged by the largest 50 U.S. banks ranked by consumer checking balances.

institutions' deposit account revenue.[80] As a result, depository institutions and credit unions have developed checking accounts to have low (or sometimes no) up-front costs, to add services such as online bill pay (including not only electronic payments through the ACH network but also manual generation of checks authorized through the bank or credit union's on-line bill pay portal) at no additional cost, and to rely on "back end" fees such as per-transaction overdraft fees and NSF fees to maintain profitability. While some prepaid products may also have low or no upfront fees associated with them, the Bureau believes that this is largely due to the fact that as a general matter, fixed costs for prepaid products are substantially lower than similar costs for many checking accounts.[81] Moreover, financial institutions that issue prepaid accounts typically do not earn their revenue from "back-end" overdraft fees or NSF fees. Instead, they earn revenue from other types of fees, such as ATM fees, and interchange fees collected from use of a prepaid account on a payment network.[82]

As discussed in greater detail below, certain prepaid products, such as payroll card accounts and prepaid accounts that receive Federal payments, must comply with Regulation E's overdraft provisions. However, because many prepaid products are not now currently subject to Regulation E, they may not be required to comply with its provisions specific to overdraft

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

[81] *See* Cathy Corby Parker, *Is "What's Old New Again" for Financial Institutions in Prepaid?* (Aug. 2012), *available at* https://www.aba.com/Tools/Offers/Documents/What's%20Old%20Is%20New%20Again%20White%20Paper.pdf.

[82] For example, in 2013 one major program manager derived approximately 32 percent of its operating revenue from cash-reload fees and 30 percent from interchange fees. *See* Green Dot Corp., 2013 Annual Report, at 30 (2014) available at http://phx.corporate-ir.net/phoenix.zhtml?c=235286&p=irol-reportsAnnual.

services. Nonetheless, the Bureau understands that program managers of prepaid products with overdraft services or credit features have structured their products to comply with Regulation E's rules regarding overdraft services. Specifically, the Bureau understands that overdraft programs on GPR cards and payroll card accounts typically provide a disclosure similar to Model Form A-9 in appendix A to Regulation E.[83] This model form contains disclosures that require a consumer to opt-in to the overdraft service before a financial institution may charge the consumer a fee for a point-of-sale debit or ATM transaction that results in an overdraft of a consumer's account.[84]

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

[83] The Bureau understands that prepaid product providers that offer overdraft services typically do so with respect to both their GPR cards and payroll card accounts, to the extent they offer both products.

[84] The Bureau found in its Study of Prepaid Account Agreements that some programs' agreements state that while they do not offer formal overdraft services, they will impose negative balance or other similar fees for transactions that may take an account negative despite generally not permitting such activity. *See* Study of Prepaid Account Agreements, at 24-25. The Bureau does not believe such fees are typically charged.

B. Existing Regulation of Prepaid Products

There are several Federal regulatory regimes, including those regarding consumer protection; receipt of Federal payments; interchange; and international money laundering, terrorist financing, and other financial crimes that apply to some or all types of prepaid products. In addition to EFTA, its implementing regulation, Regulation E, and related guidance, other relevant regulations include Treasury's Financial Management Service's rule on the receipt of Federal payments on prepaid cards;[85] the Board's Regulation II on debit card interchange and routing (12 CFR part 235); and FinCEN's prepaid access rule.[86]

Prudential regulators have also issued guidance about the application of their regulations to prepaid products, program managers, and financial institutions that issue prepaid products. For example, the FDIC has issued guidance regarding pass-through deposit insurance for prepaid accounts.[87] The Office of the Comptroller of the Currency (OCC) has published a guidance bulletin to provide guidance to national banks for assessing and managing the risks associated with prepaid access programs.[88] However, as discussed below, the Bureau believes that there are gaps in the existing Federal regulatory regimes that cause certain prepaid products not to receive full consumer protections, in particular under Regulation E. In addition to Federal regulations that apply to prepaid products, the Bureau also discusses below some State consumer protection laws and other regulations specific to prepaid products.

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[85] 75 FR 80335 (Dec. 22, 2010).

[86] 76 FR 45403 (July 29, 2011).

[87] FDIC General Counsel Opinion No. 8, Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 73 FR 67155, 67157 (Nov. 13, 2008) (FDIC 2008 General Counsel Opinion).

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

1. The Electronic Fund Transfer Act and Related Provisions in Regulation E

Core Provisions of EFTA and Regulation E

Congress enacted EFTA in 1978 with the purpose of "provid[ing] a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems." However, EFTA's primary objective is "the provision of individual consumer rights."[89] Congress also empowered the Board to promulgate regulations implementing EFTA. EFTA section 904(a). With the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), authority to implement most of EFTA transferred to the Bureau.[90] *See* Dodd-Frank Act sections 1061(b) and 1084; 12 U.S.C. 5581(b); 15 U.S.C. 1693a *et seq*.

The regulations first promulgated by the Board to implement EFTA now reside in subpart A of Regulation E, 12 CFR part 1005.[91] These rules provide a broad suite of protections to consumers who make electronic fund transfers (EFTs). An EFT is any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. § 1005.3(b)(1). Regulation E also provides protections for accounts from which consumers can make EFTs. In its initial rulemaking to implement EFTA, the Board developed a broad definition of "account," which closely mirrored the definition of "account" in EFTA.[92]

[89] *See* Public Law 95-630; 92 Stat. 3728 (1978).

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

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

[92] 44 FR 18468, 18480 (Mar. 28, 1979).

The definition provides that, subject to certain specific exceptions, an account is a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. § 1005.2(b)(1).

For covered accounts, Regulation E mandates that consumers receive certain initial disclosures, in writing and in a form that the consumer can keep. § 1005.4(a)(1). As applicable, the initial disclosures must include, among other things, disclosures regarding a consumer's liability for unauthorized EFTs, an error resolution notice, contact information for the financial institution providing the account, the types of transfers a consumer may make and any limitations on the frequency and dollar amount of transfers, and the fees associated with making EFTs. *See generally* § 1005.7(b). Regulation E also sets forth substantive provisions on error resolution and impose limits on a consumer's liability for unauthorized EFTs. *See* §§ 1005.6 and 1005.11. Moreover, Regulation E contains, among other things, provisions specific to periodic statements that generally must be provided in writing (§ 1005.9(b)), the issuance of access devices (§ 1005.5),[93] preauthorized EFTs and compulsory use (§ 1005.10), requirements for overdraft services (§ 1005.17), and ATM disclosures (§ 1005.16).

As discussed above, the Dodd-Frank Act transferred authority to implement most of EFTA from the Board to the Bureau. Since assuming the transferred authority, the Bureau has amended Regulation E in two substantive respects. First, as discussed in more detail in the section-by-section analysis below, the Bureau added consumer protections to Regulation E for certain international fund transfers. 12 CFR 1005.30 *et seq*. Additionally, the Bureau amended

[93] An access device is a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate EFTs. § 1005.2(a)(1).

Regulation E with respect to certain rules pertaining to ATM fee notices.[94] However, before authority transferred from the Board to the Bureau, the Board had revised Regulation E on multiple occasions to add, among other things, protections for products used for the electronic distribution of government benefits, payroll card accounts, gift cards, and gift certificates. The Board's amendments to Regulation E to expand coverage to these additional account types are discussed below.

Amendments to Regulation E Regarding Additional Account Types

In 1994, the Board amended Regulation E to extend Regulation E's protections to accounts used for the electronic distribution of government benefits in what was then 12 CFR 205.15 (1994 EBT Rule).[95] After the Board finalized the 1994 EBT Rule, Congress limited the application of EFTA and Regulation E with respect to State and local electronic benefit transfer programs to only those programs that are "non-needs tested," when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a comprehensive welfare reform law.[96]

The enactment of the statute necessitated a change to the 1994 EBT Rule to exempt needs-tested government benefit programs established or administered under State or local law (*e.g.*, benefits such as those provided under SNAP and the Aid to Families with Dependent Children program). As the Board explained at the time, the revision to EFTA was "enacted by the Congress at the urging of State officials, who expressed concern about the costs of compliance with EFTA and Regulation E. In particular, the States believed that EFTA

[94] 78 FR 18221 (Mar. 26, 2013).

[95] 59 FR 10678 (Mar. 7, 1994).

[96] Public Law 104-193, 110 Stat. 2105 (1996).

provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the [S]tate level."[97] As a result, the Board ultimately adopted a rule exempting EBT programs established or administered by State or local government agencies from Regulation E. However, all accounts used to distribute benefits for Federally-administered programs (including Federal needs-tested programs) and non-needs tested State and local government benefit programs, such as employment-related ones, remained covered by Regulation E.[98]

When the Board resumed rulemaking after enactment of the welfare reform legislation, it also took notice that prepaid cards (at the time referred to as stored-value cards) were beginning to be used by more consumers. The Board sought comment on whether to adopt rules specific to prepaid financial products (other than government benefit accounts) pursuant to its authority under EFTA (1996 Stored-Value Proposal).[99] The Board explained that the facts, as it understood them, supported a determination to include stored-value accounts as accounts under Regulation E. Among the provisions considered in the 1996 Stored-Value Proposal, the Board proposed to extend Regulation E's error resolution provisions to stored-value accounts and provide a periodic statement alternative for such accounts similar to what was adopted for government benefit cards in the 1994 EBT Rule. In the proposal, the Board noted pending legislation in Congress that would address stored-value cards. H.R. 2520, 104th Cong., § 443; S. 650, 104th Cong., § 601 (1995).

Ultimately, Congress directed the Board to conduct a study to evaluate whether provisions of EFTA could be applied to stored-value products without adversely affecting the

[97] 62 FR 3242, 3243 (Jan. 22, 1997).

[98] 62 FR 43467 (Aug. 14, 1997).

[99] 61 FR 19696 (May 2, 1996).

cost, development, and operation of such products.[100] The Board concluded in a March 1997 report that:

> [G]iven the limited experience [at that time] with electronic stored–value products to date, it is difficult to predict whether the benefits to consumers from any particular Regulation E provision would outweigh the corresponding costs of compliance. … [F]ull application of Regulation E would likely impose substantial operating and opportunity costs of compliance. Partial application of Regulation E would be less burdensome than full application but, depending on the details, could still impose significant operating and opportunity costs for some electronic stored-value products.[101]

The Board ultimately did not finalize the 1996 Stored-Value Proposal. In the report, it concluded that the market was evolving rapidly and was not yet ripe for regulation.[102]

The Board next considered changes to Regulation E with respect to prepaid products in 2004, when it proposed amendments to Regulation E to extend it to payroll card accounts established by an employer for providing an employee's compensation on a regular basis.[103] The Board concluded that extending a modified form of Regulation E protections was warranted for payroll card accounts because they are often used as account substitutes. However, as discussed in greater detail below, yet again, the Board decided not to extend such protections to other prepaid products such as general-use prepaid cards, because it concluded that consumers used such cards in many different ways.

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[100] Public Law No. 104–208, 110 Stat. 3009 (1996).

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

[102] *Id.*

[103] 69 FR 55996 (Sept. 17, 2004).

In its final rule, the Board included payroll card accounts within the definition of account in § 1005.2(b) (Payroll Card Rule).[104] The Board also established provisions in Regulation E specific to payroll card accounts that modified certain Regulation E provisions as the Board deemed appropriate. As noted above, Regulation E generally requires financial institutions to provide periodic statements in writing. *See* § 1005.9(b). The Board allowed providers of payroll card accounts to avoid this requirement, if the institution makes available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)). *See* § 1005.18(b). Related provisions in § 1005.18(c) modify other requirements of Regulation E with respect to payroll card accounts. They include modification related to the requirements for initial disclosures, annual error resolution notices (otherwise required by § 1005.8(b)), and error resolution and limitations on liability, in recognition of the modified periodic statement requirement.

As noted above, in adopting the Payroll Card Rule, the Board considered whether also to include GPR cards within Regulation E. The Board ultimately concluded that, as of 2006, it was premature to do so. In its view of the marketplace at that time, the Board noted that consumers did not often use other prepaid products such as general-use prepaid cards in the same way that they used payroll card accounts. The Board stated that "[F]or payroll card accounts that are

[104] 71 FR 51437, 51438 (Aug. 30, 2006).

established through an employer, there is a greater likelihood [than for general-use prepaid cards] that the account will serve as a consumer's principal transaction account and hold significant funds for an extended period of time."[105]

Similarly, in an earlier interim final rule that established that payroll card accounts are covered accounts under Regulation E, the Board expressed its belief that to the extent that consumers use general-use prepaid cards like gift cards, "consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements, and error resolution rights would be quite significant for the issuer."[106] It also noted that GPR cards are "generally designed to make one-time or a limited number of payments to consumers and are not intended to be used on a long-term basis."[107]

In 2009, Congress enacted the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act).[108] Among other provisions, the Credit CARD Act instructed the Board to promulgate new rules regarding expiration dates and dormancy or inactivity fees for gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards. The statute generally excluded general-use prepaid cards that are reloadable and not marketed or labeled as a gift card or gift certificate. Credit CARD Act section 401; EFTA section 915. In 2010, the Board issued the resulting implementing regulations, set forth in § 1005.20 of current Regulation E (Gift Card Rule).[109]

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[105] 71 FR 51437, 51441 (Aug 30, 2006).

[106] 71 FR 1473, 1475 (Jan. 10, 2006).

[107] *Id.*

[108] Public Law 111–24, 123 Stat. 1734 (2009).

[109] 75 FR 16580 (Apr. 1, 2010).

Following the Credit CARD Act, the Gift Card Rule only covers certain general-use prepaid cards. Under the rule, covered general-use prepaid cards are those that are non-reloadable cards or that are reloadable and marketed or sold as a gift card. *See* § 1005.20(a)(3) (definition of a "general-use prepaid card"). Moreover, like the statute, the Gift Card Rule excludes those general-use prepaid cards that are reloadable and not marketed or labeled as a gift card or gift certificate. § 1005.20(b)(2). For covered prepaid products, the Gift Card Rule requires the disclosure of certain fees and restricts a person's ability to impose dormancy, inactivity, or service fees for certain prepaid products, primarily gift cards. § 1005.20(d) and (f). Additionally, among other things, the Gift Card Rule generally prohibits the sale or issuance of covered prepaid products that have an expiration date of less than five years. § 1005.20(e). In adopting the Gift Card Rule, the Board did not apply the majority of Regulation E's protections, including provisions regarding periodic statements, liability for unauthorized transactions, and error resolution to covered prepaid products. However, Congress explicitly gave the Board the authority to do so. Credit CARD Act section 401; EFTA section 915(d)(1).

2. FMS Regulations of the Treasury Department

The Treasury Financial Management Service (FMS), now part of Treasury's Bureau of the Fiscal Service, manages all Federal payments. In 2010, it promulgated an interim final rule that permitted delivery of Federal payment to prepaid cards (the FMS Rule).[110] Among other things, the FMS Rule provides that for a prepaid card to be eligible to receive Federal payments, the card account must be held at an insured financial institution. Additionally, the card account must be set up to meet the requirements for FDIC or NCUSIF pass-through deposit or share

[110] 75 FR 80335 (Dec. 22, 2010). Prior to the effective date of the FMS Rule, prepaid cards (other than those issued under FMS-established programs) were not eligible to receive Federal payments.

insurance, as discussed in greater detail below. Additionally, the card account must not have an attached line of credit or loan feature that triggers automatic repayment from the card account. Moreover, the card account issuer must comply with all of the requirements, and provide the cardholder with all of the consumer protections, that apply to payroll card accounts under Regulation E. 31 CFR 210(b)(5)(i).

Based on Bureau outreach including discussions with industry participants, comment letters received in response to the Prepaid ANPR,[111] as well as a review of numerous prepaid products' terms and conditions, discussed in more detail below, the Bureau believes that many providers currently comply with the FMS Rule for all of their prepaid products, including those not receiving Federal payments. The Bureau further believes that to comply with the FMS Rule, many prepaid product providers had to adjust their systems and programs.[112] For example, to the extent that a provider did not maintain procedures for resolving errors with respect to the prepaid products it offered (or maintained procedures different from what Regulation E requires), the provider had to either adjust its processes to provide these protections or ensure that their prepaid products do not receive Federal payments.

[111] 77 FR 30923 (May 24, 2012).

[112] In issuing the FMS Rule, Treasury noted that it:

> [B]elieves that a number of prepaid cards already provide most, though not necessarily all, of the payroll card protections to cardholders. It is our expectation that some issuers of existing prepaid cards will choose to modify the terms and conditions of the card accounts to include all of the payroll card protections to cardholders, so that their cards will be eligible to receive Federal payments. We also anticipate that as new prepaid card programs are developed, issuers seeking to make the cards available to Federal payment recipients will structure their cards to incorporate Regulation E's payroll card protections.

75 FR 80335, 80338 (Dec. 22, 2010).

3. Pass-Through Deposit Insurance

The FDIC, among other things, protects funds placed by depositors in insured depository institutions. FDIC insurance protects deposit accounts, including checking and savings accounts, money market deposit accounts and certificates of deposit against loss up to $250,000 per depositor, per insured depository institution, within each account ownership category (*e.g.*, for individual owners, co-owners, trust beneficiaries, and the like).[113] The NCUSIF plays a similar role for insured credit unions.[114]

As noted above, the Bureau understands that funds loaded onto prepaid products are typically held in pooled accounts at depository institutions or credit unions. Both the FDIC and NCUA have special rules, discussed below, regarding how such accounts may qualify for, as applicable, FDIC or NCUSIF pass-through insurance. The Bureau believes that provided these requirements are met, most prepaid products are eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance.

With respect to the FDIC's rules for determining the ownership of deposits placed at insured depository institutions by agents or custodians of the true holder of the funds, its 2008 General Counsel Opinion No. 8 provides that FDIC's deposit insurance coverage will "pass through" the custodian to the underlying individual owners of the deposits in the event of failure of an insured depository institution, provided that three specific criteria are met. Those criteria are as follows. First, the account records of the insured depository institution must disclose the existence of the agency or custodial relationship. This requirement can be satisfied by opening the account under a title such as the following: "ABC Company as Custodian for Cardholders."

[113] *See, e.g.*, http://www.fdic.gov/deposit/deposits/dis/.

[114] *See, e.g.*, http://www.ncua.gov/DataApps/Pages/SI-NCUA.aspx.

Second, the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner. Third, the funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian (or other party).[115]

The NCUA's regulations similarly state that:

> [I]f the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.

12 CFR 745.2(c)(2).

NCUA regulations governing share insurance for specific types of accounts provide additional details. For example, provisions governing retirement and other employee benefit plan accounts specifically address pass-through insurance, stating that "[a]ny shares of an employee benefit plan in an insured credit union shall be insured on a 'pass-through' basis, in the amount of up to the [Standard Maximum Share Insurance Amount] for the non-contingent interest of each plan participant, in accordance with § 745.2 of this part." 12 CFR 745.9-2(a)*; see also, e.g.*, 12 CFR 745.3, 745.4, 745.5, 745.8, 745.9-1.

4. Interchange and the Board's Regulation II

Section 1075 of the Dodd-Frank Act added new section 920 to EFTA regarding debit card interchange and amended EFTA section 904(a) to give the Board sole authority to prescribe

[115] FDIC General Counsel Opinion No. 8, *Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms*, 73 FR 67155, 67157 (Nov. 13, 2008), internal citations omitted.

rules to carry out the purposes of section 920.[116] It contains several provisions related to debit cards and electronic debit transactions. EFTA section 920(a)(2) requires that the amount of any interchange fee that an issuer of debit cards receives or charges with respect to an electronic debit transaction be reasonable and proportional to the cost incurred by the issuer with respect to the transaction. It directs the Board to establish standards for assessing whether the amount of any interchange fee is reasonable and proportional to the cost incurred by the issuer. However, as discussed below, there are a few exemptions from the limitation on interchange fees that an issuer may receive from or charge to a merchant.

EFTA section 920(c) sets forth definitions that apply solely for the purposes of EFTA section 920. Section 920(c)(5) defines an electronic debit transaction as "a transaction in which a person uses a debit card." Additionally, section 920(c)(2) defines debit card to include "a general-use prepaid card, as that term is defined in section 915(a)(2)(A)," which is the Credit CARD Act's definition of general-use prepaid card. Accordingly, interchange transaction fees for transactions made with general-use prepaid cards (as defined under the Credit CARD Act) would be subject to the debit card interchange fee restrictions set forth in EFTA section 920(a).

As noted above, EFTA section 920(a) provides certain exemptions from the interchange fee limitations for certain cards. Section 920(a)(7)(A) provides exemptions from the fee restrictions for general-use prepaid (and debit) cards provided to a consumer pursuant to government-administered payment programs and for certain general purpose reloadable prepaid

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

cards. In addition, there is a blanket exemption from the interchange fee limitations for cards of issuers with total assets of less than $10 billion. EFTA section 920(a)(6). Thus, interchange fees for transactions made with these prepaid cards meeting the criteria for the statutory exemptions are generally not subject to the fee restrictions of EFTA section 920(a). However, EFTA section 920(a)(7)(B) provides that after July 21, 2012, interchange fees for transactions made with prepaid cards that receive the exemption set forth in EFTA section 920(a)(7)(A) are nonetheless limited by the Act's interchange fee restrictions if certain fees such as an overdraft fee may be charged with respect to the card. The exemption for interchange fees of cards of issuers with total assets below $10 billion is not subject to section 920(a)(7)(B). In July 2011, the Board promulgated Regulation II (12 CFR part 235) to implement EFTA section 920. The provisions regarding debit card interchange fee restrictions became effective as of October 1 of that year.[117]

5. FinCEN Rules

FinCEN also regulates prepaid products pursuant to its mission, which it describes as to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. As noted above, it has issued regulations to regulate certain prepaid products. In 2011, pursuant to a mandate under the Credit CARD Act, FinCEN published a final rule to amend BSA regulations applicable to money services businesses with respect to stored value or "prepaid access" (FinCEN's Prepaid Access Rule). [118] Subject to certain specific exemptions, a "prepaid program" is defined as an "arrangement under which one or more persons acting together provide(s) prepaid access." 31 CFR 1010.100(ff)(4)(iii). The

[117] 76 FR 43394 (July 20, 2011); 76 FR 43478 (July 20, 2011); *amended by* 77 FR 46258 (Aug. 3, 2012).

[118] 76 FR 45403 (July 29, 2011).

term "prepaid access" is defined as "access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification." 31 CFR 1010.100(ww).

FinCEN's Prepaid Access Rule established a comprehensive approach toward regulating prepaid access. Among other things, the Rule requires each provider or seller of prepaid access to: (1) file suspicious activity reports; (2) collect and retain certain customer and transactional information; and (3) maintain an anti-money laundering program. These BSA requirements are similar to those that apply to other categories of money services businesses.[119]

6. State Laws

Many States have passed consumer protection laws or other rules to regulate prepaid products in general, and in particular, certain types of prepaid products such as government benefits cards. Illinois is an example of a State that has issued regulations applicable to prepaid products in general. In 2013, Illinois imposed pre-acquisition, on-card and at-the-time-of-purchase disclosure requirements on "general-use reloadable prepaid cards."[120] IL SB 1829 (2013), Public Act 098-0545, *codified at* 205 Ill. Comp. Stat. 616/10 and 616/46. California is an example of a State that has enacted laws on specific types of prepaid products. In 2013,

[119] 76 FR 45403, 45419 (July 29, 2011).

[120] The Illinois law defines "general use reloadable card" as:

> [A] card, code, or other access device that is: (1) issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount in exchange for payment; (2) issued under an agreement containing terms and conditions that permit funds to be added to the card, code, or other device after the initial purchase or issuance, including a temporary non-reloadable card issued solely in connection with a general use reloadable card, code, or other device; and (3) not marketed or labeled as a gift card or gift certificate; and (4) redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines.

205 ILCS 616/10

California enacted a law that extended protections similar to the FMS Rule to prepaid products receiving unemployment benefits and basic-needs benefits from the State of California. CA A 1820 (2013), ch. 557, *codified at* Cal. Unemp. Ins. Code § 1339.1 and Cal. Welf. & Inst. Code § 11006.2. In 2014, California enacted another law extending similar protections to cards used for distribution of child support payments. CA A 2252 (2014), ch. 180, *codified at* Cal. Fam. Code § 17325.

Further, the Bureau understands that many States have money transmitter laws that may apply to prepaid product providers. The laws vary by State but generally require companies to be licensed and to post a surety bond to cover accountholder losses, if the providers become insolvent. Most States further require that the companies hold high-grade investments to back the money in customer accounts. However, the Bureau also understands that States vary in the amount of their oversight of companies licensed under the money transmitter laws, and many may not have streamlined processes to pay out funds in the event a prepaid product provider were to file for bankruptcy protection.[121]

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

In this rulemaking, the Bureau has considered whether and to what extent it should regulate credit features offered in connection with prepaid accounts. In approaching this question, the Bureau is conscious of the regulatory framework that has developed, including for credit products subject to Regulation Z and overdraft services on traditional deposit accounts that are exempt from Regulation Z but subject to certain parts of Regulation E. On several occasions,

[121] *See, e.g.*, Pew Charitable Trusts, *Imperfect Protection—Using Money Transmitter Laws to Insure Prepaid Cards* (Mar. 2013).

Federal regulators have addressed deposit account overdraft services in various rulemakings including those conducted pursuant to Regulations E and Z as well as in public guidance documents. The relevant actions are discussed below.

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

Credit products are generally subject to the Truth in Lending Act and Regulation Z, although the application of specific provisions of the statute and regulation depends on the attributes of the particular credit product. In 1968, Congress enacted TILA to promote the informed use of consumer credit by requiring disclosures about its terms and cost and to provide standardized disclosures. Congress has revised TILA several times and its purpose now is to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. 1601(a). TILA thus defined credit broadly to mean the right granted by a creditor to a debtor to defer payment of debt or incur debt and defer its payment. 15 U.S.C. 1602(f).[122]

Congress has amended TILA on several occasions to provide consumers of certain types of credit products with additional protections. The Fair Credit Billing Act (FCBA),[123] enacted in 1974, added a number of substantive protections for consumers who use open-end credit[124] or

[122] The term creditor in Regulation Z generally means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. *See* § 1026.2(a)(17)(i).

[123] Public Law 93-495, 88 Stat. 1511 (1974).

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

use credit cards subject to TILA. Public Law No. 93-495 (Oct. 28, 1974). For example, the FCBA increased rights and remedies for consumers who assert billing errors and required a minimum 14-day grace period for payments for creditors that offer a grace period, prompt re-crediting of refunds, and refunds of credit balances. Credit cards are also subject to these requirements,[125] but also to a broad range of additional protections. Regulation Z defines the term "credit card" to mean any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 1026.2(a)(15)(i). A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. *See* § 1026.2(a)(15)(iii). Cognizant that many financial institutions issue credit cards to cardholders with whom they also have a deposit account relationship, Congress in the FCBA also restricted the right of such institutions from taking funds out of a deposit account to satisfy their credit card claims.[126] In 1988, Congress amended TILA through the Fair Credit and Charge Card Disclosure Act. These revisions required issuers of credit cards and charge cards to provide certain disclosures at the time of application and solicitation.

In 2009, Congress enhanced protections for credit cards in the Credit CARD Act, which it enacted to "establish fair and transparent practices related to the extension of credit" in the

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

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

[126] *See Gardner v. Montgomery County Teachers Fed. Credit Union*, 864 F.Supp.2d (D. Md. 2012) (providing an overview of the FCBA's no offset provision).

credit card market.[127] The Credit CARD Act regulates both the underwriting and pricing of credit card accounts. Specifically, it prohibits credit card issuers from extending credit without assessing the consumer's ability to pay and imposes special rules regarding the extension of credit to persons under the age of 21 and to college students. The Credit CARD Act also restricts the fees that an issuer can charge during the first year after an account is opened, and limits the instances and the amount of such fees in which issuers can charge "back-end" penalty fees when a consumer makes a late payment or exceeds his or her credit limit. The CARD Act also restricts the circumstances under which issuers can increase interest rates on credit cards and establishes procedures for doing so. The Board generally implemented these provisions in subpart G of Regulation Z. Thus, while all open-end (not home-secured) credit plans receive some of TILA's protections, generally only open-end (not home-secured) credit plans that are accessed by credit cards receive the additional protections of the Credit CARD Act.

Although EFTA does not generally focus on credit issues, Congress provided one important protection in that statute as well. Known as the compulsory use provision, it provides that no person may "condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers." EFTA section 913(1).[128] (A preauthorized electronic fund transfer is an electronic fund transfer authorized in advance to recur at substantially regular intervals, such as a recurring direct deposit or ACH debit.) Where applicable, the compulsory use provision thus prevents a creditor from requiring a particular

[127] Public Law No. 111-24, 123 Stat. 1734 (2009).

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

form of payment, such as a recurring ACH debit to another account, as a form of repayment of the credit. This provides consumers with the ability to control how and when they repay credit and does not allow a creditor to insist on a particular form of repayment. Thus, as implemented in Regulations Z and E, some of these protections are broadly applicable to credit generally while others are specific to particular credit products. For example, open-end lines of credit that consumers can link to a deposit account to pull funds when the account has insufficient funds are subject to certain disclosure requirements under Regulation Z, certain provisions of the FCBA, and the compulsory use provision under Regulation E (although compulsory use exempts overdraft lines of credit).

2. Federal Regulatory Treatment of Deposit Account Overdraft Services

A separate regulatory regime has evolved over the years with regard to treatment of overdraft services, which started as courtesy programs under which financial institutions would decide on a manual, ad hoc basis to cover particular transactions for which a consumer lacked funds in their deposit account rather than to return the transactions and subject consumers to a not-sufficient-funds (NSF) fee, merchant fees, and other negative consequences from bounced checks. Although Congress did not exempt overdraft services or similar programs offered in connection with deposit accounts from TILA, the Board in issuing Regulation Z in 1969 carved financial institutions' "bounce-protection" programs out of the new regulation.[129] *See, e.g.*, § 1026.4(c)(3) (excluding charges imposed by a financial institution for paying items that overdraw an account from the definition of "finance charge," unless the payment of such items

[129] 34 FR 2002 (Feb. 11, 1969).

and the imposition of the charge were previously agreed upon in writing); § 1026.4(b)(2).[130] The Board distinguished between "bounce protection programs" where there is no written agreement to pay items that overdraw the account, and more formal, line-of-credit overdraft programs where there is a written agreement to pay overdrafts. Because financial institutions reserved discretion to pay particular overdrafts and exercised that discretion on an ad hoc basis, the Board exempted informal bounce protection programs but subjected overdraft lines of credit to Regulation Z when the creditor imposes a finance charge or the line of credit is accessed by a debit card.[131]

The Board revisited the exception of bounce protection programs from Regulation Z in 1981, in a rulemaking in which the Board implemented the Truth in Lending Simplification and Reform Act.[132] In the related proposal, the Board considered adjusting its overdraft exemption to apply only to "inadvertent" overdrafts because, the Board stated, a charge imposed for honoring an instrument under any agreement between the institution and the consumer is a charge imposed for a credit extension and thus fits the general definition of a finance charge, regardless of whether the charge and the honoring of the check are reflected in a written agreement.[133] Ultimately, however, the Board made only a "few minor editorial changes" to the exception in § 1026.4(c)(3) from the definition of finance charge that applied to fees for paying items that overdraw an account where there is no written agreement to pay, concluding that it

[130] Section 1026.4(b)(2) provides that any charge imposed on a checking or other transaction account is an example of a finance charge only to the extent that the charge exceeds the charge for a similar account without a credit feature.

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

[132] Public Law 96-221, sec. 601, 94 Stat. 132; 45 FR 80648 (Dec. 5, 1980).

[133] *Id.* at 80657.

would exclude from Regulation Z "overdraft charges from the [definition of] finance charge unless there is an agreement in writing to pay items and impose a charge." [134]

The Board also took up the status of bounce protection programs in the early 1980s in connection with the enactment of EFTA. As noted above, EFTA's compulsory use provision generally prohibits financial institutions or other persons from conditioning the extension of credit on a consumer's repayment by means of preauthorized electronic fund transfers. The Board, however, exercised its EFTA section 904(c) exception authority to create an exception to the compulsory use provision for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. *See* § 1005.10(e)(1). In adopting this exception, the Board aligned Regulation E with its approach to overdraft in Regulation Z – it exempted overdraft services from rules otherwise applicable to credit products. The Board stated that "overdraft protection is a service that financial institutions have been providing to consumers at little or no extra cost beyond the cost of the protected account."[135]

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

[134] 46 FR 20848, 20855 (Apr. 7, 1981).

[135] 46 FR 2972, 2973 (Jan. 13, 1981).

transactional capabilities by replacing consumers' ATM-only cards with debit cards that consumers could use to make electronic payments to merchants and service providers directly from their checking accounts using the major payment networks (and thus most merchants could accept them).[136] As a result, debit card transaction volumes grew quickly as payment networks that enable these transactions broadened. Acceptance by grocery stores, gas stations, fast food restaurants, and other retailers helped to drive the popularity of debit card payments across regional and global ATM networks (accessed by using a PIN). By the late 1990s, "signature debit" transaction volumes became the most common type of debit card transaction.[137] These debit cards offered acceptance at all merchants that honored payments from the major payment networks, such as internet retailers.[138]

As a result of these operational changes, overdraft services became a significant source of revenue for banks and credit unions as the volume of transactions involving checking accounts increased due primarily to the growth of debit cards.[139] Before debit card use grew, overdraft fees on check and ATM transactions formed a greater portion of deposit account overdrafts.

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

[137] Fumiko Hayashi, Fed. Reserve Bank of Kansas City, *The New Debit Card Regulations: Initial Effects on Networks and Banks*, Econ. Rev., 4th quarter 2012, at 83 chart 2. With respect to "signature debit" transactions, a consumer does not use a PIN but instead typically signs a copy of a transaction receipt provided by the merchant in order to affirm the consumer's identity. For further information on the difference between signature-based and PIN-based card transactions, *see*, for example, the preamble of the Board's proposed rule to implement the Durbin amendment, 75 FR 81722, 81723 (Dec. 28, 2010).

[138] *See generally* CFPB Overdraft White Paper, at 11-17 (explaining growth of debit card transactions from consumers' deposit accounts) *available at* http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.

[139] CFPB Overdraft White Paper, at 16.

Debit card transactions presented consumers with markedly more opportunities to incur an overdraft fee when making a purchase because of increased acceptance and use of debit cards for relatively small transactions (*e.g.*, fast food and grocery stores).[140] Over time, revenue from overdraft increased and began to influence significantly the overall cost structure for many deposit accounts, as providers began relying heavily on back-end pricing while eliminating or reducing front-end pricing (*i.e.*, free checking accounts) as discussed above.[141]

As a result of the growth of debit card transactions and the changing landscape of deposit account overdraft services, Federal banking regulators expressed increasing concern about consumer protection issues and began a series of issuances and rulemakings. First, in September 2001, the Office of the Comptroller of the Currency (OCC) released an interpretive letter expressing concern about overdraft protection services.[142] The letter noted that overdraft services are extensions of credit but that related fees may not be finance charges under Regulation Z. In declining to issue a "comfort letter" regarding an unnamed overdraft service, the OCC called attention to a number of troubling practices, including inadequate disclosure to consumers of the risk of harm from overdraft services and failure to properly help consumers who were using overdraft services as "a means of meeting regular obligations" to find more economical forms of credit.[143]

The Board also signaled concern with overdraft services in a number of rulemaking actions. In a 2002 proposal to amend Regulation Z with regard to the status of certain credit

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[140] *See* CFPB Overdraft White Paper, at 11-12.

[141] *See id.*, at 16-17.

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

[143] OCC Interpretive Letter No. 914.

card-related fees and other issues, the Board noted that some overdraft services may not be all that different from overdraft lines of credit and requested comment on whether and how Regulation Z should be applied to banks' bounce-protection services, in light of the Regulation's exclusion of such services but inclusion of lines-of-credit where a finance charge is imposed or is accessed by a debit card.[144] The Board did not modify the Regulation Z exemptions when it issued final rules in 2003,[145] but proposed revisions to Regulation DD (which implements the Truth in Savings Act) and its commentary in 2004 to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally and to address concerns about advertised automated overdraft services in particular.[146] The Board specifically noted that it was not proposing to cover overdraft services under TILA and Regulation Z, but that further consideration of the need for such coverage would be appropriate if consumer protection concerns about these overdraft services were to persist in the future.[147] When the Board finalized the Regulation DD proposal in 2005, it noted that it declined at that time to extend Regulation Z to overdraft services. In doing so, it noted that industry commenters were concerned about the cost of imposing Regulation Z requirements on deposit accounts and about the compliance burden of providing an APR calculated based on overdraft fees without corresponding benefits to consumers in better understanding the costs of credit. The Board also noted that some members of its Consumer Advisory Council believed that overdraft services are the functional equivalent of a traditional overdraft line of credit and thus should be subject to

[144] 67 FR 72618, 72620 (Dec. 6, 2002).

[145] The March 2003 final rule preamble stated that "[t]he Board's staff is continuing to gather information on these services, which are not addressed in the final rule." 68 FR 16185 (Apr. 3, 2003).

[146] 69 FR 31760 (June 7, 2004).

[147] *Id.* at 31761.

Regulation Z, but that financial institutions' historical practice of paying occasional overdrafts on an ad hoc basis should not be covered by Regulation Z. While not specifically addressing these concerns, the Board emphasized that its decision not to apply Regulation Z did not preclude future consideration regarding whether it was appropriate to extend Regulation Z to overdraft services.[148]

In February 2005 (prior to the Board having finalized the Regulation DD changes discussed above), the Federal banking agencies also issued joint guidance on overdraft programs in response to the increased availability and customer use of overdraft services (Joint Guidance).[149] The purpose of the Joint Guidance was to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services. It grew out of concern that

> [D]isclosure, and implementation of some overdraft protection programs, intended essentially as short-term credit facilities, are of concern [to the Federal banking agencies]. For example, some institutions have promoted this credit service in a manner that leads consumers to believe that it is a line of credit by informing consumers that their account includes an overdraft protection limit of a specified dollar amount without clearly disclosing the terms and conditions of the service, including how fees reduce overdraft protection dollar limits, and how the service differs from a line of credit.[150]

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[148] 70 FR 29582, 29584-85 (May 24, 2005). In this 2005 rulemaking, the Board revised Regulation DD to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their deposit accounts. Among other things, the final rule required institutions that promote the payment of overdrafts in an advertisement to disclose on periodic statements, total fees imposed for paying overdrafts and total fees imposed for returning items unpaid on periodic statements, both for the statement period and the calendar year to date, and to include certain other disclosures in advertisements of overdraft services. Ultimately, in 2009, the Board expanded this provision to all institutions not just those that promote the payments of overdrafts. *See* 74 FR 5584 (Jan. 29, 2009).

[149] 70 FR 9127 (Feb. 24, 2005) (Joint Guidance) *available at* http://www.gpo.gov/fdsys/pkg/FR-2005-02-24/pdf/05-3499.pdf. *See also* Office of Thrift Supervision Guidance on Overdraft Protection Programs, 70 FR 8428 (Feb. 18, 2005).

[150] 70 FR 9127, 9129 (Feb. 24, 2005).

The Joint Guidance stated that "the existing regulatory exceptions [*i.e.*, exceptions in Regulation Z such that the Regulation does not apply] were created for the occasional payment of overdrafts, and as such could be reevaluated by the Board in the future, if necessary. Were the Board to address these issues more specifically, it would do so separately under its clear [TILA] authority."[151] The Joint Guidance went on to state that "[w]hen overdrafts are paid, credit is extended. Overdraft protection programs may expose an institution to more credit risk (*e.g.*, higher delinquencies and losses) than overdraft lines of credit and other traditional overdraft protection options to the extent these programs lack individual account underwriting."[152] This guidance remains in effect.

In the late 2000s as controversy regarding overdraft services continued to mount despite the increase in regulatory activity, Federal agencies began exploring various additional measures with regard to overdraft, including whether to require that consumers affirmatively opt in before being charged for overdraft services. First, in May 2008, the Board along with the National Credit Union Administration and the former Office of Thrift Supervision proposed to exercise their authority under section 5 of the Federal Trade Commission Act (FTC Act)[153] to prohibit institutions from assessing any fees on a consumer's account in connection with an overdraft service, unless the consumer was given notice and the right to opt out of the service, and the consumer did not opt out.[154] At the same time, the Board issued a proposal under Regulation DD to expand disclosure requirements and revise periodic statement requirements to provide

[151] *Id.* at 9128.

[152] *Id.*

[153] Section 5 of the FTC Act prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. 45. *See also* Federal Deposit Ins. Act section 8 (extending to the Board authority to take appropriate action when unfair or deceptive acts or practices are discovered). 12 U.S.C. 1818.

[154] 73 FR 28904 (May 19, 2008).

aggregate totals for overdraft fees and for returned item fees for the periodic statement period and year-to-date.[155] The Board finalized portions of the Regulation DD proposal in January 2009.[156] In addition, although the three agencies did not finalize their FTC Act proposal, the Board ultimately adopted a similar opt-in requirement for ATM and point of sale transactions under Regulation E in late 2009.

The overdraft opt-in rule in Regulation E applies to all accounts covered by Regulation E, including payroll card accounts. In addressing overdraft services for the first time as a feature of deposit accounts in Regulation E,[157] the Board concluded that the opt-in rule carried out "the express purposes of EFTA by: (a) Establishing notice requirements to help consumers better understand the cost of overdraft services for certain EFTs; and (b) providing consumers with a choice as to whether they want overdraft services for ATM and one-time debit card transactions in light of the costs associated with those services."[158] Not surprisingly, the rule did not expressly discuss GPR cards, which as noted above, the Board had not subjected to Regulation E coverage.[159]

Following the adoption of the Board's overdraft opt-in-rule, the FDIC expanded on the previously-issued Joint Guidance when it issued a Financial Institution Letter that reaffirmed its existing supervisory expectations with respect to overdraft payment programs generally and

[155] 73 FR 28730 (May 19, 2008).

[156] 74 FR 5584 (Jan. 29, 2009). Specifically, this rule required, among other things, all depository institutions to disclose aggregate overdraft fees on periodic statements, and not solely institutions that promote the payment of overdrafts.

[157] 74 FR 59033 (Nov. 17, 2009).

[158] *Id.* at 59037.

[159] *Id.* at 59040.

provided specific guidance with respect to automated overdraft payment programs.[160] In 2011, the OCC proposed similar guidance regarding automatic overdraft programs and deposit advance products. This guidance, if finalized, would have clarified the OCC's application of principles of safe and sound banking practices in connection with deposit-related consumer credit products such as automated overdraft services and direct deposit advance programs.[161] The OCC withdrew this proposed guidance in 2013.[162]

Since the Bureau assumed authority from the Board for implementing most of EFTA in 2011, it has taken a number of steps – including research, analysis, and solicitation of comment – to assess the impact and efficacy of the Board's 2009 overdraft opt-in rule as it pertains to deposit accounts. In early 2012, the Bureau issued a Request For Information (RFI) that sought input from the public on a number of overdraft topics, including: lower cost alternatives to overdraft protection programs, consumer alerts and information provided regarding balances and overdraft triggers, the impact of changes to Regulations DD and E and overdraft opt-in rates, the impact of changes in financial institutions' operating policies, the economics of overdraft programs, and the long-term impact on consumers.[163] In response, the Bureau received over 1000 comments. This RFI did not request information specific to prepaid products, and few commenters specifically addressed prepaid products. The Bureau has also undertaken significant

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

[161] 76 FR 33409 (June 8, 2011).

[162] 78 FR 25353 (Apr. 30, 2013).

[163] 77 FR 12031 (Feb. 28, 2012).

research into overdraft services that has resulted, to date, in the release of a white paper of initial data findings in June 2013 and a data point in July 2014.[164]

The Bureau has previously indicated that it is considering whether rules governing overdraft and related services in connection with deposit accounts are warranted, and, if so, what types of rules would be appropriate. A possible rulemaking might include new or revised disclosures or address specific acts or practices.[165]

3. Other Relevant Federal Regulatory Activity

In addition to the two general regulatory regimes governing credit products generally and overdraft services as outlined above, two Federal initiatives have specifically addressed the possibility of credit features being offered in connection with prepaid products. First, the Treasury FMS Rule (described above), adopted in late December 2011, only permits Federal payments to be deposited onto a prepaid product if the product is not attached to a line of credit or loan agreement under which repayment from the account is triggered upon delivery of the Federal payments, among other conditions. *See* 31 CFR 210.5(b)(5)(i)(C). The Supplementary Information to that Interim Final Rule indicates that the goal of this requirement is to prevent payday lending and other arrangements in which a financial institution or creditor "advances" funds to a cardholder's account, and then repays itself for the advance and any related fees by taking some or all of the cardholder's next deposit. [166] The Treasury FMS Rule does not, however, directly address the permissibility of overdraft services.

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[164] CFPB Overdraft White Paper, *available at* http://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf.; CFPB Overdraft Data Point, available at http://www.consumerfinance.gov/reports/data-point-checking-account-overdraft/.

[165] *See* http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201404&RIN=3170-AA42.

[166] 75 FR 80335 (Dec. 22, 2010).

Second, as is discussed above in the broader regulatory overview, the Board's Regulation II implementing provisions of the Dodd-Frank Act generally caps interchange fees that may be imposed on debit cards. However, Regulation II provides exemptions from the fee restrictions for certain GPR cards; as a result, interchange fees for transactions made with these prepaid cards are generally not subject to the fee restrictions of EFTA section 920(a). 12 CFR 235.5(d)(1). However, EFTA, as amended by the Dodd-Frank Act, carves out of this exemption interchange fees for transactions made with these prepaid cards if, with respect to the card, an overdraft fee may be charged. EFTA and Regulation E provide a separate, blanket exemption for cards or issuers with assets of less than $10 billion, so these cards are not subject to the fee restrictions even if overdraft fees may be charged on the account.

Separately, the Department of Defense (the Department) recently proposed amendments to its regulation (32 CFR Part 232) that implements the Military Lending Act (MLA), 10 U.S.C. 987, *et seq*.[167] Under the MLA, a creditor generally may not apply a military annual percentage rate (MAPR) greater than 36 percent in connection with an extension of consumer credit to a military service member or dependent. 10 U.S.C. 987(b). The Department's proposal would modify its regulation to expand the scope of coverage to which the regulation applies to a broad range of open-end and closed end credit products, but would exclude overdraft services that are exempted from Regulation Z as discussed above.[168] For open-end (not home secured) credit card accounts, any credit-related charge that is a finance charge under Regulation Z (as well as certain other charges) would be included in calculating the MAPR[169] for a particular billing cycle

[167] 79 FR 58602 (Sept. 29, 2014).

[168] 79 FR 58602 at 58616.

[169] 79 FR 58602 at 58610.

and the MAPR for that billing cycle could not exceed 36 percent.[170] For such credit card accounts, the Department's proposal, however, provides that a card issuer does not have to include in the calculation of the MAPR any charge that is a bona fide fee and that is reasonable and customary for that type of fee.[171]

D. The Bureau's May 2012 Advance Notice of Proposed Rulemaking

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

The Bureau received over 220 comments from a variety of commenters.[172] Industry commenters, including depository institutions and credit unions, prepaid program managers, payment networks and industry trade associations, submitted the majority of comments. The

[170] 79 FR 58602 at 58619.

[171] 79 FR 58602 at 58638. *See* proposed § 232.4(d) of the Department's proposal. The exclusion from the MAPR calculation for bona fide fees does not apply to periodic rates. It also does not apply to any credit insurance premium, including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, or to any fees for credit related ancillary products sold in connection with and either at or before consummation of the credit transaction or upon account opening, because those charges are expressly included in the definition of "interest" in the applicable statute (10 U.S.C. 987(i)(3)) and therefore must be included in the MAPR calculation.

[172] The comments can be reviewed at http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0019-0001.

Bureau also received comment letters from consumer and other interest groups, as well as several individual consumers. In preparing this notice, the Bureau has evaluated the comments received in response to the Prepaid ANPR and has engaged in additional analysis of prepaid products and consumer behavior. As discussed in greater detail in the section-by-section analysis below, the proposal covers a variety of prepaid products including GPR cards. The Bureau notes that covered account types have different characteristics.

E. Other Payments-Related Bureau Actions

In June 2014, the Bureau issued a Request for Information regarding the opportunities and challenges associated with the use of mobile financial products and services (Mobile RFI).[173] As part of the Mobile RFI, the Bureau is exploring how mobile technologies are impacting economically vulnerable consumers with limited access to traditional banking systems. The Mobile RFI asked questions on a number of topics, including access for economically vulnerable consumers and the ways that mobile technologies could expand access to financial services, the use of mobile technologies for real-time money management, the types of customer service or technical assistance that are available to consumers when they use mobile products, and privacy and data security issues. The comment period on the Mobile RFI ended on September 10, 2014. The Bureau received approximately 48 comments, which it is in the process of reviewing.

In July 2014, the Bureau began accepting consumer complaints about prepaid products.[174] In addition to prepaid cards, consumers may also submit complaints about payroll

[173] 79 FR 33731 (June 12, 2014).

[174] Press Release, *CFPB Begins Accepting Consumer Complaints on Prepaid Cards and Additional Nonbank Products, available at* http://www.consumerfinance.gov/newsroom/cfpb-begins-accepting-consumer-complaints-on-prepaid-cards-and-additional-nonbank-products./.

cards, government benefit cards, gift cards, and mobile wallets.[175] In August 2014, the Bureau issued a consumer advisory on virtual currencies that discussed the risks to consumers posed by such currencies.[176] At the same time, the Bureau also began accepting consumer complaints regarding virtual currencies.[177]

The section-by-section analysis below discusses in greater detail the potential application of this proposed rule to certain mobile financial products and services. The Bureau also recognizes that the proposed rule may have potential application to virtual currency and related products and services. As a general matter, however, the Bureau's analysis of mobile financial products and services, as well as and virtual currencies and related products and services, including the applicability of existing regulations and this proposed regulation to such products and services, is ongoing.

III. Overview of Outreach and Related Industry and Consumer Research

The Bureau conducted extensive and significant additional outreach and research since it issued the Prepaid ANPR as part of its efforts to study and evaluate prepaid products. In addition to reviewing the comments received, the Bureau has engaged in a variety of outreach and other research efforts to understand better how consumers use prepaid products and where problems might exist or potentially develop. These efforts include meetings with industry, consumer groups, and non-partisan research and advocacy organizations, market research and monitoring, and related efforts. Relatedly, the Bureau has collected information from industry participants pursuant to section 1022(c)(4) of the Dodd-Frank Act, which allows the Bureau to gather

[175] *See* http://www.consumerfinance.gov/complaint/#credit-card.

[176] CFPB Consumer Advisory, *Risks to Consumers Posed by Virtual Currencies* (Aug. 2014), *available at* http://files.consumerfinance.gov/f/201408_cfpb_consumer-advisory_virtual-currencies.pdf.

[177] *See* http://www.consumerfinance.gov/complaint/#money-transfer.

information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers to aid its market monitoring efforts.

Further, as discussed in greater detail below, the Bureau conducted qualitative testing of prototype disclosure forms with consumers who use prepaid cards and reviewed numerous prepaid products' terms and conditions. The Bureau sought to determine current industry practices in a number of areas to inform its understanding of the potential costs and benefits of extending various Regulation E provisions to prepaid accounts. As described in greater detail below, Bureau staff conducted a study of publicly-available account agreements for prepaid products that appear to meet the Bureau's proposed definition of the term "prepaid account."

A. Focus Groups and Consumer Testing

As noted above, in formulating this notice, the Bureau engaged a third-party vendor, ICF International (ICF), to coordinate qualitative consumer testing consisting of informal focus groups and one-on-one interviews. The Bureau sought to gain insight about how and why consumers use prepaid cards (including GPR and payroll cards), as well as to see how they interact with prototype forms developed by the Bureau. Under direction from the Bureau, ICF facilitated four focus groups in December 2013 to gather in-depth information about how consumer shop for prepaid cards and factors they consider when acquiring such products. Each focus group lasted approximately ninety minutes, included eight to ten participants, and was held in Bethesda, Maryland. In early 2014, ICF facilitated three rounds of one-on-one interviews, each lasting approximately 60 to 75 minutes, in Baltimore, Maryland; Los Angeles, California; and Kansas City, Missouri. Each round included nine or ten participants. In conjunction with the release of this notice, the Bureau is making available a report prepared by ICF regarding the

focus groups and consumer testing (ICF Report).[178] The testing and focus groups were conducted in accordance with OMB Control Number 3170-0022.

A total of sixty-nine consumers representing a range of ages, races, and education levels participated in the focus groups and individual interviews.[179] Specifically, 40 consumers participated in the focus groups, and 29 consumers participated in the interviews. All testing was conducted in English, but both the focus groups and individual interviews included native speakers of languages other than English. All participants self-identified as having used a prepaid card in the previous six months (for focus group participants) or 12 months (for interview participants).[180] Several participants had payroll cards in addition to or in lieu of GPR cards.

Participants reported that they used prepaid cards for a variety of reasons. While some participants reported using, as applicable, a GPR card or payroll card, in lieu of a deposit account, others reported that they also had a deposit account and used their prepaid cards only occasionally. Still others specifically mentioned using their cards primarily for online purchases. These participants expressed the belief that prepaid cards addressed some of their privacy and security concerns, in that cards could remain anonymous and cardholders could not lose more funds than what they loaded onto the card. Some participants, particularly those that did not have deposit accounts, described prior bad experiences with banks in general and overdraft fees on checking accounts in particular, in explaining why they chose to use a prepaid card.

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[178] For a detailed discussion of the Bureau's consumer testing, *see* ICF Report, *available at* http://files.consumerfinance.gov/f/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf .

[179] For a detailed discussion of the methodology used in the consumer testing, including participant selection, *see* ICF Report, at 2-4.

[180] Based on oral responses, it appeared that perhaps one out of the forty focus group participants may have only used a gift card and not a GPR or payroll card. *See* ICF Report, at 4.

Focus group findings highlights. Few focus group participants reported doing any formal comparison shopping before purchasing a prepaid card in a retail store. Further, while some participants who had purchased their cards online reported doing more research about different cards' terms and conditions pre-purchase, they, too, rarely engaged in systematic comparison shopping. Most participants reported that they were very aware of the fees associated with their current prepaid card, but few reported understanding all of the fees when they purchased their prepaid cards. Instead, most reported learning about a card's fees post-acquisition after unknowingly incurring certain fees and seeing that the fees were deducted from their card balance. When asked about which fees were most important to them, almost all participants cited one of the following fees: (1) monthly maintenance fees; (2) per purchase fees; (3) ATM withdrawal fees; and (4) cash reload fees. ICF also asked participants to share their thoughts about how easily they could understand the information included in on-package disclosures from two existing prepaid cards (brand names redacted). Comprehension varied. Many participants overlooked any asterisks included on these disclosures to explain how fees may be assessed or how fees differ from what was disclosed. Participants were also confused about whether the disclosures provided a comprehensive overview of all potential fees.

Based on the observations from and information gathered in focus groups and the Bureau's outreach more generally, the Bureau and ICF developed several prototype disclosure forms to test with participants in the individual interview segment of the consumer testing. The Bureau and ICF focused mainly on designing and testing "short form" disclosures that would highlight key information about a hypothetical prepaid product in a format that would be easy to understand, yet small enough to fit on existing packaging material used to market prepaid

products on J-hooks in retail stores.[181] The Bureau and ICF developed short form prototypes that would accommodate prepaid products that have a single service plan and prototypes for products that have multiple service plans. A "long form" prototype form that included all of the hypothetical prepaid product's fees was also developed.

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

In the first round of testing, the Bureau focused on testing a variety of prototype short form disclosures. Specifically, the Bureau tested short forms that: (1) included a "top-line" of four fees displayed more prominently than the other fees; (2) grouped similar fees by category; or (3) listed fees without including either the top-line or categories. Generally, participants were able to understand the basic fee information presented in all of the prototype disclosure forms. However, many participants expressed a desire for a form that is both easy to read and that prominently displays the most important fee information. These participants also expressed that they felt that prototype forms that included a "top line" disclosure of certain fees accomplished these objectives.

Another design issue on which the Bureau and ICF focused was whether and how to develop a form that might not include all of a prepaid product's fees and full explanations of the

[181] The Bureau notes, however, that under the proposal, the short form would be disclosed in all acquisition scenarios, not just retail stores. *See* section-by-section analysis of § 1005.18(b), below.

conditions under which those fees could be imposed. In other words, the Bureau used testing to determine how to best present a subset of key information about a prepaid product in the short form disclosure, while effectively indicating to consumers that additional information not included on the form was also available. The first round's prototype forms included multiple asterisks to indicate additional information was available for fees that could vary in amount. Many participants, however, did not notice the text associated with the asterisks or struggled to accurately identify which symbol was associated with which fee.

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

Before the second round of testing, the Bureau also posted a blog on its website that included two of the prototype short form designs used during the second round of testing in Los Angeles.[182] The Bureau invited the public to provide impressions of the prototypes and suggest how the Bureau could improve their design and submit their feedback through comments directly on the blog, by sending an e-mail, or through posting a message to the Bureau via social media. The Bureau received over 80 comments from industry, consumer advocacy groups and

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

individual consumers, in addition to e-mail submissions and other correspondence. These comments informed the Bureau's form design process for the third round of testing as well as the model forms.

B. Study of Prepaid Product Features

In order to better understand existing compliance with Regulation E and other features and protections currently offered by prepaid products, the Bureau conducted a study of publicly-available account agreements for prepaid products that appear to meet the Bureau's proposed definition of the term "prepaid account" (Study of Prepaid Account Agreements).[183] Specifically, the Bureau sought to determine current industry practices in a number of areas to inform its understanding of the potential costs and benefits of extending various Regulation E provisions to prepaid accounts. Bureau staff examined certain key provisions in the account agreements of prepaid cards and other similar prepaid programs currently available to consumers and compared those terms against one another and, for some provisions, against the protections presently provided by Regulation E for payroll card accounts and cards used for the distribution of certain government benefits[184] (and, by virtue the FMS Rule, to other prepaid cards receiving Federal payments as well).

The Study of Prepaid Account Agreements covers 325 publicly-available account agreements for prepaid programs that, the Bureau believes, could be subject to the definition of prepaid account set forth in this proposal.[185] The analysis includes agreements for GPR card

[183] *Available at* http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf.

[184] *See* existing §§ 1005.18 and 1005.15, respectively.

[185] The Bureau does not intend for a program's inclusion in or exclusion from the Study of Prepaid Account Agreements to be a determination as to whether this proposed rule would or would not apply to that prepaid account program.

programs (including GPR cards marketed for specific purposes, such as travel or receipt of tax refunds, or for specific users, such as teenagers or students), as well as payroll cards, cards used for the distribution of certain government benefits, and similar card programs were included. Agreements for prepaid programs specifically used for P2P transfers that appeared to be encompassed by the proposed definition of prepaid account were also included. Gift, incentive and rebate card programs, health spending account and flexible spending account programs, and needs-tested State and local government benefit card programs were not included in the analysis, as the Bureau is proposing to exclude such products from this proposed rulemaking. While the Bureau collected a large number of agreements, it cautions that this collection is neither comprehensive or nor complete. The Bureau only included programs for which agreements were readily available online. In addition, there does not currently exist any comprehensive listing of prepaid card issuers, program managers, or programs against which the Bureau could compare the completeness of its analysis.

The Study of Prepaid Account Agreements examines key provisions regarding error resolution protections (including provisional credit); limited liability protections; access to account information; overdraft and treatment of negative balances and declined transaction fees; FDIC (or NCUSIF) pass-through deposit (or share) insurance; and general disclosure of fees. Where relevant, results of the analysis are discussed in the section-by-section analysis below. The Study of Prepaid Account Agreements is being published concurrently with this notice. It explains how Bureau staff identified publicly available prepaid account agreements online for inclusion in the analysis. It also discusses the Bureau's methodology, key assumptions, observations, and findings for each category of review. The Bureau cautions that its analysis is, in many ways, subjective and thus is not intended to be relied upon as an assessment of any legal

issue including whether a prepaid program actually complies with Regulation E's existing provisions governing payroll card accounts or cards used for the distribution of certain government benefits, the FMS Rule, or this proposed rule.

IV. Legal Authority

A. Electronic Fund Transfer Act

EFTA section 902 establishes that the purpose of the statute is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems but that its primary objective is the provision of individual consumer rights. Among other things, EFTA contains provisions regarding disclosures made at the time a consumer contracts for an electronic fund transfer service (EFTA section 905(a)), notices of certain changes to account terms or conditions (EFTA section 905(b)), provision of written documentation to consumers regarding electronic fund transfers (EFTA section 906), error resolution (EFTA section 908), consumers' and financial institutions' liability for unauthorized electronic fund transfers (EFTA sections 909 and 910), and compulsory use of electronic fund transfers (EFTA section 913). With respect to disclosures provided prior to opening an account, EFTA section 905(a) states that the terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau. It also establishes that the Bureau shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of EFTA section 905 and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. As discussed in more detail below, proposed revisions to § 1005.18(b) (pre-acquisition disclosure requirements) are proposed

pursuant to the Bureau's disclosure authority under EFTA section 905, and its adjustments and exceptions authority under EFTA section 904.

As amended by the Dodd-Frank Act, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of EFTA. As noted above, the express purposes of EFTA, are to establish "the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems" and to provide "individual consumer rights." EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain such classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions, for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion, or to facilitate compliance. The Senate Report accompanying EFTA noted that regulations are "essential to the act's effectiveness" and "[permit] the [Bureau] to modify the act's requirements to suit the characteristics of individual EFT services. Moreover, since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply."[186] For reasons discussed in this notice, the Bureau is proposing amendments to Regulation E with respect to prepaid accounts that may offer an overdraft service or credit feature pursuant to the Bureau's authority under, as applicable, sections 904(a) and (c).

B. Section 1022 of the Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes

[186] *See* S. Rept. No. 95-1273, at 26 (Oct. 4, 1978).

and objectives of the Federal consumer financial laws, and to prevent evasions thereof." Among other statutes, title X of the Dodd-Frank Act, EFTA, and TILA are Federal consumer financial laws.[187] Accordingly, in adopting this final rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under EFTA, TILA, and title X that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1). *See* Section 1022(b) Analysis below for a discussion of the Bureau's standards for rulemaking under Dodd-Frank Act section 1022(b)(2).

Dodd-Frank Act section 1022(c)(1) provides that, to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services. The Bureau may make public such information obtained by the Bureau under this section as is in the public interest. Dodd-Frank Act section 1022(c)(3). Moreover, section 1022(c)(4) provides that, in conducting such monitoring or assessments, the Bureau shall have the authority to gather information from time to time regarding the organization, business conduct, markets, and activities of covered persons and service providers. Proposed § 1005.19 is proposed pursuant to the Bureau's authority under Dodd-Frank sections 1022(c) and 1032(a), as well as its authority under EFTA sections 904 and 905. As discussed in the section-by-section analysis below, proposed § 1005.19 would mandate the collection of and posting by the Bureau of prepaid account terms and conditions and posting on a Bureau-maintained website. It would also require that financial institutions disclose such terms and conditions.

[187] Dodd-Frank Act section 1002(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws" and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12) (defining "enumerated consumer laws" to include TILA and EFTA).

C. Section 1032 of the Dodd-Frank Act

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

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

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

minimum, uses plain language that is comprehensible to consumers, contains a clear format and design, such as an easily readable type font, and succinctly explains the information that must be communicated to the consumer. Dodd-Frank Act section 1032(b)(2). As discussed in more detail below, certain portions of the proposed rule are proposed pursuant to the Bureau's disclosure authority under Dodd-Frank section 1032(a).

D. The Truth in Lending Act

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

> [E]conomic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.[188]

TILA and Regulation Z define credit broadly as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. TILA section 103(f); 15 U.S.C. 1602(f); 12 CFR 1026.2(a)(14); 15 U.S.C. 1602(f). TILA and Regulation Z set forth disclosure and other requirements that apply to creditors. Different rules apply to creditors depending on whether they are extending "open-end credit" or "closed-end credit." Under the statute and Regulation Z, open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance; and the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made

[188] TILA section 102(a); 15 U.S.C. 1601(a).

available to the extent that any outstanding balance is repaid. § 1026.2(a)(20). Typically, closed-end credit is credit that does not meet the definition of open-end credit. § 1026.2(a)(10).

The term "creditor" generally means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. *See* TILA section 103(g); 15 U.S.C. 1602(g); 12 CFR 1026.2(a)(17)(i). TILA defines finance charge broadly as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. TILA section 106(a); 12 U.S.C 1605(a); *see* 12 CFR 1026.4.

The term "creditor" also includes a card issuer, which is a person or it's agent that issues credit cards, when that person extends credit accessed by the credit card. *See* § 1026.2(a)(17)(iii) and (iv); TILA section 103(g); 15 U.S.C. 1602(g). Regulation Z defines the term "credit card" to mean any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 1026.2(a)(15). A charge card is a credit card on an account for which no periodic rate is used to compute a finance charge. *See* § 1026.2(a)(15)(iii). In addition to being creditors under TILA and Regulation Z, card issuers also generally must comply with the credit card rules set forth in the FCBA and in the Credit CARD Act (if the card accesses an open-end credit plan), as implemented in Regulation Z subparts B and G. *See generally* §§ 1026.5(b)(2)(ii), .7(b)(11), .12 and .51-.60.

TILA section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications,

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

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. However, Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain "additional requirements" that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). Accordingly, as amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the provisions of TILA section 129 that apply to the high-cost mortgages referred to in TILA section 103(bb), 15 U.S.C. 1602(bb).

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

V. Section-by-Section Analysis of the Proposed Rule

Regulation E

Subpart A – General

Section 1005.2 Definitions

2(b) Account

Section 1005.2(b)(1) defines an "account" for purposes of Regulation E as a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes. As discussed above, the Board in 2006 added a definition for "payroll card account" to the definition of account in Regulation E. Under the current regulation, a payroll card account is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), are made on

a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person. § 1005.2(b)(2). EFTA and Regulation E currently apply to payroll card accounts, except as provided in existing § 1005.18. Similar exceptions and other provisions specific to accounts used for the distribution of government benefits are in existing § 1005.15. Gift cards, although not included in the § 1005.2(b) definition of account, are addressed in § 1005.20.

The Board, in adopting rules to include payroll card accounts within the ambit of Regulation E, explicitly acknowledged that Regulation E did not, at that time, cover general spending cards to which a consumer might transfer by direct deposit some portion of the consumer's wages.[189] As a result, some regulators, the prepaid industry, and others have thus interpreted Regulation E not to apply to various types of prepaid products that are not payroll card accounts, accounts used for the distribution of government benefits, or gift cards.[190]

After the Bureau assumed authority for implementing most of EFTA pursuant to the transfer of certain authorities from the Board to the Bureau under the Dodd-Frank Act, it analyzed whether other types of prepaid products, in addition to payroll card accounts, certain government benefit accounts, and gift cards, could or should be expressly included within Regulation E. In the Prepaid ANPR, the Bureau explained that in the six years that had elapsed since the Board issued the Payroll Card Rule, the prepaid card market had changed markedly. Beyond just industry growth, consumers also have increasingly used prepaid products the same way other consumers use traditional demand deposit accounts. Further, as general use prepaid

[189] 71 FR 51437, 51441 (Aug. 30, 2006).

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

cards become a more accepted and well-known alternative financial product, the difference between prepaid and traditional deposit accounts begins to blur. Thus, the Bureau sought comment in the Prepaid ANPR on how the Bureau should define GPR cards in the context of Regulation E and whether certain prepaid products should not be included in this definition, such as cards that may serve a limited purpose (*e.g.*, university cards or health spending cards).[191]

In the first instance, most commenters to the Prepaid ANPR (industry, consumer advocacy groups, and others) did not object to bringing prepaid products within the ambit of Regulation E, at least at some broad level. While there were some concerns from industry and others, which are discussed further below, about exactly which types of prepaid products the Bureau might subject to Regulation E, most commenters favored inclusion of GPR cards, with some reservations about specific provisions of the rule. Among other reasons, several trade associations noted that insofar as many GPR card issuers and program managers already voluntarily comply with Regulation E, the Bureau should formalize GPR cards' inclusion in Regulation E as a means of standardizing protections for consumers.

Most comments focused on the types of prepaid products the Bureau should include in this rulemaking and the scope of any resulting rules. Many industry commenters urged the Bureau to focus its rulemaking only on those products that consumers can or do use in the same ways as traditional demand deposit accounts. Many commenters contrasted such products, which include GPR cards (which do not have limits on where and how consumers can use the product), with those that are issued with restrictions on use. Commenters suggested, for example, that the Bureau exclude Health Savings Account cards because they cannot be used in

[191] 77 FR 30923, 30925 (May 23, 2012).

the place of a traditional demand deposit account due to limitations on their use. Similarly, industry commenters also suggested that the Bureau exclude limited-use transit cards, university cards, and mall cards. Some industry commenters also urged the Bureau to exclude certain corporate-related cards, such as those used for expense reimbursement or for distribution of health or transit benefits. Within this vein, industry commenters also suggested that the Bureau exclude cards used to disburse insurance payments because, one commenter argued, they are not part of the class of consumer asset accounts intended to be regulated under Regulation E. Another industry commenter argued that cards that are not reloadable by the consumer or that are corporate-funded typically serve a limited audience for a limited use and therefore should not be covered by the proposed rule. Further, these commenters warned that if such cards were covered by the definition of prepaid accounts, the cost of adding Regulation E protections could cause issuers of those cards to discontinue offering them.

In addition, industry commenters disagreed over whether the Bureau should limit its proposed rule to products represented by physical cards or whether it should also include other types of prepaid products such as those that are entirely online (and might use a barcode or QR code displayed on a mobile device such as a smartphone or other online means to interact with a payment network). One prepaid card distributor commenter urged the Bureau to include these non-card products because such products may have the same features as physical cards. However, commenters urged the Bureau to distinguish between digital wallets that simply store payment credentials for other accounts or cards and those non-card products that in fact store funds themselves. To the extent that the credentials loaded into a digital wallet are for other accounts are protected by Regulations E or Z, commenters argued that those products should provide consumers with sufficient protections without direct regulation of the wallets

themselves. With the exception of these few topics, however, industry commenters generally discussed how Regulation E's substantive requirements should be tailored to prepaid products rather than what products should be defined as prepaid accounts in the first instance. These comments are discussed in detail below.

Consumer group commenters generally did not favor restrictions on any definition the Bureau might propose; they instead favored inclusion of limited purpose products such as university cards, health spending cards, and other similar products. They argued that the Bureau should include in its proposed definition all products that act like debit cards and that are currently not covered by Regulation E, as well as certain reloadable gift cards. Like many industry commenters, consumer groups urged the Bureau to apply Regulation E to those prepaid products that consumers can use as transaction account substitutes because, in part, consumers do not know that debit cards may have protections that prepaid products lack. The consumer groups diverged from industry commenters, however, by largely urging the Bureau not to modify the substantive requirements of Regulation E in applying them to prepaid products. These differences are discussed in detail below.

In addition to reviewing the comments it received on the Prepaid ANPR, the Bureau has conducted significant outreach to aid its understanding of the scope and diversity of the prepaid product marketplace. In particular, the Bureau has spoken with prepaid card program managers, issuers, distributors, processors, and other parties involved in various aspects of the prepaid card industry, as well as government agencies and non-profits that are involved in administering prepaid card programs. This outreach has included providers of prepaid products that are not sold to consumers, such as prepaid cards used to distribute financial aid to students and insurance payouts to consumers. The Bureau understands (based on its outreach efforts as well as its Study

of Prepaid Account Agreements) that many providers of prepaid products voluntarily comply with most or all of Regulation E, as it applies to payroll card accounts. As discussed in detail below, the Bureau believes that objections about the burden of including various types of products within the ambit of this proposed rule are largely negated by the fact that a significant majority of these products are already substantially in compliance with existing Regulation E provisions.

In developing this proposal, the Bureau first considered the applicability of EFTA to prepaid products. EFTA, among other things, governs transactions that involve an electronic fund transfer to or from a consumer's account. It defines an account to be "a demand deposit, savings deposit, or other asset account … as described in regulations of the Bureau, established primarily for personal, family, or household purposes…." EFTA section 903(2), 15 U.S.C. 1693a(2). Insofar as the statute defines account broadly to include any other asset account and for the other reasons discussed below, the Bureau believes it is reasonable to interpret "account" in EFTA to include prepaid accounts. Thus, it proposes to include prepaid accounts expressly within Regulation E's definition of account. To clarify the scope of the proposed rule and to modify Regulation E to reflect the characteristics of prepaid accounts, the Bureau proposes to modify the definition of "account" under § 1005.2(b) to create a specific sub-definition for prepaid account.

The Bureau believes that proposing to apply Regulation E to prepaid accounts is appropriate for several reasons. As noted above and by many commenters, prepaid products are more frequently being used today by consumers as transaction account substitutes. In particular, GPR cards (including those sold at retail locations and online) are increasingly being used by consumers as a substitute for a checking account, credit card, or both. The Bureau also

understands that consumers use other types of prepaid products as transaction account substitutes as well. For example, students may receive financial aid disbursements onto prepaid cards that the students then use as their primary transaction vehicle during the school term. Insurers may pay out insurance claims for property or casualty losses or workers' compensation claims onto prepaid cards. Consumers, in turn, may use this card as their primary transaction vehicle until the funds are depleted.

The Bureau recognizes that not all consumers use prepaid products as transaction account substitutes and that not all types of prepaid products lend themselves to use as transaction account substitutes. Nevertheless, the Bureau believes that the features of non-GPR card prepaid products as well as the ways consumers can and do use those products warrant their inclusion as prepaid accounts for several reasons. First, inclusion aligns appropriately with the purposes of EFTA. The legislative history of EFTA indicates that Congress' primary goal was to protect consumers using electronic fund transfer services. Although, at the time, providers of electronic payment services argued that enactment of EFTA was premature and that the electronic payment market should be allowed to develop further on its own, Congress believed that establishing a framework of rights and duties for all parties would benefit both consumers and providers.[192] Likewise, the Bureau believes that now it is appropriate to establish such a framework for prepaid accounts, because doing so would benefit both consumers and providers. In addition, were it to finalize this proposal, the Bureau believes that consumers will be better able to assess the risks of using prepaid products. Indeed, the Bureau is concerned that because prepaid cards can be so similar to credit and debit cards (which are protected under Regulations Z and E),

[192] S*ee* S. Rept. No. 95-915, at 2–3 (1978) and H.R. Rept. No. 95-1315, at 2–4 (1978).

consumers may not realize that their prepaid cards lack the same benefits and protections as those other cards. This proposal, if finalized, would serve to make these protections more consistent and eliminate a regulatory gap.

Second, the Bureau believes that the Board's reasoning in 2006 for excluding GPR cards from the Payroll Card Rule is now, eight years later, no longer applicable. At the time, the Board concluded that it was premature to cover other prepaid cards under Regulation E because, in its view of the marketplace at that time, consumers did not often use prepaid cards in the same way that they used payroll cards; the Board noted, "for payroll card accounts that are established through an employer, there is a greater likelihood [than for GPR cards] that the account will serve as a consumer's principal transaction account and hold significant funds for an extended period of time."[193] The Board also noted that, in its opinion, to the extent that consumers use GPR cards like gift cards, "consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements, and error resolution rights would be quite significant for the issuer."[194]

Third, consumers' use of prepaid products has evolved significantly since 2006. Although some consumers may continue to treat GPR cards and other prepaid products as if they were gift cards, many do not. Many consumers now use other types of prepaid products in the same ways and to fill the same needs as they did payroll card accounts in 2006. Consumers can and do have wages and/or benefits loaded onto prepaid cards through direct deposit and thus may

[193] 71 FR 51441 (Aug. 30, 2006).

[194] 71 FR 1473, 1475 (Jan. 10, 2006) (also noting that GPR cards are "generally designed to make one-time or a limited number of payments to consumers and are not intended to be used on a long-term basis").

load substantial sums onto their cards.[195] Consumers use prepaid cards for a variety of purposes, including making purchases, paying bills, and receiving payments.[196] For those consumers without other transaction accounts, they may depend entirely on their prepaid cards to meet their payment account needs. [197] As a result, the Bureau believes that such products should be considered consumer asset accounts subject to EFTA and Regulation E. The Bureau notes that while not all prepaid products can or will be used as transaction account substitutes, the proposed prepaid account definition discussed below appropriately includes a variety of prepaid product types that the Bureau believes warrant protection under Regulation E. The Bureau is concerned that to try to carve out very specific types of products that are, or can be, used for short-term limited purposes is complicated and could result in consumer confusion as to what protections might apply to otherwise indistinguishable products.

As the Bureau's consumer testing and industry studies have shown, many consumers are using prepaid accounts in the same ways as they use other types of accounts, such as debit and credit card accounts. Even if not all consumers use their prepaid accounts in this way, consumers may not realize that, in many ways, their prepaid accounts may provide fewer protections than substitute products (and, in fact, may expect their prepaid cards to be safer).[198]

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

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

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

[198] *See, e.g.*, ICF Report, at 10 (noting that "When asked what would happen if there were a fraudulent or inaccurate charge on their prepaid account, most participants believed that their prepaid card provider would credit the funds to

Further, to the extent the Board determined that consumers in 2006 did not use prepaid accounts in a way that warranted regulatory protections, the Bureau believes that those conditions no longer exist. As discussed in detail below, the Bureau is proposing to bring a broad range of prepaid products within the ambit of Regulation E and also is proposing to modify certain substantive provisions of Regulation E as appropriate for different types of prepaid accounts.

In crafting the proposed definition of prepaid account, the Bureau has focused on prepaid product attributes and consumer use cases. While consumers are increasingly using prepaid accounts as transaction account substitutes, the Bureau does realize, as discussed above, that not all consumers will use prepaid accounts in that way and that many continue to maintain checking and other deposit accounts while also using prepaid accounts. The Bureau also acknowledges that certain accounts subject to the proposed definition (*e.g.*, products usable only for person-to-person transfers and products that cannot be reloaded) cannot be used as transaction account substitutes. Nevertheless, because the Bureau believes that consumer protections are best understood when they apply evenly across like products, the Bureau is proposing a definition that would focus on attributes relating to how prepaid accounts are issued and used, instead of how or where they are loaded (and by whom). The Bureau believes it appropriate to cast a wide net in including products within the proposed definition of prepaid account even if, as discussed further below, it may also be appropriate to adjust certain provisions in Regulation E depending on a particular product's features and how it can be used.

The proposed definition of prepaid account is discussed below. It is followed by a discussion of the modifications and limitations the Bureau is proposing for that definition.

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their account. This belief seemed to be based almost exclusively on prior experiences with prepaid card providers and other financial institutions, rather than an understanding of any legal protections that may or may not exist.")

Finally, the new requirements and modifications the Bureau is proposing to Regulation E for prepaid accounts are discussed.

2(b)(2) Bona Fide Trust Account

The current definition of account in Regulation E includes an exception for bona fide trust accounts. *See* existing § 1005.2(b)(3). To accommodate the proposed definition for the term prepaid account and a proposed adjustment to the definition of payroll card account, the Bureau proposes to renumber the exception for bona fide trust accounts as § 1005.2(b)(2) without any substantive changes to the exception. Note that to accommodate this proposed change, the Bureau does not need to renumber existing comments 2(b)(2)-1 and -2 because those comments are currently misnumbered in the Official Interpretations to Regulation E.

2(b)(3) Prepaid Account

Overview

In determining to propose revisions to Regulation E's definition of account to include prepaid accounts, the Bureau considered which types of prepaid products should be covered by its proposed definition. As discussed below, the Bureau proposes to add new § 1005.2(b)(3) to set forth this proposed definition.

2(b)(3)(i)

Proposed § 1005.2(b)(3)(i) would define the term prepaid account as a card, code, or other device, that is not otherwise an account under § 1005.2(b)(1), that is established primarily for personal, family, or household purposes, and that satisfies three additional criteria as laid out in proposed § 1005.2(b)(3)(i)(A) through (C), discussed below.

The Bureau's proposed definition of prepaid account is based on the formulation for the definition of general-use prepaid card in the Gift Card Rule (§ 1005.20). As the Board noted

when it adopted the Gift Card Rule, that definition of general-use prepaid card largely tracks the language of the Credit CARD Act as codified in EFTA Section 915(a)(2)(A).[199] The Bureau examined other similar definitions, such as those used in FinCEN's Prepaid Access Rule or in the Board's Regulation II, but believes that its proposed approach aligns, as explained in detail below, best with the types of prepaid products the proposed definition is intended to cover and with the purposes of EFTA and Regulation E. The Bureau believes that its proposed definition closely calibrates to the products that it intends to cover as well as provides greater consistency within Regulation E.

Proposed comment 2(b)(3)(i)-1 would clarify that for purposes of subpart A to Regulation E, except for § 1005.17 (requirements for overdraft services), the term "debit card" also includes a prepaid card.

The first part of the proposed definition–an account established primarily for personal, family, or household purposes–mirrors a portion of the existing definition of account. *See* §§ 1005.2(b)(1). Proposed comment 2(b)(3)(i)-2 would explain that proposed § 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 further commentary interpreting this phrase, proposed comment 2(b)(3)(i)-2 would refer to existing comments 20(a)-4 and -5.

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

Proposed § 1005.2(b)(3)(i)(A) would define a prepaid account as either issued on a prepaid basis to a consumer in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter.

[199] *See* 75 FR 16580, 16588 (Apr. 1, 2010). Congress also used this definition of prepaid card in the Dodd-Frank Act provisions governing debit card interchange and routing requirements. Dodd-Frank Act section 1075, EFTA section 920(a)(7)(A)(ii), 15 U.S.C. 1693o-2(a)(7)(A)(ii).

This portion of the proposed definition expands upon the phrase "issued on a prepaid basis" used in the Gift Card Rule's definition of general-use prepaid card in § 1005.20(a)(3).[200] However, the Bureau seeks to ensure that accounts that are not loaded at acquisition are nonetheless eligible to be prepaid accounts. Unlike gift cards, which are typically loaded with value at purchase, other types of prepaid products may be issued before a consumer or third party loads value onto it (*e.g.*, payroll card accounts). The Bureau believes that the Gift Card Rule's limitation is unnecessary and inappropriate with respect to its definition for prepaid accounts. Thus, because the Bureau believes that prepaid products should be subject to the same protections regardless of the timing of loading, the proposed definition also includes a prepaid product that is "not issued on a prepaid basis but capable of being loaded with funds thereafter."

The Bureau is also proposing this approach in part because it is concerned that prepaid providers could restructure existing products to avoid coverage by the proposed rule if they were to separate account acquisition from initial funding. For example, a GPR card provider could create a card product that did not require an initial load at the time of purchase or a university could give a card to a student prior to the disbursement of financial aid and, without the proposed additional language, could be outside the proposed rule. The Bureau believes that by making the scope of the proposed definition broad it will limit attempts to evade the proposed consumer protections for prepaid accounts. In addition, the Bureau believes that this proposed provision would ensure that consumers who use prepaid accounts receive the protections in this proposed

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

rule—particularly the pre-acquisition disclosures regarding fees and other key terms—prior to and upon establishment of the account.

Proposed comment 2(b)(3)(i)-3 would clarify that 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.

Proposed comment 2(b)(3)(i)-4 would clarify what types of accounts would satisfy the portion of the proposed prepaid account definition regarding an account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter. Specifically, proposed comment 2(b)(3)(i)-4 would explain that 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 digital wallet that only holds payment credentials for other accounts.

Proposed comment 2(b)(3)(i)-5 would clarify that to satisfy proposed § 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 would not be 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 would satisfy proposed § 1005.2(b)(3)(i)(A).

With these examples, the Bureau seeks to make clear that it does not intend to extend the proposed definition of prepaid account to a product that can never store funds. To the extent that a digital wallet, for example, merely stores payment credentials (*e.g.*, a consumer's bank account or payment card information), rather than storing the funds themselves, the digital wallet would not be considered a prepaid account under the proposed rule. If, however, a digital wallet allows a consumer to store funds in it directly, then the digital wallet would be a prepaid account if the other criteria of the proposed definition are also met.

The Bureau proposes not to limit its definition to prepaid accounts that are reloadable, as explained in proposed comment 2(b)(3)(i)-6, which would provide that prepaid accounts need not be reloadable by the consumer or a third party. Some industry commenters to the Prepaid ANPR urged the Bureau to limit this proposed rule to those products that can be reloaded by a consumer. One of these commenters urged exclusion for cards issued pursuant to a special arrangement (such as insurance cards), arguing that such cards are quite different than GPR cards since they are not reloadable by the consumer. These commenters did not cite specific evidence to provide a basis for such a rationale. On the other hand, some industry commenters and several consumer group commenters suggested a more expansive rule based on how the consumer expects to use the card, rather than on how it may be loaded with funds.

The Bureau believes that it would be inappropriate to exclude a product from the definition of prepaid account based on whether it can be reloaded or who can (or cannot) load funds into the account. First, products that may limit consumers from loading funds include payroll card accounts, which are already subject to Regulation E. Other products reloadable only by a third party also may hold funds which similarly represent a meaningful portion of a consumer's available income. This may be true, for example, for students receiving financial aid

disbursements or a consumer receiving worker's compensation payments. The Bureau believes that, like consumers relying on payroll card accounts, which the Board previously acknowledged should be protected by Regulation E,[201] consumers may use these products as transaction account substitutes even when consumers cannot reload the cards themselves, and thus such products should be similarly protected.

Second, the Bureau does not believe that non-reloadable prepaid products should have fewer protections than reloadable products. While it is true that consumers may not generally use non-reloadable products as transaction account substitutes given that the funds will eventually be spent down in their entirety, the Bureau believes that extending protections to all broadly usable prepaid accounts is beneficial to consumers. As noted, consumers may not realize the differences between protections available for traditional debit cards and prepaid cards and even less so between different types of prepaid products. Providers' marketing strategies could exacerbate these concerns. To the extent prepaid accounts are marketed as being "safer" than other products, consumers are less likely to understand technical and legal differences in regulatory coverage.

Third, if the Bureau excluded non-reloadable cards from the definition of prepaid account, a provider intent on evading Regulation E could issue non-reloadable cards repeatedly to the same consumer instead of reloading a covered reloadable card. Including non-reloadable products (that otherwise meet the relevant criteria) in the proposed definition of prepaid account would eliminate this possibility.

[201] *See* 71 FR 51437, 51441 (Aug. 30, 2006).

Nevertheless, the Bureau seeks comment on the scope of this part of the proposed definition, including as to specific types of prepaid products that should be included or excluded from coverage, as well as the rationale for inclusion or exclusion. In particular, the Bureau seeks comment on whether the definition as proposed could have the unintended consequence of including products that do not warrant protection by the Bureau as well as any additional concerns regarding products covered by the proposed definition. The Bureau requests that commenters specifically identify the reasons why inclusion of particular products in the definition of prepaid account would be burdensome to providers or not beneficial to consumers, including relevant data to support claims where available and appropriate.

The Bureau's proposed definition does not focus on particular products based on how they are distributed – such as GPR cards sold at retail locations or payroll card accounts distributed by employers – but instead focuses on the characteristics of a product – such as whether it can store funds and how it can be used by a consumer. An alternative approach would have been to list specific types of products. The Bureau is not proposing such an approach because it believes that it is difficult to craft such a list that would remain accurate as products evolve and that such a list would create opportunities for evasion. Finally, the Bureau also requests comment on whether it should adopt specific exceptions to the proposed definition.

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

The next part of the proposed definition of prepaid account addresses how such products must be able to be used to be considered a prepaid account. As the Board noted in adopting the Gift Card Rule, a key difference between a general-use prepaid card and a store gift card is

where the card can be used.[202] While store gift cards and gift certificates can be used at only a single merchant or an affiliated group of merchants (*see* § 1005.20(a)(1)(ii) and (2)(ii)), a general-use prepaid card is defined, in part, as redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines (§ 1005.20(a)(3)(ii)). In response to the Prepaid ANPR, commenters largely urged that the Bureau maintain this distinction. As noted above, some industry commenters also urged the Bureau to exclude from the proposed rule those products that are issued with restrictions on how or where they can be used, such as health savings account cards and certain transit cards.

The Bureau is proposing to add § 1005.2(b)(3)(i)(B), which would state that to qualify as a prepaid account, the card, code or other device must be redeemable upon presentation at multiple, unaffiliated merchants for goods or services, usable at automated teller machines, or usable for person-to-person transfers. Proposed comment 2(b)(3)(i)-7 would refer to existing comments 20(a)(3)-1 and -2 from the Gift Card Rule for guidance regarding the meaning of the phrase multiple, unaffiliated merchants.[203]

The Bureau believes it is appropriate to limit the definition of prepaid account to those products that consumers can use at multiple unaffiliated merchants for goods or services, at ATMs, or for P2P transfers. First, a core feature of a conventional debit card is that it is usable at multiple, unaffiliated merchants and at ATMs. Insofar as a purpose of this rulemaking is to provide comparable coverage for products with comparable functionality – in this case traditional debit cards and prepaid cards – it is appropriate to structure the proposed definition in

[202] *See* 75 FR 16580, 16588 (Apr. 1, 2010).

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

a way that products with similar features have the protections afforded by Regulation E. Additionally, insofar as the Bureau understands that consumers expect to have equivalent protections on prepaid accounts that they do on accounts linked to debit cards, it is appropriate to include in the definition of prepaid account those products that have attributes similar to debit cards.

In other words, a prepaid account would be one that is accepted widely at unaffiliated merchants, rather than only a single merchant or specific group of merchants, such as those located on a college campus or within a mall or defined shopping area. The Bureau believes that products usable at a single merchant (*e.g.*, a merchant's gift card) do not warrant equivalent protections at this time. The Bureau believes it is appropriate to exclude closed loop gift cards from this rulemaking because of how they differ from other prepaid products and traditional debit cards. Not only can closed loop gift cards not be used in lieu of more traditional banking products, but they also cannot be used for P2P transfers or in any other way other than transacting with a merchant on the closed loop. As a result, consumers are less likely to load funds needed for day-to-day use or to load a substantial amount of funds onto such a card. Thus, the Bureau does not believe it appropriate to provide those products with the same protections at this time. While consumers may mistakenly assume that protections that apply to debit cards also apply to general-use prepaid cards, they are unlikely to be similarly confused with respect to closed loop gift cards. Indeed, consumers often do not register gift cards and are frequently instructed to treat them like cash.[204] However, as merchants and others increasingly move to

[204] *See, e.g.*, Dan Rutherford, *Giving or receiving gift cards? Know the terms and avoid surprises*, CFPB Blog Post (Dec. 21, 2012), http://www.consumerfinance.gov/blog/giving-or-receiving-gift-cards-know-the-terms-and-avoid-surprises/.

accepting card-based payments for their products and services, prepaid accounts have become more viable substitutes for more traditional financial products and services.

Prepaid products are also growing in popularity as a vehicle for consumers to transmit payments to each other or to businesses. The Bureau has identified an increasing number of products that allow consumers to make P2P or P2B payments without using a third-party branded payment network. These services may not always have wide merchant acceptance, but they do allow consumers to send money to other consumers and businesses. While some P2P transfer products may also be usable at an ATM or redeemable at multiple, unaffiliated merchants, some are not. However, unlike many limited-use prepaid products that have acceptance limited to a restricted location (such as on a college campus or in a mall), P2P products do not have such a limitation. Indeed, insofar as a P2P product may be accepted by anyone that contracts with the P2P provider, the model is not very different from a card association that contracts with unaffiliated merchants. Further, insofar as consumers may use these products to pay anyone with funds stored in the account, the Bureau believes that they should be included in the proposed definition of prepaid account.

The Bureau recognizes, however, that a product that is solely usable for storing funds and P2P transfers is different from other types of prepaid accounts, such as GPR cards. The Bureau believes that there is benefit to consumers in harmonizing those protections with those currently offered (and, if the proposal is finalized, that will be offered) by other types of prepaid accounts. Thus, the Bureau proposes to add new comment 2(b)(3)(i)-8 to further explain when accounts capable of P2P transfers are prepaid accounts. Specifically, the comment would explain that a prepaid account capable of person-to-person transfers is an account that allows a consumer to send funds 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 ATMs. 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.

The Bureau seeks comment on this portion of its proposed definition of prepaid account. In particular, the Bureau solicits comment on P2P payment products and whether they warrant inclusion in this rule. Note, of course, that a P2P payment product must satisfy the other requirements of the proposed rule to be a prepaid account, including that the product be capable of storing funds. The Bureau also seeks comment on whether there are specific types of products that offer P2P services that the Bureau should specifically exempt, such as those that are provided or established by an employer primarily for use at an affiliated group of merchants even if those products can be used to make occasional or incidental transfers to other employees, or for P2P products that are not available to the general public.

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

Regulation E's gift card provisions cover some prepaid products that also could fall within the proposed definition of prepaid account as described above. In particular, § 1005.20 contains provisions applicable to gift certificates, store gift cards, and general-use prepaid cards.[205] For those products marketed and sold as gift cards (and that meet certain other qualifications), the Gift Card Rule requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. The Gift Card Rule is distinct from the rest of subpart A of

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

Regulation E, however, and does not provide consumers who use gift cards with the other substantive protections of Regulation E, such as limited liability and error resolution protections, or periodic statements. The Gift Card Rule expressly excludes those general-use prepaid cards that are reloadable and not marketed or labeled as gift cards or gift certificates, while including general-use prepaid cards that are not reloadable as well as those that are marketed or labeled as gift cards or gift certificates. *See* § 1005.20(b)(2).

In response to the Prepaid ANPR, the Bureau received numerous industry comments urging it to exclude gift cards from this proposed rule. In their letters, these commenters argued that the protections for gift cards in the Gift Card Rule more appropriately match how such products are used. As one commenter noted, a consumer is unlikely to replace a traditional deposit account with a gift card that can only be used at a single merchant. Other commenters noted that many provisions of Regulation E would not be easily applied to most gift cards. For example, to the extent that this proposed rule might apply error resolution provisions to gift cards, such a rule might be difficult to apply because gift card holders often do not register the cards, thus potentially making it difficult for providers to determine when unauthorized transactions occur. Similarly, providing access to transactional account history to gift cardholders could also be difficult and impractical.

Commenters were also concerned that it would be overly burdensome if prepaid products were subject both to the requirements of this proposed rule and the Gift Card Rule. To the extent they expressed an opinion, consumer group commenters largely agreed that existing protections for gift cards were sufficient, although one consumer group commenter urged the Bureau to include network branded open loop reloadable gift cards loaded with at least $500, because when a card is loaded with $500 the risk of harm from loss is higher.

The Bureau is proposing to add § 1005.2(b)(3)(i)(C), which would provide that a prepaid account is not a gift certificate as defined in § 1005.20(a)(1) and (b); a store gift card as defined in § 1005.20(a)(2) and (b); a loyalty, award, or promotional gift card as defined in § 1005.20(a)(4) and (b); or a general-use prepaid card as defined in § 1005.20(a)(3) and (b) that is both marketed and labeled as a gift card or gift certificate.

The Bureau notes that the exemption in the Gift Card Rule for general-use prepaid cards applies to products that are reloadable and not marketed *or* labeled as gift cards or gift certificates. *See* § 1005.20(b)(2). The Bureau is proposing to exclude from the definition of prepaid account only such general-use prepaid products that are both marketed and labeled as gift cards or gift certificates, as the Bureau is concerned that some products it intends to include may be inadvertently excluded due to occasional or incidental marketing activities. Comment 2(b)(3)(i)-9 would explain this distinction. For example, 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 the Gift Card Rule, such a product would be considered marketed as a gift card or gift certificate because of this occasional holiday marketing activity. For purposes of proposed § 1005.2(b)(3)(i)(C), however, such a product would not 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.

Generally speaking, the Bureau believes that having to apply both the existing gift card regulatory requirements and the proposed prepaid account requirements could adversely impact the gift card market, although the Bureau recognizes that some of the concerns it has regarding

prepaid accounts can also be applied to gift cards. The Bureau acknowledges that if the requirements of this proposed rule were applied to gift cards at this time, it is possible that those requirements, in the context of the typical gift card, could confuse consumers and disrupt many gift cards' cost structures. For example, the Gift Card Rule already specifies disclosure with respect to key fees that are typically imposed in connection with gift cards. *See* § 1005.20(c)(3). In addition and as noted previously, the Bureau believes that consumers may be more aware that gift cards have fewer protections than other products and thus treat gift cards accordingly.[206] Because most gift cards are not reloadable, not usable at ATMs, and/or not open loop, consumers are less likely to use gift cards as transaction account substitutes. Were the Bureau to impose provisions for access to account information and error resolution, and create limits on liability for unauthorized EFTs, the Bureau is concerned that the cost structure of gift cards could change dramatically; unlike other types of prepaid products (which, as the Bureau's Study of Prepaid Account Agreements indicates, already are frequently in compliance with many existing provisions of Regulation E), gift cards do not typically offer these protections. In addition, while issuers of GPR cards typically encourage consumers to register their cards (so that the cards can become reloadable), the same motivations do not exist for open-loop gift cards. The Bureau nevertheless seeks comment on whether it would be appropriate to impose the provisions in this proposal on some or all types of gift cards, the nature of consumer harm with respect to gift cards, and whether the Bureau's understanding of gift cards as discussed herein is accurate.

The Bureau understands that there are certain non-reloadable products covered by the Gift Card Rule that providers do not market or sell as gift cards (and instead may be marketed

[206] *See, e.g.*, Fed. Trade Comm'n, *Consumer Information: Gift Cards* (Feb. 2011), https://www.consumer.ftc.gov/articles/0182-gift-cards (webpage providing consumers with general information on buying and using gift cards).

more like prepaid accounts) and that may be used more broadly, and these cards would be covered by both the Gift Card Rule and this proposal. In addition, these products are typically network branded and thus appear similar to other types of covered prepaid accounts. For example, the Bureau understands providers are increasingly looking to market non-reloadable prepaid products to consumers as a means of conducting specific transactions (*e.g.*, paying a single utility bill or making a purchase online). Despite the fact that these may be marketed as a single-use (as opposed to reloadable) prepaid card, the fact that these products are not marketed or labeled as gift cards, and are network branded and usable at any merchant that accepts the network brand may imply to consumers that these products are the same as the reloadable version of the product and thus warrant the same protections. The Bureau seeks comments on whether and, if so, how compliance with both this proposed rule and the Gift Card Rule would impose unique burdens on financial institutions offering such cards. The Bureau also seeks comment on whether the provisions of the Gift Card Rule alone are sufficient to protect those consumers that use non-reloadable general-use prepaid cards not marketed or sold as gift cards or gift certificates or whether consumers of such products would benefit from the proposed rule's protections. Finally, the Bureau seeks comment on whether there are any other types of products not discussed herein to which the Gift Card Rule applies and which might also be affected by this proposal.

2(b)(3)(ii)

As discussed above, Regulation E currently contains provisions specific to payroll card accounts and specifically defines such accounts. *See* § 1005.2(b)(2). Insofar as the Bureau is generally proposing to adapt existing payroll card account rules to prepaid accounts in § 1005.18, which currently addresses only payroll card accounts, the term payroll card account would be

largely subsumed within the larger definition of prepaid account. Nevertheless, the Bureau believes that because there are certain provisions of Regulation E that would remain specific to payroll card accounts, it is appropriate to propose to maintain the term payroll card account as a standalone sub-definition of prepaid account. Specifically, the Bureau proposes that § 1005.2(b)(3)(ii) provide that the term "prepaid account" includes a "payroll card account" and would otherwise restate the existing payroll card account definition. In addition, the Bureau proposes to renumber existing comment 2(b)-2, which concerns certain employment-related cards not covered as payroll card accounts, as comment new 2(b)(3)(ii)-1.In addition, the Bureau proposes to add to new comment 2(b)(3)(ii)-1 an explanation that the existing examples given of cards would not be payroll card accounts (*i.e.*, cards used solely to disburse incentive-based payments, such as bonuses, disbursements unrelated to compensation, and cards used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations where other payment methods are unavailable), such cards could constitute prepaid accounts generally, provided the other conditions of the proposed definition of that term in § 1005.2(b)(3) are satisfied. Similar to existing comment 2(b)-2, proposed comment 2(b)(3)(ii)-1 would also state that, 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.

The Bureau seeks comment on this portion of its proposed definition of prepaid account.

2(b)(3)(iii)

As discussed above, Regulation E currently contains provisions in § 1005.15 that are specifically applicable to an account established by a government agency for distributing government benefits to a consumer electronically. While such accounts are currently defined only in existing § 1005.15(a)(2), the Bureau believes that given the other modifications to Regulation E proposed herein, it is appropriate to explicitly add such accounts used for the distribution of government benefits as a stand-alone sub-definition of prepaid account as well. Specifically, the Bureau is proposing that § 1005.2(b)(3)(iii) state that the term prepaid account includes a government benefit account, as defined in existing § 1005.15(a)(2). The Bureau seeks comment on this portion of its proposed definition of prepaid account.

2(b)(3)(iv)

Proposed § 1005.2(b)(3)(iv) would address prepaid products established in connection with certain health care and employee benefit programs. Specifically, the proposed provision would state that the term prepaid account does not include a health savings account, flexible spending account, medical savings accounts, or a health reimbursement arrangement. Proposed comment 2(b)(3)(iv)-1 would define these terms by referencing existing provisions in the Internal Revenue Code. Specifically, the Bureau is proposing that "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.

The Bureau believes that while these health care and employee benefit accounts may, in some ways, be similar to other types of prepaid accounts, coverage under Regulation E is not necessary at this time. These products typically come with limits on the amount of funds that can be loaded on to them, the methods for loading, and numerous restrictions on where, when, and how those funds can be spent. These products can rarely be used to withdraw cash or to send money to another person or make payment to any merchant of the consumer's choosing (such as can be done with a P2P product or a GPR card). Instead, health insurers or employers (or their service providers) typically issue these products in connection with a consumer's healthcare or employee benefits plan and are governed by the terms of that plan and related regulations.[207] For example, health savings accounts and medical savings accounts can typically only be used to pay for qualified medical expenses. Nevertheless, the Bureau seeks comment on whether these or other types of health care and employee benefit accounts should be included within the definition of prepaid account in light of the important role they play for consumers.

Scope of Proposed Definition and Application to Virtual Wallets and Virtual Currency Products

The Bureau seeks comment on the scope of its proposed definition for the term prepaid account. In particular and as noted above, the Bureau is aware of an increasing number of mobile financial products, each with different features, capabilities, and consumer protections. Determining how this proposed rule might apply to those products may be difficult in light of the quick evolution of these products and their features. Although the Bureau anticipates that this proposal, if effective today, would apply to relatively few mobile banking products (*see, e.g.*, proposed comments 2(b)(3)(i)-4 and 2(b)(3)(i)-5), it seeks comment on whether it has

[207] *See, e.g.*, Internal Revenue Serv., Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans* (Jan. 22, 2014), *available at* http://www.irs.gov/pub/irs-pdf/p969.pdf.

appropriately predicted the scope of products this rule would apply to and whether there are products it excludes that should be included or vice versa.

With respect to mobile financial products and services, the Bureau anticipates that this proposed rule would apply to certain mobile wallets. The Bureau also recognizes that the proposed rule may have potential application to virtual currency and related products and services. As a general matter, however, the Bureau's analysis of mobile financial products and services, as well as and virtual currencies and related products and services, including the applicability of existing regulations and this proposed regulation to such products and services, is ongoing. The proposed rule does not specifically resolve these issues.

Section 1005.10 Preauthorized Transfers

10(e) Compulsory Use

10(e)(1) Credit

In the discussion of the Bureau's proposed changes to Regulation Z, below, the Bureau explains in detail its approach to regulation of overdraft services and credit features on prepaid accounts. (That discussion provides an overall explanation of the Bureau's proposed approach to overdraft services and other credit features in connection with prepaid accounts in this rulemaking, including with respect to proposed changes to Regulation E, the details of which are set forth below.) As part of that approach, the Bureau is proposing to revise the compulsory use provision of Regulation E, § 1005.10(e)(1), to make clear that it applies to credit features offered on prepaid accounts.

EFTA's compulsory use provision, EFTA section 913(1), prohibits any person from conditioning the extension of credit to a consumer on the consumer's repayment by means of preauthorized electronic fund transfers. As implemented in Regulation E, § 1005.10(e)(1)

currently states that "[n]o financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account." The term "credit" is defined in § 1005.2(f) to mean the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor. The term "preauthorized electronic fund transfer" is defined in § 1005.2(k) to mean an electronic fund transfer authorized in advance to recur at substantially regular intervals. *See* EFTA section 903(10).

Congress enacted the compulsory use provision to prevent financial institutions that are creditors from mandating repayment of credit by future preauthorized electronic fund transfers. Were the compulsory use provision not to exist, creditors could access consumers' available funds at the same institution via direct transfers, or at other institutions via recurring ACH transfers, to repay the debt. By doing so, consumers could lose access to these funds and lose the ability to prioritize repayment of debits, as a creditor could compel the consumer to grant the creditor preauthorized transfer access to a consumer's asset account as a condition for agreeing to provide credit to that consumer.

As is discussed below, the Bureau proposes certain modifications to the compulsory use provision. In particular, the Bureau proposes not to extend the provision's exception for overdraft credit plans to such plans offered on prepaid accounts. As discussed in more detail in the section-by-section analysis of Regulation Z proposed § 1026.12(d), the Bureau believes that applying § 1005.10(e)(1), with the proposed changes discussed below, along with proposed changes to the timing requirement for a periodic statement in Regulation Z § 1026.5(b)(2)(ii),

and the prohibition on offsets in Regulation Z § 1026.12(d), would together allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account.

By not extending the exception for overdraft credit plans in the current Regulation E compulsory use provision – and consistent with the statutory compulsory use provision (EFTA section 913(1)) – creditors would be required to offer prepaid account consumers a means to repay their outstanding credit balances other than by automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking website). With the proposed changes to the Regulation Z periodic statement requirement – consistent with TILA section 163 – creditors would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle. And, with the proposed changes to the Regulation Z no-offset provision – consistent with TILA section 169 – card issuers would be permitted to move funds automatically from the prepaid account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so).

Overdraft credit plans

In adopting what is now § 1005.10(e)(1) in 1981 to implement EFTA section 913(1), the Board used its EFTA exception authority to exclude overdraft credit plans from the general

compulsory use rule of EFTA section 913(1).[208] Comment 10(e)(1)-2 further explains that a financial institution may require the automatic repayment of an overdraft credit plan.

The Bureau proposes to provide that the compulsory use provision's general prohibition against conditioning the extension of credit to a consumer on the consumer's repayment by means of preauthorized electronic fund transfers would apply to credit plans, including overdraft credit plans, that are credit card accounts under Regulation Z accessed by prepaid cards that are credit cards under proposed Regulation Z § 1026.2(a)(15)(i) or 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, discussed in further detail below. Regulation Z proposed comment 2(a)(15)-2.i.F would provide that the term "credit card" in § 1026.2(a)(15)(i) includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in Regulation Z § 1026.4(c) such as an applicable fee to apply for credit or a late payment fee and is not payable by written agreement in more than four installments. Regulation Z proposed comment 2(a)(15)-2.i.G, discussed below, would provide that the term "credit card" in § 1026.2(a)(15)(i) also includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly into particular prepaid accounts specified by the creditor but does not allow the

[208] See 46 FR 2972, 2973 (Jan. 13, 1981) ("After careful consideration of the issues raised, the Board is adopting the amendment as proposed. The Board believes that it has the legal authority to adopt this exception [for overdraft lines of credit] under section 904(c) of the act, which expressly authorizes the Board to provide adjustments and exceptions for any class of electronic fund transfer that in the Board's judgment are necessary or proper to carry out the purposes of the act or to facilitate compliance."). Further, the bases for Bureau's proposal not to extend this exception to prepaid accounts is discussed below in the Overview of the Bureau's Regulation Z proposal.

consumer to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor. (Such an account number is referred to in the proposal as an "account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.") *See also* Regulation Z proposed § 1026.2(a)(15)(vii).

The proposal would revise § 1005.10(e)(1) to provide that the exception for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account does not apply to credit extended under a credit plan that is a credit card account accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z or 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.

Proposed comment 10(e)(1)-3 would provide guidance on how the prohibition in § 1005.10(e)(1) applies to credit extended under a credit plan that is a credit card account accessed by prepaid cards or account numbers that are credit cards under Regulation Z as discussed above. Proposed comment 10(e)(1)-3 would explain that 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 (§ 1026.2(a)(15)(i)). In addition, proposed comment 10(e)(1)-3 would provide that § 1005.10(e)(1) also would prevent creditors from requiring 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 account number that is a credit card under Regulation Z

(§ 1026.2(a)(15)(i)) where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Proposed comment 10(e)(1)-3 would also provide that the prohibition in § 1005.10(e)(1) would apply to any credit extended under a credit card plan as described above, including credit arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses a credit card plan as discussed above, the resulting credit would be subject to the prohibition in § 1005.10(e)(1) since it is incurred through a credit card plan, even though the consumer did not use an associated credit card.

Additionally, proposed comment 10(e)(1)-3 would cross-reference Regulation Z § 1026.2(a)(15)(i), comment 2(a)(15)-2.i.F to explain that a prepaid card is not a credit card under Regulation Z if the access device only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. Thus, the prohibition in § 1005.10(e)(1) would not apply to credit extended under an overdraft credit plan that is not a credit card account. An overdraft credit plan would not be 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.

Proposed comment 10(e)(1)-3.i would explain the connection between the prohibition in proposed § 1005.10(e)(1) on the compulsory use of preauthorized electronic fund transfers to repay credit extended under a credit plan accessed by prepaid cards that are credit cards and account numbers linked to prepaid accounts that are credit cards under Regulation Z § 1026.2(a)(15)(i) and comment 2(a)(15)-2.i.F and .G, and the prohibition on offsets by credit

card issuers in proposed § 1026.12(d). Under Regulation Z § 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under proposed Regulation Z § 1026.12(d)(3), with respect to credit card accounts that are accessed by prepaid cards 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 would not be 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 § 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 would be 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. Under proposed Regulation Z § 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, electronic fund transfers pursuant to a plan described in § 1026.12(d)(3) would be "preauthorized electronic fund transfers" under § 1005.2(k) because such electronic fund transfers would be authorized in advance to recur periodically (but could not recur more frequently than once per calendar month). Proposed comment 10(e)(1)-3.i thus would explain that § 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.

Consistent with the statutory text and purposes of EFTA, the Bureau proposes not to extend the exception for overdraft credit plans currently in § 1005.10(e)(1) to credit plans that are credit card accounts under Regulation Z accessed by prepaid cards or accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The purposes of EFTA are to establish the rights, liabilities, and responsibilities of consumers participating in EFT systems and to provide individual consumer rights. *See* EFTA section 902(b). Further, EFTA's legislative history states that EFTA compulsory use provision is "designed to assure that EFT develops in an atmosphere of free choice for the consumer."[209] The Bureau believes its proposal not to extend the Regulation's existing exception for overdraft credit plans to prepaid accounts should ensure that consumers have choice when deciding whether and how to link their prepaid accounts to credit accounts and have control over the funds in their prepaid accounts if and when such a link is established.

As is discussed in greater detail below in the discussion of Regulation Z, the Bureau also believes that not extending the exception for overdraft credit plans to prepaid accounts is consistent with the purposes of and provisions in TILA (TILA section 169) and Regulation Z

[209] *See* Senate Report No. 95-915 at 16.

(§ 1026.12(d)) that prohibit offsets by credit card issuers and will protect consumers' right to exercise control over the funds deposited into their prepaid accounts. In particular, the Bureau believes that the proposed revisions to § 1005.10(e)(1) are necessary to prevent results that are contrary to these offset provisions. The Bureau is concerned that, 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, some card issuers may attempt to avoid the TILA offset prohibition by requiring that all or part of the cardholder's credit card debt be automatically deducted from the prepaid account to help ensure that the debt is repaid (similar to how overdraft services function today). For example, the Bureau believes that without the proposed changes to the compulsory use provision, financial institutions might require that prepaid account consumers set up automated payment plans to repay the overdraft credit advances and set the payment due date for each overdraft advance to align with the expected date of subsequent deposits to the prepaid account. The Bureau believes that this type of payment arrangement could undermine the purposes of the offset and periodic statement provisions in Regulation Z.

To the extent that the Board justified its original treatment of overdraft credit plans as providing benefits to consumers from automatic payment, the Bureau notes that under the proposal consumers would still be allowed to *choose* automatic payment for credit card accounts linked to prepaid accounts (as discussed above) if they find it beneficial to do so. The Bureau also believes that certain credit card rules in Regulation Z that would apply under the proposal to credit card accounts linked to prepaid accounts (as discussed above) would help consumers avoid late payments and excessive late fees with respect to overdraft plans. For example, under the Regulation Z proposal, card issuers would be required, under proposed § 1026.5(b)(2)(ii)(A)(*1*),

to adopt reasonable procedures to ensure that Regulation Z periodic statements for credit card accounts linked to prepaid account (as discussed above) are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle. The Bureau believes this will help ensure that consumers have sufficient time after receiving periodic statements for the credit card accounts linked to prepaid accounts (as discussed above) to make payment on their credit card accounts. Also, under the Regulation Z proposal, card issuers of credit card accounts linked to prepaid accounts (as discussed above) would be limited in the circumstances in which they could increase interest rates for late payments and would be limited in the amount of late fees they could charge to consumers who pay late. *See* Regulation Z §§ 1026.52(b) and 1026.55.

This proposal does not address overdraft plans accessed by access devices that do not access prepaid accounts and does not amend the compulsory use provision as it applies to those other products.

Technical Revisions

Consistent with proposed § 1005.10(e)(1), comment 10(e)(1)-2 related to the exception for overdraft credit plans would be amended to explain that this exception does not apply to credit extended under a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z, § 1026.2(a)(15)(i), 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. In addition, the proposal would move existing guidance in comment 10(e)(1)-1 related to when financial institutions may provide incentives to consumers to agree to automatic repayment plans to a new comment 10(e)(1)-4; no substantive changes are intended.

10(e)(2) Employment or Government Benefit

EFTA section 913(2), as implemented by § 1005.10(e)(2), provides that no financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit. Existing comment 10(e)(2)-1 explains that an employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. These provisions regarding compulsory use precede the addition of the Payroll Card Rule to Regulation E.

In September 2013, the Bureau reiterated the applicability of Regulation E's prohibition on compulsory use for payroll card accounts.[210] The Bureau explained that, among other things, Regulation E's compulsory use provision prohibits employers from mandating that employees receive wages only on a payroll card of the employer's choosing.[211]

The Bureau believes that the same standards should apply to government benefit accounts. The Bureau is aware that many State and local governments use prepaid cards for distributing non-needs tested benefits and similar payments, such as unemployment insurance and child support payments.[212] These products are subject to EFTA and Regulation E. The Bureau understands that most, though not all, State governments using prepaid cards to distribute

[210] CFPB Bulletin 2013-10, *Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[211] *Id.* at 3.

[212] *See, e.g.*, Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government-Administered, General-Use Prepaid Cards* (July 2014), *available at* http://www.federalreserve.gov/publications/files/2014_Prepaid_Cards_Final.pdf. Nearly every State offers a prepaid card to disburse child support and unemployment insurance payments. *Id.* at 3.

unemployment insurance payments also offer recipients the option of receiving these payments via direct deposit and/or paper check.[213]

Based on discussions with interested stakeholders, the Bureau is aware that some may have perceived some ambiguity surrounding compulsory use of prepaid cards to distribute non-needs tested state and local government benefits. Specifically, some questions have arisen as to whether compulsory use of prepaid cards for non-needs tested benefits is permissible under Regulation E. EFTA and Regulation E clearly apply to the electronic distribution of non-needs tested government benefits generally, and EFTA section 913(2) prohibits "requiring a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of … receipt of a government benefit."

Therefore, the Bureau believes it is appropriate to clarify the application of the compulsory use provision in Regulation E to accounts established to receive such benefits. Thus, the Bureau is proposing to add comment 10(e)(2)-2, which would make clear that 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. Relatedly, the Bureau seeks comment on whether a financial institution would comply with this provision if it provides the first payment to a benefit recipient

[213] *See, e.g.*, Lauren K. Saunders & Jillian McLaughlin, *2013 Survey of Unemployment Prepaid Cards: States Save Workers Millions in Fees; Thumbs Down on Restricting Choice* (Jan. 2013), *available at* http://www.nclc.org/images/pdf/pr-reports/report-prepaid-card-2013.pdf.

on a government benefit card and, at that time, provides information on how to divert or otherwise direct future payments to an account of the consumer's choosing.

The Bureau is also proposing to make consumers' options more clear, for both government benefit accounts and payroll card accounts, via a notice on the pre-acquisition short form disclosure for these types of prepaid accounts. *See* section-by-section analysis of §§ 1005.15(c)(2) and 1005.18(b)(2)(i)(A).

The Bureau requests comment on its proposed clarification of the prohibition on compulsory use of specific accounts for receipt of government benefits. The Bureau also seeks comment on whether a similar restriction should be extended to other types of prepaid accounts (other than payroll card accounts and government benefit accounts), such as cards used by post-secondary educational institutions for financial aid disbursements or insurance companies to pay out claims. In particular, the Bureau seeks comment on how consumers are enrolled in these other types of prepaid accounts, whether those enrollment methods involve concerns similar to those addressed above regarding prepaid cards for distribution of government benefits, and what the impact, if any, would be of expanding this provision to other types of prepaid accounts. Finally, the Bureau seeks comment on whether other interventions are appropriate with respect to prepaid products distributed by employers, government entities, educational institutions, and other third parties in connection with the payment of funds to particular groups.

Section 1005.12 Relation to Other Laws

12(a) Relation to the Truth in Lending Act

Section 1005.12(a) provides guidance on whether the issuance provisions in Regulation E § 1005.5 or the unsolicited issuance provisions in Regulations Z § 1026.12(a) apply where access devices under Regulation E also are credit cards under Regulation Z. (For discussion of when

this may occur, see the Regulation Z proposal, below.) In addition, § 1005.12(a) also provides guidance on how the provisions on liability for unauthorized use and for resolving errors in Regulation E §§ 1005.6 and 1005.11 and Regulation Z §§ 1026.12(b) and 1026.13 interact where a credit transaction is incidental to an electronic fund transfer.

Issuance Rules

Consistent with EFTA section 911(a) (15 U.S.C. 1693i(a)), existing § 1005.5(a) provides that a financial institution generally may issue an access device to a consumer only: (1) In response to an oral or written request for the device; or (2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor. Nonetheless, consistent with EFTA section 911(b) (15 U.S.C. 1693i(b)), § 1005.5(b) provides that a financial institution may distribute an access device to a consumer on an unsolicited basis if four enumerated situations are met.

In contrast, the issuance rules for a credit card under Regulation Z are more restrictive. Consistent with TILA section 132, Regulation Z § 1026.12(a), provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) As a renewal of, or substitute for, an accepted credit card.

Section 1005.12(a) provides guidance on whether the issuance provisions in Regulation E or the unsolicited issuance provisions in Regulations Z apply where access devices under Regulation E also are credit cards under Regulation Z. Specifically, § 1005.12(a)(1) currently provides that EFTA and Regulation E subpart A govern: (1) The addition to an accepted credit card, as defined in Regulation Z (§ 1026.12, comment 12-2), of the capability to initiate electronic fund transfers; (2) The issuance of an access device that permits credit extensions

pursuant to an overdraft line of credit (involving a preexisting agreement between a consumer and a financial institution to extend credit only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account), or under an overdraft service (as defined in Regulation E § 1005.17(a)); and (3) The addition of an overdraft service, as defined in § 1005.17(a), to an accepted access device. On the other hand, § 1005.12(a)(2) provides that TILA and Regulation Z apply to (1) the addition of a credit feature to an accepted access device; and (2) the issuance of a credit card that is also an access device, except the issuance of an access device that permits credit extensions pursuant to a preexisting overdraft line of credit or under an overdraft service. The application of these various provisions to prepaid accounts and proposed revisions to the relevant prongs of § 1005.12 are discussed below.

Generally, the proposal would amend § 1005.12(a) to provide that the unsolicited issuances rules in Regulation Z § 1026.12(a) apply to the addition of a credit feature or plan to an access device for a prepaid account where the credit feature or plan would make the access device into a credit card under Regulation Z, even if the credit feature is structured as an overdraft line of credit.

First, as noted, § 1005.12(a)(1)(ii) provides that the issuance rules of EFTA and Regulation E subpart A govern the issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 1005.17(a). Current comment 12(a)-2 then explains that for access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance), known as an overdraft

credit plan, or an overdraft service, as defined in § 1005.17(a). For checking accounts, a consumer may have a preexisting agreement with the financial institution to cover checks that overdraft the account. This overdraft line of credit would be subject to Regulation Z. If a debit card is then added to access this overdraft line of credit under the preexisting agreement, § 1005.12(a)(1)(ii) provides that the debit card (which would also be a credit card under Regulation Z) may be issued under the issuance rules in Regulation E, instead of the issuance rules in Regulation Z. Regulation Z's issuance rules apply if there is another type of credit feature being added to a debit card that would make the debit card into a credit card; for example, one permitting direct extensions of credit that do not involve the asset account.

The proposal would amend § 1005.12(a)(1)(ii) to provide that this provision does not apply to access devices for prepaid accounts. Thus, even if an access device for a prepaid account is issued to access a preexisting overdraft plan, the access device would be subject to the unsolicited issuance rules in TILA and Regulation Z § 1026.12(a) when that overdraft plan would make the access device into a credit card under Regulation Z. *See* proposed § 1005.12(a)(2)(ii). The proposal also would move comment 12(a)-2 related to preexisting overdraft credit plans to proposed comment 12(a)-1 and would revise the comment to explain that it does not apply to access devices for prepaid accounts.

As discussed above, § 1005.12(a)(1)(ii) contemplates the situation where there is a preexisting agreement between a financial institution and the consumer for an overdraft line of credit where the institution will cover checks that overdraft the account and the Regulation E access device is issued to access this plan. For the reasons set forth in the section-by-section analysis of Regulation Z, the Bureau believes that credit card rules in Regulation Z, including the unsolicited issuance rules in § 1026.12(a), generally should apply to credit card accounts that are

linked to prepaid accounts as discussed above. Consistent with the unsolicited issuance rules in Regulation Z § 1026.12(a), the Bureau is proposing these changes because it is concerned that unsolicited issuance of a prepaid card that can access an overdraft credit plan would pose risks to consumers. The Bureau seeks to ensure that prepaid account consumers are fully aware of the addition, or potential addition, of a credit feature to a prepaid account.

Similarly, the proposal would carve prepaid accounts out from § 1005.12(a)(1)(iii), which provides that the issuance rules in EFTA and Regulation E govern the addition of an overdraft service, as defined in § 1005.17(a), to an accepted access device. Current comment 12(a)-3 provides that the addition of an overdraft service, as that term is defined in § 1005.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Comment 12(a)-3 also explains that 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 debit card or ATM transaction may be assessed on the account (§ 1005.17). The proposal would amend § 1005.12(a)(1)(iii) to provide that this provision does not apply to access devices for prepaid accounts. The proposal also would move comment 12(a)-3 to proposed comment 12(a)-2 and revise the comment to indicate that this comment does not apply to access devices for prepaid accounts. As discussed in more detail in the section-by-section analysis of § 1005.17, the proposal would revise the term "overdraft service" as defined in § 1005.17(a) to exclude a credit plan that is accessed by an access device for a prepaid account where the access device is a credit card under Regulation Z, because these credit plans would be subject to the provisions in Regulation Z.

Second, the proposal would also add references to prepaid accounts in portions of the regulation stating that certain activities are subject to TILA and Regulation Z issuance rules. For

example, § 1005.12(a)(2)(i) currently provides that the unsolicited issuance rules of TILA section 132 and Regulation Z § 1026.12(a) apply to the addition of a credit feature to an accepted access device. The proposal would amend § 1005.12(a)(2)(i) to provide that the unsolicited issuance rules in TILA and Regulation Z § 1026.12(a) would apply to the addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z. Proposed comment 12(a)-4 would explain that Regulation Z governs the addition of any credit feature or plan to an access device for a prepaid account where the access device also would be a credit card under Regulation Z. Proposed comment 12(a)-4 would note that Regulation Z (§ 1026.2(a)(20), comment 2(a)(20)-2(ii)) provides guidance on whether a program constitutes a credit plan, and that Regulation Z (§ 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.

Similarly, § 1005.12(a)(2)(ii) currently provides that TILA and Regulation Z apply to the issuance of a credit card that is also an access device, except as provided in § 1005.12(a)(1)(ii). Proposed comment 12(a)-3 would cross reference proposed § 1005.18(g) and Regulation Z § 1026.12(h), which would prevent prepaid cards from accessing credit card accounts when the prepaid cards are issued. For the reasons discussed in the section-by-section analysis of proposed § 1005.18(g), proposed § 1005.18(g)(1)(ii) would prohibit a financial institution from allowing a prepaid account access device to access a credit plan subject to Regulation Z that would make the access device into a credit card at any time prior to 30 calendar days after the prepaid account has been registered. In addition, proposed § 1005.18(g)(1)(i) also would prohibit a financial institution from opening a credit card account subject to Regulation Z for the holder of a prepaid account, or providing a solicitation or application to open a credit card

account subject to Regulation Z that would be accessed by the access device for a prepaid account that is a credit card, prior to 30 calendar days after the prepaid account has been registered. For the reasons discussed in the section-by-section analysis of Regulation Z proposed § 1026.12(h), proposed § 1026.12(h) would require 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 a prepaid account, or providing a solicitation or application to the holder of the prepaid account to open a credit card account, that would be accessed by the access device for a prepaid account that is a credit card.

The Bureau believes that its proposed application of Regulations E and Z to the issuance of access devices strikes an appropriate balance between the regulations. The proposal recognizes that prepaid card issuers are not likely to have preexisting agreements with the customer to extend overdraft credit prior to issuing the prepaid card. The Bureau believes in particular that the addition of a credit feature to an accepted prepaid access device causes a significant transformation with respect to a prepaid account. The Bureau believes that applying the Regulation Z issuance rules to the addition of such a credit feature to a prepaid access device will help ensure that consumers are fully aware of the implications of their decision to effect such a transformation.

Rules Applicable to Limits on Liability for Unauthorized Use and to Billing Errors Procedures

Section 1005.6 generally sets forth provisions for when a consumer may be held liable, within the limitations described in § 1005.6(b), for an unauthorized electronic fund transfer involving the consumer's account. Section 1005.11 generally sets forth the procedures for resolving errors relating to electronic fund transfers involving a consumer's account. Section 1005.18(e) sets forth a consumer's liability for unauthorized electronic fund transfers and the

procedures for investigating errors related to electronic fund transfers involving prepaid accounts. *See generally* section-by-section analysis of proposed § 1005.18(e).

Relatedly, Regulation Z § 1026.12(b) sets forth limits on the amount of liability that a credit card issuer may impose on a consumer for unauthorized use of a credit card. Regulation Z § 1026.13 generally sets forth error resolution procedures for billing errors that relate to extensions of credit that are made in connection with open-end accounts or credit card accounts.

Regulation E § 1005.12(a)(1)(iv) currently provides guidance on how the provisions on limits on liability for unauthorized use and the provisions setting forth error resolution procedures under Regulation E and Regulation Z apply when credit is extended incident to an electronic fund transfer. Specifically, § 1005.12(a)(1)(iv) provides that EFTA and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs pursuant to an overdraft line of credit (under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account), or under an overdraft service, as defined in § 1005.17(a). Comment 12(a)-1 provides that for transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E's liability limitations apply, in addition to Regulation Z § 1026.13(d) and (g) (which apply because

of the extension of credit associated with the overdraft feature on the checking account).[214] If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply. Comment 12(a)-1 also sets forth examples that illustrate these principles.

With respect to limits on liability for unauthorized use, § 1005.12(a) and comment 12(a)-1 are consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized electronic fund transfer and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn. 15 U.S.C. 1693g(c). In adopting rules in 1980 to implement EFTA, the Board generally applied Regulation E's error resolution procedures to credit transactions that are incident to an electronic fund transfer involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.[215] In proposing these rules, the Board stated that the proposed rule would simplify

[214] Section 1026.13(d) provides that a consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to a disputed amount reflected on the consumer's credit card bill. It also provides that if the cardholder has enrolled in an automatic payment plan, the card issuer shall not deduct any part of the disputed amount or related finance or other charges from the consumer's asset account if the consumer provides to the card issuer a billing error notice that the card issuer receives any time up to 3 business days before the scheduled payment date. Section 1026.13(g) sets forth requirements governing what a creditor must do if it determines that a consumer owes all or part of the disputed amount and related finance or other charges.

[215] 45 FR 8249, 8257 (Feb. 6, 1980).

procedures for financial institutions where an electronic fund transfer results in both a debit to a consumer's account and a credit extension.[216]

For the reasons discussed in more detail in the section by section analysis of Regulation Z proposed § 1026.13(i), the Bureau proposes to amend § 1005.12(a)(1)(iv) by moving the current language to proposed § 1005.12(a)(1)(iv)(A) and applying it to access devices that do not access prepaid accounts. The Bureau also proposes to add proposed § 1005.12(a)(1)(iv)(B) to provide that with respect to a prepaid account, EFTA and Regulation E govern a consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit, under a credit plan subject to Regulation Z subpart B, that is incident to an electronic fund transfer when the consumer's prepaid account is overdrawn. Proposed § 1005.12(a)(1)(iv)(B) that applies to credit in connection with a prepaid account is similar but not the same as proposed § 1005.12(a)(1)(iv)(A) which applies to accounts other than prepaid accounts. Like proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) generally would apply Regulation E's limits on liability for unauthorized use and error resolution procedures to transactions that are partially funded through an electronic fund transfer using a prepaid card and partially funded through credit under a plan that is accessed by a prepaid card when the consumer's prepaid account is overdrawn.[217]

However, unlike proposed § 1005.12(a)(1)(iv)(A), proposed § 1005.12(a)(1)(iv)(B) would not focus on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's prepaid account is overdrawn or to maintain a specified

[216] 44 FR 25850, 25857 (May 3, 1979).

[217] This treatment would not apply to plans 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 the discussion of Regulation Z § 1026.13(i) below.

minimum balance in the consumer's prepaid account. Instead, proposed § 1005.12(a)(1)(iv)(B) focuses on whether credit is extended under a "plan" when the consumer's prepaid account is overdrawn and the plan is subject to the provisions in Regulation Z subpart B. For example, a credit plan that is accessed by a prepaid card that is a credit card would be subject to the provisions of subpart B. Under the proposal, a prepaid card can be a credit card under Regulation Z even if the creditor retains discretion not to pay the credit transactions. As discussed in the section-by-section analysis of Regulation Z proposed § 1026.2(a)(15)(i), proposed comment 2(a)(15)-2.i.F would provide that the term "credit card" for purposes of Regulation Z includes a prepaid card that is a single device that may be used from time to time to access a credit "plan," except if the prepaid card only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) such as an application fee to apply for credit or a late payment fee and is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of proposed Regulation Z § 1026.2(a)(20), with respect to credit that is accessed by a prepaid card, a "plan" includes a program where the consumer is obligated contractually to repay the credit. For example, such a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Under the proposal, such a program would constitute a plan notwithstanding that the creditor retains discretion not to pay such transactions. Thus, proposed § 1005.12(a)(1)(iv)(B) focuses on whether credit is extended under an "plan" that is subject to the provisions of subpart B, rather than whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

Comment 12(a)-1 provides guidance on determining the applicable regulation related to liability and error resolution, primarily focusing on examples of when a debit card that also is a credit card under Regulation Z accesses a checking account. Under the proposal, comment 12(a)-1 would be moved to proposed comment 12(a)-5. The proposal also would amend proposed comment 12(a)-5 to provide guidance on determining the applicable regulation related to liability and error resolution for overdraft credit plans in connection with asset accounts, including prepaid accounts.

Proposed comment 12(a)-5.i would also explain that 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 Regulation Z § 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). With respect to an account other than for 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 § 1026.23(d) and (g) do not apply.

Proposed comment 12(a)-5 would provide that 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). Under the proposal, a credit plan is subject to Regulation Z subpart B if the credit plan is accessed by an access device that is a credit card under

Regulation Z or the credit plan is open-end credit. An access device for a prepaid account would not be a credit card if the access device only accesses credit that is not subject to any finance charge as defined in Regulation Z § 1026.4 or any fee described in Regulation Z § 1026.4(c) and is not payable by written agreement in more than four installments. *See* Regulation Z comment 2(a)(15)-2.i.F. Proposed comment 12(a)-5 would explain that 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.

Comment 12(a)-1.i and ii would be moved to proposed comment 12(a)-5-.ii and iii, respectively, and would be revised to indicate how the principles and examples apply generally to asset accounts, including checking accounts and prepaid accounts.

The Bureau believes that it is appropriate to apply the limits on liability and the error resolution procedures in Regulation E generally to transactions that debit a prepaid account but also draw on an overdraft plan that is subject to Regulation Z subpart B. The Bureau believes that its proposed approach is consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized electronic fund transfer and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn. 15 U.S.C. 1693g(c). An unauthorized electronic fund transfer on a prepaid account generally would be subject to the limits on liability in § 1005.6 and proposed § 1005.18(e); an unauthorized electronic fund transfer on a prepaid account also is an error for purposes of error resolution procedures set forth in § 1005.11 and proposed § 1005.18(e). *See* § 1005.11(a)(1)(i).

Although billing errors under Regulation Z § 1026.13(a) include a broader category than only unauthorized use, the Bureau believes it is necessary and proper to apply Regulation E's error resolution provisions and limited Regulation Z error resolution provisions to these transactions, to facilitate compliance with EFTA section 908 and TILA section 161 on error resolution. The Bureau is concerned that conflicting provisions could apply to transactions that debit a prepaid account but also draws on an overdraft plan subject to Regulation Z subpart B if Regulation E's provisions applied to limits on liability for unauthorized use, and Regulation Z's provisions generally apply to investigation of billing errors, including transactions involving unauthorized use. To avoid these potential conflicts and to facilitate compliance, under proposed Regulation Z § 1026.12(a)(1)(v), if the transaction debits a prepaid account but also draws on an overdraft plan subject to Regulation Z subpart B, Regulation E's liability limitations and error resolution procedures apply to the entire transaction and Regulation Z's error resolution rules in § 1026.13(d) and (g) apply to the credit portion of the transaction. This approach is also consistent with the existing provisions in § 1005.11(a)(1)(iv) and Regulation Z § 1026.13(i), which applies Regulation E's liability limitation and error resolution procedures to extensions of credit that is incident to an electronic fund transfer.

The Bureau solicits comment on this approach. The Bureau also solicits comment on whether there are any other preferable approaches to determining how the liability limitations and error resolution procedures in Regulations E and Z should apply to transactions that debit prepaid accounts but also draw on overdraft plans that are subject to Regulation Z subpart B.

12(b) Preemption of Inconsistent State Laws

In 2013, the Bureau published a final determination as to whether certain laws of Maine and Tennessee relating to unclaimed gift cards are inconsistent with and preempted by EFTA and

Regulation E.[218] The Bureau concluded that it had no basis for concluding that the provisions at issue in Maine's unclaimed property law relating to gift cards are inconsistent with, or therefore preempted by, Federal law. The Bureau did determine, however, that one provision in Tennessee's unclaimed property law relating to gift cards is inconsistent with, and therefore preempted by, Federal law. The Bureau's notice of its preemption determination stated that the determination would also be reflected in the commentary accompanying Regulation E.

The Bureau proposes to add a summary of its preemption determination with respect to Tennessee's unclaimed property law as comment 12(b)-4. Proposed comment 12(b)-4 would state that the Bureau had determined that a provision in the State law of Tennessee is preempted by the Federal law, effective April 25, 2013. Specifically, section 66–29–116 of Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and stored-value cards, as defined in § 1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or stored value cards and their underlying funds are permitted to expire under § 1005.20(e).

Existing comment 12(b)-2 states, in part, that the Bureau recognizes state law preemption determinations made by the Board prior to July 21, 2011, unless and until the Bureau makes and publishes any contrary determination. The Bureau proposes to make this statement into a standalone comment in proposed comment 12(b)-2 under the heading *Preemption determinations generally.* The Bureau proposes to renumber the remainder of existing comment 12(b)-2 as proposed comment 12(b)-3, to make the heading for that comment *Preemption determination – Michigan* for the sake of clarity, and to update proposed comment 12(b)-3.i through .iv to

[218] 78 FR 24386, 24391 (Apr. 25, 2013).

provide full citations to the preempted Michigan law at issue therein, which appear in chapter 488 of the Michigan Compiled Laws. Additionally, the Bureau proposes adding language in proposed comment 12(b)-3.iv to clarify that the preemption of sections 488.17 and 488.18 of Michigan law does not apply to transfers of $15 or less, which, pursuant to existing § 1005.9(e), are not subject to § 1005.9. Section 1005.9(e) (then § 205.9(e)) was added by the Board in 2007 to eliminate the requirement to provide terminal receipts for transactions of $15 or less.[219]

The Bureau seeks comment on this portion of its proposal.

Section 1005.15 Electronic Fund Transfer of Government Benefits

Section 1005.15 of Regulation E currently contains provisions specific to certain accounts established by government agencies for distributing government benefits to consumers electronically, such as through ATMs or POS terminals. As discussed in more detail above, the Board amended Regulation E in 1994 to specifically address such accounts. In 1997, the Board modified Regulation E to exempt "needs-tested" EBT programs established or administered under State or local law in response to a 1996 change to EFTA made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.[220] All accounts used to distribute benefits for Federally administered programs (including needs-tested EBT programs) and non-needs tested State and local programs, such as those used to distribute unemployment insurance payments, pensions, and child support, are currently covered by § 1005.15.[221]

Although the Bureau is proposing to include these accounts in the general definition of prepaid account in proposed § 1005.2(b)(3), as discussed above, the Bureau is proposing for ease

[219] *See* 72 FR 36589 (July 5, 2007).

[220] Public Law 104-193, 110 Stat. 2105 (1996).

[221] *See, e.g.,* 62 FR 43467 (Aug. 14, 1997).

of administration to modify existing § 1005.15 to address the proposed revisions for government benefit accounts, rather than subsuming the rules for such accounts into proposed § 1005.18 as the Bureau proposes to do with respect to payroll card accounts. These proposed revisions and additions would generally align the requirements in § 1005.15 with the proposed requirements for prepaid accounts generally in § 1005.18, which are discussed in more detail in the section-by-section analysis of proposed § 1005.18 below.

15(a) Government Agency Subject to Regulation

Existing § 1005.15(a)(1) provides that a government agency is deemed to be a financial institution for purposes of EFTA and Regulation E if it directly or indirectly issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under State or local law or administered by a State or local agency. It also provides that the agency shall comply with all applicable requirements of EFTA and Regulation E, except as provided in § 1005.15. The Bureau is proposing to adjust the final sentence of § 1005.15(a)(1) to reflect that proposed § 1005.15, as discussed in detail below, is no longer only providing an exception to a Regulation E requirement. The Bureau is otherwise not proposing to modify § 1005.15(a)(1).

Existing § 1005.15(a)(2) defines, for purposes of § 1005.15, the term "account" to mean an account established by a government agency for distributing government benefits to a consumer electronically, such as through ATMs or POS terminals, but does not include an account for distributing needs-tested benefits in a program established under State or local law or administered by a State or local agency. For ease of reference, the Bureau is proposing to define such an account as a "government benefit account;" no substantive change is intended by the addition of this definition.

The Bureau does not intend for the proposed revisions in § 1005.15 to alter the programs or agencies to which § 1005.15 is applicable. Thus, the Bureau also does not expect that its proposed revisions to § 1005.15 would impose significant burden on government agencies distributing funds via government benefit accounts.

The Bureau understands that government benefit account programs are typically administered by financial institutions pursuant to a contract between the institution and the agency.[222] The Bureau is not aware of any covered programs run solely by an agency. Although the Bureau does not propose to substantively revise § 1005.15(a), the Bureau requests comment as to whether these provisions in existing § 1005.15(a) remain relevant in light of both current industry practices and the Bureau's proposed definition for "prepaid account" in § 1005.2(b)(3). Specifically, the Bureau seeks comment on the effect on consumers and covered government benefit account programs were the Bureau to remove it.

The Bureau notes that although it is proposing to maintain § 1005.15 for government benefit accounts, there is some question as to whether separate provisions remain necessary or whether the requirements for such accounts could be subsumed into proposed § 1005.18. The Bureau thus requests comment on whether, in light of the proposal herein to address all other types of covered prepaid accounts in § 1005.18, the Bureau should subsume all requirements for government benefit accounts into § 1005.18 as well.

15(b) Issuance of Access Devices

Existing § 1005.15(b) explains that for purposes of § 1005.15, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency

[222] *See, e.g.*, Bd. of Governors of the Fed. Reserve Sys., *Report to the Congress on Government-Administered, General-Use Prepaid Cards*, at 3 (July 2014), *available at* http://www.federalreserve.gov/publications/files/2014_Prepaid_Cards_Final.pdf.

disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated. The Bureau is not proposing to modify § 1005.15(b).

15(c) Pre-Acquisition Disclosure Requirements

The Bureau is proposing new disclosure requirements for government benefit accounts that would be provided before a consumer acquires a government benefit account. The requirements in proposed § 1005.15(c) would be in addition to the initial disclosure requirements in existing § 1005.7(b) and would correspond to the requirements in proposed § 1005.18(b) for prepaid accounts generally.[223]

EFTA section 905(a) sets forth disclosure requirements for accounts subject to the Act.[224] In addition to these disclosures, the Bureau is proposing to use its authority under EFTA sections 904(a) and (c), 905(a), and section 1032(a) of the Dodd-Frank Act to require government agencies to provide disclosures prior to the time a consumer acquires a government benefit account. As discussed in more detail in the section-by-section analysis of proposed § 1005.18(b)(1)(i) below for prepaid accounts, the Bureau believes that adjustment of the timing requirement is necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of government benefit account consumers, because the proposed revision will assist consumers' understanding of the terms and conditions of their government benefit accounts.

[223] The Bureau is also proposing, for purposes of government benefit accounts, to expand the requirement in existing § 1005.7(b)(5) to disclose fees related to EFTs to cover all fees related to the government benefit account, as discussed below in the section-by-section analysis of proposed § 1005.15(f). *See also* proposed § 1005.18(f) (proposing the same requirement for prepaid accounts).

[224] Specifically, EFTA section 905(a) states that "[t]he terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau." 15 U.S.C. 1693c(a)

The Bureau is proposing in new § 1005.15(c) to extend to government benefit accounts the same pre-acquisition disclosure requirements proposed for prepaid accounts, which are discussed in detail in the section-by-section analysis of proposed § 1005.18(b) below. Specifically, proposed § 1005.15(c)(1) would state that before a consumer acquires a government benefit account, a government agency shall comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in proposed § 1005.18(b), in accordance with the timing requirements of proposed § 1005.18(h).

To address issues of compulsory use (*see* existing § 1005.10(e)(2) and proposed comment 10(e)(2)-2), the Bureau is proposing that a notice be provided at the top of the short form to highlight to consumers that they are not required to accept a government benefit account. Specifically, proposed § 1005.15(c)(2) would state that before a consumer acquires a government benefit account, the agency must provide a statement pursuant to proposed § 1005.18(b)(2)(i)(A) that the consumer does not have to accept the government benefit account and that the consumer can ask about other ways to get their benefit payments from the agency instead of receiving them through the account, in a form substantially similar to proposed Model Form A-10(a). As explained in the section-by-section analysis of § 1005.10(e)(2) above, the Bureau is proposing to clarify that Regulation E does not permit a government agency to require individuals to receive government benefits by direct deposit to any particular institution. As noted, the Bureau believes it is important for consumers to realize they have the option of not accepting a government benefit account before they acquire the account, and that receiving such notice at the top of the short form will help to ensure consumers are aware of this right.

Proposed comment 15(c)-1 would explain that Model Form A-10(a) 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).

Proposed comment 15(c)-2 would reiterate that § 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. Proposed comment 15(c)-2.i would provide an example illustrating when a consumer receives disclosures before acquisition of an account for purposes of proposed § 1005.15(c)(1). Specifically, the example would address a situation in which a government agency informs a consumer that she can receive distribution of benefits via a government benefit account in the form of a prepaid card. In the first example, 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. The comment explains that these disclosures were provided to the consumer pre-acquisition, and the agency has complied with proposed § 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 proposed § 1005.15(c)(1).

Proposed comment 15(c)-3 would explain that 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 proposed § 1005.15(c)(1) and (2) before issuing a government benefit account complies with the timing requirements of proposed § 1005.15(c).

15(d) Access to Account Information

15(d)(1) Periodic Statement Alternative

EFTA section 906(c) requires that a financial institution provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an electronic fund transfer occurred or, if there are no such transfers, a periodic statement at least quarterly.[225] Financial institutions must deliver periodic statements in writing and in a form that the consumer can keep, unless consent is received for electronic delivery or unless Regulation E provides otherwise. *See* §§ 1005.4(a)(1) and 1005.9(b).

In the 1994 EBT Rule, the Board adopted a final rule that modified the periodic statement requirement for government benefit accounts. Pursuant to that rule, existing § 1005.15(c) explains that government agencies can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the agency must make available to the consumer: (1) the account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal, or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and (2) a written history

[225] The periodic statement must include transaction information for each EFT, the account number, the amount of any fees assessed, the beginning and ending account balance, the financial institution's address and telephone number for inquiries, and a telephone number for preauthorized transfers. *See* § 1005.9(b).

of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days.

The Bureau is proposing to revise existing § 1005.15(c) as new § 1005.15(d)(1), which would generally align the periodic statement alternative for government benefit accounts with the proposed alternative for prepaid accounts discussed below in the section-by-section analysis of proposed § 1005.18(c). Specifically, the Bureau is proposing in § 1005.15(d)(1) an alternative to the periodic statement requirement that would allow government agencies to instead provide access to account balance by telephone and at a terminal, 18 months of transaction history online, and 18 months written transaction history upon request. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers (including government benefit account consumers), the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to continue the exception to the periodic statement requirements of EFTA section 906(c) for government benefit accounts and to modify that exception in Regulation E to more closely align it with the proposed requirements for prepaid accounts generally. *See also* the section-by-section analysis of proposed § 1005.18(c)(1) below.

Proposed § 1005.15(d)(1) and (1)(i) retain the existing language in current § 1005.15(c) and (c)(1), and would state that a government agency need not furnish periodic statements required by § 1005.9(b) if the agency makes available to the consumer the consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer). This language is unchanged from existing § 1005.15(c)(1). Existing § 1005.18(b)(1)(i) for payroll card accounts and proposed

§ 1005.18(c)(1)(i) for prepaid accounts, however, do not include the requirement to provide balance information at a terminal. As discussed below in the section-by-section analysis of proposed § 1005.18(c)(1)(i), the Bureau is seeking comment on whether a similar requirement to provide balance information at a terminal should be added to the requirements of proposed § 1005.18(c) for prepaid accounts generally. The Bureau requests comment on whether, alternatively, the requirement to provide balance information for government benefit accounts at a terminal should be eliminated from § 1005.15 given the other enhancements proposed herein and for parity with proposed § 1005.18.

The second piece of the proposed periodic statement alternative for government benefit accounts, proposed § 1005.15(d)(1)(ii), would be an electronic history of the consumer's account transactions, such as through a website, that covers at least 18 months preceding the date the consumer electronically accesses the account. As noted above, the requirement to provide an electronic history of a consumer's account transactions would be new to government benefit accounts. This provision would mirror proposed § 1005.18(c)(1)(ii) for prepaid accounts generally. The Bureau does not believe that this proposed requirement would impose significant burden on government agencies, as the Bureau believes that may government benefit account programs already provide electronic access to account information. For example, the Bureau found that all the government benefit card programs included in its Study of Prepaid Account Agreements already provide online access to account information[226] and, in most cases, electronic periodic statements as well.[227]

[226] *See* Study of Prepaid Account Agreements, at 18 tbl.5. All account agreements reviewed for cards used to distribute government benefits indicated that electronic access to account information is available. The Bureau acknowledges that this selection may have some bias as all account agreements, including those for government

The third piece of the proposed periodic statement alternative, proposed § 1005.15(d)(1)(iii), would be a requirement to provide a written history of the consumer's account transactions promptly in response to an oral or written request and that covers at least 18 months preceding the date the agency receives the consumer's request. This provision is similar to existing § 1005.15(c)(2), but has been modified to change the time period covered by the written history from 60 days to 18 months, and to otherwise mirror the language used in proposed § 1005.18(c)(1)(iii) for prepaid accounts generally.

15(d)(2) Additional Access to Account Information Requirements

The Bureau is proposing new § 1005.15(d)(2), which would require that a government agency comply with the account information requirements applicable to prepaid accounts as set forth in proposed § 1005.18(c)(2), (3), and (4). As discussed in more detail below, proposed § 1005.18(c)(2) requires that the electronic and written histories in the periodic statement alternative must include the information set forth in § 1005.9(b). This provision currently exists for payroll card accounts in existing § 1005.18(b)(2), but does not presently appear in § 1005.15 for government benefit accounts. Proposed § 1005.18(c)(3) would require disclosure of all fees assessed against the account, in both the history of account transactions provided as periodic statement alternatives, as well as in any periodic statement. Proposed § 1005.18(c)(4) would require disclosure, in both the history of account transactions provided as periodic statement alternatives, as well as in any periodic statement, monthly and annual summary totals of fees

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benefit programs, reviewed in the Study were obtained online; as such, those programs may be more likely than others to provide electronic access to account information.

[227] The Study of Prepaid Account Agreements found that 95.38 percent of account agreements for government benefit cards indicate that those programs provide electronic periodic statements (in addition to electronic access to account history information). *See id.*, at 20 tbl.7.

imposed on and the total amount of deposits and debits made to a prepaid account. Proposed comment 15(d)-1 would refer to proposed comments 18(c)-1 through -5 for guidance on access to account information requirements.

To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers (including government benefit account consumers), the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to modify the periodic statement requirements of EFTA section 906(c) to require inclusion of all fees charged and a summary total of both monthly and annual fees. *See also* the section-by-section analysis of proposed § 1005.18(c)(3) and § 1005.18(c)(4) below. These proposed revisions will assist consumers' understanding of the account activity on their government benefit accounts. In addition, the Bureau is also using its disclosure authority pursuant to the Dodd-Frank Act section 1032(a) because the Bureau believes that disclosure of all fees and account activity summaries ensure that the features of government benefit accounts, over the term of the account, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with government benefit accounts.

15(e) Modified Disclosure Requirements

Existing § 1005.15(d) provides that a government agency that follows the periodic statement alternative in existing § 1005.15(c) must modify certain initial and ongoing disclosures given to consumers. Existing § 1005.15(d)(1) requires modification of the initial disclosures given pursuant to § 1005.7(b) to reflect the methods a consumer can employ to obtain account balance information and copies of written account history, and to address corresponding changes in the timing requirements for the error resolution notice required by § 1005.7(b)(10). Existing

§ 1005.15(d)(2) addresses modification of the annual error resolution notice required by § 1005.8(b). Existing § 1005.15(d)(3) and (4) adjust the triggering of the 60-day period for reporting unauthorized transfers pursuant to the limited liability provisions in § 1005.6(b)(3) and the error resolution provisions of § 1005.11. Because the Bureau is proposing to modify the periodic statement alternative for government benefit accounts in proposed § 1005.15(d)(1), the Bureau is proposing to modify the requirements in existing § 1005.15(d), renumbered as new § 1005.15(e), to adjust the corresponding timing provisions therein and to align with the requirements of proposed § 1005.18(d) for prepaid accounts generally, discussed below.

15(e)(1) Initial Disclosures

15(e)(1)(i) Account Information

Proposed § 1005.15(e)(1)(i) would require that a government agency modify the disclosures required under § 1005.7(b) by disclosing a telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a website, and a summary of the consumer's right to receive a written account history upon request (in place of the a periodic statement required by § 1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by proposed § 1005.15(e)(1)(i) may be made by providing a notice substantially similar to the notice contained in proposed appendix A-5.

15(e)(1)(ii) Error Resolution

Mirroring existing § 1005.15(d)(1)(iii), proposed § 1005.15(e)(1)(ii) would require that a government agency modify the disclosures required under § 1005.7(b) by providing a notice concerning error resolution that is substantially similar to the notice contained in proposed

appendix A-5, in place of the notice required by § 1005.7(b)(10). These proposed modifications are discussed below in the section-by-section analysis of appendix A-5.

15(e)(2) Annual Error Resolution Notice

Mirroring existing § 1005.15(d)(2), proposed § 1005.15(e)(2) would require that an agency provide an annual notice concerning error resolution that is substantially similar to the notice contained in proposed appendix A-5, in place of the notice required by § 1005.8(b). The Bureau is proposing to add that, alternatively, the agency may include on or with each electronic or written history provided in accordance with proposed § 1005.15(d)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) of appendix A-3, modified as necessary to reflect the error resolution provisions set forth in proposed § 1005.15. The Bureau is proposing to allow each electronic and written history to include an abbreviated error resolution notice, in lieu of an annual notice, for parity with proposed § 1005.18(d)(2) for prepaid accounts generally, which is based on existing § 1005.18(c)(2) for payroll card accounts.

The Bureau seeks comment, however, on whether it should continue to require annual error resolution notices for government benefit accounts in certain circumstances, such as those accounts for which a consumer has not accessed an electronic history or requested a written history in an entire calendar year and thus would not have received any error resolution notice during the course of the year.

15(e)(3) Modified Limitations on Liability Requirements

EFTA section 909 governs consumer liability for unauthorized electronic fund transfers. EFTA section 908 governs the timing and other requirements for consumers and financial institutions on error resolution, including provisional credit. EFTA section 909 on consumer

liability is implemented by existing § 1005.6. For accounts under Regulation E generally, including payroll card accounts, § 1005.6(a) provides that a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met.[228] If the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of $50 or the amount of unauthorized transfers made before giving notice. § 1005.6(b)(1). If timely notice is not given, the consumer's liability is the lesser of $500 or the sum of (1) the lesser of $50 or the amount of unauthorized transfers occurring within two business days of learning of the loss/theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution. § 1005.6(b)(2). Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

For government agencies that follow the periodic statement alternative in existing § 1005.15(c), existing § 1005.15(d)(3) provides that for purposes of § 1005.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall being with the transmittal of a written account history or other account information provided to the consumer under existing § 1005.15(c). The Bureau notes that this

[228] The required disclosures for this purpose include a summary of the consumer's liability under § 1005.6, or under State law or other applicable law or agreement, for unauthorized electronic fund transfers; the telephone number and address of the person or office to be notified when the consumer believes an unauthorized transfer has been or may be made; and the financial institution's business days. §§ 1005.6(a) and 1005.7(b)(1) through (3).

provision only modifies the 60-day period for consumers to report an unauthorized transfer and does not alter any other provision of § 1005.6.

Proposed § 1005.15(e)(3) would modify existing § 1005.15(d)(3) to adjust the timing requirements for reporting unauthorized transfers based on the proposed requirement to provide consumers with electronic account history under proposed § 1005.15(d)(1)(ii), as well as written history upon request. Specifically, proposed § 1005.15(e)(3)(i) would provide that for purposes of existing § 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of the date the consumer electronically accesses the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflects the unauthorized transfer, or the date the agency sends a written history of the consumer's account transactions requested by the consumer under proposed § 1005.15(d)(1)(iii) in which the unauthorized transfer is first reflected.

Proposed § 1005.15(e)(3)(ii), which mirrors existing § 1005.18(c)(3)(ii) and proposed § 1005.18(e)(1)(ii), would provide that an agency may comply with proposed § 1005.15(e)(3)(i) by limiting the consumer's liability for an unauthorized transfer as provided under existing § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

The Bureau notes that nothing in this proposal modifies the requirement to comply with existing § 1005.6(b)(4), regarding an extension of time limits if a consumer's delay in notifying the agency was due to extenuating circumstances, nor any other provisions of existing § 1005.6.

15(e)(4) Modified Error Resolution Requirements

EFTA section 908 governs the timing and other requirements for consumers and financial institutions on error resolution, including provisional credit, and is implemented for accounts

under Regulation E generally, including government benefit accounts, in § 1005.11. Section 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an electronic fund transfer from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.*, whether the transfer was unauthorized), within ten business days (20 business days if the electronic fund transfer occurred within 30 days of the first deposit to the account). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days. After determining that an error occurred, the financial institution must correct an error within one business day. *See* § 1005.11(c)(1). Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account.

Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within ten business days, its investigation may take up to 45 days if it provisionally credits the amount of the alleged error back to the consumer's account within ten business days of receiving the error notice.[229] Provisional credit is not required if the financial institution requires but does not receive written confirmation within 10 business days of an oral notice by the consumer. *See* § 1005.11(c)(2)(i)(A). If the investigation establishes proof that the transaction was, in fact, authorized, the financial institution may reverse any provisional credit previously extended (assuming there are still available funds in the account). *See* § 1005.11(d)(2).

[229] The financial institution has 90 days (instead of 45) if the claimed unauthorized electronic fund transfer was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. *See* § 1005.11(c)(3)(ii).

For government agencies that follow the periodic statement alternative in existing § 1005.15(c), existing § 1005.15(d)(4) provides that an agency shall comply with the requirements of existing § 1005.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information under existing § 1005.15(c) in which the error is first reflected. The Bureau notes that this provision only modifies the 60-day period for consumers to report an error and does not alter any other provision of § 1005.11.

Proposed § 1005.15(e)(4) would modify existing § 1005.15(d)(3) to adjust the timing requirements for reporting errors based on the proposed requirement to provide consumers with electronic account history under proposed § 1005.15(d)(1)(ii), as well as written history upon request. Specifically, proposed § 1005.15(e)(4)(i) would provide that an agency shall comply with the requirements of existing § 1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of 60 days after the date the consumer electronically accesses the consumer's account under proposed § 1005.15(d)(1)(ii), provided that the electronic history made available to the consumer reflects the alleged error, or 60 days after the date the agency sends a written history of the consumer's account transactions requested by the consumer under proposed § 1005.15(d)(1)(iii) in which the alleged error is first reflected.

Proposed § 1005.15(e)(4)(ii) would provide that in lieu of following the procedures in proposed § 1005.15(e)(4)(i), an agency complies with the requirements for resolving errors in existing § 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the agency within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

Proposed comment 15(e)-1 would refer to proposed comments 18(d)-1 through -3, discussed below, for guidance on modified limited liability and error resolution requirements.

The Bureau notes that proposed § 1005.15 does not contain an exclusion that corresponds to proposed § 1005.18(e)(3), which would exempt a financial institution from compliance with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account for which it has not completed its collection of consumer identifying information and identity verification, provided the institution has disclosed to the consumers the risks of not registering the prepaid account. The Bureau is not proposing a similar exclusion for government benefit accounts because existing § 1005.15(b) requires that government agencies verify consumers' identities before an access device for an account governed by § 1005.15 is activated.

15(f) Initial Disclosure of Fees and Other Key Information

The Bureau is proposing § 1005.15(f) to provide that for government benefit accounts, a government agency shall comply with the requirements governing initial disclosure of fees and other key information applicable to prepaid accounts as set forth in proposed § 1005.18(f), in accordance with the timing requirements of proposed § 1005.18(h). This proposed requirement is in addition to the pre-acquisition disclosure requirements of proposed § 1005.15(c), discussed above.

As discussed in more detail in the section-by-section analysis of proposed § 1005.18(f) below, the Bureau is proposing to modify the initial disclosure of fees requirement in § 1005.7(b)(5) for prepaid accounts, including government benefit accounts. EFTA section 905(a)(4) requires financial institutions to disclose to consumers, as part of an account's terms and conditions, any charges for electronic fund transfers or for the right to make such transfers.

Existing § 1005.7(b)(5) implements this requirement by stating that, as part of the initial disclosures, any fees imposed by a financial institution for electronic fund transfers or for the right to make transfers must be disclosed. Existing comment 7(b)(5)-1 further clarifies that other fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed. The Bureau believes that for prepaid accounts (including government benefit accounts), however, it is important that the initial account disclosures provided to consumers list all fees that may be imposed in connection with the account, not just those fees related to electronic fund transfers.

Thus, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an adjustment of the requirement EFTA section 905(a)(4), which is implemented in existing § 1005.7(b)(5), for government benefit accounts. Specifically, the Bureau is proposing § 1005.15(f), which would cross-reference § 1005.18(f) to require that, pursuant to proposed § 1005.18(f)(1), in addition to disclosing any fees imposed by a government agency for electronic fund transfers or the right to make such transfers, the agency must also provide in its initial disclosures given pursuant to § 1005.7(b)(5) all other fees imposed by the agency in connection with a government benefit account. For each fee, an agency must disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, and, to the extent known, whether any third party fees may apply. The Bureau believes that most agencies are already disclosing all fees in the terms and conditions accompanying government benefit accounts. These disclosures pursuant to proposed §§ 1005.15(f) and 1005.18(f) must include all of the information required

to be disclosed pursuant to § 1005.18(b)(2)(ii)(B) and must be provided in a form substantially similar to Sample Form A-10(e).

The Bureau believes that for consistency purposes and to facilitate consumer understanding of a government benefit account's terms, it is useful for the fee disclosure provided pursuant to § 1005.7(b)(5), as modified by proposed § 1005.18(f), to be in the same format of the long form disclosure requirement of proposed § 1005.18(b)(2)(ii)(A), as applied to government benefit accounts via proposed § 1005.15(c).

15(g) Credit Card Plans Linked to Government Benefit Accounts

The Bureau is proposing § 1005.18(g), which would require that for credit plans linked to government benefit accounts, a government agency must comply with prohibitions and requirements applicable to prepaid accounts as set forth in proposed § 1005.18(g). See the section-by-section analysis of proposed § 1005.18(g) below for additional information on this proposed requirement. The Bureau seeks comment on this portion of its proposal for government benefit accounts.

Section 1005.17 Requirements for Overdraft Services

17(a) Definitions

Section 1005.17 sets forth requirements that financial institutions must follow in order to provide "overdraft services" to consumers related to consumers' accounts. Under § 1005.17, financial institutions must provide consumers with notice of their right to opt in, or affirmatively consent, to the institution's overdraft service for ATM and one-time debit card transactions, and obtain the consumer's affirmative consent, before fees or charges may be assessed on the consumer's account for paying such overdrafts.

Section 1005.17(a) currently defines "overdraft service" to mean a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. Section 1005.17(a) also provides that the term "overdraft service" does not include any payment of overdrafts pursuant to: (1) A line of credit subject to Regulation Z, including transfers from a credit card account, home equity line of credit, or overdraft line of credit; (2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or, (3) A line of credit or other transaction exempt from Regulation Z pursuant to § 1026.3(d). In adopting the provisions in what is now § 1005.17, the Board indicated that these methods of covering overdrafts were excluded because they require the express agreement of the consumer.[230]

As discussed in the Overview of Regulation Z Proposal section, the Bureau is declining to extend the current regulatory scheme governing overdraft services on checking accounts to prepaid accounts, and is instead proposing to regulate these types of services generally under Regulation Z (as well as Regulation E's compulsory use provision). The proposal would amend § 1005.17(a)(1) to explain that the term "overdraft service" does not include credit plans that are accessed by prepaid cards that are credit cards under Regulation Z. Specifically, the proposal would amend § 1005.17(a)(1) to provide that the term "overdraft services" does not include any payments of overdrafts pursuant to a line of credit or credit plan subject to Regulation Z, including transfers from a credit card account, home equity line of credit, overdraft line of credit, or a credit plan that is accessed by an access device for a prepaid account where the access

[230] 74 FR 59033, 59040 (Nov. 17, 2009).

device is a credit card under Regulation Z. Similar to the other exemptions from the definition of "overdraft service," credit card plans require the express agreement of consumers in that, under the proposal, such plans can be added to previously issued prepaid accounts only upon consumer request. See Regulation Z § 1026.12(a)(1) and proposed comment 12(a)(1)-7. In addition, under the proposal, a credit card account may not be added to a previously issued prepaid account until 30 calendar days after the prepaid account has been registered. *See* proposed § 1005.18(g)(1) and Regulation Z § 1026.12(h). The Bureau believes that the provisions in Regulation Z § 1026.12(a)(1) and (h) and § 1005.18(g)(1) would provide sufficient protections to ensure that the addition of a credit card account to a previously issued prepaid account would occur only with the consumer's consent.

The Bureau also notes that the opt-in provision in § 1005.17 would not apply to credit accessed by a prepaid card that is not a credit card because the card only accesses credit that is not subject to any finance charge 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. This is because § 1005.17(a) applies only to overdraft services where a financial institution assessed a fee or charge for the overdraft. For prepaid accounts under the proposal, any fees or charges for ATM or one-time "debit card" transactions (as that term is used in § 1005.17) that access an institution's overdraft service would be considered "finance charges" under the proposal.[231] Thus, a prepaid card that is not a credit card could not be charging any fees or charges for ATM or one-time "debit card" transactions (as that term is used in Regulation E § 1005.17) for accessing the overdraft service, such that the opt-in provision in Regulation E

[231] Under the proposal, the term "debit card" in subpart A of Regulation E generally includes prepaid cards, except for purposes of § 1005.17. *See* proposed comment § 1005.2(b)(3)(i)-8.

§ 1005.17 would apply. If a prepaid card was charging any fees or charges for ATM or one-time "debit card" transactions (as that term is used in Regulation E § 1005.17) that accessed the overdraft service, the prepaid card would be a credit card under Regulation Z. In that case, the prepaid card would not be subject to the opt-in requirement in § 1005.17, but would be subject to provisions of Regulation Z, as discussed above.

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

Regulation E currently applies to payroll card accounts (as well as government benefit accounts, as discussed above in the section-by-section analysis of § 1005.15). Section 1005.18 contains provisions specific to payroll card accounts. Because payroll card accounts would be largely subsumed into the proposed definition of prepaid account, the Bureau proposes to revise § 1005.18 by replacing it with provisions governing prepaid accounts, which the Bureau proposes to apply to payroll card accounts as well.

The current provisions in § 1005.18, as discussed below, provide an alternative to the periodic statement requirement of § 1005.9(b) for payroll card accounts and make corresponding adjustments to certain other provisions in Regulation E for financial institutions following the periodic statement alternative. In addition to providing a periodic statement alternative (and corresponding adjustments) for prepaid accounts, proposed § 1005.18 also contains other modifications and additions to certain requirements in Regulation E, including with respect to pre-acquisition and other disclosures, limited liability and error resolution, and credit card plans linked to prepaid accounts. The provisions of proposed § 1005.18 are discussed below in turn.

The Bureau notes that while proposed § 1005.18 would set forth specific requirements for prepaid accounts, there are other provisions in Regulation E subparts A and B that would apply to prepaid accounts by virtue of their being deemed accounts in the Regulation. Thus, to the

extent a provision in Regulation E applies to an "account," unless otherwise modified by proposed § 1005.18, that provision would apply to a prepaid account. For example, § 1005.8(a) requires provision of a change in terms notice in certain circumstances. As the Bureau is not proposing to modify this requirement for prepaid accounts, it would apply to prepaid accounts in the same manner as it does to all other accounts under Regulation E.

18(a) Coverage

The Bureau is proposing to modify § 1005.18(a) to state that a financial institution shall comply with all applicable requirements of EFTA and Regulation E with respect to prepaid accounts except as modified by proposed § 1005.18. Proposed § 1005.18(a) would also refer to proposed § 1005.15 for rules governing government benefit accounts.

Existing comment 18(a)-1 addresses issuance of access devices under § 1005.5 and explains that a consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. The Bureau is proposing to add a cross-reference to § 1005.5(b) (regarding unsolicited issuance of access devices) in comment 18(a)-1 and to add additional guidance that would explain that a consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail store or acquires a prepaid account by making a request or submitting an application by telephone or online. The Bureau notes that while financial institutions may provide prepaid accounts to consumers on an unsolicited basis, they must comply with the provisions on unsolicited issuance in existing § 1005.5(b) and compulsory use in § 1005.10(e)(2).

The Bureau is also proposing to revise existing comment 18(a)-2 regarding application of Regulation E to employers and services providers to refer to prepaid accounts in addition to payroll card accounts, but otherwise intends to leave comment 18(a)-2 unchanged.

The Bureau seeks comment on this portion of its proposal.

18(b) Disclosure Requirements for Prepaid Accounts

Overview

The Bureau is proposing to adopt new disclosures for prepaid accounts that would be provided before a consumer acquires a prepaid account. These proposed disclosures, which the Bureau developed during a period of consumer testing and outreach, would be adopted in proposed § 1005.18(b) and would be in addition to the initial disclosure requirements in existing § 1005.7(b).[232] The Bureau believes that providing disclosures before the consumer's acquisition of the prepaid account will ensure that all consumers, regardless of the type of prepaid account they are acquiring, receive the proposed disclosures at a relevant time in the acquisition sequence.

The proposal would require that a financial institution provide to the consumer both a "short form" and a "long form" disclosure before the consumer acquires a prepaid account. The short form would set forth the prepaid account's most important fees to facilitate basic understanding of the account's key terms and, when feasible, comparison shopping with other prepaid account products. The Bureau believes that this form would quickly allow the consumer to assess key fees and terms of the prepaid account. Meanwhile, the long form disclosure would list all of the fees associated with the prepaid account and would include more detailed

[232] The Bureau is also proposing, for purposes of prepaid accounts, to expand the requirement in existing § 1005.7(b)(5) to disclose fees related to EFTs to require the disclosure of all fees related to the prepaid account, as discussed below in the section-by-section analysis of proposed § 1005.18(f).

information on how those fees are assessed. The long form would give consumers an opportunity to review all fee information about the prepaid account before acquiring an account.

The Bureau is also proposing exceptions to the general disclosure requirement for situations where a consumer acquires a prepaid account in certain retail stores or orally by telephone. In these situations, a financial institution would still always have to provide the short form disclosure to the consumer prior to acquisition, but it would have the option of providing the long form disclosure post-acquisition, as long as the financial institution provides methods for consumers to access the long form electronically and orally prior to acquisition. *See* proposed § 1005.18(b)(1)(i) through (iii).

Disclosure Requirements Generally

EFTA section 905(a) sets forth disclosure requirements for accounts, stating that the terms and conditions of electronic fund transfers involving a consumer's account must be provided at the time the consumer contracts for an electronic fund transfer service, in accordance with the regulations of the Bureau. Section 905(a) further states that the disclosures must include, among other things and to the extent applicable, any charges for electronic fund transfers or for the right to make such transfers (section 905(a)(4)), that a fee may be imposed for use of certain ATMs (section 905(a)(10)), information regarding the type and nature of electronic fund transfers that the consumer can initiate (section 905(a)(3)), and details regarding the consumer's liability for unauthorized transactions and whom to contact in the event an unauthorized transaction has occurred (section 905(a)(1) and (2)).[233]

[233] In addition, the Truth in Savings Act (TISA) (12 U.S.C. 44, *et seq.*) contains disclosure requirements for accounts issued by depository institutions. Specifically, Regulation DD (10 CFR part 1030), which implements TISA, requires disclosure of the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. 12 CFR 1030.4(b)(4).

In prior rulemakings, the Board implemented provisions in Regulation E consistent with these statutory requirements, primarily in existing § 1005.7. Specifically, section 1005.7(a) states that the required disclosures must be provided to a consumer at the time a consumer contracts for an electronic fund transfer or before the first electronic fund transfer is made involving the consumer's account. Section 1005.7(b) also sets forth what a financial institution must include in its initial disclosures, including details regarding the types of transfers that the consumer may make and the limitations on the frequency and dollar amount of the transfers, any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers, and a notice that a fee may be imposed by an ATM operator when the consumer initiates an electronic fund transfer or makes a balance inquiry, among other requirements.

At various points, these general provisions in § 1005.7 were modified for use with other types of accounts or in other contexts. *See generally* § 1005.14(b)(1) (disclosures provided by certain service providers); [234] current § 1005.15(d) (disclosures related to the electronic fund transfer of government benefits);[235] § 1005.16 (disclosures at ATMs);[236] § 1005.17(d) (overdraft disclosures);[237] current § 1005.18(c)(1) (payroll card account disclosures);[238] and § 1005.31 (disclosures related to remittance transfers).[239]

[234] 61 FR 19662, 19674 (May 2, 1996).

[235] 61 FR 19662, 19670 (May 2, 1996).

[236] 78 FR 18221, 18224 (Mar. 26, 2013).

[237] 74 FR 59033, 59053 (Nov. 17, 2009).

[238] 71 FR 51437, 51449 (Aug. 30, 2006).

[239] 77 FR 50244, 50285 (Aug. 20, 2012).

Comments Received and Stakeholder Outreach Regarding Disclosure

In proposing new requirements and a modification of the existing disclosure requirements in § 1005.7(b)(5) for prepaid accounts, the Bureau has considered comments received in response to the Prepaid ANPR, in addition to conducting further outreach. In the Prepaid ANPR, the Bureau noted that one of its goals was to allow consumers to easily compare financial products by ensuring transparent fee disclosure.[240] The Bureau also asked three specific sets of questions related to disclosure: (1) What steps could the Bureau take to most effectively regulate prepaid products to provide the consumer with transparent, useful, and timely fee disclosures?; (2) How can the Bureau best enable a consumer to compare various GPR cards, or other payment products, that may have different fee structures or be offered through various distribution channels? Should market participants be required to provide disclosure pre-sale, post-sale, or both?; and (3) Should the existence, or lack thereof, of FDIC pass-through insurance associated with a GPR card be disclosed to the consumer? If so, how and when should the existence of FDIC pass-through insurance be disclosed?[241]

Comments received in connection with the first two sets of these questions are addressed below, and the comments received in connection with the set of questions regarding FDIC pass-through deposit insurance are addressed below in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*13*).

As to the first set of questions, commenters focused primarily on disclosures that would appear on the external packaging material of a GPR card sold in a retail store. Many industry and consumer advocacy group commenters suggested that the Bureau develop specific

[240] 77 FR 30923, 30925 (May 24, 2012).

[241] *Id*.

disclosures, such as a uniform chart or fee box, that a financial institution would affix to a GPR card's packaging when the card is offered for sale in a retail store, instead of a more general rule that stated only that fees be disclosed clearly and conspicuously without providing specific instructions or model forms. Many of these industry commenters suggested that adopting a standardized form would be less confusing than complying with a clear and conspicuous standard. Apart from suggesting a standardized form, industry commenters mostly agreed that on-package disclosures should include only the fees that a consumer would most commonly incur while using a prepaid account, in order to increase the likelihood that consumers would understand and use the disclosures.

Many consumer advocacy group commenters, on the other hand, encouraged the Bureau to require full disclosure to the consumer of all fees associated with a GPR card before the consumer acquires an account, rather than only a subset of certain fees. These groups were concerned that consumers would not have a full understanding of a prepaid account's true costs without this information and that providers could subvert the disclosure's purpose by adjusting fee schedules to increase or add fees not required to be disclosed on a shorter disclosure.

Separately, some consumer advocacy group commenters suggested that the Bureau propose an "all-in" cost disclosure. These commenters explained that an "all-in" disclosure would present a single number to the consumer that would estimate the approximate cost of a prepaid account product. These consumer advocacy group commenters also asserted that such a disclosure could estimate, for example, the average monthly cost of using the prepaid account product based on one or several different use cases. Some of the consumer advocacy group commenters also suggested that the Bureau could collect actual usage data from issuers of

prepaid accounts and use that data to develop an algorithm or other equation to serve as the basis for this type of all-in disclosure.[242]

As to the second set of questions regarding how to facilitate consumer comparison shopping and whether pre- or post-sale disclosures are necessary, many industry and consumer advocacy group commenters agreed that it was important for consumers to receive disclosures before they buy a prepaid account. Industry commenters further discouraged the Bureau from implementing any disclosure regulations that would mandate a specific method of delivery for disclosures provided after the consumer acquires a prepaid account, which they viewed as potentially imposing a large burden on industry without significantly benefiting the consumer. Industry and consumer advocacy group commenters also encouraged the Bureau to develop disclosures to accommodate the variety of distribution channels through which prepaid products are distributed and sold, while also considering how distribution may evolve in the future. Several consumer advocacy group commenters emphasized the need for the Bureau to ensure disclosures provided online through a website are easy to locate, while also considering that many consumers lack internet access and would have difficulty viewing disclosures online. Some commenters also suggested that providers implement mechanisms to ensure consumers purchasing prepaid accounts online have actually reviewed the disclosures.

In addition to reviewing comments received in response to the Prepaid ANPR, the Bureau has also engaged in additional outreach with interested stakeholders and conducted consumer focus groups and one-on-one testing of prototype disclosures. As discussed in greater detail above and in the report published with this proposal, the Bureau engaged a contractor, ICF, to

[242] The "all-in" disclosure concept is discussed in more detail in the section-by-section analysis of proposed § 1005.18(b).

hold four focus group sessions to gain a general understanding of how and why consumers use prepaid accounts. The Bureau also worked with ICF to conduct one-on-one interviews with consumers to test various model form prototypes the Bureau developed, including variations of the model short form and sample long form disclosures proposed herein.

Based on its review of the comments received in response to the Prepaid ANPR, outreach with stakeholders, insights gathered from consumer testing, and its general market analysis, the Bureau is proposing a new pre-acquisition disclosure regime that it believes will standardize industry disclosures, increase consumers' understanding of prepaid accounts' terms, and improve consumers' ability to compare prepaid account products prior to acquiring a prepaid account. The Bureau is also proposing model forms and sample forms.

Proposed Disclosure Regime

As noted above, EFTA section 905(a) sets forth disclosure requirements for accounts subject to the Act.[243] Proposed section 1005.18(b) would implement EFTA section 905(a) for prepaid accounts. In addition, the Bureau is proposing to use its authority under EFTA sections 904(a) and (c), 905(a), and section 1032(a) of the Dodd-Frank Act to require financial institutions to provide disclosures prior to the time a consumer acquires a prepaid account and for disclosures to include all fees that may be charged for the prepaid account. The Bureau is also proposing, in certain circumstances that financial institutions provide disclosures in languages other than English. As discussed in the section-by-section analysis of proposed § 1005.18(b)(1)(i), proposed § 1005.18(b)(2)(ii)(A), and proposed § 1005.18(b)(6), the Bureau believes that adjustment of the timing and fee requirement and the disclosure language is

[243] The relevant portion of EFTA section 905 states that "[t]he terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau…"

necessary and proper to effectuate the purposes of EFTA to provide a framework to establish the rights, liabilities and responsibilities of prepaid account users, because the proposed revision will assist consumers' understanding of the terms and conditions of their prepaid accounts. In addition, the Bureau believes that pre-acquisition disclosures of all fees for prepaid accounts as well as certain foreign language disclosures will, consistent with Dodd-Frank section 1032(a), ensure that the features of the prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account.

The Bureau believes that there are many ways a consumer could obtain a prepaid account and that the proposed disclosure regime should be adaptable to this variety. For example, a consumer might purchase a prepaid account in a retail store, online through a provider's website, or by calling a provider by telephone. A consumer could also receive a prepaid account from an employer in the form of a payroll card account or a student might receive a prepaid account from their university in connection with the disbursement of financial aid. The Bureau believes that framing the disclosure regime as one that would apply before the consumer's acquisition of the prepaid account will ensure that any consumer who obtains a prepaid account, regardless of the type of prepaid account or its method of acquisition, will receive the proposed disclosures.

The proposed pre-acquisition disclosure regime would have two parts. First, the Bureau is proposing that a consumer would receive a "short form" disclosure before acquiring a prepaid account. The short form, as demonstrated in proposed Model Forms A-10(a) through (d) and as discussed below in the section-by-section analysis of proposed § 1005.18(b)(3)(iii)(A), would consist of a "static" portion that would set forth fees that must be disclosed for all prepaid account products, even if such fees are $0 or if they relate to features not offered for a particular

prepaid account product.[244] This static portion would have a "top-line" component highlighting four types of fees (the periodic fee, per-purchase fees, ATM withdrawal fees, and the cash reload fee) at the top of the form. The Bureau believes these fee types are the most important to consumers when shopping for a prepaid account.[245] The top-line fees would be displayed in a more prominent and larger font size than the remainder of the disclosures on the form to draw consumers' attention to those fees quickly. Three additional fee types (ATM balance inquiry fees, a customer service fee, and an inactivity fee) and a statement regarding the availability of overdraft services and other credit features would also be required to appear in the static portion of the short form. Additionally, the short form would include an "incidence-based" portion that would list up to three additional fees that consumers most commonly incur for a particular prepaid account product. Short forms for payroll card accounts and government benefit accounts would also include a notice at the top of the form regarding compulsory use that consumers are not required to accept such cards as the only method of receiving funds).[246] *See* § 1005.10(e)(2)

The second part of the Bureau's proposed pre-acquisition disclosure regime would require that, before acquiring a prepaid account, consumers would always receive a stand-alone "long form" disclosure that would set forth all of a prepaid account product's fees and their qualifying conditions, except for accounts that consumers acquire in retail stores or orally by telephone. For prepaid accounts consumers acquire in retail stores, financial institutions could

[244] The Bureau refers to a "prepaid account product" to mean a product that offers prepaid accounts with identical fee schedules to any consumer who opens an account.

[245] *See* section-by-section analysis of proposed § 1005.18(b)(2)(i) for a complete discussion of the short form's contents.

[246] *See* section-by-section analysis of proposed § 1005.18(b)(2)(i)(A) for a discussion of the notice requirement on the short form for payroll card accounts. *See* section-by-section analysis of proposed § 1005.15(c)(2) for a discussion of the notice requirement on the short form for government benefit accounts.

disclose a URL and telephone number on the short form that a consumer would use to access the content of the long form disclosure prior to acquisition, but they would not have to provide a stand-alone long form disclosure prior to the consumer's acquisition of the prepaid account. For prepaid accounts acquired orally by telephone, financial institutions could inform a consumer that they can access the long form by telephone or online, but would not have to provide the long form disclosure before acquisition unless a consumer requests it.[247]

This proposal would mean that consumers would receive or have access to the short form and long form disclosures in all prepaid account acquisition scenarios. Thus, consumers acquiring prepaid accounts in the form of a payroll card account, a government benefit account, at a bank branch, at a retail store, or on a website, for example, would always have the opportunity to review the short form and long form disclosures before acquiring a prepaid account. The Bureau believes it is important for consumers to have access to both of these disclosures in all acquisition scenarios because they serve different but complementary goals. First, the Bureau believes that by prominently displaying important fees with limited explanatory text, the short form will increase the likelihood consumers notice the disclosure of these key fees and are able to use the disclosure to inform their acquisition choice. The short form would present the key fees of a prepaid account in a simplified format rather than requiring a consumer to navigate an exhaustive list of fees and their qualifications for each product in order to identify those that are most relevant. The Bureau also believes that the short form's design, and in particular the emphasized top-line portion of the disclosure, will prominently present key fees, and create a visual hierarchy of information that will more effectively draw consumer's attention

[247] In all acquisition scenarios, however, the financial institution would have to provide a version of the long form in the terms and conditions included inside a package in a retail setting or provided to the consumer through other methods, such as in the mail after acquisition. *See* comment to proposed § 1005.18(f).

to a prepaid account product's key terms. The Bureau also believes this visual hierarchy on the short form will increase the likelihood that consumers will engage with the disclosure. Research has shown that such engagement, or the formation of the intent to use the disclosure, is an important first step to ensure that consumers utilize and understand any disclosure.[248] The Bureau believes that, in many cases, consumers spend little time reviewing fee disclosures when shopping for prepaid accounts, and it is therefore important that any disclosure quickly draw consumers' attention to the most important information regarding that particular account with minimal clutter on the form.

The Bureau also believes that by standardizing most components of the short form, consumers will receive consistent, key fee information about prepaid account products regardless of how or where they shop for or obtain prepaid accounts. For example, under this proposal, a consumer who takes a package containing a prepaid account access device off of a J-hook in a retail store would see a short form listing the same types of fees in the static portion of the short form included on the exterior of the packaging material as the fee types included in the static portion of the short form for an entirely different prepaid account product a consumer would see when shopping online. Similarly, consumers receiving payroll card accounts at their place of employment would receive a short form disclosure containing the same fees in the static portion of the short form before agreeing to receive wages via the payroll card account. The Bureau believes that standardizing pre-acquisition disclosures across all possible acquisition channels will make it easier for consumers to compare different types of prepaid account products.

[248] *See, e.g.*, Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 Stan. L. Rev. 545 (2014).

As discussed below in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*8*), however, the Bureau is also proposing to include an incidence-based portion on the short form disclosure to highlight the most commonly charged fees that are not otherwise captured in the form. In part, the Bureau has proposed to include this incidence-based portion on the short form to address concerns that providers could simply change their fee structures to make their products appear less expensive relative to other products. The Bureau acknowledges that this portion of the short form would not be standardized across different prepaid account products due to the different fees financial institutions would be required to disclose on the incidence-based portion of the short form. [249] The Bureau believes, however, that having identical fee types listed in the static portion of the short form will be sufficiently consistent so as to facilitate consumer comparison shopping, even if the incidence-based portion of the form introduces some variance. At the same time, the incidence-based portion of the short form disclosure will ensure that consumers are made aware of any other significant fees relating to a particular prepaid account product.

The Bureau also recognizes that providing only a subset of fee information about a prepaid account on the short form might not give all consumers the information they need to make their acquisition decisions. Thus, the Bureau is proposing also to require provision pre-acquisition of the long form disclosure, which would set forth all of a prepaid account's fees to a consumer and the conditions under which those fees could be imposed. The Bureau expects that consumers seeking to learn about more fees than those listed on the short form will utilize the

[249] The Bureau also notes that the proposed updating requirements for the proposed incidence-based fee disclosure could result in these fees being different for the same prepaid account product due to differing proposed requirements for timing of revisions to in-store versus online forms. *See* the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*8*)(I).

long form. The proposed long form also would provide detailed explanations to consumers about conditions that may cause fees to vary, such as the impact of crossing a threshold number of transactions or receiving direct deposits into the prepaid account. Such explanations would not be permitted on the short form in order to preserve its simplicity, but may be relevant to some consumers' acquisition decisions. *See* proposed § 1005.18(b)(2)(i)(C).[250]

The Bureau does not believe consumers would necessarily benefit from receiving only this long form disclosure before acquiring a prepaid account. In the Bureau's testing, for example, many participants reported feeling overwhelmed by the amount of information included on a prototype long form and they struggled to compare two long form disclosures, even those that listed identical fee types. The Bureau believes that the potential size and complexity of the long form might overwhelm and lead consumers to disregard the disclosure and also not use it to comparison shop across products or even to evaluate a single product. As discussed above, the short form, on the other hand, will be in a simpler format and its static portion, the Bureau believes, will facilitate comprehension and comparison shopping. Insofar as the Bureau does recognize that the subset of fee information on the short form may be incomplete for some consumers, the Bureau believes that providing both the short form and long form disclosures would strike the right balance between giving consumers key information about a prepaid account to aid understanding and comparison shopping, while also providing them with the opportunity to review all of a prepaid account's fee information pre-acquisition.

[250] As discussed in greater detail below, the Bureau is proposing § 1005.18(b)(1)(ii) and (b)(iii) to require that for prepaid accounts consumers acquire in retail stores or orally by telephone, long form disclosures would only need to be made accessible, but not necessarily provided, pre-acquisition (although they must be provided after acquisition with the terms and conditions as part of the initial disclosures).

The Bureau also recognizes that in certain acquisition scenarios, it is less likely that a consumer would engage in comparison shopping. For example, when the consumer receives disclosures for a payroll card account, it may be more difficult for that consumer to comparison shop. Even in this situation, though, the Bureau believes that consumers would benefit from receiving the short form and long form disclosures prior to acquiring the payroll card account because the disclosures will facilitate the consumer's understanding of the account's terms and may allow for subsequent comparisons to be made.

The Bureau understands that many prepaid account providers currently provide disclosures that include many (if not all) of their prepaid account's fees, and therefore the Bureau does not believe that this aspect of the proposal introduces a significant new burden, as discussed in greater detail below in the Section 1022 Analysis. As discussed below, however, the Bureau does recognize that there are different forms of disclosures that could apply to prepaid account pre-acquisition disclosures and that burden may vary.

Alternative Approaches Considered by the Bureau

The Bureau has considered a variety of approaches to pre-acquisition disclosures, including those suggested by commenters to the Prepaid ANPR and others who have opined to the Bureau and in other publications about prepaid account disclosures.

"All-in" disclosure. Among the alternatives the Bureau has considered is disclosure of a single monthly cost for using a prepaid account. Proponents commented that such a disclosure is appealing because it would provide a quick and understandable reference point and, as compared to a disclosure listing several different numbers with line items for each fee type, could also allow for easier comparisons among prepaid account products. Proponents have suggested that this figure could be conceptually similar to the "Energy Star" cost disclosure regime the FTC has

implemented for appliances,[251] and would present the average amount paid by users of that particular prepaid account product over a designated time period (such as monthly) or the output of a formula intended to replicate typical consumers' use of prepaid accounts.

While the Bureau believes that this "all-in" disclosure could potentially have several benefits, it declines to propose such an approach at this time for several reasons. First, the Bureau is concerned that it may not be possible to develop a single formula to reflect accurately how most consumers typically use a prepaid account. A single formula might include several fee types, such as ATM withdrawal fees, any periodic maintenance fees, and cash reload fees, and weight them based on how often a consumer might incur those fees during a month to determine the approximate cost to all consumers of that prepaid account product. The Bureau's testing, along with other studies, has identified, however, that there is no single, typical use case for all prepaid accounts.[252] Thus, it would be difficult to determine which fee types should be included in such a formula and how often such fees might be incurred.

Second and relatedly, a prepaid account that might have a higher cost under a formula adopted by the Bureau may actually be less costly for certain consumers, depending on how they use the card. For example, a formula might factor in several ATM withdrawal fees each month, but for consumers not using the prepaid account for ATM withdrawals, the disclosure of that single number could be confusing or misleading, and potentially cause a consumer to acquire a prepaid account with a lower all-in cost according to the prescribed formula, but that will cost

[251] The FTC's Energy Labeling Rule shows consumers how much it might cost to run an appliance each year based on how much energy it uses, and makes it easier for shoppers to compare the energy use among similar models. *See* Fed. Trade Comm'n, *EnergyGuide Labeling: FAQs for Appliance Manufacturers* (May 2013), *available at* http://www.business.ftc.gov/documents/bus-82-energyguide-labels-faqs.

[252] *See, e.g.*, 2014 Pew Study, at 13.

the particular consumer more. Although multiple usage formulas might rectify this to some degree, the Bureau believes that disclosing more than one such number on a single form could compound consumer confusion.

The Bureau also is concerned that an all-in number that presents the average amount paid by users of that particular prepaid account product over a designated time period would also be confusing because consumers would likely struggle to interpret how such a summary statistic would apply to their own prepaid account usage.[253] In addition, historical data does not exist for new products and may be inaccurate for products that have changed fees or features. For these reasons, the Bureau has concluded, at this time, that an all-in disclosure would be of limited utility, and could perhaps even be misleading to consumers, but the Bureau might reconsider the utility of this approach in the future.

Category headings. The Bureau also considered a short form disclosure that would include category headings based on the function for which a consumer would utilize the service associated with each fee, a format that many prepaid account providers have already adopted, in lieu of the top-line fee format on the short form that the Bureau is proposing.[254] The Bureau declines to propose this "categories" approach for several reasons. First, the Bureau believes that category headers take up needed space on the form that may limit disclosure of other, more important information about the prepaid accounts, particularly given that some categories might

[253] For example, when testing a concept that presented a fee amount next to a graphic representing the range of the maximum and minimum fees that other providers might charge for the same service, the Bureau found that the vast majority of testing participants did not understand this graphic or how it might apply to their own prepaid card usage.

[254] *See* ICF Report, at App. C, 2A. As listed in the prototype, an "Add and withdraw money" category, for example, would list the various ways the consumer could withdraw money from a prepaid account, such as through a withdrawal from an automated teller machine.

include only one fee.[255] Second, the Bureau believes it would be difficult on the same short form to include both its proposed top-line concept and to divide fees into categories. Though space constraints are only an issue for accounts sold in retail stores (due to packaging material size constraints), the Bureau is proposing that a short form with the same format and content would be disclosed in all acquisition scenarios, and thus, it is important that the short form's design can be implemented in all of these scenarios. Finally, during consumer testing, the Bureau did not find that participants' comprehension of fees and their purpose improved when a form included categories; indeed, most participants understood most fees without such a label. Although the Bureau is not proposing to include category headings in the proposed short form, it is proposing that the long form disclosure – which would have more space and detail – would include such headings to facilitate navigation of the larger amount of information that the Bureau anticipates will be included on that form. *See* proposed § 1005.18(b)(4)(i)(B).

The Bureau seeks comment on all of these alternatives and its proposed approach. In particular, the Bureau seeks comment on the utility of including category headings as part of the short form, in lieu of the top-line, and on incorporating an "all-in" summary fee concept into prepaid account disclosures. The Bureau also seeks comment on whether it should consider other disclosure alternatives and why such alternatives would be more appropriate than the Bureau's proposed pre-acquisition disclosure regime. Finally, the Bureau seeks comment on whether any pre-acquisition disclosure regime that requires consumers to receive forms disclosing fee information before acquiring a prepaid account is necessary.

[255] For example, a "Maintenance" category might include only one periodic fee, such as a monthly fee.

To implement its proposed pre-acquisition disclosure regime, the Bureau is proposing timing, content, form and other requirements for prepaid account disclosures. The following discussion sets forth these proposed requirements in detail.

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

As discussed above, § 1005.7(b) of Regulation E currently requires financial institutions to provide certain initial disclosures when a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account. The Bureau is proposing in revised § 1005.18(b)(1)(i) that, in addition to these initial disclosures that are usually provided in an account's terms and conditions document, a financial institution must also provide a consumer with certain fee-related disclosures before a consumer acquires a prepaid account. Specifically, the Bureau is proposing that except when a consumer acquires a prepaid account in a retail store or orally by telephone, as described in proposed § 1005.18(b)(1)(ii) or (iii), a financial institution must provide a short form and a long form disclosure required by proposed § 1005.18(b)(2)(i) and (ii) before a consumer acquires a prepaid account. The Bureau believes consumers in all acquisition scenarios would benefit from receiving these additional, pre-acquisition disclosures prior to contracting for an electronic fund transfer service or before the first electronic fund transfer is made involving the account, at which point they would receive the initial disclosures that Regulation E already requires.

The Bureau believes disclosures that provide fee information *prior* to a consumer's acquisition of a prepaid account (rather than at the time of contracting for an electronic fund transfer service, which may be later) are necessary and beneficial to consumers for several reasons. First, the Bureau believes a consumer should receive clear disclosures about prepaid

accounts before acquiring them. Based on its outreach, the Bureau understands that some financial institutions may already provide limited disclosures to consumers prior to acquisition, and that some financial institutions may not disclose the fees that consumers may find relevant to their acquisition decision until the account is purchased (or otherwise acquired), the packaging material is opened, and a consumer reviews the enclosed terms and conditions document. For example, one prepaid product currently sold in retail stores imposes an inactivity fee after ninety days of no transactions, but this fee is not disclosed on an outward-facing external surface of the prepaid account access device's packaging material that is visible before purchase. Further, the Bureau believes that some employees acquiring payroll card accounts may receive information about the accounts in a manner that makes it difficult for an employee to comprehend the accounts' key fees. For example, employees might receive terms and conditions documents regarding payroll card accounts at the same time they receive other benefits-related paperwork, making the fees difficult for employees to comprehend while sorting through other important and time-sensitive paperwork. Similarly, certain providers of prepaid accounts online may present disclosures on their websites in a way that makes it difficult for consumers to have the chance to review them prior to acquisition.

Additionally, the Bureau believes that pre-acquisition disclosures can also decrease the ability of financial institutions to obscure key fees. Many participants in the Bureau's consumer testing reported incurring fees that they did not become aware of until after they purchased their prepaid account. Several participants also admitted to having difficulty understanding the disclosures they received with their current prepaid accounts and were very unsure as to whether key fees had been disclosed before they acquired the accounts.

Second, as some commenters to the Prepaid ANPR emphasized, in order to comparison shop among products, it is helpful for consumers to be able to review disclosures setting forth key terms in like ways before choosing a product. As noted earlier, the Bureau recognizes that consumers offered prepaid products by third parties like employers or educational institutions may be unable to easily comparison shop. For example, at the time students are offered a student card from their university, such as when registering for school, they might be unable to compare that card with other products. The Bureau believes, however, that even in this scenario, students will benefit from receiving the short form and the long form disclosure so that they can better understand the product's terms before deciding to accept it. Additionally, the Bureau believes that both of these disclosures may inform the way in which these consumers decide to use the product once they have acquired it and enable them to, at a convenient time, compare it with any other products.

Third, the Bureau believes that consumers could potentially use their prepaid account for an extended period of time and perhaps incur substantial fees over that time. For example, during the Bureau's consumer testing, participants indicated that they tend to use a given prepaid account product, even one they do not like, at least until they spend the entirety of the initial load amount, which could be as much as $500. Others reported reloading the account, using it for as long as one or two years after purchase, and often arranging to receive direct deposit of wages or benefits into the account. Thus, the Bureau believes that whatever disclosure information a consumer uses when selecting a prepaid account could have a significant, and potentially long-term, impact, especially if a consumer chooses to receive direct deposit into a prepaid account. Current research supports this belief. Specifically, one study indicates that prepaid accounts receiving direct deposit of government benefits might have life spans of as long as three years,

and consumers who receive non-government direct deposit on their accounts use them on average for longer than one year.[256] Though other, older research estimates the average life span of some prepaid accounts may be on average less than six months, the Bureau believes that even this period of time is significant if consumers load most or all of their funds into their prepaid accounts.[257]

Regulation E, however, currently only provides for initial disclosures to be delivered at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account. The Bureau believes that, in the prepaid account context, this might sometimes be too late. With prepaid accounts, consumers often contract for an electronic fund transfer when acquiring the prepaid account and completing an initial load. The Bureau therefore is concerned that consumers may receive the fee-related, initial disclosures required by § 1005.7(b) (which proposed § 1005.18(f) would modify for prepaid accounts) that are typically provided within the prepaid account's terms and conditions document too late to utilize them to decide on the right prepaid account product for their needs and to comparison shop among various prepaid account products.

The Bureau is therefore proposing § 1005.18(b)(1)(i), which would require a financial institution, in most cases, to provide the short and long form disclosures described in proposed § 1005.18(b)(2)(i) and (ii) before a consumer acquires a prepaid account. As noted above, this aspect of the proposal is authorized under EFTA sections 904(a) and (c), 905(a), and Dodd-Frank

[256] Fumiko Hayashi & Emily Cuddy, Fed. Reserve Bank of Kansas City, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees and Fraud Risks* at 33-35 (Working Paper No. RWP 14-01, 2014), *available at* https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-01.pdf.enter/publications/discussion-papers/2012/D-2012-August-Prepaid.pdf.

[257] A 2012 study by the Federal Reserve Bank of Philadelphia indicates that the average life span of GPR cards tends to be between 3 and 6 months. *See* 2012 FRB Philadelphia Study, at 18.

sections 1032(a). The Bureau seeks comments on all aspects of its proposal to mandate pre-acquisition disclosures. In particular, the Bureau solicits feedback on whether pre-acquisition disclosures are necessary or if the fee information provided pursuant to existing § 1005.7(b) (as modified by proposed § 1005.18(f)) at the time a consumer contracts for the prepaid account is sufficient to inform consumers about the account's terms and conditions.

The Bureau is also proposing to add comment 18(b)(1)(i)-1, which would provide examples of what would and would not qualify as having provided disclosures pre-acquisition. The first example would clarify how pre-acquisition disclosures work in a bank branch context. Specifically, proposed comment 18(b)(1)(i)-1.i would explain that when a consumer inquires about obtaining a prepaid account at a branch location of a bank, then receives the printed short form and long form disclosures related to the prepaid account product, and after receiving the disclosures, agrees to open a prepaid account with the bank, a consumer would have received the short form and long form disclosures pre-acquisition. Another proposed example would address payroll card accounts. Specifically, proposed comment 18(b)(1)(i)-1.ii would explain that if a consumer learns that he or she can receive wages via a payroll card account, at which time a consumer receives the short form and long form disclosure to review, and a consumer agrees to receive wages via a payroll card account, a consumer would have received the short form and long form disclosures pre-acquisition. Proposed comment 18(b)(1)(i)-1.ii would further clarify that if a consumer receives the payroll card or other device at the end of the first pay period, 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 proposed § 1005.18(b)(1)(i).

Proposed comment 18(b)(1)(i)-2 would provide further explanation regarding circumstances when short form and long form disclosures would be considered to have been delivered after a consumer acquires a prepaid account, and thus in violation of the timing requirement in proposed § 1005.18(b)(1)(i). Specifically, proposed comment 18(b)(1)(i)-2 would explain that when the short form and long form disclosures required under proposed § 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 website, but before a consumer provides any personal identifying information and agrees to accept the prepaid account, such disclosures would be made pre-acquisition in accordance with proposed § 1005.18(b)(1)(i). Proposed comment 18(b)(1)(i)-2 would also explain that the short form and long form disclosures that are provided electronically when a consumer acquires a prepaid account on a financial institution's website are considered to be given after a consumer acquires a prepaid account if a consumer can easily bypass the disclosures before acquiring a prepaid account. Proposed comment 18(b)(1)(i)-2 would also clarify that a financial institution can present the short form and long form disclosures on the same webpage to fulfill the requirements of proposed § 1005.18(b)(1)(i), and that a financial institution could also present the short form disclosure on a webpage and include a hyperlink directly to the long form disclosure on that same webpage, but, if it does so, a consumer must not have to review any unrelated pages before viewing the long form disclosure. The Bureau nevertheless seeks comment on whether additional guidance is necessary regarding how electronic disclosures can be provided in compliance with the pre-acquisition timing requirement in proposed § 1005.18(b)(1)(i).

Some consumer advocacy groups that responded to the Prepaid ANPR suggested that the Bureau also require that financial institutions confirm that consumers have read disclosures

provided online. The Bureau believes that such a requirement is infeasible. Nevertheless, the Bureau seeks comment on whether technology exists that could be implemented by all potentially covered entities and that would permit them to confirm a consumer has read online disclosures, or if providing guidance that a consumer should not be able to easily bypass the pre-acquisition disclosures would ensure that consumers have sufficient opportunity to review disclosures provided electronically.

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

The Bureau is proposing an adjustment to its proposed general pre-acquisition timing requirement where consumers acquire prepaid accounts in retail stores. Proposed § 1005.18(b)(1)(ii) would provide that financial institutions would have to provide a written version of the short form disclosure before a consumer acquires a prepaid account in person in a retail store. But it would permit financial institutions to delay providing the long form disclosure until after the consumer acquires a prepaid account as long as certain conditions are met. Those conditions are described in proposed § 1005.18(b)(1)(ii)(A) through (C).

The Bureau believes that in many cases it is not feasible for financial institutions that offer prepaid accounts in retail stores to provide printed long form disclosures prior to acquisition. For example, retail stores may require financial institutions to use packaging material with specific dimensions that accommodate standard J-hook display racks. The Bureau understands that the dimensions of a typical J-hook display used today for prepaid accounts may limit a prepaid account access device's packaging material to no larger than 4 inches by 5.25 inches. In addition, the length of the hooks on which a prepaid account's packaging material is displayed is finite and can accommodate only a limited number of packages depending on each package's thickness.

Due to these apparent size and space limitations, the Bureau believes that many financial institutions would not be able to present both the short and long form disclosures required by § 1005.18(b)(2)(i) and (ii) on the packaging before a consumer acquires a prepaid account in a retail store, without overhauling the packaging's design or otherwise adjusting the relevant retail space. For example, more disclosures could require longer, wider or thicker packaging material than that currently used. The Bureau believes that such packaging adjustments would impose a significant burden and likely decrease the number of prepaid account products that could be sold at one time in retail stores. In turn, this could increase the cost of prepaid account products and limit comparison shopping (if the retail store maintains the same overall space for the display and sale of all prepaid account products).

Nevertheless, the Bureau believes it is important that consumers be provided an opportunity to review both the short form and long form disclosures before acquisition. Thus, proposed § 1005.18(b)(1)(ii) would require that in retail stores, a financial institution could provide the long form disclosure after a consumer acquires a prepaid account in person in a retail store, as long as the three conditions discussed below are met. The Bureau believes these conditions will ensure a consumer receives a written, short form disclosure that includes methods for accessing the long form disclosure by telephone or via a website.

Proposed § 1005.18(b)(1)(ii)(A) would set forth the first condition: that the access device for the prepaid account available for sale in a retail store must be inside of a packaging material. This condition would apply even if the product, when sold, is only a temporary access device. As noted above, J-hooks place limitations on the size and volume of packaging material that can be used to market prepaid accounts. If a financial institution does not use such packaging material because, for example, a customer service representative is responsible for distributing

prepaid accounts to consumers, then the Bureau does not believe that space constraints would prevent a financial institution from providing both the short and long form disclosure pre-acquisition. The Bureau considered requiring that in order to qualify for the retail store exemption, the packaging material should also be directly accessible to a consumer. Under such a requirement, a financial institution would not qualify for the retail store exemption if the prepaid account access devices were inside of packaging material, but such packaging material was stored behind glass or a counter, and a consumer would have to request to see a package from a customer service representative in order to review the disclosures. The Bureau decided against proposing this requirement. The Bureau believes that retailers that do not make packaging material directly accessible to consumers may have justifiable reasons for doing so, such as security concerns, yet still face space constraints that make pre-acquisition delivery of both proposed forms difficult. Nevertheless the Bureau seeks comment on whether retailers that use packaging material, but do not make it directly accessible to consumers, actually do face space constraints that justify allowing them to disclose the long form post-acquisition.

Proposed § 1005.18(b)(1)(ii)(B) would set forth the second condition: the short form disclosures required by proposed § 1005.18(b)(2)(i) must be provided on or be visible through an outward-facing, external surface of a prepaid account access device's packaging material in the tabular format described in proposed § 1005.18(b)(3)(iii). The Bureau recognizes that fulfilling this condition could mean that some financial institutions that offer prepaid accounts in retail stores and want to comply with proposed § 1005.18(b)(1)(ii) may have to change their packaging. The Bureau, however, believes that the majority of current prepaid account products' packaging material would allow financial institutions to include the short form content

requirements on an external surface that is visible to a consumer pre-acquisition without altering the structure of the existing packaging.

The third condition, set forth in proposed § 1005.18(b)(1)(ii)(C), would require that a financial institution include a telephone number and URL on the short form disclosure, as required by proposed § 1005.18(b)(2)(i)(B)(*11*), that a consumer can use to access the long form disclosure while in a retail store. The Bureau believes that even if it is not feasible for a consumer to receive both the short and long form disclosures pre-acquisition in some retail settings, the consumer should at least be able to access the long form disclosure by telephone or via a website, should they want to obtain comprehensive fee information. The Bureau understands that many consumers use mobile devices that can access the internet, and the Bureau notes that all of the participants in the Bureau's consumer testing reported having a smartphone with internet access. Indeed, recent polls indicate that as many as 65 percent of adults in the United States own a smartphone.[258] The Bureau therefore believes that many consumers at least have the ability to access a website through the URL that would be listed on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) when shopping for a prepaid account. Several testing participants also mentioned, however, that even though they have a smartphone, they were concerned whether all consumers would be able to access a website when in a retail store or whether they would always have sufficient reception to access a website from their smartphone while indoors. The Bureau is therefore also proposing that when a financial institution is not disclosing the long form before a consumer acquires a prepaid account, the financial institution

[258]The Nielsen Company, *The Digital Consumer, at 5* (Feb. 2014), *available at* http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2014%20Reports/the-digital-consumer-report-feb-2014.pdf. In 2012, the Board estimated that 35 percent of the U.S. population uses smartphones. *See* Bd. of Governors of the Fed. Reserve, *Consumers and Mobile Financial Services*, at 3 n1 (Mar. 2012), *available at* http://www.Federalreserve.gov/econresdata/mobile-device-report-201203.pdf (internal citations omitted).

must also make the long form available to a consumer by telephone, a method that even consumers with mobile devices that are not smartphones could use to access the long form disclosure's contents.

The Bureau recognizes that proposed § 1005.18(b)(ii)(C) assumes that a consumer would have a mobile device capable of either accessing the internet or making calls when shopping in a retail store. But it believes that providing these two methods will increase the likelihood that most consumers would be able to access the long form disclosure in a retail store. The Bureau also acknowledges that it might be complicated for financial institutions to provide the long form disclosure by telephone, whether using an interactive voice response system or through a customer service agent. Further, as discussed in the section-by-section analysis of proposed § 1005.18(b)(1)(iii), it may be harder for a consumer to understand the information in the long form when delivered orally. Nevertheless, the Bureau believes that if a consumer takes the affirmative step to request additional information about a prepaid account by telephone when shopping in a retail store, it could be more likely that the consumer is seeking out specific information that is not included on the short form, and will therefore be less likely to suffer from information overload.

The Bureau further recognizes that permitting financial institutions to only provide a short form disclosure to a consumer pre-acquisition in retail stores means that consumers may not see full fee information before acquiring a prepaid account. It could be due to the technical reasons described above or due to the fact that consumers lack the time or motivation to seek it out. Indeed, in the Bureau's consumer testing, some participants had difficulty noticing and understanding language that listed the methods for accessing the long form disclosure on the short form. Some participants also reported that they would be unlikely to use their mobile

device to seek out such information when shopping because, in the past, they spent limited time shopping for a prepaid account.

The Bureau therefore considered whether, as some non-partisan research and advocacy organizations have suggested, it might be better for consumers to see all of a prepaid account's fees pre-acquisition for prepaid accounts sold in retail stores and all other acquisition scenarios to avoid putting the burden on consumers to seek out additional information. The Bureau declines to propose this approach for multiple reasons. First, the Bureau believes that recent research indicates that many consumers have difficulty comprehending and utilizing extensive amounts of information when making decisions about certain financial products.[259] Second, when consumers use a disclosure, recent research indicates they might have trouble identifying which information is relevant to them, prioritizing and comprehending the information they encounter, or utilizing that information to make the best choice for their situation.[260] The Bureau believes this comprehension difficulty could be exacerbated in a retail store where consumers often make acquisition decisions quickly. During its consumer testing, the Bureau also learned that only a few types of fees drive most consumers' decisions about prepaid accounts. The Bureau believes the proposed short form disclosure captures these fees. Third, when participants in the Bureau's consumer testing saw longer lists of fees during testing, they frequently cited one of the fees included on the short form disclosure as that which would most influence their decision about which prepaid product to acquire. In other words, testing participants were not relying on the

[259] *See* James Lacko & Janis Pappalardo, *The Failure and Promise of Mandated Consumer Mortgage Disclosures: Evidence from Qualitative Interviews and a Controlled Experiment with Mortgage Borrowers,* 100 Am. Econ. Rev. 516 (2010); Kleimann Commc'n Group, *Know Before You Owe: Evolution of the Integrated TILA RESPA Disclosures* (July 9, 2012). *See generally,* Eric Johnson et al. *Can Consumers Make Affordable Care Affordable? The Value of Choice Architecture*, PLOS One, Dec. 2013, at 1, 2.

[260] *Id.*

additional information in the long form disclosure to make a decision. The results suggest that the participants would have reached the same decision reviewing a short form disclosure.

Testing participants also spent more time comparing two long form disclosures when engaging in a shopping comparison exercise Such time is additional time that the Bureau believes consumers are less likely to spend when shopping in a retail setting. Finally, consumers in testing also generally found it more difficult to perform side-by-side comparisons of two long form disclosures included on the inside of prototype packaging material versus comparing two short form disclosures provided on an outside surface of prototype packaging material. The Bureau also considered the significant cost to industry of providing the long form disclosure. As discussed above,, the packaging adjustments including such a disclosure would likely require based on the space constraints in many retail locations.

To summarize, the Bureau proposes that, in retail stores, financial institutions may provide the proposed long form disclosure after acquisition, if the three conditions in proposed § 1005.18(b)(1)(ii)(A) through (C) are satisfied. The Bureau also notes that pursuant to proposed § 1005.18(f), all consumers, including those shopping in retail stores, would get a long form disclosure in the terms and conditions document that they receive after they have acquired a prepaid account. In a retail setting, the terms and conditions document would likely be provided inside the packaging material and immediately accessible to a consumer post-acquisition.

Nevertheless, the Bureau seeks comment on all aspects of this approach to fee disclosures for prepaid accounts sold in retail locations. Specifically, the Bureau seeks comment on what information consumers should receive when shopping for a prepaid account in a retail store and how comprehensive this information could be, given the space constraints imposed by J-hooks. The Bureau also seeks comment on whether to require disclosure of the long form pre-

acquisition in retail stores instead of permitting financial institutions to only make it accessible to a consumer. Finally, the Bureau solicits comment on whether the two methods (website or telephone number) that the Bureau has proposed to include on the short form in retail stores are reliable ways for consumers to access the long form disclosure when shopping in a retail store, and whether there are other methods that could be required instead of or in addition to those that are proposed. The Bureau also seeks comment on whether it should require that consumers must be able to access the telephone number listed after regular business hours.[261]

Proposed comment 1005.18(b)(1)(ii)-1 would provide guidance on the definition of retail store. Specifically, proposed comment 1005.18(b)(1)(ii)-1 would explain that, for purposes of the proposed requirements 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 a financial institution or by an agent of the financial institution. Proposed comment 1005.18(b)(1)(ii)-1 would further clarify that a bank or credit union branch is not a retail store, but that drug stores and grocery stores at which a consumer can acquire a prepaid account may be retail stores. Proposed comment 1005.18(b)(1)(ii)-1 would also clarify that 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 proposed § 1005.18(b)(1)(i) in such settings.

The Bureau believes that if a financial institution is the sole provider of prepaid account products in a given retail store, or is otherwise an agent of the financial institution, then it is easier for the financial institution to manage the distribution of disclosures to a consumer, and

[261] The Bureau also considered requiring that financial institutions list an SMS short code on the short form disclosure provided in retail stores. *See* section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*11*) for a discussion of this alternative.

they might be less dependent on the J-hook infrastructure to market their products to consumers. Thus, the Bureau believes that financial institutions with such exclusive relationships should have fewer hurdles to providing both the short form and long form disclosures to a consumer before acquisition. Nevertheless, the Bureau seeks comment on whether agents of the financial institution face space constraints in retail stores that would make it difficult to provide the short form and long form disclosures pre-acquisition.

Proposed comment 1005.18(b)(1)(ii)-2 would clarify that except when providing the long form disclosure post-acquisition in accordance with the retail store exception set forth in proposed § 1005.18(b)(1)(ii), the short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) must be provided to a consumer pre-acquisition in compliance with proposed § 1005.18(b)(1)(i). Proposed comment 1005.18(b)(1)(ii)-2 would further explain that 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. Proposed comment 1005.18(b)(1)(ii)-2 would also provide the example that if the packaging material is presented in a way that consumers would assume they must purchase the prepaid account before they can open the packaging material, the financial institution would be deemed to have provided disclosures post-acquisition.

Proposed comment 1005.18(b)(1)(ii)-3 would explain that 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 proposed § 1005.18(b)(1)(ii), and thus, a consumer would have to receive the short form and long form disclosures pre-acquisition pursuant to the

timing requirement set forth in proposed § 1005.18(b)(1)(i). The Bureau does not believe that there are space constraints involved in offering payroll card accounts to retail store employees. Thus, the Bureau believes that retail store employees receiving payroll card accounts must receive both the short form and long form disclosures pre-acquisition in accordance with proposed § 1005.18(b)(1)(i).

Proposed comment 18(b)(1)(ii)-4 would clarify that pursuant to proposed § 1005.18(b)(1)(ii)(C), a financial institution must make the long form accessible to a consumer by telephone and by a website when not providing a printed version of the long form disclosure to a consumer prior to acquisition of a prepaid account. Proposed comment 18(b)(1)(ii)-4 would clarify that a financial institution could, for example, provide the long form disclosure by telephone using an interactive voice response system or by using a customer service agent.

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

Similar to its proposed alternative for retail stores, the Bureau is also proposing, for several reasons, to modify the general pre-acquisition disclosure requirement in proposed § 1005.18(b)(1)(i) when a consumer acquires a prepaid account orally by telephone. First, the Bureau believes prepaid accounts acquired by telephone introduce logistical challenges that make it difficult for financial institutions to provide both the short form and the long form disclosures to all consumers. The Bureau also believes that it may be more difficult for consumers to process information disclosed orally and that therefore, generally, less fee information should be provided when consumers acquire prepaid accounts by telephone. The Bureau acknowledges that consumers are probably less likely to comparison shop when acquiring prepaid accounts by telephone, but the Bureau believes that some consumers might want to compare the short form disclosure of prepaid account products they are considering

acquiring orally by telephone to short form disclosures for other prepaid accounts that they might already possess or have available on their computer during the telephone call.

The Bureau is therefore proposing that before a consumer acquires a prepaid account orally by telephone, a financial institution must disclose orally the short form information that would be required by proposed § 1005.18(b)(2)(i). *See* proposed § 1005.18(b)(1)(iii). The Bureau believes that disclosing only limited information by telephone will increase the likelihood that a consumer will understand any information about the prepaid account when acquiring it orally by telephone. Proposed § 1005.18(b)(1)(iii) would further state that a financial institution may provide the disclosures required by § 1005.18(b)(2)(ii) after a consumer acquires a prepaid account orally by telephone if the financial institution communicates to a consumer orally, before a consumer acquires the prepaid account, that the information required to be disclosed by § 1005.18(b)(2)(ii) is available orally by telephone and on a website.

The Bureau believes that a financial institution should be able to disclose information contained in the long form orally, by, for example, allowing a consumer to ask a customer service agent about a fee or by using an automated system, but the Bureau questions the effectiveness of requiring that the full long form disclosure be provided orally to every consumer. Rather, the Bureau believes that as long as consumers are made aware of their ability to access the information contained in the long form disclosure, they will be able to get enough information to make an informed acquisition decision. Those who wish to learn more about the prepaid account can do so, and financial institutions would not be unduly burdened by having to provide the long form disclosure to all consumers who acquire prepaid accounts by telephone.

The Bureau recognizes that proposed § 1005.18(b)(1)(ii)(C) would require that a financial institution always disclose the telephone number and the URL that a consumer can use

to access in the long form disclosure on all short forms when qualifying for the retail store exception. But, for prepaid accounts acquired orally by telephone pursuant to proposed § 1005.18(b)(1)(iii), the Bureau believes it is sufficient to let a consumer know that the long form disclosure is available by telephone and through a website without having to actually dictate the telephone number and the URL of the website, unless a consumer requests them. A version of the long form, however, would still be required to be provided after acquisition in the prepaid account's initial disclosures. *See* proposed § 1005.18(f).

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau seeks comment on whether consumers will benefit from hearing the contents of only the short form disclosed orally. The Bureau also seeks comment on whether financial institutions should be required to disclose all fees associated with a prepaid account orally before acquisition instead of having the option not to disclose full fee information as long as they make consumers aware of the methods by which they can access the content of the long form disclosure.

Proposed comment 18(b)(1)(iii)-1 would explain that, for purposes of proposed § 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, but would clarify that 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. The Bureau believes that the proposed general pre-acquisition disclosure requirement in proposed § 1005.18(b)(1)(i) should be modified when a consumer acquires a prepaid account orally by telephone. By contrast, if a consumer is using a smartphone to access a mobile application to

acquire a prepaid account, and is not receiving disclosures about the prepaid account orally, the Bureau proposes that disclosures could be provided electronically pursuant to proposed § 1005.18(b)(3)(i)(B) and that a consumer still receive both the short form and long form disclosures pre-acquisition. Though a consumer may access a mobile application to acquire a prepaid account on a mobile phone device, the Bureau believes that once a consumer has entered the application, disclosures can be provided in a similar, if not identical, way to how they are offered on a website. Thus, the Bureau believes that in such a scenario the logistical challenges justifying an alternative requirement for accounts acquired orally using the telephone are not present.

Proposed comment 18(b)(1)(iii)-2 would explain how disclosures provided orally can comply with the pre-acquisition timing requirement in proposed § 1005.18(b)(2)(i). Specifically, proposed comment 18(b)(1)(iii)-2 would clarify that to comply with the pre-acquisition requirement set forth in proposed § 1005.18(b)(1)(i) for prepaid accounts acquired orally by telephone, a financial institution may, for example, read the short form disclosure required under proposed § 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. Proposed comment 18(b)(1)(iii)-2 would also clarify that although the long form disclosure required by proposed § 1005.18(b)(2)(ii) is 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 website. Finally, the proposed comment would clarify that a financial institution must provide information on all fees in the terms and conditions as required

by existing § 1005.7(b)(5), as modified by proposed § 1005.18(f), before the first electronic fund transfer is made from a consumer's prepaid account.

18(b)(2) Content of Disclosures

Proposed § 1005.18(b)(2) would set forth substantive content requirements for the Bureau's proposed pre-acquisition disclosure regime. Specifically, proposed § 1005.18(b)(2)(i) would set forth the information a financial institution would have to provide on the short form disclosure, and proposed § 1005.18(b)(2)(ii) would set forth the information a financial institution would have to provide on the long form disclosure. The proposed content for each disclosure is discussed in detail below.

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

Proposed § 1005.18(b)(2) would set forth substantive content requirements for the Bureau's proposed pre-acquisition disclosure regime. Specifically, proposed § 1005.18(b)(2)(i) would set forth the information a financial institution would have to provide on the short form disclosure, and proposed § 1005.18(b)(2)(ii) would set forth the information a financial institution would have to provide on the long form disclosure. The proposed content for each disclosure is discussed in detail below.

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

As explained above, the Bureau is proposing that financial institutions provide a short form disclosure before a consumer acquires a prepaid account. *See* proposed § 1005.18(b)(1)(i). Proposed § 1005.18(b)(2)(i) would require disclosure of specific information on the short form about a prepaid account, including certain notices, fees, and other information, as applicable. Specifically, for all prepaid accounts, financial institutions would be required to disclose, in the static portion of the short form, the fee types set forth in proposed § 1005.18(b)(2)(i)(B)(*1*)

through (*7*), even if such fees are not charged or if those features are not offered in connection with a particular prepaid account product. A disclosure regarding whether a prepaid account might offer an overdraft service or another type of credit feature to a consumer would also be disclosed in the static portion of the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*9*). In addition, the short form would require, in proposed § 1005.18(b)(2)(i)(B)(*8*), disclosure of up to three additional fees most commonly incurred by users of a given prepaid account product in the prior 12-month period. This portion of the disclosure would vary across prepaid account products. Pursuant to proposed § 1005.18(b)(3)(iii)(A), the short form disclosure would be in a form substantially similar to the proposed Model Forms A-10(a) through (d).

Depending on the structure of a particular prepaid account, however, the Bureau understands that the short form may not capture all of a particular prepaid account's fees or explain the conditions under which a financial institution might impose those fees. The Bureau's consumer testing, however, indicated that when participants were shown prototype short forms, most understood that they represented only a subset of fee information and that they could potentially be charged fees not shown on the form. Further, except in certain retail stores or with respect to accounts acquired orally by telephone, under the proposed pre-acquisition disclosure regime, a consumer would receive a long form disclosure simultaneously with the short form and therefore have the opportunity to see all fees associated with a prepaid account and any relevant conditions before acquiring a prepaid account.[262] *See* proposed § 1005.18(b)(1)(i). Further, most testing participants did not identify any additional fees that they would like to see listed in a short form. The Bureau therefore believes that the proposed short form would contain most fees

[262] For prepaid accounts acquired in retail stores or orally by telephone, the long form would have to be made available to the consumer either electronically or by telephone. *See* section-by-section analysis of proposed § 1005.18(b)(1)(ii) and (iii).

that might be charged in connection with a prepaid account, and those fees that are most important for a consumer to know in advance of acquiring a prepaid account.

The Bureau also recognizes that disclosing even this proposed subset of fee information on the short form runs the same risk of information overload that the Bureau believes could occur if all fees were disclosed to a consumer instead of just a subset of fees. The Bureau believes, however, based on its consumer testing and other research, that incorporating elements of visual hierarchy will mitigate these risks. Most importantly, the fee types that would be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in the top-line of the short form would use font size and other elements to promote readability.[263] The Bureau is proposing to add comment 18(b)(2)(i)-1 to explain what a provider should disclose on the short form when fees are inapplicable to a particular prepaid account product. Specifically, proposed comment 18(b)(2)(i)-1 would explain that the disclosures required by proposed § 1005.18(b)(2)(i) must always be provided prior to prepaid account acquisition, even when a particular disclosure is inapplicable to a specific prepaid account. The proposed comment would also provide an example that if a financial institution does not charge a fee to a consumer for withdrawing money at an ATM in the financial institution's network or an affiliated network, which is a type of fee that would be required to be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(3), the financial institution should list "ATM withdrawal (in network)" on the short form disclosure and list "$0" as the fee. Proposed comment 18(b)(2)(i)-1 would further clarify that if, however, the financial institution does not allow a consumer to withdraw money from ATMs that are in the financial institution's network or from those in an affiliated network, the financial institution

[263] *See* the section-by-section analysis of proposed § 1005.18(b)(4)(iii).

would still have to list "ATM withdrawal (in-network)" and "ATM withdrawal (out-of-network)" on the short form disclosure but instead state "not offered" or "N/A." The Bureau believes it important that the static portion of the short form disclosure would list identical account features and fee types across all prepaid account products, to enable consumers to quickly determine and compare the potential cost of certain offered features.

The Bureau is also proposing to adopt comment 18(b)(2)(i)-2, to further explain how to disclose fees and features on the short form disclosure. Specifically, the proposed comment would explain that no more than two fees could be listed for each fee type required to be listed by proposed § 1005.18(b)(2)(i)(B)(*2*), (*3*) and (*5*) in the short form disclosure, and that only one fee could be disclosed for each fee type required to be listed by proposed § 1005.18(b)(2)(i)(B)(*1*), (*4*), (*6*), (*7*) and (*8*). The proposed comment would clarify, however, that proposed § 1005.18(b)(2)(i)(B)(*8*) would require the disclosure of up to three additional fees. Finally, the proposed comment would clarify that 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 would charge the highest fee would be disclosed, and the financial institution could use an asterisk or other symbol next to the cash reload fee disclosed to indicate that the fee may be lower. *See* section-by-section analysis of proposed comment 18(b)(2)(i)(C)-1.

As discussed in detail above, the Bureau believes that simplicity and clarity are important goals of the short form disclosure. Insofar as allowing complicated explanations and multiple different fees to be disclosed for a particular feature could disrupt those goals, the Bureau proposes that for most fees on the short form, a financial institution only be permitted to list one fee—the highest fee a consumer could incur for a particular activity, as discussed in more detail below in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(C). The Bureau notes

that these limitations would only apply to the short form disclosure; the financial institution would have both the long form disclosure and any other portion of the packaging material or website to disclose other relevant fees.

The Bureau also believes there is particular value in maintaining simplicity on the short form by limiting the top-line portion of the form in order to encourage consumer engagement with the disclosure. Thus, the Bureau is proposing to require only four fee types in the top-line. For two of those fee types – per purchase fees and ATM withdrawal fees – the Bureau is also proposing to require disclosure of two fee values. *See* proposed comment 18(b)(2)(i)-2. The Bureau believes that it is important to include two per purchase fees—a per purchase fee when a consumer uses a signature and a per purchase fee when a consumer uses a PIN—because consumers could potentially incur these fees every time they use their prepaid accounts, and the fee could vary depending on how a consumer completes the transaction. The Bureau believes including two per purchase fees will highlight for consumers that the fees for completing a transaction using a personal identification number versus the fee for using a signature could differ. Similarly, the Bureau believes that it is important to include two ATM withdrawal fees in order to highlight that fees for in-network and out-of-network transactions may differ and to signal to consumers that the product's ATM network may have an impact on the fee incurred, which could lead a consumer to seek out more information about the relevant network. The Bureau notes that in its testing, some participants were confused about the meaning of an ATM network.

By contrast, the Bureau is proposing to allow only one periodic fee and one cash reload fee to be listed in the top-line of the short form. The Bureau acknowledges that both of these fees might also vary based, for example, on how often a consumer uses a prepaid account or the

method used to reload cash into a prepaid account. Despite this possibility for variation, however, the Bureau believes consumers will benefit more from immediately seeing the two ways the per purchase and ATM withdrawal fees may vary.

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau solicits feedback on whether mandating disclosure of inapplicable features on the short form disclosure would be unnecessarily confusing to consumers, or whether financial institutions will find it difficult to explain elsewhere on a prepaid account access device's packaging material or on their websites that certain features may not be available. In addition, the Bureau seeks comment on whether only providing the highest fee on the short form disclosure for a given fee type will be misleading to consumers, even when financial institutions include a symbol, like an asterisk, to indicate the fee amount could vary. The Bureau also seeks comment on the proposed type of and number of fees included in the top-line portion of the form, as discussed further below in the section-by-section analysis of proposed § 1005.18(b)(4)(iii). Finally, the Bureau also solicits comment on whether the cost of purchasing or activating a prepaid account should be included on the short form disclosure.

18(b)(2)(i)(A) Payroll Card Account Notices

Pursuant to existing § 1005.10(e)(2), no financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit. *See also* existing comment 10(e)(2)-1 and proposed comment 10(e)(2)-2. The Bureau believes it is important for consumers to realize they have the option of not receiving payment of wages via a payroll card account, and that receiving such notice at the top of the short form disclosure will help to ensure consumers are aware of this right. Thus, the Bureau is proposing that a notice be provided at the

top of the short form for a payroll card account to highlight for consumers that they are not required to accept a particular payroll card account.

Specifically, proposed § 1005.18(b)(2)(i)(A) would require that, when offering a payroll card account, a financial institution must include a statement on the short form that a consumer does not have to accept the payroll card account, and that a consumer can ask about other methods to get wages or salary from the employer instead of receiving them via a payroll card account, in a form substantially similar to the language set forth in Model Form A-10(b). The Bureau is proposing a similar notice requirement for government benefit accounts. Proposed § 1005.18(b)(2)(i)(A) would state that for requirements regarding what notice to give a consumer when offering a government benefit account, see proposed § 1005.15(c)(2).

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

18(b)(2)(i)(B)(1) Periodic Fee

Proposed § 1005.18(b)(2)(i)(B)(*1*) would require disclosure of a periodic fee charged for holding a prepaid account, assessed on a monthly or other periodic basis, using the term "Monthly fee," "Annual fee," or a substantially similar term. This proposed provision is intended to capture regular maintenance fees that a financial institution levies on a consumer solely for having a prepaid account for a period of time, whether the fee is charged monthly, annually, or for some other period of time. A financial institution could choose a label for this fee that accurately reflects the relevant periodic interval. Pursuant to the formatting requirements in proposed § 1005.18(b)(4), a financial institution would be required to disclose this fee in the top-line of the short form disclosure.

The Bureau believes that all prepaid accounts should disclose such a periodic fee, or the absence thereof, for several reasons. First, the Bureau's analysis of fee data indicates that many

prepaid accounts charge a recurring fee, typically on a monthly basis. Second, the Bureau believes a periodic fee is one that consumers will likely pay no matter what other fees they incur because it is imposed for maintaining the prepaid account, unless a financial institution offers a way for a consumer to avoid that fee (*e.g.*, through the receipt of a regular direct deposit or maintaining a certain average daily account balance). Those prepaid accounts that do not assess a periodic fee often charge other fees instead, typically per purchase fees.[264] The Bureau therefore believes that the lack of a periodic fee is also an important feature of a prepaid account that should be included in the top-line to allow consumers to more easily identify this trade-off between periodic fees and per purchase fees. Third, the Bureau believes that the existence of a monthly fee (or lack thereof) is typically a key factor in a consumer's decision about whether to acquire a particular prepaid account. Additionally, in the Bureau's testing, participants frequently cited periodic fees as one of the most important factors influencing their decision about which prepaid account product to acquire.

18(b)(2)(i)(B)(2) Per Purchase Fee

Proposed § 1005.18(b)(2)(i)(B)(*2*) would require disclosure of two fees for making a purchase using a prepaid account, both for which when a consumer uses a personal identification number and when a consumer provides a signature, including at point-of-sale terminals, by telephone, on a website, or by any other means, using the term "Per purchase fee" or a substantially similar term, and "with PIN" or "with sig.," or substantially similar terms.

Although the Bureau understands that most prepaid accounts do not charge per transaction fees for purchases of goods or services from a merchant, some do. When charged,

[264] Per purchase fees are also proposed to be on the top-line of the short form. *See* proposed § 1005.18(b)(2)(i)(B)(*2*).

the impact of these fees could be substantial for consumers who make multiple purchases. Often these fees are charged when periodic fees are not (*see* proposed § 1005.18(b)(2)(i)(B)(*1*)), and thus a consumer may be choosing between a prepaid account that has no monthly fee but charges for each purchase and a prepaid account that has a monthly fee but no per purchase charge. Therefore, the Bureau believes it appropriate for all prepaid accounts to disclose on the short form both whether there is a per purchase fee and, if so, the fee for making those purchases. The Bureau's model forms (*see* proposed Model Forms A-10(a) through (d)) would disclose this amount on the top-line portion of the short form.

The Bureau further recognizes that a handful of prepaid accounts charge a different per purchase fee depending on whether the purchase is processed as a signature or PIN transaction. While PIN debit transactions require input of the accountholder's PIN code at the time of authorization of the transaction, for a signature transaction, the accountholder may sign for the transaction but does not need to enter his or her PIN code. The Bureau is therefore proposing model forms for prepaid accounts that disclose both fees for these two authorization methods. *See* proposed Model Forms A-10(a) through (d). Nevertheless, the Bureau seeks comment on whether two per purchase fees should be disclosed on the short form disclosure. The Bureau also solicits comment on whether there are additional per purchase fees beyond using a PIN or a signature that the Bureau should consider including in the short form disclosure.

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

Proposed § 1005.18(b)(2)(i)(B)(*3*) addresses disclosure on the short form of ATM fees for withdrawing cash. Specifically, proposed § 1005.18(b)(2)(i)(B)(*3*) would require disclosure of two fees for using an ATM to initiate a withdrawal of cash in the United States from a prepaid account, both within and outside of the financial institution's network or a network affiliated

with the financial institution, using the term "ATM withdrawal fee" or a substantially similar term, and "in-network" or "out-of-network," or substantially similar terms. The Bureau's model forms (*see* proposed Model Forms A-10(a) through (d)) would disclose these ATM withdrawal fees on the top-line portion of the short form.

The Bureau understands that most prepaid accounts have ATM fees that differ depending on whether the ATM is in a network of which the financial institution that issued the card is a member or an affiliate. Typically, prepaid account cards can also be used on other ATM networks of which the issuing financial institution is not a member or an affiliate. Insofar as accessing these networks often costs the financial institution more, they typically charge a higher fee to a consumer for using that out-of-network ATM. For example, one current prepaid account product charges $0 for in-network ATM withdrawals and $2 for ATM withdrawals that occur out-of-network. Given that such potential variances are common, the Bureau believes that disclosure of fees for both in- and out-of-network ATMs withdrawals is important. Although the Bureau notes that many participants during its consumer testing were unfamiliar with the difference between "in-network" and "out-of-network," the Bureau believes the inclusion of these two fees on the top-line of the proposed short form would highlight for consumers that such fee variations can occur and the importance of understanding the ATM network associated with a particular prepaid account product.

Nevertheless, the Bureau seeks comment on whether disclosure of additional information regarding ATM withdrawal fees and ATM networks is necessary on the short form. Specifically, the Bureau solicits comment on whether the in- versus out-of network distinction makes sense for prepaid accounts. The Bureau also solicits comment on whether there are additional types of ATM withdrawal fees (other than foreign ATM withdrawal fees, which are discussed below) that

should be included in the short form. For example, the Bureau is aware that some financial institutions impose different ATM withdrawal fees on ATMs that are "bank-owned."

Proposed comment 18(b)(2)(i)(B)(*3*)-1 would clarify that if the fee imposed on the consumer for using an ATM in a foreign country to initiate a withdrawal of cash is different from the fee charged for using an ATM in the United States within or outside the financial institution's network or a network affiliated with the financial institution, a financial institution would not disclose the foreign ATM fee pursuant to proposed § 1005.18(b)(2)(i)(B)(*3*), but may be required to do so pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*), as part of the incidence-based fee disclosure.

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

Proposed § 1005.18(b)(2)(i)(B)(*4*) would require disclosure of a fee for loading cash into a prepaid account using the term "Cash reload" or a substantially similar term. Cash reloads are one of the primary ways for a consumer to add funds to a prepaid account. As such, the Bureau believes that the existence of a cash reload service and the amount of any fee for using such a service, if any, is important for consumers to know insofar this is a key feature of many prepaid accounts. Further, the Bureau's model forms (*see* proposed Model Forms A-10(a) through (d)) would disclose the cash reload fee on the top-line of the short form disclosure as described in the section-by-section analysis of proposed § 1005.18(b)(4)(i).

The Bureau also proposes to adopt new comment § 1005.18(b)(2)(i)(B)(*4*)-1, which would provide guidance on what would be considered a cash reload fee. Specifically, the proposed comment would explain that the cash reload fee, for example, would include the cost of adding cash at a point-of-sale terminal, or the cost of purchasing an additional card or other device on which cash is loaded and then transferred into a prepaid account, or any other method

a consumer may use to load cash into a prepaid account. This proposed comment would also clarify that if a financial institution offers more than one method for a consumer to load cash into the prepaid account, proposed § 1005.18(b)(2)(i)(C) would require that it only disclose the highest fee on the short form. The Bureau notes that consumers may incur additional third party fees when loading cash onto a card or other access device; these expenses are typically not controlled by the financial institution or program manager and instead are charged by the entity selling the cash reload product. Such fees would not be incorporated into the proposed short form disclosure. *See* proposed comment § 1005.18(b)(2)(i)(C)-2. The Bureau notes, however, that, pursuant to proposed comment 18(b)(2)(ii)(A)-3, fees imposed by third parties acting as an agent of the financial institution would always have to be disclosed in the long form.

The Bureau considered requiring financial institutions to list on the short form disclosure both cash reload methods discussed in proposed comment 18(b)(2)(i)(B)(*4*)-1: loads via a point-of-sale terminal and loads via an additional card or other device. The Bureau recognizes that many prepaid accounts make both methods available to consumers and only allowing providers to list the fee for the method that imposes the highest fee could confuse consumers about which methods are available, and inhibit their ability to accurately estimate the fees they will incur based on the method they most commonly utilize. The Bureau, however, believes it is important to limit the amount of information on the short form disclosure to maintain its simplicity in order to facilitate consumer understanding of the information that is included. Further, in testing, the Bureau found that participants consistently understood a disclosure containing a single cash reload fee, and therefore the Bureau does not believe it is as important to include two fees for this fee type. Although the Bureau is proposing to allow only the highest cash reload fee to be disclosed in the short form, however, financial institutions would be able to use an asterisk or

other symbol pursuant to proposed § 1005.18(b)(2)(i)(C) discussed below (in addition to any other part of the packaging material or website) to indicate when more than one method exists for reloading cash into a prepaid account.

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

Directly below the proposed top-line disclosure in the short form disclosure, the Bureau proposes to include balance inquiry fees charged by the financial institution for inquiring into the prepaid account's balance at an ATM. Specifically, proposed § 1005.18(b)(2)(i)(B)(*5*) would require disclosure of two fees for using an ATM to check the balance of a consumer's prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution, using the term "ATM balance inquiry" or a substantially similar term, and "in-network" or "out-of-network," or substantially similar terms.

As discussed above regarding disclosure of ATM withdrawal fees the Bureau believes it is important for consumers to know that different fees could be imposed when requesting balance inquiries at an ATM in a financial institution's network or outside of the network. The Bureau, however, does believe it is less common for consumers to initiate ATM balance inquiries transactions compared to withdrawals at ATMs, and thus, the Bureau is not proposing to include the two balance-inquiry fees in the top-line of the short form disclosure. Nevertheless, the Bureau seeks comment on whether consumers incur ATM balance inquiry fees frequently enough to justify including these fees in the top-line of the short form disclosure.

Proposed comment 18(b)(2)(i)(B)(*5*)-1 would clarify that if the fee imposed on a consumer for using an ATM in a foreign country to check the balance of a consumer's prepaid account is different from the fee charged for using an ATM within or outside the financial institution's network or a network affiliated with the financial institution in the United States, a

financial institution would not disclose the foreign ATM balance inquiry fee pursuant to proposed § 1005.18(b)(2)(i)(B)(*5*), but could be required to do so by proposed § 1005.18(b)(2)(i)(B)(*8*), discussed below.

18(b)(2)(i)(B)(6) Customer Service Fee

Proposed § 1005.18(b)(2)(i)(B)(*6*) would require disclosure on the short form of any fee for calling the financial institution or its service provider, including an interactive voice response system, about a consumer's prepaid accounts using the term "Customer service fee" or a substantially similar term. The Bureau believes that many consumers regularly have issues with their prepaid accounts that require talking to a customer service agent by telephone. The Bureau also believes that some providers impose fees for making such a call. Additionally, several participants in testing reported having incurred such customer service fees. For these reasons, the Bureau believes that the short form disclosure should include this fee. This disclosure would be required even if the financial institution did not charge such a fee. *See* proposed comment 18(b)(2)(i)-1.

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

Proposed § 1005.18(b)(2)(i)(B)(*7*) would require disclosure of a fee for non-use, dormancy, or inactivity on a prepaid account, using the term "Inactivity fee" or a substantially similar term, as well as the duration of inactivity that triggers a financial institution to impose such an inactivity fee.[265] The Bureau believes that many financial institutions charge consumers fees when they do not use their prepaid account for a specified period of time. The Bureau believes disclosure of these fees is important insofar as consumers sometimes acquire a prepaid

[265] The Bureau understands that some States bar or limit inactivity fees, and nothing in this portion of the proposal is meant to preempt any applicable State laws.

account for occasional use; such consumers may want to know that a particular prepaid account product charges fees for inactivity.[266] Thus, the Bureau is proposing that financial institutions disclose the existence, duration, and amount of inactivity fees, or that no such fee will be charged, as part of the static portion of the short form disclosure. The Bureau notes, however, that, as with all the disclosures in the short form, the requirement to disclose a particular fee type is not an endorsement of the practice of imposing such a fee.

The Bureau, however, also believes that a lower inactivity fee may correlate with a prepaid account product imposing a higher monthly periodic fee on a consumer. Thus, a consumer who uses a prepaid account only sporadically, but often enough to not reach the dormancy period that would trigger the inactivity fee, might actually incur higher fees if they shop based on the inactivity fee instead of the monthly periodic fee. The Bureau considered whether the risk of potential confusion to a consumer outweighs the benefit of including the inactivity fee on the short form disclosure, but believes that providing consumers with the inactivity fee amount and the relevant duration of dormancy will allow consumers to make an informed choice about which prepaid account product is best for their usage patterns.

Proposed comment 18(b)(2)(i)(B)(*7*)-1 would clarify that when a financial institution is disclosing the inactivity fee in the long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A), a financial institution should specify whether this inactivity fee is imposed in lieu of or in addition to the periodic fee disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*).

[266] In testing, several participants mentioned only using their prepaid cards occasionally.

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau seeks comment on including the inactivity fee as part of the static portion of the short form disclosure could confuse consumers, and whether it is important communicate the potential relationship between inactivity fees and monthly periodic fees more clearly on the short form disclosure.

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

In addition to the fee types that all financial institutions would have to disclose in the static portion of the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), the Bureau is proposing that financial institutions would also disclose up to three additional "incidence-based" fees not already disclosed elsewhere on the short form that are incurred most frequently for that particular prepaid account product. If a financial institution offers several prepaid account products, the incidence-based fees analysis would be conducted separately for each product, based on usage patterns in the prior 12-month period. Thus, the incidence-based fees provided to a consumer on the short form disclosure could vary from one product to the next depending on which fees consumers incurred most frequently for a particular prepaid account product.

The Bureau is proposing this disclosure because it is concerned that, while the fee types disclosed in the static portion of the short form under the proposed rule should generally include the key fees on most prepaid accounts, that list is not comprehensive and there could be other fees that consumers might incur with some frequency. The Bureau is also concerned that absent this incidence-based disclosure, there is a risk of evasion. For example, a financial institution could restructure its fee schedule for a prepaid account product to make the fees disclosed in the static portion of the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*)

cheaper, knowing they would not be the fees that consumers would most frequently pay. The Bureau believes that requiring financial institutions to disclose other fees that are frequently paid by consumers will limit the ability of financial institutions to evade disclosing relevant fee information upfront on the short form disclosure. Additionally, the Bureau believes that the incidence-based portion of the short form, though it does mandate a specific metric to determine which additional fees may be listed, would also provide some flexibility to industry participants to disclose three more fee types that might be particular to their prepaid account product and are imposed for features that could be appealing to consumers.

Accordingly, the Bureau is proposing § 1005.18(b)(2)(i)(B)(*8*), which would establish a three-part provision to determine which incidence-based fees a financial institution must include on its short form disclosures. First, proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would require, except as provided in proposed § 1005.18(b)(2)(i)(B)(*8*)(II) or (III), disclosure of up to three fees, other than any of those disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), that were incurred most frequently in the prior 12-month period by consumers of that particular prepaid account product.

Thus, for existing prepaid account products, proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would require that at the same time each year, a financial institution assess whether the incidence-based fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I) were the most frequently incurred fees in the prior 12-month period, in accordance with the timing requirements of proposed § 1005.18(h),. Proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would further require that the financial institution would then have to, if necessary and within 90 days, revise the incidence-based fees on disclosures provided in written or electronic form pursuant to proposed § 1005.18(b)(1)(i). Disclosures provided on the packaging material of prepaid account access

devices, for example, in retail stores pursuant to proposed § 1005.18(b)(1)(ii), or in other locations, must be revised when the financial institution is printing new packaging material for its prepaid account access devices, in accordance with the timing requirements in proposed § 1005.18(h). Proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would also require that all disclosures provided pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I) and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary, would have to include such changes in accordance with the timing requirements in proposed § 1005.18(h). This final requirement in proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would apply to all disclosures, whether in written or electronic form, or on the packaging material of a prepaid account product sold in a retail store.

The Bureau believes that it is important for the incidence-based fee disclosure to list a prepaid account product's most commonly incurred fees. The Bureau, however, recognizes that financial institutions would need time to update disclosures upon assessing whether any changes to the incidence-based fee disclosure are needed, although it expects such changes to be infrequent. The Bureau believes such updates will be easier for disclosures provided in electronic form or in written form outside of a retail setting. Thus, the Bureau is proposing that financial institutions would have to make written and electronic updates within 90 days to ensure that consumers receive up-to-date incidence-based fee disclosures. The Bureau, however, recognizes that it could be more complicated and time-consuming for financial institutions to make updates to packages used to market prepaid accounts in retail stores, and is therefore proposing that financial institutions would be able to implement updates on packaging material whenever they are printing new stock during normal inventory cycles. The Bureau acknowledges that this proposal could result in some disclosures for the same prepaid account

product (*i.e.*, electronic disclosures provided online or printed disclosures provided in person without the use of packaging) having different incidence-based fee disclosures on the short forms provided on retail store packaging material. The Bureau, however, does not believe that this discrepancy will significantly impact a consumer's decision regarding which prepaid account product to acquire since consumers will most likely compare the disclosures for two distinct products, and not consider disclosures for the same prepaid account product found in different acquisition channels.

The Bureau also recognizes that allowing financial institutions to continue to use packaging with out-of-date incidence-based fee disclosure in retail stores could reduce the effectiveness of this disclosure. The Bureau, however, believes that imposing a cut-off date after which sale or distribution of out-of-date retail packages would be prohibited could be overly burdensome. Nevertheless, the Bureau seeks comment about whether not including such a cut-off date would negatively impact consumers in a significant way.

Though the Bureau is not proposing specific package update requirements for the incidence-based fee disclosure, the Bureau notes, however, that financial institutions generally must ensure all other fee types and amounts disclosed pre-acquisition, whether on retail packaging, online, or through other means, are accurate at the time such disclosures are provided. The Bureau, therefore, does not believe that a general disclosure update requirement is necessary for non-incidence-based fee disclosures provided before a consumer acquires a prepaid account, as a financial institution must continue to honor whatever fee schedule it provides a consumer.

The Bureau is also proposing to adopt several comments to provide additional guidance on incidence-based fee disclosures. First, proposed comment 18(b)(2)(i)(B)(*8*)-1 would clarify how many additional fees a financial institution must disclose pursuant to proposed

§ 1005.18(b)(2)(i)(B)(*8*)(I) and when disclosure of fewer than three incidence-based fees would be permitted. Specifically, the proposed comment would explain that if a prepaid account product only has one, two or three fees not already disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), proposed § 1005.18(b)(2)(i)(B)(*8*) would require disclosure of these fees assuming it was incurred by a consumer at least once during the prior 12-month period. Proposed comment 18(b)(2)(i)(B)(*8*)-1 would also clarify that, conversely, if a prepaid account has four fees not already disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*), proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would require disclosure of the three fees most frequently incurred. Finally, the proposed comment would clarify that if the disclosures made pursuant to proposed § 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 proposed § 1005.18(b)(2)(i)(B)(*8*)(I).

The Bureau also proposes to add comment 18(b)(2)(i)(B)(*8*)-2, which would clarify how to determine which fees were incurred most frequently in the prior 12-month period. Specifically, the proposed comment would explain that incidence should be considered on a total basis across all consumers using a particular prepaid account product. The proposed comment would further clarify that, 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 would be factored into the total incidence calculation for that fee type. The proposed comment would also clarify that if a financial institution offers more than one prepaid account product, it would have to consider a consumers' fee incidence for each product separately and not consolidate the fee incidence across all of its prepaid account products. Finally, the proposed

comment would clarify that the price for purchasing or activating a prepaid account could be an incidence-based fee for purposes of proposed § 1005.18(b)(2)(i)(B)(*8*).

Proposed comment 18(b)(2)(i)(B)(*8*)(I)-3 would provide guidance on the relationship between proposed § 1005.18(b)(2)(i)(B)(*8*)(I) and the proposed effective date regime in proposed § 1005.18(h). Specifically, the proposed comment would explain that § 1005.18(h)(2) further requires a financial institution to 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. The proposed comment would also clarify that 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 proposed § 1005.18(h)(1).Proposed comment 18(b)(2)(i)(B)(*8*)(I)-4 would explain how to disclose incidence-based fees for those prepaid account products that give consumers the opportunity to choose among multiple service plans with different fee schedules.[267] Specifically, the proposed comment would explain that when disclosing multiple service plans on a short form disclosure as permitted by proposed § 1005.18(b)(3)(iii)(B) (discussed below), 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 proposed § 1005.18(b)(2)(i)(B)(*8*)(I). The Bureau recognizes that it is possible the most commonly incurred fees among all of the multiple service plans could also be one of the fees that varies in amount depending on the service plan selected

[267] See section-by-section analysis of § 1005.18(b)(3)(iii)(B) and comment 18(b)(3)(iii)(B)-1 for a more detailed discussion of how the Bureau defines multiple service plans for prepaid account products under the proposed pre-acquisition disclosure regime.

by a consumer. But the Bureau believes it is unlikely because the short form will capture most fees charged by most prepaid account providers, and the multiple service plans, when available, will only have those plans fee schedules vary based on a couple of fee types—typically, the periodic fee and the per purchase fees, both of which are already required to be disclosed for each service plan. Thus, the Bureau believes it is unlikely that one of the remaining fees that could qualify for the incidence-based fee requirement would vary across service plans. The Bureau, however, seeks comment on whether it is actually the case that most prepaid account products offering multiple service plans only vary based on a couple of fee types. 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, the proposed comment would further clarify that it would consider only the fee incidence for that service plan . The proposed comment would also reference that proposed comment 18(b)(3)(iii)(B)-1 provides guidance on what would constitute multiple service plans. Proposed comment 18(b)(2)(i)(B)(*8*)(I)-5 would explain that proposed § 1005.18(b)(2)(i)(B)(*8*)(I) would 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 proposed § 1005.18(b)(2)(i)(B)(*8*)(I). The proposed comment would further clarify that 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 could still be sold and the financial institution would comply with proposed § 1005.18(b)(2)(i)(B)(*8*)(I).

18(b)(2)(i)(B)(8)(II). Recognizing that new prepaid products have no prior fee data history, the Bureau is also proposing additional requirements to address such circumstances. Thus, proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would require that, if a particular prepaid account product was not offered by the financial institution during the prior 12-month period, the financial institution would have to disclose up to three fees other than any of those fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) that it reasonably anticipates will be incurred by consumers most frequently during the next 12-month period. Proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would also provide that the incidence-based fee disclosures for newly-created prepaid account products would have to be included on all disclosures created for the prepaid account product, whether the disclosure is written, electronic, or on the packaging material of a prepaid account product sold in a retail store, in accordance with the timing requirements in proposed § 1005.18(h). Although financial institutions do not have actual fee data for new prepaid account products, the Bureau believes that they nonetheless would have a reasonable expectation as to which fees will be incurred most frequently. Thus, proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would require institutions, for those prepaid account products without prior fee data, to estimate in advance the fees that should be disclosed in the incidence-based portion of the short form disclosure.

The Bureau proposes to add commentary and provide examples explaining how to apply proposed § 1005.18(b)(2)(i)(B)(*8*)(II) in situations where a financial institution has inadequate data regarding a prepaid account's fee history. Specifically, proposed comment 18(b)(2)(i)(B)(*8*)(II)-1 would explain that the provider should use available data to reasonably anticipate what fees should be disclosed. The proposed comment would also provide guidance about what is considered a new prepaid account product. Specifically, the proposed comment

would clarify that, 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 proposed § 1005.18(b)(2)(i)(B)(*8*)(II); however, insofar as the fee schedule remains unchanged, and the financial institution reasonably anticipates that the fees it previously disclosed pursuant to proposed § 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.

1005.18(b)(2)(i)(B)(8)(III). The Bureau is also proposing to add additional requirements for when a particular prepaid account product's fee schedule changes. Specifically, proposed § 1005.18(b)(2)(i)(B)(*8*)(III) would require that if a financial institution changes an existing prepaid account product's fee schedule at any point after assessing its incidence-based fee disclosure pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(I), it would have to determine whether, after making such changes, it reasonably anticipates that the existing incidence-based fee disclosure would represent the most commonly incurred fees for the remainder of the current 12-month period. If the financial institution reasonably anticipates that the current incidence-based fee disclosure would not represent the most commonly incurred fees for the remainder of the current 12-month period, it would have to update the incidence-based fee disclosure within 90 days for disclosures provided in written or electronic form, in accordance with the timing requirements in proposed § 1005.18(h).

Proposed § 1005.18(b)(2)(i)(B)(*8*)(III) would also state that disclosures provided on a prepaid account product's packaging material, for example, in retail stores pursuant to proposed § 1005.18(b)(1)(ii), or in other locations, must be revised when the financial institutions is printing new packaging material, in accordance with the timing requirements of proposed

§ 1005.18(h). Finally, proposed § 1005.18(b)(2)(i)(B)(*8*)(III) would also state that all disclosures provided pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)(III) and created after a financial institution makes an incidence-based fee assessment and determines changes are necessary must include such changes, in accordance with the timing requirements of proposed § 1005.18(h). Proposed comment 18(b)(2)(i)(B)(*8*)(III)-1 would also provide several examples of demonstrate how different changes to an existing prepaid account product could impact the incidence-based fee disclosure. Specifically, the proposed comment would explain that, 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 proposed § 1005.18(b)(2)(i)(B)(*8*)(III). The proposed comment would further explain that, 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 would conduct its next, annual incidence-based fees assessment.

The Bureau notes that its proposed model forms do not isolate or identify these incidence-based fees in a way that distinguishes them from the other fees disclosed under proposed § 1005.18(b)(2)(i)(B)(*5*) – (*7*) that are not required to be in the top-line. Thus, a consumer comparing two different prepaid account products may see some types of fees that are the same (the seven standardized fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) – (*7*)) and may see some that differ (the three incidence-based fees disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*8*)). During its consumer testing, the Bureau tested language identifying the incidence-based fees as such, but this language was often ignored or misunderstood by

participants. Nevertheless, the Bureau recognizes that some variation on the short form fee disclosure could lead to confusion, and thus the Bureau seeks comment on whether the model forms should more clearly indicate to a consumer the meaning of the incidence-based fees.

The Bureau also recognizes that the proposed procedure for determining and disclosing incidence-based fees could be complicated in some instances, particularly for new prepaid accounts or those with revised fee schedules. Further, the Bureau acknowledges that basing the incidence-based fees determination on fee incidence might not make sense for all prepaid products. Thus, the Bureau seeks comment on all aspects of this incidence-based fees proposal. Specifically, the Bureau solicits feedback on whether other measures, such as fee revenue, would be better measures of the most important remaining fees to disclose to consumers considering a prepaid account. Relatedly, the Bureau seeks comment on whether there should be a de minimis threshold below which changes to the incidence ranking would not require form revisions, and if so, what that threshold should be. Such comments would be most useful if aided by data supporting the suggested threshold. The Bureau also seeks comment on how often financial institutions should be required to update the incidence-based fees disclosures, whether financial institutions should have to all conduct their incidence-based fee assessment at the same time in the 12-month period, and whether the timing requirements for updates to electronic and written disclosures versus those provided on retail packaging should be different. Additionally, under the current proposal, a financial institution would have to consider the cost of purchasing or activating the prepaid account as a fee when determining its incidence-based fee disclosure, but the Bureau is not otherwise mandating its disclosure in the short form disclosure.[268] The Bureau

[268] The Bureau notes, however, that this fee, when applicable, would be listed in the long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A).

also seeks comment on whether the cost to purchase the account, as a one-time fee, should be excluded from the incidence-based fee disclosure or whether it should be mandated as part of the static portion of the short form. The Bureau also solicits comment on whether there are alternate approaches for disclosing key fees not captured by the standardized portion of the short form that recognize how products may vary and that would prevent evasion of the short form's requirements.

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

The Bureau is proposing that the short form disclosure would also have to include a statement indicating whether the prepaid account product could offer a credit feature to a consumer. Specifically, proposed § 1005.18(b)(2)(i)(B)(*9*) would require a statement on the short form that credit-related fees may apply, in a form substantially similar to proposed Model Form A-10(c), if, at any point, a credit plan that would be a credit card account under Regulation Z, 12 CFR part 1026 may be offered in connection with the prepaid account. Proposed § 1005.18(b)(2)(i)(B)(*9*) would also state that such a credit plan could be accessed by a credit card under Regulation Z, 12 CFR 1026.2(a)(15)(i), that also is an access device that accesses the prepaid account, or the credit plan could be 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 offering the plan. Finally, proposed § 1005.18(b)(2)(i)(B)(*9*) would state that if neither of these two types of credit plans would be offered in connection with the prepaid account at any point, a financial institution would have to disclose on the short form a statement that no overdraft or credit-related fees would be charged, in a form substantially similar to proposed Model Form A-10(d) in Appendix A.

In the Bureau's consumer testing, many participants expressed a desire to avoid using any financial products that offer overdraft. Further, the 2014 Pew Survey indicates that many consumers turn to prepaid cards specifically to avoid incurring any overdraft charges.[269] The Bureau therefore believes that if a financial institution may offer a credit feature, then a consumer should be on notice of this possibility before acquiring the prepaid account. The Bureau believes that placing such notice on the short form would allow a consumer to decide whether they want to acquire a product that may offer credit, or whether they would prefer a product that would not offer credit, which, when applicable would also be disclosed in a statement on the short form disclosure. Without such a notice, the Bureau believes that consumers may not have adequate information to decide which prepaid product is best for them. The Bureau recognizes, however, that receiving notice about credit features on the short form disclosure might be confusing to consumers, since the Bureau is proposing to prohibit financial institutions from offering credit features to prepaid account holders until they have held an account for at least thirty days, and not all account holders would qualify for such credit features.[270] *See* proposed §§ 1005.18(g) and 1026.12(h). The Bureau, however, believes that the importance of alerting all consumers as to whether a prepaid account product could offer credit features outweighs any risk of confusion. The Bureau nevertheless seeks comment on all aspects of this part of the proposal, and, in particular, whether including notice of credit features on the short form disclosure is the proper approach.

[269] 2014 Pew Study, at 1.

[270] For a more detailed discussion of the Bureau's approach to credit features offered on prepaid accounts, see the introduction to the TILA discussion.

Proposed comment (b)(2)(i)(B)(*9*)-1 would explain that the statement indicating whether a prepaid account product offers credit plans to a consumer would have to be provided on all short form disclosures, regardless of whether some consumers would be solicited to enroll in such a plan, if such a plan could be offered.

The Bureau solicits comment on all aspects of the requirement to include a statement on the availability of credit features, including whether such statements should be required to be disclosed on the short form, and what statements would be most helpful for consumers in deciding between products that offer credit features and those that do not.

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

In addition to disclosure of specific fee types and a credit feature, the short form would also require, in proposed § 1005.18(b)(2)(i)(B)(*10*) disclosure of certain information regarding additional fees that a financial institution could impose on a prepaid account that are not captured in the short form. Specifically, proposed § 1005.18(b)(2)(i)(B)(*10*) would require financial institutions to include on the short form a statement regarding the number of fees other than those listed in the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*1*) through (*8*) that are listed on the long form disclosure pursuant to proposed § 1005.18(b)(2)(ii)(A), in a form substantially similar to the clause set forth in appendix A-10(a) through (d). The Bureau believes that because the short form may only include a subset of a prepaid account's fees, it would be important for consumers to understand when more fees might apply. As noted earlier, many participants in the Bureau's consumer testing reported finding out about fees only after they incur them. The Bureau believes that including a statement on the short form disclosure indicating exactly how many additional fees could apply to encourage consumers to seek out more information about a prepaid account before acquisition.

The Bureau recognizes, however, that this statement might suggest any other fees that apply are punitive when in fact such fees might be charged for services a consumer could find beneficial, and that might not be offered on competing cards. Nevertheless, the Bureau solicits comment on whether including this type of statement on the short form would be useful to consumers or if, instead, it might interfere with their ability to make an informed choice among prepaid accounts.

Unlike the incidence-based fees, the Bureau does not believe it is necessary to propose provisions about updating the statement regarding other fees. Pursuant to proposed § 1005.18(f), a financial institution would have to include the long form disclosure in the terms and conditions provided as part of a prepaid account's terms and conditions. Thus, any updates that are made to the fees disclosed in the long form would require an overhaul of all of the disclosures for a given prepaid account product, which the Bureau believes is unlikely to occur. The Bureau also seeks comment, however, on whether guidance around updating this statement is necessary.

Proposed comment 18(b)(2)(i)(B)(*10*)-1 would provide examples of how to comply with proposed § 1005.18(b)(2)(i)(B)(*10*). Specifically, the proposed comment would clarify that if 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 proposed § 1005.18(b)(2)(i)(B)(*8*), and if this would be the only fee the financial institution would not be required to disclose elsewhere on the short form, then 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 language set forth in the Model Forms in proposed appendix A-10(a) through (d) of this part. The proposed comment would also provide an example that if a financial institution does not

charge any fees other than those required to be disclosed pursuant to proposed § 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.

Proposed comment 18(b)(2)(i)(B)(*10*)-2 would provide guidance about how to count the total number of fees to disclose pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*). Specifically, the proposed comment would clarify that if the fee a financial institution imposes might vary, even if the variation is based on a consumer's choice of how to utilize a particular service, the financial institution must count each variation of the fee that might be imposed as a separate fee. The proposed comment would further explain that for example, if a financial institution imposes one fee to issue a replacement card to the consumer using standard mail service, but charges a different (and perhaps higher) fee if the 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 proposed § 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 proposed § 1005.18(b)(2)(i)(B)(*10*). Even if a fee could be waived under certain conditions, the proposed comment clarifies that it would still be counted to comply with proposed § 1005.18(b)(2)(i)(B)(*10*).

Nevertheless the Bureau seeks comment on whether this guidance is sufficient to enable compliance with § 1005.18(b)(2)(i)(B)(*10*). The Bureau also solicits comment on whether its proposed approach to addressing fee amount variations when counting the number of other fees could actually be misleading to the consumer.

18(b)(2)(i)(B)(11) Telephone Number and Website

Proposed § 1005.18(b)(2)(i)(B)(*11*) would require disclosure, in a form substantially similar to the language set forth in the Model Forms in proposed appendix A-10(c) and (d), of a telephone number and the unique URL of a website that a consumer may enter to access the long form disclosure required under proposed § 1005.18(b)(2)(ii). Proposed § 1005.18(b)(2)(i)(B)(*11*) would also state that this disclosure would be required only when a financial institution chooses not to provide a written form of the disclosures required by proposed § 1005.18(b)(2)(ii) before a consumer acquires a prepaid account at a retail store as described in proposed § 1005.18(b)(1)(ii). The Bureau believes that using either of these methods, a consumer should be able to access information about the fees listed in the long form disclosure, and any conditions on the applicability of those fees, as described in the section-by-section analysis of proposed § 1005.18(b)(2)(ii)(A). As discussed above, the Bureau believes that if a consumer is not receiving the long form disclosure before acquisition in a retail store, it is important that they are still able to access the information. The Bureau also believes it is important that the URL of the website be unique to ensure that a consumer can directly access the same type of stand-alone long form that could be required to be provided pursuant to proposed § 1005.18(b)(1)(i) in written or electronic form before a consumer acquires a prepaid account.

Proposed comment 18(b)(2)(i)(B)(*11*)-1 would provide further details about the telephone number that would have to be included on the short form when a financial institution does not provide the long form disclosure before a consumer acquires a prepaid account. Specifically, proposed comment 18(b)(2)(i)(B)(*11*)-1 would state that a financial institution must make the long form disclosure described in proposed § 1005.18(b)(2)(ii) accessible to a

consumer orally via a telephone number disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) when a financial institution chooses not to provide a written form of these disclosures before a consumer acquires a prepaid account, as described in proposed § 1005.18(b)(2)(i)(B)(*11*). The proposed comment would further clarify that for example, a financial institution could use a customer service agent or an interactive voice response system, to provide this disclosure. Proposed comment 18(b)(2)(i)(B)(*11*)-1 would also explain that a consumer must not incur a fee to call this telephone number before acquiring a prepaid account. The proposed comment would further clarify that the telephone number disclosed pursuant to § 1005.18(b)(2)(i)(B)(*11*) could be the same as the customer service number for which a financial institution impose a fee on a consumer to use for other purposes, but a consumer could not incur any customer service or other transaction fees when calling this number to access the information set forth in proposed § 1005.18(b)(2)(ii) before acquiring a prepaid account in retail store.

The Bureau considered requiring that this number be toll-free, but ultimately decided that having a toll-free number is less important to consumers, most of whom use mobile phones and do not incur additional fees for making long distance calls, and such a requirement could impose a burden on smaller prepaid account providers because they would perhaps have to maintain a separate toll-free line just for their prepaid account products. The Bureau notes that some card networks may require financial institutions to maintain toll-free lines, and therefore numbers disclosed in such cases will likely be toll-free.

Proposed comment 18(b)(2)(i)(B)(*11*)-2 would clarify that § 1005.18(b)(2)(i)(B)(*11*) requires disclosure of a unique URL that must take consumers to the webpage 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 proposed § 1005.18(b)(1)(ii). The proposed comment would further clarify that an entered URL that requires a consumer to navigate various other webpages before viewing the long form disclosure would not comply with proposed § 1005.18(b)(2)(i)(B)(*11*). The Bureau believes that consumers make acquisition decisions in retail stores relatively quickly – often while standing – and should not have to navigate different links to access the webpage that contains the long form disclosure. The Bureau has also considered requiring financial institutions to use shortened URLs on the short form disclosure provided in retail stores to decrease the amount of time required to access the long form disclosure. The Bureau seeks comment on whether such a requirement regarding the URL is necessary.

The Bureau also considered whether to propose to require financial institutions to disclose an SMS short code, which might be easier to type than a URL, that consumers could text to receive the URL that links directly to the long form disclosure.[271] The Bureau, however, decided against including this method for several reasons. First, sending a text message using an SMS short code would still require that consumers have a mobile phone that is capable of sending text messages and that a consumer receives adequate internet reception when in a retail store. Thus, the Bureau does not believe that an SMS short code would broaden the spectrum of consumers who could access the long form disclosure when in a retail store, and it could impose an additional cost on consumers who incur fees from their mobile carriers for receiving text messages. Further, the Bureau did not believe that an SMS short code would save a consumer who wants to access the long form disclosure an appreciable amount of time. The Bureau also

[271] An SMS short code is a group of numbers one can send as a text message using a mobile phone and receive a text message in response.

believed that there could be security concerns involved with offering disclosures via SMS. The Bureau has also considered, but is not requiring, that a quick response (QR) code be included in the short form. Some Prepaid ANPR commenters suggested QR codes as another method for accessing information. Although potentially useful, a QR code would require a substantial amount of space on the small short form and, the Bureau believes, QR code adoption remains low.

The Bureau seeks comment on its proposal to disclose a telephone number and the unique URL of a website on the short form disclosure when the long form disclosure is not provided pre-acquisition in retail stores, and whether there are other methods the Bureau should consider disclosing on the short form. The Bureau also seeks comment on whether providing a SMS code or QR code on the short form would increase the number of consumers who would be willing or able to access the long form disclosure pre-acquisition in a retail store.

18(b)(2)(i)(B)(12) Statement Regarding Registration

The Bureau is also proposing that a statement regarding the importance of registering the prepaid account with the financial institution be included on the short form disclosure. Specifically, proposed § 1005.18(b)(2)(i)(B)(*12*) would require a statement that communicates to a consumer that a prepaid account must be registered with a financial institution or service provider in order for the funds loaded onto the account to be protected, in a form substantially similar to the clause included on proposed Model Forms A-10(a) through (d).

As discussed in the section-by-section analysis of proposed § 1005.18(e)(3), registration typically means that a consumer provides identifying information such as name, address, date of birth, and Social Security Number or other government-issued identification number so that the financial institution can identify the cardholder and verify the cardholder's identity. The Bureau

is proposing to add this statement because many consumer protections set forth in this proposal would not take effect until a consumer registers an account. For example, under proposed § 1005.18(e)(3), a consumer would not be entitled to error resolution rights or protection from unauthorized transactions until after registering the prepaid account. The Bureau believes that this is an important protection insofar as unregistered prepaid accounts are like cash – once lost, funds may be difficult or impossible to protect or replace because the financial institution may not know who is the rightful cardholder.

The Bureau, however, recognizes that in some acquisition scenarios, for example, government benefit accounts, payroll card accounts, or cards used to disburse financial aid to students, this type of statement might be less useful because consumers must register with the government agency, employer, or institution of higher education, in order to acquire the account. The Bureau therefore solicits comment on whether the short form disclosure provided to consumers pre-acquisition should always include this statement.

18(b)(2)(i)(B)(13) Statement Regarding FDIC (or NCUSIF) Insurance

The Bureau is proposing to address pass-through deposit (and share) insurance in proposed § 1005.18(b)(2)(i)(B)(*13*). As discussed above, the FDIC, among other things, protects funds placed by depositors in insured banks and savings associations; the NCUA provides a similar role for funds places in credit unions. As explained in the FDIC's 2008 General Counsel Opinion No. 8, the FDIC's deposit insurance coverage will "pass through" the custodian to the actual underlying owners of the deposits in the event of failure of an insured institution, provided certain specific criteria are met.[272]

[272] 73 FR 67155, 67157 (Nov. 13, 2008).

In response to the Prepaid ANPR, many consumer advocacy group commenters suggested that the Bureau require that pass-through deposit (or share) insurance cover all funds loaded into prepaid accounts, while many industry group commenters suggested that the Bureau propose clear disclosure of whether a prepaid product carries FDIC insurance or not.

The Bureau believes it is not always easy to determine or explain whether FDIC or NCUSIF pass-through deposit or share insurance would apply to a particular prepaid account. Thus, as is discussed below, the Bureau is proposing disclosure be made regarding FDIC or NCUSIF insurance in only limited situations. In the Bureau's Study of Prepaid Account Agreements, the Bureau found that 65.85 percent of all account agreements reviewed stated that cardholder funds were protected by FDIC deposit (or NCUSIF share) insurance (this includes agreements that explained insurance coverage depends on card registration and/or that it only applies to funds held by a bank or credit union in a pooled account associated with the program). Of the remaining agreements, 17.23 percent implied that the program was FDIC or NCUSIF insured by stating that the issuer is an FDIC or NCUSIF-insured institution, but that did not address FDIC or NCUSIF insurance coverage for the program. A small number of agreements, 6.15 percent of those reviewed, did not address FDIC or NCUSIF insurance coverage for the program. For the latter two categories of programs, it is possible that such programs are in fact set up to be eligible for pass-through deposit (or share) insurance, but it was not possible to tell from reviewing the program's account agreement. Finally, 10.77 percent of agreements explicitly stated that the program was not insured.[273]

[273] *See* Study of Prepaid Account Agreements, at 27-28 and tbl. 13. In addition, the Bureau has observed that some GPR card providers disclose the existence of pass-through deposit insurance coverage or that the issuing bank is an FDIC-insured institution on their retail packaging, often quite prominently. The Bureau's Study of Prepaid Account Agreements, however, did not examine pass-through insurance statements made on GPR cards' retail packaging.

In its consumer testing, the Bureau observed that some participants misunderstood the scope of the protections FDIC pass-through deposit insurance actually provides for prepaid accounts. During the consumer focus groups, for example, participants were asked if they had heard of FDIC deposit insurance and how it related to their GPR cards. Nearly all participants said they had heard of FDIC deposit insurance, and many consumers believed the funds on their GPR cards were FDIC-insured.[274] When consumers were asked to explain what it meant that their GPR card had FDIC deposit insurance, most made vague references to their funds being "protected." Upon further probing, however, the majority of participants incorrectly thought FDIC deposit insurance would protect their funds in the event of fraudulent charges or a stolen card.[275] A few believed a problem of that nature would be resolved faster if the prepaid card had FDIC deposit insurance than if it did not. Some participants stated that FDIC insured money in banks; they reasoned that because their card was most likely connected to a bank, the money on their cards was therefore protected from fraud by the FDIC, although others disagreed. Very few participants understood FDIC insurance correctly in that it applies to the insolvency of the bank that holds the underlying funds and not to the funds on a prepaid card itself in the case of an unauthorized transaction on the account.

In light of the results of the Bureau's Study of Prepaid Account Agreements indicating that many products meeting the proposed definition of prepaid account already provide pass-

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Likewise, the Study did not examine pass-through insurance statements made on prepaid programs' other marketing materials or on their websites. *See id.*

[274] *See* ICF Report, at 10.

[275] The Bureau notes, however, that despite believing that FDIC insurance could "protect" funds held in a prepaid account, no testing participants mentioned FDIC insurance when asked to interpret the statement "Register your card to protect your money," which would be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*12*). *See* ICF Report, at 5.

through deposit insurance coverage and consumers' misunderstandings about what protections pass-through deposit insurance actually affords, the Bureau has decided not to propose any requirements related to the affirmative existence of pass-through deposit insurance. The Bureau is proposing, however, that financial institutions would have to disclose a statement on the short form if a prepaid account is not set up to be eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance. Specifically, proposed § 1005.18(b)(2)(i)(B)(*13*) would require that if a prepaid account product is not set up to be eligible for FDIC deposit or NCUSIF share insurance, a financial institution would have to include a statement on the short form disclosure that FDIC deposit insurance or NCUSIF share insurance, as appropriate, does not protect funds loaded into the prepaid account, in a form substantially similar to the clause set forth in Model Forms A-10(c) and (d).

The Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau solicits comment on whether the existence – or lack thereof – of pass-through deposit (or share) insurance should be disclosed on retail packaging, online disclosures, or in any other medium, as many consumer advocacy group comments to the Prepaid ANPR suggested. The Bureau has also observed that financial institutions currently use varied language to describe FDIC (or NCUSIF) insurance. The Bureau therefore solicits comment on whether specific language should be used to describe pass-through deposit (or share) insurance, and if so, what that language should be. The Bureau also solicits comment on whether there is a simple way that this, and other conditions on the applicability FDIC pass-through insurance described above, can be disclosed, particularly in retail stores given the limited space available on card packaging material. Finally, the Bureau solicits comment on whether non-banks that issue prepaid accounts could apply the proposed statement regarding FDIC or NCUSIF insurance to their products, or

whether the Bureau should propose an alternative requirement regarding the disclosure of the availability of FDIC or NCUSIF insurance for non-banks that issue prepaid accounts.

18(b)(2)(i)(B)(14) CFPB Website

Proposed § 1005.18(b)(2)(i)(B)(*14*) would require disclosure of the URL of the website of the Consumer Financial Protection Bureau in a form that is substantially similar to the clauses set forth in appendix A-10(a) of this part. The Bureau intends to develop resources on its website that would, among other things, provide basic information to consumers about prepaid accounts, the benefits and risks of using them, how to use the proposed disclosures, and a URL to the Bureau's complaint portal for prepaid products.

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

Proposed § 1005.18(b)(2)(i)(C) would set forth how, within the confines of the proposed short form disclosure, financial institutions could disclose fees that may vary. As noted above, in many instances, prepaid accounts may have certain fees that vary depending on how a consumer uses the account. For example, monthly periodic fees are, for some prepaid account products, waived when a consumer receives direct deposit or when the monthly balance exceeds a certain amount. In some instances, these conditional situations could become complicated and difficult to explain on a short form disclosure, particularly for multiple fees. The Bureau believes that allowing multiple, complex disclaimers on a single form would be complicated and make comprehension and comparisons more difficult.

Thus, the Bureau is proposing § 1005.18(b)(2)(i)(C), which would provide that if the amount of the fee that a financial institution imposes for each of the fee types disclosed pursuant to proposed § 1005.18(b)(2)(i)(B) could vary, a financial institution would have to disclose the highest fee it could impose on a consumer for utilizing the service associated with the fee, along

with a symbol, such as an asterisk, to indicate that a lower fee might apply, and include text explaining that the fee could be lower, in a form substantially similar to the clause set forth in the Model Forms A-10(a)- through(d) in appendix A. Proposed § 1005.18(b)(2)(i)(C) would also state that a financial institution would have to use the same symbol and text for all fees that could be lower, but could use any other part of the prepaid account product's packaging material or website to provide more detail about how a specific fee type may be lower. Proposed § 1005.18(b)(2)(i)(C) would further state that a financial institution must not disclose any third party fees imposed in connection with any of the fees disclosed pursuant to § 1005.18(b)(2)(i)(B)(*1*) through (*8*). To the extent third party fees apply or fees could be lower, the Bureau is not proposing to allow that information to be conveyed on the short form beyond allowing the financial institution to use a symbol to indicate when this is the case.

Proposed comment 18(b)(2)(i)(C)-1 would provide examples of how to disclose variable fees on the short form in compliance with proposed § 1005.18(b)(2)(i)(C). Specifically, the proposed comment would explain that, 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 explains the fee may be lower. The proposed comment would also clarify that another example might be if a financial institution charges a cash reload fee of $3.95 at reload networks that are not agents of the financial institution but would waive 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. In this example, the financial institution would disclose a cash reload fee of $3.95 on the short form disclosure pursuant to proposed § 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 may be lower. The proposed comment would further clarify that proposed § 1005.18(b)(2)(i)(C) does not permit a financial institution explain the conditions under which a fee may be lower, but a financial institution could use any other part of the prepaid account product's packaging material or may use its website to disclose that information, and that information would also be required to be disclosed pursuant to proposed § 1005.18(b)(2)(ii)(A). Proposed comment 18(b)(2)(i)(C)-2 would explain that third parties could include service providers and other entities, regardless of whether the entity is an agent of the financial institution. The Bureau believes that regardless of whether a third party has a relationship with the financial institution, no additional fees should be disclosed on the short form.

The Bureau recognizes that its proposed approach to the disclosure of variable fees on the short form could potentially obscure some complexity in a prepaid account's fee structure. The Bureau, however, proposes to require that this information be disclosed on the long form (*see* proposed § 1005.18(b)(2)(ii)(A)) and to permit its disclosure outside the confines of the short form to mitigate any risk of confusion. *See* comment 18(b)(2)(i)(C)-1. Thus, the Bureau believes that its proposed short form disclosure – and the requirement to disclose the highest fee with an indication that the fee may be lower in certain circumstances – would allow consumers to know the maximum they will pay for that fee type while indicating to consumers when they could qualify for a lower fee. The Bureau, however, recognizes the compromises it has made, and it seeks comment on whether there are other ways that variability should be addressed. The Bureau also solicits feedback on whether it should mandate or permit the disclosure of third party fees on the short form. Also, the Bureau seeks comment on whether financial institutions should be allowed to use more than one type of symbol to explain variability of fees listed in the

short form. Additionally, the Bureau also seeks comment on whether a de minimis exception should be allowed that would permit financial institutions to disclose a different fee if it is close in value to the highest fee.

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

In addition to the short form, the proposed rule would require financial institutions to provide a long form disclosure pre-acquisition. Pursuant to proposed § 1005.18(b)(3)(iii)(A), in most cases, the contents of the long form disclosure discussed below would have to be in a form substantially similar to proposed Sample Form A-10(e).

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

Proposed § 1005.18(b)(2)(ii)(A) would require the disclosure in the long form of all fees that may be imposed by the financial institution in connection with a prepaid account. For each fee type, the financial institution would have to disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, including, to the extent known, any third party fee amounts that may apply. Proposed § 1005.18(b)(2)(ii)(A) would also require that if such third party fees may apply but the amount of those fees are not known, a financial institution would have to instead include a statement indicating that third party fees may apply without specifying the fee amount, and that a fee imposed by a third party who acts as an agent of the financial institution for purposes of the prepaid account would always be disclosed.

As noted above, this part of the proposal is authorized under EFTA sections 904(a) and (c), 905(a), and Dodd-Frank Act sections 1032(a). The Bureau believes that pre-acquisition disclosures of all fees for prepaid accounts will, consistent with EFTA section 902 and Dodd-Frank section 1032(a), assist consumers' understanding of the terms and conditions of their prepaid accounts, and ensure that the features of the prepaid accounts are fully, accurately, and

effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account. The Bureau believes that this disclosure would, in many ways, be similar to what many financial institutions disclose today regarding prepaid accounts' fee structures in the terms and condition documents, but the content of the long form in proposed § 1005.18(b)(2)(ii)(A) would be provided to a consumer as a stand-alone document before a consumer acquires a prepaid account.[276]

Proposed § 1005.18(b)(2)(ii)(A) would also state that a financial institution could not utilize any symbols, such as asterisks, to explain the conditions under which any fee may be imposed. The Bureau believes it is important that consumers can easily follow the information in the long form, and that, when financial institutions do not face space constraints like on the short form, text should be used to explain any information about fees, instead of relying on a consumer first to notice symbols and then associate them with text in a footnote, for example. *See* proposed comment 18(b)(2)(ii)(A)-2.

The Bureau also proposes to add commentary to explain the format of the long form disclosure. Specifically, proposed comment 18(b)(2)(ii)(A)-1 would explain that for example, if a financial institution charges a cash reload fee, the financial institution must list the amount of the cash reload fee and also specify any circumstances under which a consumer could qualify for a lower fee. The proposed comment would further explain that relevant conditions to disclose in the long form disclosure 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.

[276] Pursuant to existing § 1005.7(b)(5), as modified by proposed § 1005.18(f), a version of the long form must also be provided in the terms and conditions for prepaid accounts at the time the consumer contracts for an electronic funds transfer or before the first electronic funds transfer is made involving the consumer's account. *See* section-by-section analysis of proposed § 1005.18(f).

Proposed comment 18(b)(2)(ii)(A)-2, would explain that a financial institution may, at its option, choose to disclose pursuant to proposed § 1005.18(b)(2)(ii)(A), any service or feature it provides or offers even if it does not charge a fee for that service or feature.

The proposed comment would clarify that, for example, a financial institution may choose to list "online bill pay service" and indicate that the fee is "$0" or "free" when the financial institution does not charge consumers a fee for that service or feature. Proposed comment 18(b)(2)(ii)(A)-2 would further clarify that by contrast, where a service or feature is available without a fee for an introductory period, but where a fee may be imposed at the conclusion of the introductory period for that service or feature, the financial institution could not indicate that the fee is "$0." The proposed comment would clarify that the financial institution would instead have to 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. The proposed comment would provide further guidance that similarly, if a consumer would have to enroll in an additional service to avoid incurring a fee for another service, neither of those services would disclose a charge of, "$0," but, instead, would list each fee amount imposed if the consumer does not enroll. The proposed comment would also provide an example that if the monthly fee is waived once a consumer receives direct deposit payments into the prepaid account, the monthly fee imposed upon a consumer if they do not receive direct deposit would be disclosed in the long form, and an explanation regarding how receiving direct deposit might lower the fee would have to be included in the explanatory column in the long form. A financial institution's ability to disclose any fees of its choosing in the long form disclosure (as long as the fee amounts disclosed are accurate) is different from the disclosures required on the short form (*see* proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) and

proposed comment 18(b)(2)(i)-1), which must always be included, even when inapplicable to a particular prepaid account product, and a financial institution cannot choose to disclose more fee information than what is required.

Proposed comment 18(b)(2)(ii)(A)-3 would provide guidance on the disclosure of third party fees in the long form disclosure. Specifically, the proposed comment would explain that proposed § 1005.18(b)(2)(ii)(A) generally requires the disclosure, to the extent known, of any third party fee amounts that may apply. Proposed comment 18(b)(2)(ii)(A)-3 would further explain that, for example, a financial institution that offers balance updates to a consumer via text message would disclose that mobile phone carrier data charges could apply for each text message a consumer receives. The proposed comment would also clarify that proposed § 1005.18(b)(2)(ii)(A) 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. The proposed comment would also provide an example that 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

Proposed § 1005.18(b)(2)(ii)(B) would require the financial institution to include in the long form the disclosures described in § 1026.60(a), (b) and (c) of Regulation Z (12 CFR part 1026) if at any point, a credit plan that would be a credit card account under Regulation Z, 12 CFR Part 1026 may be offered in connection with the prepaid account. Proposed § 1005.18(b)(2)(ii)(B) would further state that such a credit plan could be accessed by a credit card under Regulation Z, 12 CFR 1026.2(a)(15)(i), that also is an access device that accesses the prepaid account, or a credit plan could be 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 offering the plan.

The Bureau recognizes that Regulation Z does not require these disclosures to be provided until a consumer is actually solicited for the credit plan. The Bureau, however, believes it is important for consumers who are considering whether to acquire a prepaid account to know not only if a credit plan could be offered at any point, as required to be disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*9*), but also what the possible cost of such a plan might be. Because of the space constraints on the short form, as discussed above, the Bureau believes it is appropriate for a consumer to receive as part of the long form disclosure more complete information about any credit plan that could be offered to them, even if they would not be solicited for such a plan until at least thirty days after registering a particular prepaid account. *See* proposed § 1005.18(g) and 1026.12(h).

Proposed comment 18(b)(2)(ii)(B)-1 would clarify that the disclosures described in § 1026.60(a), (b) and (c) of Regulation Z (12 CFR part 1026) would have to 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 webpage as the rest of the information required to be listed pursuant to proposed § 1005.18(b)(2)(ii). The Bureau recognizes that depending on the number of fees included in the long form disclosure, it might not be possible to include both disclosures on the same printed page. The Bureau believes, however, that to the extent it would be possible to include these disclosures on the same printed page or webpage, doing so would make it easier for the consumer to review the disclosures.

18(b)(2)(ii)(C) Telephone Number, Website and Mailing Address

Proposed § 1005.18(b)(2)(ii)(C) would require disclosure of the name, telephone number, website, and mailing address of the person or office that a consumer could contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a written copy of transaction history pursuant to proposed § 1005.18(c)(1)(iii) if the financial institution does not provide a periodic statement pursuant to existing § 1005.9(b) or to notify the person or office when a consumer believes that an unauthorized electronic fund transfer has occurred as required by existing § 1005.7(b)(2) or proposed § 1005.18(d)(1)(ii).

18(b)(2)(ii)(D) Statement Regarding FDIC (or NCUSIF) Insurance

Proposed § 1005.18(b)(2)(ii)(D) would require that the long form also include the disclosure required under proposed § 1005.18(b)(2)(i)(B)(*13*) regarding FDIC (or NCUSIF), pass-through deposit (or share) insurance , when appropriate. This statement would be the same as the statement included on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*13*). For more details, *see* section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*13*).

18(b)(2)(ii)(E) CFPB Web Site and Telephone Number

Proposed § 1005.18(b)(2)(ii)(D) would require disclosure of the URL of the Web site of the Consumer Financial Protection Bureau, and a telephone number a consumer could contact and the URL a consumer could visit to submit a complaint related to a prepaid account. As discussed in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*14*), the Bureau intends to develop resources on its website that would, among other things, provide basic information to consumers about prepaid accounts, the benefits and risks of using them, and how to use the proposed disclosures. The Bureau also believes that consumers would benefit from

seeing the Consumer Financial Protection Bureau's website and telephone number that they can use to submit a complaint about a prepaid account.

The Bureau seeks comment on all aspects of the proposed contents of the long form disclosure. In particular, the Bureau seeks comment on whether it should propose more specific content requirements for the long form disclosure, or whether some of the information the Bureau proposes to include on the long form is unnecessary.

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

Proposed § 1005.18(b)(3) would set forth the requirements for how the short form and long form disclosures must be presented. Specifically, proposed § 1005.18(b)(3)(i) sets forth general requirements for written, electronic, and oral disclosures. Proposed § 1005.18(b)(3)(ii) would provide requirements regarding whether these disclosures would have to be in a retainable form. Proposed § 1005.18(b)(3)(iii) would set forth parameters for the tabular form in which the disclosures would have to be presented, including specific requirements for short forms presenting multiple service plans.

18(b)(3)(i) General

Except when such disclosures are provided electronically or orally, as described in proposed § 1005.18(b)(3)(iii)(B) and (C), proposed § 1005.18(b)(3)(i)(A) would provide that short form and long form disclosures required by proposed § 1005.18(b)(2)(i) and (ii) generally must be disclosed in writing. The Bureau believes that consumers can best review the terms of a prepaid account before acquisition when seeing these disclosures in written form. As is discussed above, however, the Bureau recognizes that in certain situations it is not practicable to provide written disclosures. For example, when a consumer acquires a prepaid account on the

internet, the Bureau believes that a financial institution cannot easily provide written (non-electronic) disclosures to a consumer pre-acquisition.

Currently, Regulation E permits disclosures to be provided in electronic form, subject to compliance with consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C 7001, et seq.). § 1005.4(a)(1). The E-Sign Act generally allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if a consumer has affirmatively consented to such use and has not withdrawn such consent, and if certain format of delivery requirements are met. Before receiving such consent, the E-Sign Act requires that financial institutions make clear to a consumer that they have the option of receiving records in paper form, to specify whether a consumer's consent applies to a specific transaction or throughout the duration of their relationship with the financial institution, and to inform a consumer of how he or she might withdraw consent and update information needed to contact them electronically, among other requirements. The E-Sign Act also requires financial institutions to retain record of any disclosures that have been provided to a consumer electronically so that a consumer can access them later.

When the Bureau issued regulations on remittance transfers, the Bureau altered Regulation E's general requirement for remittance that provides electronic disclosures are permissible as long as they comply with the E-Sign Act. The Bureau mandated that certain disclosures could be provided electronically, in retainable form, without having to comply with the E-Sign Act if the sender electronically requests the remittance transfer provider to send the remittance transfer. *See* § 1005.31(a)(2).

The Bureau is proposing to modify the general Regulation E electronic disclosure requirement for prepaid accounts in proposed § 1005.18(b)(3)(i)(B), which would require that a financial institution would have to provide the short form and long form disclosure required by proposed § 1005.18(b)(2)(i) and (ii) in electronic form when a consumer acquires a prepaid account through the internet, including via a mobile application. Proposed § 1005.18(b)(3)(i)(B) would also state that disclosures required by proposed § 1005.18(b)(2)(i) and (ii) would have to be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. In addition, proposed § 1005.18(b)(3)(i)(B) would provide that the electronic disclosures required by § 1005.18(b)(2)(i) and (ii) would not need to meet the consumer consent and other applicable provisions of the E-Sign Act.

As in the remittances pre-purchase disclosure context, the Bureau believes altering the general Regulation E requirement for prepaid accounts is necessary to ensure consumers that receive relevant disclosure information at the appropriate time. The Bureau believes that during the pre-acquisition time period for prepaid accounts it is important for consumers who decide to go online to acquire a prepaid account to see the relevant disclosures for that prepaid account product in electronic form. The Bureau believes that consumers will often decide whether to acquire a particular prepaid account after doing significant research online, and that if they are not able to see disclosures on the products' websites, they cannot make an informed acquisition decision. As discussed above, Regulation E's current general E-Sign provision allows financial institutions to provide disclosures electronically at their discretion;[277] however, the Bureau

[277] *See* § 1005.4(a)(1).

believes that, for internet acquisitions of prepaid products, a mandate of electronic disclosures on websites is more appropriate.

The general Regulation E E-Sign provision also requires that financial institutions comply with E-Sign consent provisions when providing disclosures electronically. The Bureau is not proposing to require such compliance for prepaid accounts that are acquired through the internet. Instead, the Bureau is proposing § 1005.18(b)(3)(i)(B), which would state that electronic disclosures of the short form and long forms for prepaid accounts acquired through the internet would only have to be provided electronically in a manner which is reasonably expected to be accessible in light of how a consumer acquired the prepaid account. For example, if a consumer has acquired a prepaid account through a website, it is reasonable to expect that a consumer would be able to view electronic disclosures on a website and no E-Sign consent would be necessary. The Bureau notes, however, that this alternative E-Sign requirement applies only to the pre-acquisition disclosure of the short form and long form disclosures for prepaid accounts acquired over the internet and does not alter the application of the general E-Sign provision in Regulation E to prepaid account after acquisition, or for any other type of account.

The Bureau also proposes to add comment 18(b)(3)(i)(B)-1 which would explain how to disclose the short and long forms electronically. Specifically, the proposed comment would explain that a financial institution may, at its option, provide the short and long form disclosures on the same webpage or two different webpages as long as the disclosures are provided in accordance with the pre-acquisition disclosure requirements in proposed § 1005.18(b)(1)(i). The Bureau recognizes, as several consumer advocacy group commenters to the Prepaid ANPR stated, that disclosures provided electronically on websites may be difficult for consumers to find because they are sometimes buried several pages deep or require some form of registration or

logging on to access. To mitigate the risk of consumers having trouble locating electronic disclosures on a website, the Bureau generally believes that disclosures provided on a website should be easy to locate, whether they are provided on the same webpage, or on two separate pages. *See* proposed comment 18(b)(1)-2.

Proposed comment 18(b)(3)(i)(B)-2 would provide guidance around the lack of an E-sign requirement for prepaid account pre-acquisition disclosures. Specifically, the proposed comment would clarify that if, for example, a consumer is acquiring a prepaid account using a financial institution's website, it would be reasonable to expect that a consumer would be able to access pre-acquisition disclosures provided on a similar website.

Proposed § 1005.18(b)(3)(i)(B) would also require that disclosures provided to a consumer through a website as described in proposed § 1005.18 (b)(2)(i)(B)(*11*) would have to be made in an electronic form using machine-readable text that is accessible via both Web browsers and screen readers. Proposed comment 18(b)(3)(i)(B)-3 would clarify that a disclosure would not comply with this requirement if it was not provided in a textual format that can be read automatically by an internet search engines or other computer systems. This textual format could include, for example, JSON, XML, or a similar format.

18(b)(3)(i)(C) Oral Disclosures

The Bureau is also proposing § 1005.18(b)(3)(i)(C), which would state that disclosures required by proposed § 1005.18(b)(2)(i) would have to be provided orally when a consumer acquires a prepaid account orally by telephone as described in proposed § 1005.18(b)(3)(iii). Proposed § 1005.18(b)(3)(i)(C) would also state that disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(*11*) also would have to be made orally. The Bureau believes that when a consumer acquires a prepaid account orally by

telephone or when a consumer requests to hear the long form disclosure in a retail store by calling the telephone number disclosed on the short form pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*), it is not practicable for a financial institution to provide these disclosures in written form and therefore oral disclosures could be provided.

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

Proposed § 1005.18(b)(3)(ii) would require that disclosures required by proposed § 1005.18(b)(2)(i) and (ii) be provided in a retainable form except for disclosures provided to a consumer through the telephone number described in proposed § 1005.18(b)(2)(i)(B)(*11*) or disclosure provided orally pursuant to proposed § 1005.18(b)(1)(iii). The Bureau notes, however, that Regulation E does have general recordkeeping requirements. *See* § 1005.13(b). After having acquired a prepaid account orally, a consumer would receive the long form disclosure in the full terms and conditions accompanying the prepaid account inside its packaging. *See* proposed § 1005.18(f). Further, the long form disclosure would also presumably be available on the financial institution's website as part of the full prepaid account agreement that would be required to be posted pursuant to proposed § 1005.19, discussed below, should a consumer want to review it post-acquisition. Thus, the Bureau does not believe it is necessary for the disclosures provided to a consumer for a prepaid account acquired orally by telephone or the long form disclosure that a consumer may access by telephone pre-acquisition in a retail store to be retainable, and the Bureau does not believe it is practicable to provide retainable forms of oral disclosures. The Bureau does, however, believe that providing a retainable format of written and electronic disclosures is feasible in all other contexts. Proposed comment 18(b)(3)(ii)-1 would explain that a financial institution may satisfy the requirement to provide electronic

disclosures in a retainable form if it provides disclosures on its website in a format that would be capable of being printed, saved or e-mailed to a consumer.

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

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

The Bureau is also proposing, in proposed § 1005.18(b)(3)(iii)(A), tabular form requirements that would be used to present the short and long form disclosures. Currently, the Bureau believes that most financial institutions use some sort of table format to disclose prepaid account fees in their terms and conditions documents, although each institution selects different fees to highlight and presents them in different orders. Financial institutions also implement a variety of formats to present fee information on packaging material in retail stores. Thus, the burden is on consumers to identify the fees that are most important to them in the various tabular formats to determine the best product for their needs.

During consumer testing, however, the Bureau found that few participants researched prepaid accounts before acquisition, particularly in retail stores. The Bureau believes that at least part of the reason that consumers do not do much comparison shopping is that doing so is not straightforward. In a retail store, prepaid accounts are often displayed behind counters, close to check-out lanes at ends of aisles and in other areas that can often be crowded or difficult to access, which can limit careful review of a product's terms. The Bureau believes that financial institutions are more likely to present fee information in a clearer and more complete format for prepaid account products offered online, but, as mentioned above, the format used to display this information varies, making comparisons harder. Although some variation is inevitable because each financial institution offers different services in connection with its prepaid accounts, the Bureau nevertheless believes that requiring use of a standardized form to disclose fee

information can minimize some variation by maintaining a consistent format and, in the case of the short form, also keeping many of the fee types that are listed constant.

The Bureau therefore is proposing that, except as provided in proposed § 1005.18(b)(3)(iii)(B), short form disclosures required by proposed § 1005.18(b)(2)(i) that are provided in writing or electronically shall be in the form of a table substantially similar to proposed Model Forms A-10(a) through (d), as applicable. Long form disclosures required by proposed § 1005.18(b)(2)(ii)(A) through(E) that are provided in writing or electronically would have to be in a form of a table substantially similar to proposed Sample Form A-10(e).[278] The Bureau is proposing a sample form for the long form disclosure instead of a model form, as is proposed for the short form disclosure, because the Bureau believes the long form disclosures could vary depending on the number of fees included in the form and the extent of relevant conditions that would have to be disclosed in connection with each fee. Nevertheless the Bureau solicits comment on whether it should provide a model form for the long form disclosure.

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

As an exception to proposed § 1005.18(b)(3)(iii)(A) (which applies to products with a single fee schedule), proposed § 1005.18(b)(3)(iii)(B) would set forth tabular form requirements for prepaid products offering multiple service plans. Specifically, proposed § 1005.18(b)(3)(iii)(B)(*1*) would state that when a financial institution offers multiple service plans for a particular prepaid account product and each plan has a different fee schedule, the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*7*) could be provided for each service plan in the form of a table substantially similar to the proposed Model Form A-

[278] The Bureau notes that the explanatory text used in the model long form disclosure is meant only to serve as an example, as the Bureau is proposing only formatting requirements for the long form disclosure, and not specific language.

10(f), and must include descriptions of each service plan included in the table using the terms, "Pay-as-you-go plan," "Monthly plan," "Annual plan," or substantially similar terms. Proposed § 1005.18(b)(3)(iii)(B)(*1*) would further state when disclosing multiple service plans on one short form, the information required by proposed § 1005.18(b)(2)(i)(B)(*8*) must only be disclosed once in the table. Alternatively, proposed § 1005.18(b)(3)(iii)(B)(*1*) would permit a financial institution to disclose just the information required by proposed § 1005.18(b)(2)(i) for only the service plan in which a consumer is enrolled automatically by default upon acquiring the prepaid account, in the form of a table substantially similar to proposed Model Form A-10(c) or (d). Finally, proposed § 1005.18(b)(3)(iii)(B)(*1*) would state that regardless of whether a financial institution discloses all service plans on one form or chooses only to disclose the service plan in which a consumer is automatically enrolled by default, the disclosures required by proposed § 1005.18(b)(2)(i)(B)(*9*) through (*14*) would only have to be disclosed once.

As discussed above, the Bureau believes that it is important for short and long form disclosures to have a standardized format in order to facilitate consumers' comparison of multiple products and their ability to understand key fee and service information about a prepaid product. The Bureau also recognizes, however, that financial institutions offering multiple service plans on one prepaid account need flexibility to disclose information about multiple plans to a consumer. The Bureau therefore is proposing that financial institutions may use one short form table that discloses the information required by proposed § 1005.18(b)(2)(i) for each of the service plans to highlight for a consumer that such plans exist. At its option, a financial institution could also choose to only disclose the service plan in which a consumer is enrolled upon acquiring the prepaid account using the tabular format described in proposed § 1005.18(b)(3)(iii)(A) and note elsewhere on the packaging material or on its website the other

service plans it offers. The Bureau believes that these options will give financial institutions the flexibility to accommodate disclosure of multiple service plans, while also maintaining the simplicity of the short and long form table designs to facilitate consumers' comparison shopping. In consumer testing, some participants were confused by short forms that included multiple service plans similar to the one proposed in Model Form A-10(f) . The Bureau therefore also considered proposing that financial institutions must disclose each service plan in a separate short form table instead of allowing financial institutions to disclose all of the plans on one short form. Some testing participants also were unsure of which service plan applied upon purchase when seeing multiple service plans on one short form, an issue that the Bureau believes may be resolved if a financial institution only discloses the fee schedule for the plan that applies upon a consumer's acquisition of the account. The Bureau thus seeks comment on the best way to accommodate prepaid accounts products offering multiple service plans on the short form disclosure while providing accurate and sufficient information to consumers.

The Bureau also acknowledges that only disclosing the service plan in which a consumer is automatically enrolled by default upon acquiring the prepaid account could potentially conflict with the Bureau's proposed requirement in proposed § 1005.18(b)(2)(i)(C) that financial institutions would have to disclose the most expensive fee for each fee type required to be disclosed in the short form. For example, a "pay-as-you-go" plan in which a consumer is enrolled upon acquisition might not impose a periodic fee, and thus, could disclose "$0" in the top-line of the short form where the periodic fee disclosure would be required. Under such a plan, if a consumer were to opt into a monthly plan, however, they could be charged a periodic fee higher than $0. The Bureau therefore also seeks comment on whether the disclosure of only

the default plan on the short form would be clear or if the Bureau should require that financial institutions always disclose multiple service plans on the short form.

Proposed § 1005.18(b)(3)(iii)(B)(*2*) would state that the information required to be disclosed in the long form by proposed § 1005.18(b)(2)(ii) must be presented for all service plans in the form of a table substantially similar to proposed Sample Form A-10(g). The Bureau believes the long form disclosure should include all fee information about a prepaid account product, and therefore it should contain the fee schedule for every possible service plan.

Additionally, the Bureau proposes to add comment 18(b)(3)(iii)(B)-1 which would provide additional guidance on its proposed definition of multiple service plans. Specifically, proposed comment 18(b)(3)(iii)(B) would state that the multiple service plan disclosure provisions in proposed § 1005.18(b)(3)(iii)(B) apply when a financial institution offers more than one service plan for a particular prepaid account product, and each plan has a different fee schedule. For example, a financial institution might offer a prepaid account product with one service plan where a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee. The proposed comment would also state that a financial institution could also offer a prepaid account product with one service plan for consumers who utilize another one of a financial institution's non-prepaid services (*e.g.*, a mobile phone service) and a different plan for consumers who only utilize a financial institution's prepaid account products. Each of these plans would be considered a "service plan" for purposes of proposed § 1005.18(b)(3)(iii).

18(b)(4) Specific Formatting Requirements

18(b)(4)(i) Grouping

18(b)(4)(i)(A) Short Form Disclosures

Proposed § 1005.18(b)(4)(i)(A) would contain several formatting requirements for the short form disclosure. First, proposed § 1005.18(b)(4)(i)(A) would state that the information required by proposed § 1005.18(b)(2)(i)(A) or proposed § 1005.15(c)(2), when applicable, would have to be grouped together. Proposed § 1005.18(b)(4)(i)(A) would further state that the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) would have to be generally grouped together and appear in the order of the Model Forms in appendix A-10(a) through (d) of this part. As discussed above, the Bureau believes that grouping the fees required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in the top-line will more effectively direct consumers' attention to these fees, which the Bureau believes are the most important fees. The Bureau also believes that, when it is applicable, the payroll card account or government benefit account notice banner should appear at the top of the short form to ensure consumers understand that they do not have to accept such an account. Finally, proposed § 1005.18(b)(4)(i)(A) would further state that the information required by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*9*) would have to be generally grouped together and appear in the order of the Model Forms in appendix A-10(a) through (d). The Bureau also proposes, in proposed § 1005.18(b)(4)(i)(A), that the textual information required by proposed § 1005.18(b)(2)(i)(B)(*10*) through (*14*) must be grouped together on the short form disclosure and in the order they appear in proposed Model Forms A-10(c) and (d). The Bureau recognizes that some consumers may focus only on fee information and not review textual information. Indeed, in testing, many consumers did not notice some of the textual information included on

model forms until the facilitator pointed it out to them. The Bureau therefore seeks comment on whether there is a better way to group the textual information on the short form disclosure to increase the likelihood that consumers will read it.

The Bureau further proposes in § 1005.18(b)(4)(i)(A) that the URL of the website disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) would not be permitted to exceed twenty-two characters, and that it must be meaningfully named. By meaningfully named, the Bureau means a URL that uses real words or phrases, particularly those related to the actual prepaid account product. The Bureau believes twenty-two characters is the maximum length of a URL that can fit legibly on a short form disclosure that would fit on most existing retail packaging material. The Bureau believes these parameters will ensure that a consumer can easily enter the URL of the website listed on the short form into a mobile device when shopping in a retail store in order to access the long form. Using a meaningfully named URL will also ensure that it is easy for a consumer to understand, which the Bureau believes will increase the likelihood that a consumer would utilize the URL to seek out more information about a prepaid account product.

Nevertheless the Bureau seeks comment on all aspects of this part of the proposal. Specifically, the Bureau solicits comment on whether a requirement that the URL be meaningfully named could make it more challenging for financial institutions to use shortened URLs or other mechanisms on the short form to facilitate accessibility of the long form in retail locations.

18(b)(4)(i)(B) Long Form Disclosures

The Bureau proposes in § 1005.18(b)(4)(i)(B) that all fees that may be imposed by the financial institution in connection with a prepaid account that proposed § 1005.18(b)(2)(ii)(A)

would require to be disclosed in the long form must be generally grouped together and organized by categories of function for which a consumer would utilize the service associated with each fee. The Bureau believes that disclosing fees in categories will aid consumers' navigation of the long form disclosure, which would include all of a prepaid account's fees and could be much longer than the short form disclosure. Proposed § 1005.18(b)(4)(i)(B) would also require that text describing the conditions under which a fee could be imposed would have to appear in the table directly to the right of the numeric fee amount disclosed. The Bureau also proposes, in § 1005.18(b)(4)(i)(B), that the telephone number, website and mailing address, the statement regarding FDIC insurance, if applicable, and the CFPB website and telephone number, as required to be disclosed by proposed § 1005.18(b)(2)(ii)(C) through (E) must be generally grouped together. Proposed § 1005.18(b)(4)(i)(B) would also require that the information required by § 1005.18(b)(2)(ii)(B) would have to be generally grouped together.

18(b)(4)(i)(C) Multiple Service Plan Disclosures

The Bureau proposes in § 1005.18(b)(4)(i)(C) that when a financial institution provides disclosures in compliance with proposed § 1005.18(b)(3)(iii)(B)(*1*) and discloses the fee schedules of multiple service plans together on one short form, the fees required to be listed pursuant proposed § 1005.18 (b)(2)(i)(B)(*1*) through (*7*) that vary among service plans must be generally grouped together, the fees that are the same across all service plans must be grouped together, as set forth in proposed appendix A-10(f). Proposed § 1005.18(b)(4)(i)(C) would further state that if the periodic fee varies between service plans, the financial institution must use the term "plan fee," or a substantially similar term when disclosing the periodic fee for each service plan. The Bureau believes that, when a financial institution chooses to disclose multiple service plans together on one short form, it is most useful for a consumer to see all the fees that

vary among plans grouped together to more easily compare the different plans. The Bureau seeks comment on whether this grouping distinction for short forms that include multiple service plans makes sense.

Proposed § 1005.18(b)(4)(i)(C) would also state that the incidence-based fees disclosed pursuant to proposed § 1005.18 (b)(2)(i)(B)(*8*) must be grouped with the fees that are the same across all service plans as set forth in proposed Model Form A-10(f). The Bureau believes that since a financial institution would have to consider total incidence across all plans when determining its incidence-based fee disclosure to comply with proposed § 1005.18(b)(2)(i)(B)(*8*), it makes sense that these fees would be grouped with the fees that are the same across all service plans. *See* proposed comment 18(b)(2)(i)(B)(*8*)-1.

18(b)(4)(ii) Prominence and Size

Proposed § 1005.18(b)(4)(iii) would set forth the prominence and size requirements for the short form and long form disclosures. Generally, the Bureau believes that the information provided to consumers in the short and long form disclosure should appear in a large enough font size to ensure that consumers can easily read the information. Further, in its testing, the Bureau found that some participants had to use reading glasses or otherwise struggled to read existing prepaid account disclosures. Also, many participants reported a preference for larger font sizes to facilitate their ability both to read and to understand disclosures. Thus, as discussed below, the Bureau has proposed minimum font size requirements for both the short form and long form disclosures in order to ensure that consumers can easily read the disclosures. In addition, the Bureau believes that the relative font sizes of the disclosures made on the short form should ensure that consumers' attention is quickly drawn to the most important information about a prepaid account. As described in more detail below, the Bureau is therefore also proposing

certain minimum font sizes for the short form disclosure requirements described in proposed § 1005.18(b)(2)(i) in addition to the requirement that the top-line fees (*i.e.*, periodic fee, per purchase fees, ATM withdrawal fees, and cash reload fee) appear more prominently than all of the other information included on the short form to create a visual hierarchy of information.

Proposed § 1005.18(b)(4)(ii)(A) would require that all text used to disclose the information pursuant to proposed § 1005.18(b)(2) must be in a single, easy-to-read type face. Proposed § 1005.18(b)(4)(ii)(A) would also state that all text included in the tables that would be required to be disclosed by proposed § 1005.18(b)(3)(iii) would have to be all black or one color type and printed on a white or other neutral contrasting background whenever practical. The Bureau believes that contrasting colors for the text and the background of the short form and long form disclosures will make it easier for consumers to read the disclosure. The Bureau believes that using a black color for the text and a white color for the background of the form is the most clear presentation, but the Bureau also recognizes that other similarly dark colors for text with a neutral background color could just as clearly present the information. For example, when including the payroll card account notice banner at the top of the short form, a financial institution could use a grey background if the background of the rest of the short form is white. The Bureau believes this type of distinction would make it easier for a consumer to see that banner.

Proposed § 1005.18(b)(4)(ii)(B)(*1*) would require that the information required to be disclosed by proposed § 1005.18(b)(2)(i)(A) and proposed § 1005.15(c)(2) for the payroll card account or government benefit account notices banners would have to appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used for the information required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) in

the top-line portion of the short form. Proposed § 1005.18(b)(4)(ii)(B)(*2*) would require that the top-line fees required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*) be more prominent than the other parts of the disclosure required by proposed § 1005.18(b)(2)(i) and appear in a minimum 11 point font or the corresponding pixel size.

As discussed above, the Bureau believes that consumers commonly incur these top-line fees when a financial institution imposes charges for these services. In the Bureau's consumer testing, participants reported that these fee disclosures were the most important to them. As discussed in the section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*), the Bureau recognizes that a financial institution may not charge a fee for all of these services. For example, a financial institution might not charge any per purchase fees when it imposes a monthly fee. The Bureau, however, still believes that such fees should be disclosed in a more prominent and larger font size than other information on the short form disclosure in order to draw consumers' attention to this information before acquiring a prepaid account. In proposed Model Form A-10(f), the amounts of these fees appear in bold to make them more prominent than the other information on the short form. The Bureau is also proposing pixel sizes because it acknowledges that font sizes could vary when applied in electronic contexts. Though the font sizes may differ, the relative sizes of the components of the short form would have to remain consistent to maintain the visual hierarchy of information included in the form.

Additionally, the Bureau proposes in § 1005.18(b)(4)(ii)(B)(*2*) that the fee disclosures required by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*9*), namely, the ATM balance inquiry fees, inactivity fee, and incidence-based fees, must appear in a minimum eight-point font or the corresponding pixel size and appear in no larger a font than what is used to disclose the information required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*4*). As discussed earlier,

while the Bureau believes that these fees are important for a consumer to know pre-acquisition, the Bureau believes that these fees are less likely to drive most consumers' acquisition decisions when shopping among prepaid accounts and thus should be disclosed using a smaller font size.

Proposed § 1005.18(b)(4)(ii)(B)(*2*) would also require that the textual information disclosed on the short form pursuant to proposed § 1005.18(b)(2)(ii)(*10*) through (*14*) must appear in a minimum seven-point font or corresponding pixel size and must appear in no larger a font than what is used to disclose the ATM balance inquiry fees, inactivity fee, and incidence-based fees that would have to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*5*) through(*9*).

The Bureau notes that the proposed minimum font sizes are likely also the maximum sizes that could be used on the short form to ensure that it will still fit on most packaging material currently used in retail locations. In other acquisition scenarios, however, when space constraints are not as much of an issue, the Bureau expects that financial institutions would use larger versions of the short form. For example, when distributing disclosures for payroll card accounts in printed form, financial institutions could use 8.5 by 11 inch pieces of paper to present a larger version of the short form, as long as the form maintains the visual hierarchy of having the information on the short form gradually decrease in size from top to bottom. The Bureau further proposes in § 1005.18(b)(4)(ii)(B)(*2*) that the statement disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*10*), and the telephone number and URL disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*11*) must be more prominent than the information disclosed pursuant to proposed § 1005.18(b)(2)(i)(B)(*12*) through (*14*) and proposed § 1005.18(b)(2)(i)(C). The Bureau believes that it is particularly important for a consumer to see this information on the short form, and that making it more prominent than the other textual language on the short form could help to draw consumers' attention to these disclosures.

Proposed § 1005.18(b)(4)(ii)(B)(*2*) would also state that text used to distinguish each of the two fees that are required to be disclosed by proposed § 1005.18(b)(2)(i)(B)(*2*), (*3*) and (*5*), or to explain the duration of inactivity that triggers a financial institution to impose an inactivity fee pursuant to proposed § 1005.18(b)(2)(i)(B)(7) would have to appear in at least six-point font or corresponding pixel size and appear in no larger a font than what is used for information required to be disclosed by § 1005.18(b)(2)(i)(B)(*9*) through (*12*). The Bureau believes that this descriptive information is less important than the actual fee information and therefore should be in a smaller font or pixel size.

Finally, proposed § 1005.18(b)(4)(ii)(B)(*3*) would require that the explanatory text disclosed pursuant to proposed § 1005.18(b)(2)(i)(C) when any of the fees included on the short form could vary would have to be in a minimum seven-point font and appear in no larger the font than what is used to disclose the fees not in the top-line as required by proposed § 1005.18(b)(2)(i)(B)(*5*) through (*8*). The Bureau believes that this explanatory text should be in the same font size as the rest of the textual information included on the short form.

The Bureau is proposing § 1005.18(b)(4)(ii)(C) to require that the fees and other information required to be disclosed in the long form by proposed § 1005.18(b)(2)(ii) would have to appear in at least eight-point font or the corresponding pixel size. The Bureau believes that the long form, which will list all of a prepaid account's fees, need only appear in a font that is clear enough for consumers to read. The Bureau does not believe any part of the long form should be more prominent than another part. Thus, the Bureau is not proposing any rules regarding the relative font size of information disclosed in the long form.

The Bureau is proposing in § 1005.18(b)(4)(ii)(D) that when providing disclosures in compliance with proposed § 1005.18(b)(3)(iii)(B)(*1*) and disclosing the fee schedules of multiple

service plans together on one form, disclosures required by proposed § 1005.18(b)(2)(i)(B)(*1*) through (*9*) must appear in a minimum seven-point font or the corresponding pixel size. Proposed § 1005.18(b)(4)(ii)(D) would also require the disclosures required by proposed § 1005.18(b)(2)(i)(B)(*10*) through (*14*) to appear in the font sizes set forth in proposed § 1005.18(b)(4)(ii)(B)(*2*).

18(b)(5) Segregation

Proposed § 1005.18(b)(5) would explain that disclosures required under this section that are provided in writing or electronically would have to be segregated from everything else and could contain only information that is directly related to the disclosures required under this section . The Bureau believes it is important that only the information it would require to be disclosed be included on the short form and long form disclosures. As noted, financial institutions (or whatever entity is responsible for marketing the prepaid account) could use the remainder of a prepaid account's packaging material or website to disclose other information to a consumer, but the Bureau believes it is important to limit the amount of information permitted in its required disclosures to protect the integrity of forms' design.

18(b)(6) Prepaid Accounts Acquired in Foreign Languages

Regulation E generally permits, but does not require, that disclosures be made in a language other than English, provided that where foreign language disclosures are provided the disclosures are made available in English upon a consumer's request. *See* § 1005.4(a)(2). When it issued regulations on remittance transfers, the Bureau altered Regulation E's general requirement for foreign language disclosures to require disclosures be made in English in addition to a foreign language if that foreign language is used principally by the remittance transfer provider to advertise, solicit, or market remittance transfer services at the office in which

the sender conducts a transaction or asserts an error. (§ 1005.31(g)(1)(i)). The Bureau amended Regulation E in this way pursuant to a statutory mandate in Section 1073 of the Dodd-Frank Act.

The Bureau proposes also to modify the general Regulation E foreign language requirement for prepaid accounts such that proposed § 1005.18(b)(6) would require that if a financial institution principally uses a foreign language on prepaid account packaging material, , by telephone, in person, or on the website a consumer utilizes to acquire a prepaid account, the short form and long form disclosures made pursuant to proposed § 1005.18(b)(2)(i) and (ii) would have to t be provided in that same foreign language. A financial institution would also have to provide the long form required to be disclosed by proposed § 1005.18(b)(2)(ii) in English upon a consumer's request and on any part of the website where it provides the long form disclosure in a foreign language.

As noted above, this proposal is made pursuant to the Bureau's authority under EFTA sections 904(a) and (c), 905(a), and Dodd-Frank Act section 1032(a). The Bureau notes that this proposed approach to foreign language disclosures applies only to prepaid accounts and would not alter the application of the general Regulation E provision for any other type of account. The Bureau believes that if a financial institution is primarily using a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, consumers should receive pre-acquisition disclosures in that foreign language to ensure that they are able to understand them. The Bureau also believes that such a consumer might benefit from receiving the long form disclosure in both the foreign language and English in case a consumer is comfortable speaking the language, but may only read English, or if a family member who speaks English assists a consumer with managing their prepaid account.

The Bureau recognizes, however, that requiring financial institutions to provide short form disclosures in two languages could be burdensome. The Bureau therefore seeks comment on whether it is feasible for financial institutions in all acquisition scenarios to provide the long form disclosure in English in addition to in the foreign language in which the account is marketed, and whether financial institutions typically already provide disclosures in both languages. The Bureau also solicits comment on whether financial institutions should also provide the short form disclosure in English in all cases. Proposed comment 18(b)(6)-1 would provide several examples as to when financial institutions would have to provide the short form and long form disclosures in a foreign language. Specifically, the proposed comment would clarify that if, for example, 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, if accessed by the consumer, long form disclosure provided to a consumer must also be in Spanish. Proposed comment 18(b)(6)-1would also clarify that if the homepage of the website 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. Additionally, the proposed comment would clarify that 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 information in Spanish in accordance with proposed § 1005.18(b)(2)(ii). Finally, the proposed comment would clarify that if a consumer speaks with a customer service agent in a foreign language in a bank or credit union branch location, this would be considered "in person," and a consumer would have to receive the short form and long form disclosures in that foreign language to comply with proposed § 1005.18(b)(6).

18(b)(7) Disclosures on Prepaid Account Access Devices

Proposed § 1005.18(b)(7) would require that certain disclosures be made on the actual prepaid account access device itself. Specifically, the Bureau proposes that financial institutions must disclose the name of the financial institution, the URL of a website, and a telephone number that a consumer can use to access information about a prepaid account. Proposed § 1005.18(b)(7) would also state that if a financial institution does not provide a physical access device in connection with a prepaid account, the Bureau is proposing that the disclosure must appear at the URL or other entry point a consumer must visit to access the prepaid account electronically. The Bureau further proposes that disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device would not constitute a disclosure on the access device. Proposed comment 18(b)(7)-1 would clarify that a consumer might use this information disclosed on the access device to contact a financial institution with a question about a prepaid account's terms and conditions, or to report when an unauthorized transaction has occurred involving a prepaid account.

The Bureau believes it is important for a consumer to be able to access fee information, as well as check an account's balance, and have a means for reporting unauthorized transactions, even after a consumer has acquired a prepaid account. Disclosing telephone numbers on an access device will allow consumers to access this information if they are not in the location where they have retained the disclosures or are not able to access disclosures via the internet.

18(c) Access to Prepaid Account Information

EFTA section 906(c) requires that a financial institution provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an

electronic fund transfer. Section 1005.9(b), which implements EFTA section 906(c), generally requires a periodic statement for each monthly cycle in which an electronic fund transfer occurred or, if there are no such transfers, a periodic statement at least quarterly.[279] Financial institutions must deliver periodic statements in writing and in a form that the consumer can keep, unless consent is received for electronic delivery or unless Regulation E provides otherwise. *See* §§ 1005.4(a)(1) and 1005.9(b).

In the Payroll Card Rule, the Board modified the periodic statement requirement for payroll card accounts similar to what it had done previously for government benefit accounts under § 1005.15. Pursuant to existing § 1005.18(b), financial institutions can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the institution must make available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)).

The Bureau is proposing new § 1005.18(c)(1) and (2) to apply Regulation E's periodic statement requirement to prepaid accounts, and an alternative that would allow financial institutions to instead provide access to account balance by telephone, at least 18 months of transaction history online, and at least 18 months written transaction history upon request. Proposed § 1005.18(c)(3) would require financial institutions to disclose all fees assessed against

[279] The periodic statement must include transaction information for each EFT, the account number, the amount of any fees assessed, the beginning and ending account balance, the financial institution's address and telephone number for inquiries, and a telephone number for preauthorized transfers. § 1005.9(b).

the account, in any electronic or written account histories and periodic statements. In addition, the Bureau proposes in § 1005.18(c)(4) to require financial institutions to disclose, in any electronic or written account histories and periodic statements, monthly and annual summary total of the amount of all fees imposed on a prepaid account, and the total amounts of deposits to and debits from a prepaid account.

As discussed below in the section-by-section analysis of proposed § 1005.18(c)(1), (3), and (4), to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an exception to the periodic statement requirements of EFTA section 906(c) and to modify the periodic statement requirements of EFTA section 906(c) to require inclusion of all fees charged and a summary total of both monthly and annual fees. These proposed revisions will assist consumers' understanding of their prepaid account activity. In addition, the Bureau is also using its disclosure authority pursuant to the Dodd-Frank Act section 1032(a) because the Bureau believes that disclosure of fee and account activity summaries ensures that the features of prepaid accounts, over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with prepaid accounts.

18(c)(1) Periodic Statement Alternative

As discussed above, financial institutions that issue payroll cards can provide periodic statements that comply with the general provisions in Regulation E, or alternatively, the institution must make available to the consumer: (1) the account balance, through a readily available telephone line; (2) an electronic history of account transactions that covers at least 60

days (including all the information required in periodic statements by § 1005.9(b)); and (3) a written history of account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days (including all the information required in periodic statements by § 1005.9(b)). *See* existing § 1005.18(b).

Relatedly, the FMS Rule requires a prepaid card receiving a Federal payment (such as Social Security benefits, Federal tax refunds, or Federal government wages) to satisfy several conditions, including that the card issuer must comply with all of the requirements of, and provide the cardholder with all of the consumer protections that apply to, a payroll card account under Regulation E. *See* 31 CFR 210.5(b)(5). By virtue of the FMS Rule, the Bureau believes that a majority of prepaid account programs are presently complying with Regulation E's periodic statement alternative for payroll card accounts. Indeed, in its Study of Prepaid Account Agreements, the Bureau found that almost all prepaid account agreements reviewed (including 99.03 percent of agreements reviewed for GPR card programs) provide electronic access to account information;[280] a majority of programs reviewed (including 73.91 percent of agreements for GPR card programs) explicitly provide that transactional history is available for at least 60 days (which is consistent with the payroll card account alternative in existing § 1005.18(b));[281] and most programs reviewed (including 88.41 percent of agreements for GPR card programs) make clear that paper statements or paper account histories are available upon request.[282]

This is consistent with what other studies of the prepaid industry have found. For example, the Center for Financial Services Innovation (CFSI) found in its review of 18 GPR card

[280] *See* Study of Prepaid Account Agreements, at 18 tbl. 5.

[281] *See id.* at 19 tbl. 6.

[282] *See id.* at 21 tbl. 8.

programs,[283] representing an estimated 90 percent of the GPR card marketplace, that all card programs reviewed allowed cardholders to obtain balance information online, by calling customer service, by text message, or via mobile app or mobile-enabled website. CFSI found that eleven out of fifteen cards for which information was available (representing about 60 percent of the market sampled) provided at least two years of transactional data online, three provided one year of data, and one card provided six months of data.[284] CFSI also found that fifteen cards (representing approximately 75 percent of the market sampled) allowed cardholders to make one-time requests for paper statements, and nine cards (about 40 percent of the market sampled) allowed cardholders to receive ongoing monthly statements, typically for a fee ranging between $1 and $3.[285] In a recent review of 66 GPR card programs, the Pew Charitable Trusts found that 45 cards (68 percent) disclosed a paper statement fee ranging from 99 cents to $10, with a median fee of $2.95; seven cards (11 percent) disclosed that paper statements were free, and 14 cards (21 percent) did not disclose any fee (or lack thereof) for paper statements. Pew also found that 65 cards (98 percent) disclosed that transaction information is provided online for free.[286]

In its Prepaid ANPR, the Bureau sought comment on whether it was appropriate to modify Regulation E's general requirements for prepaid cards and, as an example, asked whether it was necessary to extend the requirement to provide periodic paper statements to prepaid cards.

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[283] Programs reviewed by CFSI included "cards issued by the largest program managers in the marketplace, as well as a selection of smaller program managers that have particularly innovative cards." Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 6 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

[284] *Id.* at 12. The CFSI study did not note, however, whether any prepaid programs might charge fees for these methods of accessing account information.

[285] *Id.* at 13.

[286] 2014 Pew Study, at 19-20.

In response, most industry and trade association commenters recommended that the Bureau extend to prepaid cards the Payroll Card Rule's alternative method of complying with Regulation E's periodic statement requirement. Many of these commenters argued that paper statements are not a viable alternative for prepaid cards and that electronic access to account information – as provided under the Payroll Card Rule – is more consistent with current consumer needs and expectations. They explained that consumers have shown little interest in receiving paper statements for prepaid accounts and that consumers prefer to have access to current and historical account information online. In addition, information contained on a monthly paper statement may be considered by consumers to be "stale" by the time it arrives. These commenters also cited the fact that prepaid card users are often transient which results in paper statements often being returned as undeliverable. Finally, industry commenters expressed concern that a paper statement requirement would be cost prohibitive and would ultimately result in fee increases.

Consumer groups' comments regarding whether the Bureau should require written periodic statements were mixed. Some groups urged that paper statements be provided by default for all prepaid accounts unless the consumer explicitly opts out. One group argued this was necessary because, based on its research, many cards do not provide account history information sufficient to determine whether an unauthorized transaction occurred. Several groups argued that prepaid accounts should be exempt from the paper statement requirement only if they offer no credit or overdraft features and the underlying funds are held in an account with deposit insurance. Other groups suggested that it is appropriate to forego paper statements for prepaid accounts so long as consumers are able to receive ad hoc paper statements upon request.

The Bureau conducted additional outreach to industry regarding the usage of written statements by consumers and the cost to financial institutions of providing such statements. Based on this outreach, the Bureau believes that there may be significant costs in providing monthly paper statements for all prepaid accounts. Beyond the costs of printing and mailing statements, the Bureau also understands, based on industry outreach, that there could be a high incidence of returned mail due to the transient nature of some prepaid account users if paper periodic statements were required for all prepaid accounts. Further, in its focus groups and consumer testing, the Bureau asked participants if they were satisfied with the information they have about their account and whether they would value a monthly electronic or paper statement. The Bureau notes that almost no participants said that they would want to receive a monthly paper statement that they had not requested. Instead, almost all participants stated that free access to account information online and by telephone provided by prepaid issuers and program managers largely met their needs.

Based on its analysis, the Bureau is proposing to extend to prepaid accounts the Payroll Card Rule's alternative to providing periodic statements (existing § 1005.18(c)(1)), with certain modifications that would be applicable to payroll card accounts as well as to prepaid accounts, as described below. The Bureau believes that the methods of access to account information in the Payroll Card Rule generally strike the appropriate balance between providing consumers the transactional history they need without unnecessarily burdening financial institutions. The Bureau believes that requiring written monthly statements to all prepaid card consumers could increase cost and burden. Thus, the Bureau is proposing to extend the Payroll Card Rule's provisions regarding access to account information to prepaid accounts, with certain modifications as described below. As noted above, this proposed revision is authorized under

EFTA section 904(c) and section 1032(a) of the Dodd-Frank Act. As with the Payroll Card Rule, financial institutions would generally be able to provide traditional periodic statements for prepaid accounts, whether in paper form or electronically with E-Sign consent,[287] in lieu of the alternative in § 1005.18(c)(1) discussed below, but consistent with proposed § 1005.18(c)(3) and (4) below.

18(c)(1)(i)

As discussed above, a financial institution need not furnish periodic statements pursuant to § 1005.9(b) if it instead follows the periodic statement alternative for payroll card accounts. *See* existing § 1005.18(b)(1). The first part of that alternative, § 1005.18(b)(1)(i), currently requires a financial institution to provide access to the consumer's account balance through a readily available telephone line. The Bureau is proposing to extend this requirement in § 1005.18(b)(1)(i), renumbered as § 1005.18(c)(1)(i), to all prepaid accounts. The Bureau reminds financial institutions that, when providing balance information by telephone as part of the alternative to the § 1005.9(b) periodic statement requirement, neither they nor their service providers would be permitted to charge consumers for accessing this information required to be provided pursuant to proposed § 1005.18(c)(1)(i).

As the Board explained in the supplementary information to the Payroll Card Rule, a readily available telephone line for providing balance information must be a local or toll-free telephone line that, at a minimum, is available during standard business hours. The Board noted that it expected that, in most cases, institutions would provide 24-hour access to balance

[287] As explained above in the section-by-section analysis of proposed § 1005.18(b)(3)(i), the E-Sign Act generally allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if a consumer has affirmatively consented to such use and has not withdrawn such consent, and certain format of delivery requirements are met.

information through an automated line, which would ensure that consumers could access balance information at their convenience. Because the Board believed that it might be operationally difficult for some institutions to provide information about 60 days' worth of transactions through a telephone system, the Payroll Card Rule did not require institutions to provide information about specific transactions by telephone.[288] For substantially similar reasons, the Bureau believes it is appropriate to propose extending existing § 1005.18(b)(1)(i), renumbered as new § 1005.18(c)(1)(i), to all prepaid accounts.

As discussed above in the section-by-section analysis of proposed § 1005.15(d)(1)(i), the periodic statement alternative for government benefit accounts (both currently and as proposed) requires access to balance information through a readily available telephone line as well as at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer). The Bureau seeks comment on whether a similar requirement to provide balance information at a terminal should be added to the requirements of proposed § 1005.18(c)(1)(i) for prepaid accounts generally. As noted above, the Bureau is also requesting comment on whether, alternatively, the requirement to provide balance information for government benefit accounts at a terminal should be eliminated from § 1005.15 given the other enhancements proposed therein and for parity with proposed § 1005.18.

18(c)(1)(ii)

The second part of the periodic statement alternative for payroll card accounts, § 1005.18(b)(1)(ii), currently requires financial institutions to provide an electronic history of the

[288] *See* 71 FR 51437, 51443 (Aug. 30, 2006).

consumer's account transactions, such as through a website, that covers at least 60 days preceding the date the consumer electronically accesses the account. Based on the Bureau's Study of Prepaid Account Agreements, other public studies, and outreach, the Bureau believes that virtually all prepaid account providers make available some form of free electronic access to balance and transaction history information[289] and that at least 60 days of account history is typically provided. [290] Further, the Bureau believes that, based on its outreach to industry stakeholders and recent public studies, many prepaid programs provide more extensive online account history information than is currently required by the Payroll Card Rule (60 days).[291] Some prepaid account providers also offer periodic (*e.g.*, monthly) electronic statements at no charge in addition to account history.[292]

The Bureau is proposing to extend this requirement in existing § 1005.18(b)(1)(ii) to prepaid accounts, renumbered as new § 1005.18(c)(1)(ii), and to expand the length of time that online access must cover from 60 days to 18 months. The Bureau is proposing to extend this time period because it believes that based on how consumers are currently using prepaid

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[289] As noted above, in its Study of Prepaid Account Agreements, the Bureau found that 97.85 percent of all prepaid account agreements reviewed indicated that electronic access to account information was available; the remaining 2.15 percent of agreements were unclear as to whether such access was available. *See* Study of Prepaid Account Agreements, at 18 tbl. 5.

[290] The majority of account agreements reviewed in the Study of Prepaid Account Agreements that addressed access to account information with any specificity simply stated that account information would be available for at least the past 60 days (66.15 percent of all agreements reviewed), a small portion explicitly provided for a longer period (7.40 percent), and the remainder were unclear as to the time period (26.46 percent). *See id.* at 19 tbl. 6.

[291] *See, e.g.*, Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 12 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf (finding that about 60 percent of the market sampled, which is estimated to represent approximately 90 percent of the GPR card marketplace, allowed cardholders to access at least two years of transactional data online; the remaining products provided six months or one year of data).

[292] The Study of Prepaid Accounts found that 57.54 percent of agreements reviewed specifically stated that electronic periodic statements (rather than just electronic access to account history) are available. *See* Study of Prepaid Account Agreements, at 20 tbl. 7.

accounts, more than 60 days of account history may be, in many cases, beneficial for consumers. While recent account history is important for consumers tracking balances or monitoring for unauthorized transactions, a longer available account history serves a variety of potential purposes. For example, some consumers might need to demonstrate on-time bill payment or to compile year-end data for tax preparation purposes. The Bureau also believes that a consumer may realize during any given year that he needs financial records from the prior calendar year and that access to 18 months of prepaid account history will give the consumer six months into the next calendar year to make such a request. In addition, based on outreach to prepaid account providers and recent publicly available studies, as discussed above, the Bureau believes that many prepaid accounts provide at least 12 months of account history and that, even if they do not, the cost of extending existing online histories to 18 months should be minimal. The Bureau reminds financial institutions that, when providing electronic access to account information as part of the alternative to the § 1005.9(b) periodic statement requirement, neither they nor their service providers would be permitted to charge consumers for providing access to account information required pursuant to proposed § 1005.18(c)(1)(ii).

Alternative Approaches Considered by the Bureau

The Bureau considered other alternatives to the Payroll Card Rule's approach regarding access to account information. Among them, the Bureau considered proposing to require electronic periodic statements for all prepaid accounts, in addition to ongoing electronic access to account information. An electronic periodic statement requirement would require providers to deliver electronic periodic statements to consumers, even if the provider did not have the consumer's E-Sign consent. The Bureau viewed this as a potential, less-costly alternative to written statements. However, the Bureau questions whether the benefit of providing electronic

periodic statements would justify the cost given that the existing Payroll Card Rule and this proposal require that electronic and written histories of account transactions provided as an alternative to § 1005.9(b) contain the information set forth in § 1005.9(b) for periodic statements generally. *See* section-by-section analysis of proposed § 1005.18(c)(2).

The Bureau additionally considered proposing to require financial institutions that do not provide periodic statements pursuant to § 1005.9(b) to periodically send an informational email or text message notification to consumers, for example, noting the prepaid account's remaining balance. The Bureau similarly considered requiring financial institutions to contact consumers by email or text message each time an inactivity, dormancy, or similar fee is assessed on the consumer's prepaid account. Such requirements would help remind consumers of the existence of prepaid accounts that they may have forgotten or have otherwise left dormant with unused balances. The Bureau considered that such requirements likely would be limited to those prepaid accounts for which consumers provided email addresses or mobile phone numbers and consented to receive such communications from the financial institution. The Bureau ultimately concluded, however, not to include such a requirement in this Proposed Rule because such a requirement may be overly burdensome given that consumers would have other access to account balance and transactional history under the proposal. The Bureau solicits comments on periodic statement alternatives on prepaid accounts.

In the context of overdraft and other credit features on prepaid accounts, discussed in more detail below, the Bureau has considered the possibility of requiring additional real-time notifications of transactions triggering an overdraft or the accessing of a linked credit feature, or requiring real-time opt-in by consumers in order to approve each overdraft or other credit transaction in addition to what it proposes herein (and not in lieu of what § 1005.17 requires for

deposit accounts). The Bureau understands that there may be technological, operational, and procedural challenges to the timing and delivery of such a notice or compliance with such an opt-in requirement, particularly in the point of sale retail environment. The Bureau is unsure at this time whether such a procedure could be implemented given that notifications and/or consent might require multiple communications among financial institutions, card networks, and merchants. To the extent such real-time notification and consent could be provided or obtained by mobile device or other means, the Bureau continues to monitor developments with respect to real-time opt-in. Accordingly, the Bureau is not proposing any requirements related to real-time notification or opt-in, but solicits comment on possible options and suggestions for what it might require in this regard for prepaid accounts.

18(c)(1)(iii)

The third part of the periodic statement alternative for payroll card accounts, § 1005.18(b)(1)(iii), currently requires financial institutions to provide a written history of the consumer's account transactions promptly in response to an oral or written request, which covers at least 60 days preceding the date the financial institution receives the consumer's request Similar to electronic account access above, the Bureau is proposing to extend this requirement in current § 1005.18(b)(1)(iii) to all prepaid accounts, renumbered as proposed § 1005.18(c)(1)(iii), and to expand the length of time for which written history must be provided from 60 days to 18 months.

In its Study of Prepaid Account Agreements, the Bureau found that most of the agreements reviewed indicate that paper account histories or paper statements are made available

upon request.[293] For those agreements that indicate fees are charged for providing paper account histories or statements,[294] the amount of the fee varied widely (ranging from $0.75 to $10).[295] As discussed previously, CFSI found 15 out of 18 GPR cards it reviewed (representing approximately 75 percent of the market sampled) allowed cardholders to make one-time requests for paper statements, and nine cards (about 40 percent of the market sampled) allowed cardholders to receive ongoing monthly statements, typically for a fee ranging between $1 and $3.[296]

As discussed above, the Bureau understands from outreach to industry and its own consumer research that consumer utilization of written account histories is very low, regardless of whether a fee is charged to obtain such information. Of those prepaid account providers that shared specific statistics with the Bureau, none had greater than one percent of active customers requesting written histories for GPR cards on a regular basis, regardless of whether the entity made electronic statements available as well. The Bureau also observed during its consumer focus groups that participant receipt of or desire for written account histories was very low.

[293] The Study of Prepaid Account Agreements found that, across all agreements reviewed, 89.23 percent stated that paper statements or account histories are available. For payroll card programs, 96 percent of agreements reviewed stated that paper statements or account histories were available, and 100 percent for government benefit cards. For GPR cards, 88.41 percent of agreements, and 64.29 percent of agreements for all other types of programs stated that paper statements or account histories were available. *See* Study of Prepaid Account Agreements, at 21 tbl. 8.

[294] The Study of Prepaid Account Agreements found that, across all agreements reviewed that indicated a paper statement or account history is available, 32.41 percent do not charge a fee; 46.90 percent specifically state a fee; 8.62 percent indicated that a fee would be charged but did not list the amount; and for 12.07 percent of agreements the Bureau was unable to find fee information for the programs generally. *See id.* at 22 tbl. 9.

[295] The Study of Prepaid Account Agreements found that, across all agreement reviewed, the average fee charged in the 136 agreements that specified a non-zero fee amount was $3.54 and the median fee was $2.98. *See id.* at 23 tbl. 10.

[296] *See* Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles,* at 13 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

The Bureau is proposing to extend existing comment 18(b)-1, which requires that the history of transactions provided under existing § 1005.18(b)(1)(ii) and (iii) reflect transactions once they have been posted to the account, and comment 18(b)-2 regarding retainability of electronic account history, to all prepaid accounts as new comments 18(c)-1 and -2, and revise the internal paragraph references to conform with other numbering changes the Bureau is proposing, but otherwise leave these two comments unchanged.

As the Board explained in the Payroll Card Rule, it anticipated that, in general, written account histories would be sent the next business day or soon after an institution receives the consumer's oral or written request. The Board explained that institutions also may designate a specific telephone number for consumers to call and a specific address for consumers to write to request a written copy of account transactions. The Board also noted that, although § 1005.18 does not address the issue, it believed that charging fees to consumers who make occasional requests for written histories could have a chilling effect on consumers' ability to obtain information about transactions and, thus, to exercise their error resolution rights.[297] The Bureau shares these concerns.

The Bureau reminds financial institutions that, when providing written account histories upon request as part of the alternative to the § 1005.9(b) periodic statement requirement, generally, neither they nor their service providers would be permitted charge consumers for providing this required information pursuant to proposed § 1005.18(c)(1)(iii). During the Bureau's outreach, many industry participants indicated that consumers very rarely make these

[297] *See* 71 FR 51437, 51444 (Aug. 30, 2006).

types of requests, so the Bureau does not anticipate that this requirement would pose a significant burden.

The Bureau recognizes, however, that in certain situations consumers' requests for written account information may exceed what would be required under the proposal; therefore, the Bureau is proposing to clarify in new comment 18(c)-3 those instances where a financial institution would be permitted to charge a fee for providing such information. Proposed comment 18(c)-3 would include several examples of requests that exceed the requirements of proposed § 1005.18(c)(1) for providing account information and for which a financial institution would be permitted to charge a fee. 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. 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. 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 proposed § 1005.18(c)(1)(iii).

Proposed comment 18(c)-4 would explain that a financial institution may provide fewer than 18 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been open for fewer than 18 months, the financial institution need only provide account information pursuant to proposed § 1005.18(c)(1)(ii) and (iii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution must continue to provide at least 18 months of account transaction information from the date the request is received. 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 available. The proposed comment references existing comment 9(b)-3, which provides that, with respect to written periodic statements, a financial institution need not send statements to consumers whose accounts are inactive as defined by the institution. The Bureau expects that for purposes of proposed comment 18(c)-4, a financial institution would similarly define for itself the threshold for when it considers a prepaid account inactive, consistent with existing comment 9(b)-3.

The Bureau requests comment on all aspects of proposed § 1005.18(c)(1) regarding access to prepaid account information and commentary related thereto. In particular, the Bureau seeks comment on the methods of access consumers need to their account information, and the time period needed for such access. Additionally, the Bureau requests comment on other alternatives for providing access to account information, as well as potential changes to what is proposed herein.

18(c)(2) Information Included on Electronic or Written Histories

Section 1005.18(b)(2) currently states that the history of account transactions provided under § 1005.18(b)(1)(ii) and (iii) must include the information set forth in § 1005.9(b). Section 1005.9(b) lists the various items that must be included in periodic statements, including, but not limited to, detailed transaction information and fees assessed. The Bureau proposes to renumber existing § 1005.18(b)(2) as new § 1005.18(c)(2) and revise the cross-references to correspond with proposed § 1005.18(c)(1)(ii) and (iii), but otherwise leave this requirement unchanged. The Bureau solicits comment on this proposed approach.

18(c)(3) Inclusion of All Fees Charged

The Bureau is proposing to require in new § 1005.18(c)(3) that a periodic statement furnished pursuant to § 1005.9(b) for a prepaid account, an electronic history of account transactions whether provided under proposed § 1005.18(c)(1)(ii) or otherwise, and a written history of account transactions provided under proposed § 1005.18(c)(1)(iii) must disclose the amount of any fees assessed against a prepaid account, whether for electronic fund transfers or otherwise.

EFTA section 906(c), generally implemented in § 1005.9(b), provides that, among other things, a periodic statement must include the amount of any fees assessed against an account for electronic fund transfers or account maintenance. The Bureau notes that Regulation DD requires that periodic statements disclose all fees debited to accounts covered by that regulation. § 1030.6(a)(3). Regulation DD defines "account" to mean "a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts." § 1030.2(a). Because some prepaid accounts, as proposed herein to be defined under Regulation E, may not also constitute accounts as defined

under Regulation DD, the Bureau is proposing new § 1005.18(c)(3) to ensure that periodic statements and histories of account transactions for all prepaid accounts include all fees, not just those related to electronic fund transfers and account maintenance. As noted above, this proposed revision is authorized under EFTA section 904(c) and section 1032(a) of the Dodd-Frank Act.

The Bureau solicits comment on this portion of the proposal. In addition, the Bureau seeks comment on whether any other specific protections of Regulation DD, which may not apply to prepaid accounts provided by financial institutions (as defined in Regulation E) that are not depository institutions (as defined in Regulation DD), could be addressed for all prepaid accounts to ensure consistent protections for prepaid accounts regardless of who is providing the account.

18(c)(4) Summary Totals of Fees, Deposits, and Debits

The Bureau is proposing new § 1005.18(c)(4) to require that financial institutions provide a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of all deposits to the account, and the total amount of all debits from the account, for the prior calendar month and for the calendar year to date. This information would be disclosed on any periodic statement provided pursuant to § 1005.9(b), in any electronic history of account transactions whether provided pursuant to proposed § 1005.18(c)(ii)or otherwise, and on any written history of account transactions provided pursuant to proposed § 1005.18(c)(iii). As discussed above, the Bureau is concerned that disclosure of a single "all-in" estimation of fees on a prepaid product's packaging or elsewhere in pre-acquisition disclosures would not be feasible and ultimately would not provide useful information to consumers. The Bureau believes, however, that providing summary information about actual account usage (including fees

incurred) would be useful to consumers in understanding their actual costs in using a particular prepaid account. As noted above, this proposed revision is authorized under EFTA section 904(c) and Dodd-Frank Act 1032(a). This summary total of fees proposal is similar to the requirement to disclose fees and interest in open end credit plans under Regulation Z. *See* 12 CFR 1026.7(b)(6).

The summary total of fees would include all fees assessed against the prepaid account in each calendar month, as well as a total for the year-to-date. The summary totals of both monthly and annual fees paid, and the totals of deposits to and debits from the account on a monthly and annual basis, would be updated on an ongoing basis for each month and each year in the prepaid account's online transaction history, and would be disclosed in any ad hoc written transaction history provided in response to a consumer's request or in a periodic statement.

Proposed comment 18(c)-5 would explain that 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. Proposed comment 18(c)-5 would also explain that 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.

In addition, proposed comment 18(c)-5 would explain that 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. Finally, proposed comment 18(c)-5 would

explain that the total deposits and total debits must include all deposits to and debits from the prepaid account, not just those deposits and debits that are the result of electronic fund transfers.

The Bureau solicits comment on this portion of its proposal. In particular, the Bureau seeks comment on whether financial institutions are able to discern the amount of third party fees charged to a consumer's prepaid account (such as fees imposed by an ATM operator where the financial institution has no relationship with the operator) and whether it would therefore be feasible for financial institutions to include such third party fees in this summary total of fees. The Bureau also seeks comment on whether and how credit accessed by a prepaid account, and the fees and finance charges related thereto, should be reflected in these proposed summary totals of fees, deposits and debits for the prepaid account

18(d) Modified Disclosure Requirements

The Bureau is proposing to extend the requirements in existing § 1005.18(c)(1) related to initial disclosures regarding access to account information and error resolution, and in existing § 1005.18(c)(2) regarding annual error resolution notices, to all prepaid accounts. The Bureau proposes to renumber existing § 1005.18(c)(1) and (2) as new § 1005.18(d)(1) and (2) for organizational purposes and to separate the modified requirements related to disclosures in existing § 1005.18(c)(1) and (2) from the modifications for limitations on liability and error resolution requirements in existing § 1005.18(c)(3) and (4). *See* section-by-section analysis of proposed § 1005.18(e). The Bureau proposes to adjust the internal cross-references in new § 1005.18(d) in light of the various paragraph numbering changes and other revisions proposed throughout § 1005.18.

EFTA section 905(a)(7) requires financial institutions to provide consumers with an annual error resolution notice. The annual error resolution notice provision for payroll card

accounts in existing § 1005.18(c)(2) permits a financial institution, in lieu of providing an annual notice concerning error resolution, to include an abbreviated error resolution notice on or with each electronic and written history provided in accordance with existing § 1005.18(b)(1). Financial institutions providing periodic statements are similarly permitted to provide an abbreviated error resolution notice on or with each periodic statement pursuant to § 1005.8(b). The Bureau considered limiting the requirement to provide annual error resolution notices to only active and registered prepaid accounts, but given this existing alternative for providing an abbreviated notice with electronic and written history, the Bureau does not believe such a modification is necessary. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), to permit notices for prepaid accounts as described in proposed § 1005.18(d)(2), in order to facilitate compliance with error resolution requirements.

The Bureau requests comment on the application of these provisions for initial disclosures regarding access to account information and error resolution, and annual error resolution notices, to all prepaid accounts. Specifically, the Bureau seeks comment on whether financial institutions would face particular challenges in providing annual error resolution notices to all consumers using prepaid accounts, as well as whether it should require that annual error resolution notices be sent for prepaid accounts in certain circumstances, such as those accounts for which a consumer has not accessed an electronic history or requested in written history in an entire calendar year and thus would not have received any error resolution notice during the course of the year.

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

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit. EFTA section 909 governs consumer liability for unauthorized electronic fund transfers. The Bureau is proposing to extend the Payroll Card Rule's limited liability provisions and error resolution provisions, including provisional credit, to all prepaid accounts. The Bureau also proposes to reorganize existing § 1005.18(c)(3) and (4) into proposed § 1005.18(e)(1) and (2) and to revise the paragraph headings for proposed § 1005.18(e), (e)(1) and (e)(2). Similar to the reorganization of existing § 1005.18(c)(1) and (2) above, these changes are proposed to simplify the organization of proposed § 1005.18 generally and to separate the modified requirements related to limited liability and error resolution from other modifications made for prepaid accounts.

As discussed below in the section-by-section analysis of proposed § 1005.18(e)(1), (2), and (3), the Bureau proposes to modify Regulation E's limited liability and error resolution timing requirements for prepaid accounts to accommodate how account information would be delivered by financial institutions choosing to follow the periodic statement alternative in proposed § 1005.18(c)(1) discussed above, and to exempt unverified prepaid accounts from the limited liability and error resolution requirements. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to exercise its authority pursuant to EFTA section 904(c) to modify the timing requirements of EFTA section 909(a) and to except unverified prepaid accounts from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remain unverified.

18(e)(1) Modified Limitations on Liability Requirements

EFTA section 909 addresses consumer liability and is implemented in § 1005.6. For accounts under Regulation E generally, including payroll card accounts, § 1005.6(a) provides that a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met.[298] If the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of $50 or the amount of unauthorized transfers made before giving notice. § 1005.6(b)(1). If timely notice is not given, the consumer's liability is the lesser of $500 or the sum of (1) the lesser of $50 or the amount of unauthorized transfers occurring within two business days of learning of the loss/theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution. § 1005.6(b)(2). Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

Existing § 1005.18(c)(3)(i) provides that, for payroll card accounts following the periodic statement alternative in existing § 1005.18(b), the 60-day period in § 1005.6(b)(3) for reporting unauthorized transfers begins on the earlier of (1) the date the consumer electronically accesses his account under § 1005.18(b)(1)(ii), provided that the electronic history reflects the transfer, or

[298] The required disclosures for this purpose include a summary of the consumer's liability under § 1005.6, or under State law or other applicable law or agreement, for unauthorized electronic fund transfers; the telephone number and address of the person or office to be notified when the consumer believes an unauthorized transfer has been or may be made; and the financial institution's business days. *See* §§ 1005.6(a) and 1005.7(b)(1) through (3).

(2) the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under § 1005.18(b)(1)(iii) in which the unauthorized transfer is first reflected. Alternatively, existing § 1005.18(c)(3)(ii) provides that a financial institution may comply with the requirements of § 1005.18(c)(3)(i) by limiting a consumer's liability for an unauthorized transfer as provided under § 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account. The Bureau notes that this provision only modifies the 60-day period for consumers to report an unauthorized transfer and does not alter any other provision of § 1005.6.

In response to the Prepaid ANPR, the Bureau received few comments specifically regarding limited liability requirements. Most industry, trade association, and consumer advocacy group commenters suggested that GPR cards should generally be treated the same as payroll card accounts under Regulation E (except with respect to access to account information, discussed above, and provisional credit, discussed below). A few commenters, however, urged against extending protections for lost or stolen cards, arguing that there is a potential for abuse by some consumers, or suggested that modified liability provisions are needed to account for the increased risks they claimed are associated with prepaid products.

The Bureau's Study of Prepaid Account Agreements found that the vast majority of programs reviewed limit consumer liability in accordance with existing Regulation E provisions.[299] Similarly, CFSI found that all 18 programs in its review (representing an

[299] The Study of Prepaid Account Agreements found that across all prepaid account agreements reviewed, 88.92 percent provided full limited liability; 8.31 percent partially limited consumers' liability; and 2.77 percent did not appear to provide consumers with any limited liability protections. Excluding agreements for payroll card and government benefit card programs (100 percent of each provided full limited liability protections), 88.02 percent of agreements for GPR card programs and 64.28 percent of all other programs' agreements provide full limited liability protections to consumers. See Study of Prepaid Account Agreements, at 16 tbl. 4.

estimated 90 percent of the GPR card marketplace) had adopted the Payroll Card Rule's version of Regulation E error resolution and limited liability protections.[300]

The Bureau is proposing to extend to all prepaid accounts the existing limited liability provisions of Regulation E with modifications to the § 1005.6(b)(3) timing requirements in proposed § 1005.18(e)(1) for financial institutions following the periodic statement alternative in proposed § 1005.18(c)(1).[301] The text of proposed § 1005.18(e)(1) would update internal paragraph citations to reflect other numbering changes made in this proposal and add the word "unauthorized" to refer to the transfer discussed in proposed § 1005.18(e)(1)(i)(A) for consistency with usage elsewhere in proposed § 1005.18(e)(1), but otherwise would remain unchanged from existing § 1005.18(c)(3). Related commentary is discussed below in the section-by-section analysis of proposed § 1005.18(e)(2). The Bureau notes that this proposal does not modify the requirement to comply with existing § 1005.6(b)(4), regarding an extension of time limits if a consumer's delay in notifying the financial institution was due to extenuating circumstances, nor any other provisions of § 1005.6. As discussed above, this proposed revision is authorized under EFTA section 904(c). The Bureau seeks comments on all aspects of this part of the proposal.

[300] Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 12 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

[301] The Bureau is proposing an additional modification in proposed § 1005.18(e)(3), discussed below, to provide an exception to the requirement to provide limited liability protection when a financial institution has not completed collection of consumer identifying information and identity verification for a prepaid account, assuming notice of the risk of not registering the prepaid account has been provided to the consumer.

18(e)(2) Modified Error Resolution Requirements

Overview of Existing Requirements

EFTA section 908 governs the timing and other requirements for consumers and financial institutions on error resolution, including provisional credit, and is implemented for accounts under Regulation E generally, including payroll card accounts, in § 1005.11. Section 1005.11(c)(1) and (3)(i) requires that a financial institution, after receiving notice that a consumer believes an electronic fund transfer from the consumer's account was not authorized, must investigate promptly and determine whether an error occurred (*i.e.*, whether the transfer was unauthorized), within ten business days (20 business days if the electronic fund transfer occurred within 30 days of the first deposit to the account). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days. After determining that an error occurred, the financial institution must correct an error within one business day. *See* § 1005.11(c)(1). Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account.

Existing § 1005.11(c)(2) provides that if the financial institution is unable to complete the investigation within ten business days, its investigation may take up to 45 days if it provisionally credits the amount of the alleged error back to the consumer's account within ten business days of receiving the error notice.[302] Provisional credit is not required if the financial institution requires but does not receive written confirmation within 10 business days of an oral notice by

[302] The financial institution has 90 days (instead of 45) if the claimed unauthorized electronic fund transfer was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account was made. § 1005.11(c)(3)(ii).

the consumer. § 1005.11(c)(2)(i)(A). If the investigation establishes proof that the transaction was, in fact, authorized, the financial institution may reverse any provisional credit previously extended (assuming there are still available funds in the account). § 1005.11(d)(2).

Existing § 1005.18(c)(4) provides that, for payroll card accounts following the periodic statement alternative in existing § 1005.18(b), the period for reporting an unauthorized transaction is tied, in part, to the date the consumer electronically accesses the consumer's account pursuant to existing § 1005.18(b)(1)(ii), provided that the electronic account history reflects the transfer at that time, or the date the financial institution sends a written history of the consumer's account transactions requested by the consumer pursuant to existing § 1005.18(b)(1)(iii) in which the unauthorized transfer is first reflected. The Bureau notes that this provision only modifies the 60-day period for consumers to report an error and does not alter any other provision of § 1005.11.

As discussed above, the FMS Rule requires that the issuer of a prepaid card that receives a Federal payment must comply with the error resolution and provisional credit requirements for payroll cards accounts in Regulation E. *See* 31 CFR 210.5(b)(5). The Bureau understands that prepaid cards that receive Federal payments and, as discussed previously, by extension many other prepaid cards that are eligible to receive Federal payments if the consumer so chooses, already comply with these provisions.

Comments Received and Other Industry Outreach

In response to the Prepaid ANPR, industry, trade associations, and consumer groups were nearly unanimous in their support for extending Regulation E error resolution requirements to prepaid cards. Those industry commenters that disagreed suggested, however, that the Bureau should not extend Regulation E limited liability and error resolution provisions to prepaid

products, arguing that consumers should assume some liability for fraud or stolen PINs in certain situations where the consumer acted negligently. One credit union argued that increasing protections for prepaid cards decreases the incentive for consumers to establish checking and savings accounts. Other commenters suggested that, if prepaid cards were covered under Regulation E at all, the Regulation should be modified to generally match existing industry practices rather than requiring financial institutions to change products in ways that commenters said could cause fees to increase, thus making these products more expensive for consumers.

Several industry and trade association commenters requested that the Bureau shorten any time frame for consumers to report unauthorized transactions to 60 days from the date the transaction is posted to the consumer's account, arguing that a longer period is not necessary given consumers' readily available access to online account information. These parties also pointed out that, when consumers significantly delay reporting unauthorized transactions to their financial institution, it can be costly and difficult for the institution to investigate. Others argued that ten business days is too short a period in which to investigate errors before extending provisional credit and that time period should be extended to at least 20 business days or longer.

Commenters were varied in their suggested approaches with respect to provisional credit. Some program managers, in comment letters responding to the Bureau's Prepaid ANPR as well as in other outreach conducted by the Bureau, have expressed concern about extending provisional credit to all prepaid card accounts, asserting that the potential fraud losses would be unsustainable. Specifically, they contend that cardholders intending to take advantage of the rules can make a purchase or withdraw cash at an ATM, assert that an error has occurred, obtain provisional credit (because many claims take most providers more than ten or even 20 business days to resolve), spend down those funds, and abandon the card before the provider is able to

complete its investigation. Industry commenters argued that prepaid cards may have higher incidences of fraudulently-asserted errors than other types of accounts for a number of reasons, including that prepaid cards are often purchased anonymously; prepaid cards are easier to abandon and are more often abandoned (by quickly spending down the balance and discarding the card); consumers may not have any other ongoing relationship with the issuing bank or program manager; and fraud is less likely when a consumer's paycheck or employer is implicated (*e.g.*, in accounts receiving direct deposit), whether those funds are being sent to a prepaid account, payroll card account, or other consumer asset account under Regulation E. As noted above, EFTA places the burden of proof on the financial institution to show that an alleged error was, in fact, an authorized transaction.

Nevertheless, consumer advocates and some industry commenters argued that many prepaid accounts are used in substantially similar ways as traditional consumer asset accounts and thus consumers using prepaid accounts should receive protections for funds lost due to unauthorized use in the same timeframe as holders of other accounts covered by Regulation E. Consumer advocates repeatedly emphasized how important provisional credit can be for consumers, noting that many consumers who use prepaid cards have limited liquid assets and may put a substantial portion of those assets on their prepaid cards. Without provisional credit, if those funds are lost due to an unauthorized transfer, a consumer could be without those funds – most of their assets – for the duration of the financial institution's investigation (up to 45 days, or 90 days in certain circumstances). Consumer advocates contended that provisional credit may be particularly important to prepaid account users because they may be less likely to have access to other funds.

Study of Prepaid Account Agreements Regarding Error Resolution and Provisional Credit

As discussed previously, the Bureau conducted its Study of Prepaid Account Agreements to better understand how providers of prepaid accounts would be affected by a requirement they offer error resolution with provisional credit. In this Study, the Bureau analyzed prepaid account terms and conditions to determine current industry practices in a number of areas, including with respect to error resolution and provisional credit. The Bureau found that across all agreements reviewed, 77.85 percent provided full error resolution with provisional credit protections, 12.31 percent provided error resolution with limitations on provisional credit; 9.23 percent provided error resolution without provisional credit; and 0.62 provided no error resolution protections.[303] Because these statistics weight all agreements equally, and thus do not reflect individual programs' or providers' market shares, the Bureau also specifically analyzed the 22 agreements for GPR card programs in the Study that belong to five of the largest program managers in the GPR card market (which together constituted 81 percent of the market by load volume and 72.2 percent market share based on number of active cards as of late 2012[304]). The Bureau found that 17 of these agreements provide full error resolution protections with provisional credit, three provide error resolution with limitations on provisional credit, and two provide error resolution without provisional credit.[305]

[303] *See* The Study of Prepaid Account Agreements, at 13 tbl. 3.

[304] Aite Group LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity*, at 17, 23 (Nov. 2012).

[305] *See* The Study of Prepaid Account Agreements, at 13 tbl. 3.

Similarly, as noted above, CFSI found that all cards reviewed, representing an estimated 90 percent of the GPR card marketplace, had adopted the Payroll Card Rule's version of Regulation E's error resolution and limited liability protections.[306]

Apart from the relevant provisions in Regulation E, the Bureau notes that the four major payment card networks' rules all impose some form of zero liability protections for cardholders in certain circumstances. At least one network, for example, requires provisional credit to be given after five days (rather than ten) for unauthorized transactions occurring over its network, unless certain exceptions apply.

Proposal

The Bureau is proposing to extend to all prepaid accounts the error resolution provisions of Regulation E, including provisional credit, with modifications to the § 1005.11 timing requirements in proposed § 1005.18(e)(2) for financial institutions following the periodic statement alternative in proposed § 1005.18(c)(1).[307] The text of proposed § 1005.18(e)(2) updates internal paragraph citations to reflect other numbering changes made in this proposal, but otherwise remains unchanged from existing § 1005.18(c)(4). As discussed above, EFTA section 904(c) authorizes this proposed revision.

The Bureau is proposing to extend to all prepaid accounts existing comment 18(c)-1 regarding the error resolution safe harbor provision, renumbered as new comment 18(e)-1 and with references to payroll card accounts changed to prepaid accounts. The Bureau is also

[306] Ctr. for Fin. Services Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles, at 12* (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

[307] The Bureau is proposing an additional modification in proposed § 1005.18(e)(3), discussed below, to provide an exception to the requirement to provide error resolution when a financial institution has not completed collection of consumer identifying information and identity verification for a prepaid account, assuming appropriate notice of the risk of not registering the prepaid account has been provided to the consumer.

proposing to extend existing comment 18(c)-2 to all prepaid accounts, with one substantive modification, renumbered as new comment 18(e)-2, and with the reference to payroll card account changed to prepaid account. This comment currently provides, in part, that a consumer is deemed to have accessed a payroll card 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. The Bureau proposes to add language to the comment to make clear that access to account information via a mobile application, as well as through a web browser, would constitute electronic access to an account for purposes of the timing provisions in proposed § 1005.18(e)(1) and (2). The existing comment also explains that 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. To further clarify this, the Bureau proposes to add an additional sentence to the end of proposed comment 18(e)-2 to explain that 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.

The Bureau is proposing to extend existing comment 18(c)-3, regarding untimely notice of error by a consumer, to all prepaid accounts, renumbered as new comment 18(e)-3 and with internal paragraph citations updated to reflect other numbering changes made in this proposal. The last sentence of the comment currently provides that where the consumer's assertion of error involves an unauthorized EFT, the institution must comply with § 1005.6 before it may impose any liability on the consumer. The Bureau is proposing to specifically note that compliance with § 1005.6 includes compliance with the extension of time limits provided in § 1005.6(b)(4).

The Bureau seeks comments on all aspects of its proposal for new § 1005.18(e)(2) and related commentary. In particular, the Bureau requests comment on whether there is an alternative approach to error resolution that the Bureau should adopt for prepaid accounts. The Bureau also seeks comment on whether error resolution with provisional credit is appropriate for all, or only certain, prepaid accounts, and whether there are any indicators that financial institutions use that might adequately predict the validity of a particular error claim, which might inform the Bureau's application of error resolution requirements to all prepaid accounts.

The Bureau also seeks comment on whether there might be any other consequences to extending the requirement for error resolution with provisional credit to all prepaid accounts. In particular, the Bureau seeks comment on what impact the concern for increased fraud losses (or the potential therefor) might have on financial institutions' eligibility requirements and initial screening processes for new prepaid accountholders. The Bureau also seeks comment on whether institutions might become more apt to close accounts that have asserted error claims, and whether and how these factors might result in decreased access to financial products for consumers.

Alternative Approaches Considered by the Bureau

In light of the various concerns raised in comment letters received in response to the Prepaid ANPR and during the Bureau's outreach to industry and consumer groups, the Bureau recognizes that provisional credit can be important to consumers, but also that there could be an increased risk of fraud by cardholders who might be unscrupulous and might be able to take advantage of a comprehensive provisional credit rule. Thus, the Bureau considered a number of alternatives to extending full provisional credit to all prepaid accounts. For example, the Bureau considered whether provisional credit should be limited only to prepaid accounts receiving

payroll or government payments, those that have received some form of direct deposit within a certain period, such as 30 days, those that have been opened for a certain amount of time, or those that maintained a balance over a certain threshold prior to the alleged error, among other things.

Any of these factors could potentially limit provisional credit fraud, although each has drawbacks. For example, even though providers indicated that a claim for an unauthorized transaction in the first few days after account opening is more likely to be fraudulent than claims on older accounts, consumers seeking to commit fraud could simply wait the designated period of time before asserting an error claim and seeking provisional credit if the Bureau were to require provisional credit only for prepaid accounts of a certain age. At the same time, honest consumers would be without key protections during that time period. Another approach would be to limit provisional credit to prepaid accounts that receive some form of direct deposit because consumers who receive wage or benefit payments on a card may be less likely to risk that payment to commit fraud. Ultimately, however, the Bureau believes the protection offered by this approach would potentially be too narrow because many consumers using prepaid accounts receive wages in forms other than direct deposit (such as those that receive their wages or tips in cash) and would not be able to receive provisional credit under such a standard. It would similarly leave consumers who do not receive any wage or benefit payments into their prepaid accounts unprotected.

The Bureau seeks comment on whether there are any other alternatives to or potential limits on provisional credit that might contain fraud losses for institutions while adequately protecting consumers from harm.

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

To further the purposes of EFTA, the Bureau believes it is necessary and proper to propose to use its exceptions authority under EFTA section 904(c) to add new section § 1005.18(e)(3). This proposed provision would provide 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 proposed notice contained in paragraph (c) of appendix A-7 , 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 for which it has not completed it collection of consumer identifying information and identity verification.[308] However, once the consumer's identity has been verified, a financial institution must limit the consumer's liability for unauthorized EFTs and resolve any errors that occurred prior to verification subject to the timing requirements of existing §§ 1005.6 or 1005.11, or the modified timing requirements in proposed § 1005.18(e), as applicable.

Proposed comment 18(e)-4 would explain that for the purpose of compliance with proposed § 1005.18(e)(3), consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. Comment 18(e)-4 would also explain that for an unauthorized transfer or an error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or alleged error is based on the date the consumer contacts the financial institution to report the unauthorized transfer or alleged error, not the date the financial

308 Relatedly, the Bureau is proposing to require that financial institutions include on the short form disclosure for all prepaid accounts a statement emphasizing the importance of registering the prepaid account. *See* section-by-section analysis of proposed § 1005.18(b)(2)(i)(B)(*12*).

institution completes its customer identification and verification process. Comment 18(e)-4 would further explain that for an error asserted on a previously unverified prepaid account, the time limits for a financial institution's investigation of errors pursuant to § 1005.11(c) 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.

The Bureau understands that financial institutions often conduct customer identification and verification at the onset of a relationship with a consumer, such as at the time a consumer signs up to receive wages via a payroll card account or when a consumer requests a GPR card online. For GPR cards purchased at retail stores, the financial institution may – but does not always – obtain customer-identifying information and perform verification at the time the consumer calls or goes online to activate the card. Because of restrictions imposed by FinCEN's Prepaid Access Rule (31 CFR 1022.210(d)(1)(v)) and the payment card networks' operating rules, among other things, the Bureau understands that customer identification and verification is almost always performed before a card can be reloaded, used to make cash withdrawals, or used to receive cash back at the point of sale. The Bureau believes that providers thus have an incentive to encourage consumers to register their cards to increase the functionality and thus the longevity of the consumer's use of the account.

Collection of consumer identifying information and verification of identity under proposed § 1005.18(e)(3) would include information collected, and identities verified, by a financial institution directly as well as by a service provider or agent of the institution. Thus, the Bureau expects that financial institutions providing prepaid accounts for purposes such as student

financial aid disbursements or property or casualty insurance payments would likely not be able to avail themselves of the exclusion in § 1005.18(e)(3) because consumer identifying information is collected and consumers' identities verified by the financial institution, or a service provider or agent of the institution, prior to distribution of such prepaid accounts. The Bureau solicits comment on the proposed exclusion and on what other types of prepaid account products might be eligible for it, and whether the exclusion should be applied more broadly or limited only to certain types of prepaid account products such as those sold anonymously at retail locations.

The Bureau is proposing to adopt this exemption because it understands that financial institutions may face difficulties in determining whether an unauthorized transaction occurred if it does not know a prepaid accountholder's identity. For example, a financial institution might have a video recording provided by a merchant or ATM operator showing the card user, but without having identified the accountholder, it would have no way of knowing if the individual conducting the transaction is authorized to do so.

The Bureau believes that financial institutions would follow the customer identification and verification requirements set forth in FinCEN's customer identification program requirements for banks in 31 CFR 1020.220 or for providers and sellers of prepaid access in 31 CFR 1022.210(d)(1)(iv).

The Bureau anticipates that when a consumer calls to assert an error on an unverified account, the financial institution would inform the consumer of its policy regarding error resolution on unverified accounts and would begin the customer identification and verification process at that time. As noted previously, the Bureau believes that providers have an incentive to

encourage consumers to register their cards to increase the functionality and thus the longevity of the consumer's use of the account.

The Bureau seeks comment on all aspects of this part of its proposal, including whether FinCEN's regulations, as discussed above, are the appropriate standard to use for identification and verification of prepaid accountholders, or whether some other standard should be used. The Bureau also seeks comment on whether error resolution should be required even for unidentified or unverified accounts or whether, for such accounts, the Bureau should exercise its exceptions authority under EFTA to change the burden of proof from the financial institution to the accountholder in such circumstances rather than eliminate error resolution rights altogether. Such a change might add protections for consumers in particular circumstances, such as if their initial cash load amount does not match the amount actually credited to their prepaid account. (For example, if the consumer were to load $100 cash, but their online account balance shows only $10.) The Bureau seeks comment on the proportion of prepaid accounts for which customer identification and verification is either never performed or is attempted but cannot be completed. The Bureau also seeks comment on whether such accounts should receive error resolution protections but without requiring financial institutions to grant provisional credit.

The Bureau believes that it is unlikely that a financial institution would seek to avoid completion of the identification and verification process in order to refuse to address an error asserted by a consumer given the potential benefits to the institution associated with having a consumer complete the identification and verification process. However, the Bureau seeks comment on whether such evasion is likely to occur and whether the Bureau should impose a time limit for completion of the customer identification and verification process.

18(f) Initial Disclosure of Fees and Other Key Information

The Bureau is proposing § 1005.18(f), which would modify the initial disclosure of fees requirement in § 1005.7(b)(5) for prepaid accounts. EFTA section 905(a)(4) requires financial institutions to disclose to consumers, as part of the account's terms and conditions, any charges for electronic fund transfers or for the right to make such transfers. Existing § 1005.7(b)(5) implements this requirement by stating that, as part of the initial disclosures, any fees imposed by a financial institution for electronic fund transfers or for the right to make transfers must be disclosed. Existing comment 7(b)(5)-1 further clarifies that other fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed. The Bureau believes that for prepaid accounts, however, it is important that the initial account disclosures provided to consumers list all fees that may be imposed in connection with the prepaid account. The Bureau believes that because these disclosures are what consumers will likely reference throughout their ongoing use of their prepaid accounts, it is important that these disclosures include all relevant fee information, not just those fees related to electronic fund transfers.

Thus, to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account users, the Bureau believes it is necessary and proper to exercise its authority under EFTA section 904(c) to propose an adjustment of the requirement in EFTA section 905(a)(4), which is implemented in existing § 1005.7(b)(5), for prepaid accounts. In addition, the Bureau believes that disclosure of all fees for prepaid accounts will, consistent with Dodd-Frank Act section 1032(a), ensure that the features of prepaid accounts are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with a prepaid account.

Specifically, the Bureau is proposing § 1005.18(f), which would require that in addition to disclosing any fees imposed by a financial institution for electronic fund transfers or the right to make such transfers, the financial institution must also include in its initial disclosures given pursuant to § 1005.7(b)(5) all other fees imposed by the financial institution in connection with a prepaid account. For each fee, a financial institution must disclose the amount of the fee, the conditions, if any, under which the fee may be imposed, waived, or reduced, and, to the extent known, whether any third party fees may apply.

The Bureau believes that most providers are already disclosing all fees in the terms and conditions accompanying prepaid accounts. Further, the Bureau notes that Regulation DD, which implements TISA, requires that initial disclosures for deposit accounts include the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. § 1030.4(b)(4).

The Bureau is further proposing that these disclosures pursuant to proposed § 1005.18(f) include all of the information required to be disclosed pursuant to § 1005.18(b)(2)(ii)(B) and must be provided in a form substantially similar to Sample Form A-10(e). The Bureau believes that for consistency purposes and to facilitate consumer understanding of a prepaid account's terms, it is useful for the fee disclosure provided pursuant to § 1005.7(b)(5), as modified by proposed § 1005.18(f), to be in the same format of the long form disclosure requirement of proposed § 1005.18(b)(2)(ii)(A).

The Bureau seeks comment on this portion of the proposal.

18(g) Credit Card Plans Linked to Prepaid Accounts

Proposed § 1005.18(g)(1) would set forth timing rules related to when a credit card plan under Regulation Z could be linked to a prepaid account. Proposed § 1005.18(g)(2) would set

forth rules related to the terms applicable to the prepaid account when a credit card plan is linked to a prepaid account.

18(g)(1) Prohibitions

Proposed § 1005.18(g)(1) generally would restrict financial institutions that establish or hold prepaid accounts from linking a credit card plan under Regulation Z to a prepaid account, or allowing the prepaid account to be linked to such a credit card plan, until 30 calendar days after the prepaid account has been registered. Proposed § 1005.18(g)(1)(i) would restrict financial institutions that establish or hold prepaid accounts from providing solicitations or applications to holders of prepaid accounts to open credit card accounts subject to Regulation Z, prior to 30 calendar days after the prepaid accounts have been registered. For purposes of proposed § 1005.18(g)(1), the term *solicitation* would mean an offer by the person to open a credit or charge card account subject to Regulation Z that does not require the consumer to complete an application. A "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card would be a solicitation for purposes of proposed § 1005.18(g)(1).

Proposed § 1005.18(g)(1)(ii) would restrict financial institutions that establish or hold prepaid accounts of consumers from allowing prepaid access devices to access credit card plans subject to Regulation Z that would make the prepaid access devices into credit cards at any time prior to 30 calendar days after the prepaid accounts have been registered. Proposed § 1005.18(g)(1)(iii) would restrict financial institutions that establish or hold prepaid accounts of consumers from allowing credit extensions from credit card plans subject to Regulation Z to be deposited in prepaid accounts, where the credit plans are accessed by account numbers that are credit cards under Regulation Z where extensions of credit are permitted to be deposited directly

only into particular prepaid accounts specified by the creditor, prior to 30 calendar days after the prepaid account has been registered. Proposed § 1005.18(g)(1)(iii) is intended to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the open-end account using an account number only, and (3) the advance is deposited into the prepaid account. Proposed comment 18(g)-1 would cross reference provisions in Regulation Z that would provide guidance on when a program constitutes a credit plan (*see* proposed § 1026.2(a)(20) and comment 2(a)(20)-2.ii) and would provide guidance on when an access device for a prepaid account is a credit card and 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 (*see* § 1026.2(a)(15)(i), proposed § 1026.2(a)(15)(vii), and proposed comment 2(a)(15)-2.i.F and .G).

Proposed § 1005.18(g)(1) would complement a similar proposed provision in Regulation Z, proposed § 1026.12(h), which would require credit card issuers to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account that will be accessed by the prepaid card that is a credit card under Regulation Z, or by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau is proposing § 1005.18(g)(1) pursuant to its authority under sections 904(a), 904(c), and 905(a) of EFTA (15 U.S.C. 1693b) and Dodd-Frank Act section 1032(a). The Bureau believes that proposed § 1005.18(g)(1) is necessary and proper to effectuate the express purposes of EFTA to provide a framework to establish the rights, liabilities and responsibilities

of prepaid account users by helping consumers understand the terms of their prepaid accounts and that credit card plans linked to the prepaid accounts are optional. Under the Bureau's proposal and as discussed above, a consumer's registration of a prepaid account would be a critical step for obtaining Regulation E's consumer rights and protections with respect to the account, and the Bureau's proposal to restrict financial institutions from offering credit features to holders of prepaid accounts until 30 days after the accounts have been registered seeks, in part, to ensure that consumers understand that they are not required to request any credit feature in order to register and use a prepaid account.

The Bureau is also proposing to adopt this provision because a consumer's decision of which prepaid account to purchase, register, and use is itself a complex decision involving several variables, including the consumer's finances and purchasing habits. If the consumer makes a choice that does not ultimately prove to be a good fit, it is relatively easy for that consumer to acquire a different prepaid account (to the extent that account does not have a credit feature). The Bureau believes that this dynamic has fostered a competitive market, and it is concerned that combining decisions on prepaid accounts and credit features would tend to undermine that in at least two ways. First, it makes the acquisition of the prepaid account even more complex by adding more variables to consider; as noted previously, consumers may spend little time shopping for a prepaid card. Second, the presence of a credit feature may make it harder for consumers to terminate their account relationships if consumers can incur significant debts before having a chance to determine how the prepaid account itself is performing.

The Bureau's proposal seeks to keep that decision separate from a consumer's decision whether to add a credit feature to the prepaid account, which involves numerous additional variables that the consumer should consider. The two decisions in combination could cause

consumers to make incorrect or suboptimal decisions. The Bureau is particularly concerned that the events of purchasing, registering, and adding a credit feature to a prepaid account could become conflated for prepaid accounts that consumers obtain on the Internet, because in that context the events could occur close together in time. In particular, the Bureau believes that the proposed 30-day waiting period would, consistent with Dodd-Frank section 1032(a), ensure that the features of the prepaid account and any credit card feature that might become connected to it are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the account. The Bureau believes that a consumer should have the opportunity to assess the features of a prepaid account by means of actually using it before being offered a credit feature that might make it more difficult for the consumer to terminate the prepaid account relationship due to outstanding credit balances.

As discussed in the section-by-section analysis of Regulation Z § 1026.12(a)(1), under the proposal, a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h). Proposed § 1026.12(h) would require credit card issuers to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may open a credit card account for the holder of a prepaid account, or may provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account, that will be accessed by the prepaid card that is a credit card under Regulation Z or by an account number that is a credit card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau believes that Regulation E proposed § 1005.18(g)(1) and Regulation Z proposed § 1026.12(h), taken together, would promote the informed use of the prepaid account

and the credit card account by separating the decision to purchase and register a prepaid account from the decision to accept an offer to link a credit card account to that prepaid account. By separating these decisions, § 1005.18(g)(1) would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration which may enable the consumer to better understand those terms and conditions, consistent with EFTA section 905(a) which requires financial institutions to disclose the terms and conditions of electronic fund transfers involving a consumer's account. The Bureau also believes that requiring at least 30 calendar days to elapse between the registration of a prepaid account and any offer of a linked credit or charge card account would enhance consumer understanding of the terms of the prepaid account and would help consumers to make more informed decisions regarding linking a credit or charge card account the prepaid account. Otherwise, the Bureau fears that consumers could believe that they are required to request that the credit or charge card account be linked to the prepaid account in order to register or access the prepaid account.

The Bureau recognizes that this provision would be unique to prepaid accounts. *Compare* existing 1005.17(c). Nevertheless and for the reasons discussed above, the Bureau believes that it is particularly important to separate these two decisions for prepaid accounts and related overdraft services and credit features. The Bureau solicits comment on this provision. The Bureau also solicits comment on the 30 day time frame, and whether a shorter or longer time frame would better accomplish the goals of the provision.

The Bureau notes that proposed § 1005.18(g)(1) and Regulation Z § 1026.12(h) would overlap in cases where the credit card plan is accessed by a prepaid card or the credit card plan is being offered by a financial institution that holds the prepaid account and is accessed by an account number where extensions of credit are permitted to be deposited directly only into

particular prepaid accounts specified by the creditor. In those cases, the financial institution would be a "card issuer" under Regulation Z § 1026.2(a)(7)[309] and the Bureau is proposing that both the requirements of proposed Regulation Z § 1026.12(h) and proposed Regulation E § 1005.18(g)(1) would apply to the financial institution who also is a card issuer. Nonetheless, the Bureau intends proposed Regulation E § 1005.18(g)(1) and Regulation Z § 1026.12(h) to impose the same restrictions in those situations. In cases where the credit card account is being offered by a person other than the person who holds the prepaid account and is being accessed by an account number as described above, the person issuing the account number that is a credit card (*i.e.*, card issuer) must comply with proposed Regulation Z § 1026.12(h). In addition, the financial institution that holds the prepaid account must comply with Regulation E § 1026.18(g)(1). The Bureau believes that imposing complementary restrictions on both the card issuer that is offering the credit card account and the financial institution that holds the prepaid account would prevent circumvention of the prohibition, and help ensure that consumers' decisions whether to open a credit card account linked to the prepaid account are separate from when the prepaid account is purchased or registered, in order to enable consumers to understand better the terms and conditions that apply to the prepaid account, consistent with EFTA section 905(a) which requires financial institutions to disclose the terms and conditions of electronic fund transfers involving a consumer's account.

18(g)(2) Requirements

[309] Under the proposal, with respect to a prepaid card that is a credit card where the card accesses a credit plan that is offered by a third party, a person offering the credit plan that is accessed by the prepaid card would be an agent of the person issuing the prepaid card and thus, would be a card issuer with respect to the prepaid card that is a credit card. *See* Regulation Z proposed comment 2(a)(7)-1.ii. In this case, both the person offering the credit plan and the financial institution issuing the prepaid card would be card issuers under Regulation Z § 1026.2(a)(7).

Proposed § 1005.18(g)(2) would set forth rules related to the terms applicable to the prepaid account when a credit card plan is linked to a prepaid account. Specifically, proposed § 1005.18(g)(2) would provide that where a credit card plan subject to Regulation Z may be offered at any point to the consumer with respect to a prepaid account that is accessed by an access device for the prepaid account where the access device is a credit card under Regulation Z 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, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions to a consumer's account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account.

Proposed comment 18(g)-2.i would provide guidance on the applicability of the restriction in proposed § 1005.18(g)(2). Specifically, proposed comment 18(g)-2.i would explain that a financial institution may offer different terms on different prepaid account products, where the terms may differ between a prepaid account product where a credit card plan subject to Regulation Z cannot be linked to the prepaid account, and a prepaid account product where a credit card plan subject to Regulation Z can be linked to the prepaid account. Nonetheless, on the prepaid account product where a credit card plan subject to Regulation Z may be offered at any point to the consumer that is accessed by an access device for the prepaid account that is a credit card under Regulation Z 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, a financial institution that establishes or holds such a prepaid account may not apply different terms and conditions to a consumer's

account that do not relate to an extension of credit, carrying a credit balance, or credit availability, depending on whether the consumer elects to link such a credit card plan to the prepaid account. Proposed comment 18(g)-2.ii explains that § 1005.18(g)(2) prevents a financial institution from waiving fees or reducing the amount of fees that do not relate to an extension of credit, carrying a credit balance, or credit availability if the consumer elects to link the prepaid account to a credit card plan.

Proposed comment 18(g)-2.ii would provide examples of account terms and conditions that would be subject to the restrictions in proposed § 1005.18(g)(2). The proposed examples in comment 18(g)-2.ii include fees assessed on the prepaid account that do not relate to an extension of credit, carrying a credit balance, or credit availability, including any transaction fees for transactions that are completely funded by the prepaid account and any one-time or periodic fees imposed for opening or holding a prepaid account. The proposed comment also would cross reference Regulation Z proposed § 1026.4(b)(2) and comment 4(b)(2)-1.iii and .iv, which provide additional guidance on fees that relate to an extension of credit, carrying a credit balance or credit availability. Proposed comment 18(g)-2.iii also would provide examples of account terms and conditions that are not subject to the restrictions in proposed § 1005.18(g)(2) because these terms and conditions would relate to an extension of credit, carrying a credit balance, or credit availability. The proposed examples would include (1) fees or charges assessed on the prepaid account applicable to transactions that access the credit card plan subject to Regulation Z, including transaction fees for transactions that either access just the credit card plan, or access both the prepaid account and the credit card plan; and (2) any one-time or periodic fees imposed for the issuance or availability of the credit card plan subject to Regulation Z. Proposed

comment 18(g)-2.iv provides examples that illustrate the prohibition in proposed § 1005.18(g)(2).

The Bureau is proposing § 1005.18(g)(2) pursuant to its authority under EFTA sections 904(a) and (c). In implementing its overdraft opt-in rule under § 1005.17, the Board required that "[a] financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions." § 1005.17(b)(3). The Board recognized that without this requirement, "some institutions could otherwise effectively compel the consumer to provide affirmative consent to the institution's payment of overdrafts for ATM and onetime debit card transactions by providing consumers who do not opt in with less favorable terms, conditions, or features than consumers who do opt in."[310] The Bureau believes that the same requirement should be extended here for the same reasons. As discussed in the section-by-section analysis of Regulation Z § 1026.12(a)(1), under the proposal, a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with proposed § 1026.12(h), which would require credit card issuers to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may open a credit or charge card account, or provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account, that will be accessed by the prepaid card that is a credit card under Regulation Z or an account number that is a credit

[310] 74 FR 59033, 59044 (Nov. 17, 2009).

card under Regulation Z where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau believes some institutions could otherwise effectively compel the consumer to request a credit card plan be linked to the prepaid account as described above by providing consumers who do not make such a request with less favorable terms, conditions, or features than consumers who do make such requests. For example, an institution could waive the monthly fee for holding a prepaid account for consumers who request that the credit card plan be linked to the prepaid account, but not waive the monthly fee for consumers who do not make such a request.

18(h) Compliance Dates

The Bureau is proposing that all prepaid accounts comply with the requirements of EFTA and Regulation E, as modified by proposed § 1005.18, within nine months of publication of the Bureau's final rule in the **Federal Register**. This nine month effective date would apply to disclosures for newly-manufactured prepaid account materials and disclosures or other information delivered to consumers online or by telephone. The Bureau is proposing a delayed effective date for prepaid account packaging, access devices, and other printed materials that were created prior to the nine-month effective date, so that immediate removal or destruction of unsold or undistributed prepaid account packaging, access devices, or other physical materials created prior to the nine month effective date would not be mandated. However, within 12 months of publication of the Bureau's final rule in the **Federal Register**, all prepaid accounts would have to comply fully with the requirements of the rule including its disclosure requirements, regardless of when the physical packaging, access devices, or other physical materials on which such disclosures appear were created.

The Bureau addresses its proposed effective date in two places. The effective date for proposed § 1005.18 is discussed in this section (a cross-reference to the proposed § 1005.18(h) effective date appears in proposed § 1005.15(c) for pre-acquisition disclosure requirements for government benefit accounts) while the effective date for the rest of this proposal is discussed in the Effective Date section at the conclusion of the section-by-section analysis.

Comments Received and Stakeholder Outreach Regarding Effective Date

In determining the appropriate effective date to propose for this rule, the Bureau considered comments submitted in response to the Prepaid ANPR and also conducted further outreach and research. In the Prepaid ANPR, the Bureau stated that one of its goals was to be mindful of avoiding any unnecessary burden on industry. The Bureau also asked a series of specific questions related to how market participants manage their prepaid product inventory: (1) Through what methods, and under what circumstances, do market participants communicate a change of contract terms, or other information, to cardholders?; (2) Are there inventory replacement cycles that drive the printing of cards to stock distribution outlets?; (3) Do market participants conduct periodic maintenance of systems during which updating compliance systems would impose less of a burden? If so, how often does this maintenance occur?; and (4) Are there other issues with respect to the cost of regulatory compliance about which the Bureau should be aware?[311]

In response, a number of industry commenters noted that mandating too short an implementation transition period to comply with new disclosure requirements would result in financial institutions having to remove, replace, and destroy existing inventory. These

[311] *See* 77 FR 30923, 30925 (May 24, 2012).

commenters contended that such logistical procedures would be quite burdensome and costly. Some commenters also noted the potential adverse environmental impact that could stem from a short implementation period resulting in the destruction of large quantities of unused products rendered unsaleable or undistributable by virtue of new rules.

Industry commenters instead urged the Bureau to provide for an implementation period long enough to allow for the exhaustion of existing card inventories through ordinary sales, a process most commenters generally estimated would span 12 to 18 months, although a few suggested even longer. Under such an approach, industry commenters argued, financial institutions would be able to introduce newly-printed and compliant prepaid account product packages gradually so that they could avoid excessive expenses without needing to destroy a large number of non-compliant packages. Consumer advocacy groups and other commenters generally did not address this issue.

Few industry commenters addressed the potential time needed for the implementation of changes related to other potential issues to be addressed by the proposed rule, such as error resolution procedures, access to account information, or other provisions in Regulation E. Commenters who did address these changes requested that financial institutions be given between 12 and 24 months of time to implement any systems-related updates. One commenter noted that such regulatory changes generally require making changes to systems, sales processes and training tools; conducting tests to ensure that changes are properly implemented without disruption to cardholders; and communicating changes to cardholders. These commenters further noted that systems-related updates are typically undertaken at predetermined biannual intervals and that regulatory deadlines resulting in systems-related updates at previously unscheduled times would be particularly costly and disruptive.

Proposal

The Bureau is proposing, in general, a nine month effective date for the requirements of new § 1005.18. Proposed § 1005.18(h)(1) would state that, except as provided in proposed § 1005.18(h)(2), the requirements of EFTA and Regulation E, as modified by proposed § 1005.18, apply to prepaid accounts nine months following the publication of the Bureau's final rule in the **Federal Register**. The disclosure requirements in proposed § 1005.18(b) and (f)(2) would apply to prepaid account packaging, access devices, and other physical materials that are manufactured, printed, or otherwise prepared in connection with a prepaid account on or after nine months. Thus, proposed § 1005.18(h)(1) would generally make applicable to all prepaid accounts the requirements of EFTA and Regulation E, as modified by proposed § 1005.18's proposed provisions including those governing disclosures, access to prepaid account information, limited liability and error resolution, among others, after nine months. However, this first proposed effective date would not require destruction of previously-printed materials because it would only require packages, cards and other materials printed on or after the nine month date to comply with the rule's disclosure requirements in proposed § 1005.18(b) and (f)(2). These disclosure requirements would apply after nine months, however, for prepaid account disclosures and other information made available to consumers online or by telephone.

For prepaid account packaging, access devices, and other printed materials created prior to this first effective date, the Bureau believes that nothing proposed herein would mandate a change-in-terms notice insofar as the proposal would not require increased fees, liability, or fewer types of available electronic fund transfers for consumers. *See* § 1005.8(a) and 12 CFR 1030.5(a)(1). If, however, financial institutions wish to avail themselves of the more limited

error resolution or limited liability requirements for existing unregistered prepaid accounts and their existing terms provide greater protections, then a change-in-terms notice may be required.

Of course, if financial institutions wish to make substantive changes to prepaid account fees or terms, they would, as always, be required to remove from retail stores and other distribution channels prepaid account packaging, access devices, and other printed materials that their changes render inaccurate, and to provide notice of those changes to consumers with existing prepaid accounts. The Bureau believes that such legal requirements exist independent of the proposed rule under operative state consumer protection and contract laws.

The Bureau understands that it may take some financial institutions longer than nine months to fully redesign prepaid account packaging, access devices, and other printed materials, and to begin printing new products. The Bureau is not proposing to mandate that financial institutions start manufacturing new materials exactly at the nine month mark. Rather, the Bureau is proposing to require that at whatever point after the nine month date a financial institution does decide to print new materials, those materials be in compliance with the requirements of proposed § 1005.18.

Other than disclosure-related issues discussed in proposed § 1005.18(h)(2), the Bureau believes nine months is an appropriate implementation period for the provisions proposed herein. The Bureau seeks to ensure that consumers receive the benefit of the protections proposed herein as soon as possible. As noted in the previous discussions of the Bureau's Study of Prepaid Account Agreements, a majority of providers are already complying with a majority of the proposed requirements. To the extent entities do need to make changes, the Bureau believes that they can be accomplished within a nine month period. Nevertheless, the Bureau seeks comment

on whether nine months is appropriate or whether a longer or shorter period should be adopted for these parts of the proposal.

The Bureau is also proposing a delayed effective date for certain packaging-related changes, which would be 12 months following the publication of the final rule in the **Federal Register**. This second date, in proposed § 1005.18(h)(2), would require full compliance with the rule's disclosure requirements and prohibit the offering, sale or otherwise making available of prepaid accounts and related packaging, access devices, or other printed materials without such disclosures. As a result, by 12 months, financial institutions and their third party distribution agents would have to remove from retail store shelves and other distribution channels any prepaid accounts with disclosures not fully in compliance with the rule. As noted above, the Bureau believes that 12 months is an appropriate period after which products with old disclosures should not be sold. As noted, industry representatives have indicated to the Bureau that typically, prepaid product restocking cycles occur at least every 12 to 18 months, if not more frequently, although it could take as long as 24 months to sell out all existing product on retail shelves. By allowing financial institutions time to prepare, the Bureau expects its proposal to minimize, even if it may not entirely eliminate, destruction of prepaid product packaging. The Bureau notes that not all existing inventories will be exhausted after 12 months as part of normal restocking cycles. However, the Bureau believes that after 12 months, such inventories will be sufficiently exhausted such that to permit the sale of non-compliant packages should no longer be permitted. Further, the Bureau notes so long as it proposed a fixed end-date for the sale of non-compliant packages, prepaid providers will always have to incur certain fixed costs involved in confirming that non-compliant product is removed from retail stock. Thus, even if the Bureau adopted the longest period suggested by Prepaid ANPR commenters, providers still would need

to incur costs in confirming that they and their retail partners are no longer offering non-compliant products for sale.

The Bureau seeks comment on its proposed implementation timeframes for this proposed rule as set forth in proposed § 1005.18(h), as well as possible alternative approaches. In particular, the Bureau seeks comment and supporting data on the costs to industry and benefits to consumers that might be expected from the Bureau's proposed effective dates and from any alternative approaches. Of particular interest to the Bureau is whether and to what extent the proposed timeframes would require financial institutions to remove, replace, and destroy portions of their product inventories and, if so, what the costs of doing so would be at various time intervals, including those proposed herein. The Bureau solicits comment both on the potential costs of alternate implementation timelines and on possible logistical constraints, such as the expected amount of time needed for third parties to print and deliver new prepaid account packages and other materials to financial institutions or those institutions' distribution networks or other service providers, and the expected amount of time needed for financial institutions to update their systems to comply with the proposed disclosure requirements and other requirements of Regulation E generally.

In addition, the Bureau specifically requests comment on whether an effective date longer than 9 months would be needed for financial institutions to comply with the access to account information requirements proposed in § 1005.18(c) and, if so, what an appropriate effective date for this portion of the proposal might be. The Bureau understands that many financial institutions currently provide prepaid account consumers with access to more than 60 days of account history and, additionally, that financial institutions generally have obligations to retain prepaid account transactional records outside the context of Regulation E for far longer than 60

days. The Bureau specifically seeks comment on the amount of prepaid account transactional records financial institutions currently retain now and any difficulties financial institutions would face in using such transactional records to comply with proposed § 1005.18(c).

The Bureau is not proposing a longer effective date for implementation of the disclosures on prepaid access devices in proposed § 1005.18(b)(7) for access devices that were sold or delivered to consumers prior to the effective date of the final rule. The Bureau understands that prepaid cards generally already list the financial institution's name, telephone number and URL of a website on the back of the card, and thus no changes to consumers' access devices would need to be made as a result of this proposal. The Bureau requests comment, however, on whether there may be prepaid cards that currently do not list this information and, if so, whether the Bureau should allow financial institutions longer than nine months to replace those cards.

The Bureau also seeks comments on whether it should adopt an alternative approach to the effective date of this proposal or whether it should adopt a single effective date for all proposed provisions.

Section 1005.19 Internet Posting of Prepaid Account Agreements

The Bureau is proposing new § 1005.19 to require prepaid card issuers to submit agreements for prepaid accounts to the Bureau for posting on a publicly-available website established and maintained by the Bureau. The Bureau is also proposing to require issuers to make prepaid account agreements available to the public on the issuers' own websites or, in certain limited circumstances, provide agreements directly to consumers holding prepaid accounts via a restricted website or in writing upon request. These new provisions in proposed § 1005.19 would be similar to existing requirements in Regulation Z 12 CFR 1026.58 for open-end consumer credit card plans.

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

In 2009, section 204 of the Credit CARD Act added new TILA section 122(d) to require creditors to post agreements for open-end consumer credit card plans on the creditor's websites and to submit those agreements to the Board for posting on a publicly-available website

established and maintained by the Board. 15 U.S.C. 1632(d). The Board implemented these provisions in what is now 12 CFR 1026.58. The Bureau's receipt of credit card agreements pursuant to § 1026.58 has aided the Bureau in its market monitoring functions, and the Bureau's posting of those credit card agreements on its website may, among other things, enable consumers to more effectively compare credit cards.

The Bureau is proposing § 1005.19 for substantially the same reasons with respect to prepaid accounts. The Bureau expects to use the prepaid account agreements it receives from issuers pursuant to proposed § 1005.19 to assist in its market monitoring efforts. In addition, the Bureau's posting of prepaid account agreements on its website would allow consumers to more easily compare terms of prepaid accounts currently in the marketplace as well as facilitate third parties' analysis of prepaid accounts and the development of online shopping tools. Consumers would also benefit from having access to their prepaid account agreements available through the issuers' websites (or available upon request in limited instances).

The specific requirements in proposed § 1005.19 largely mirror existing provisions in § 1026.58 and the Bureau expects these rules to generally function in the same manner, albeit with certain modifications made in proposed § 1005.19 to address differences between the credit card and prepaid account markets.

19(a) Definitions

The Bureau is proposing in § 1005.19(a) certain definitions specific to proposed § 1005.19.

19(a)(1) Agreement

The Bureau is proposing § 1005.19(a)(1) to define "agreement" or "prepaid account agreement" for purposes of proposed § 1005.19 as the written document or documents

evidencing the terms of the legal obligation, or prospective legal obligation, between a prepaid account issuer and a consumer for a prepaid account. An agreement or prepaid account agreement also includes fee information, as defined in proposed § 1005.19(a)(3), which is discussed below. Proposed § 1005.19(a)(1) mirrors the definition of "agreement" or "credit card agreement" in § 1026.58(b)(1) in Regulation Z.

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

19(a)(2) Amends

The Bureau is proposing § 1005.19(a)(2) to provide that for purposes of proposed § 1005.19, an issuer "amends" an agreement if it makes a substantive change (an "amendment") to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in proposed

§ 1005.19(a)(3), discussed below, is deemed to be substantive. Proposed § 1005.19(a)(2) mirrors the definition of the term amends in § 1026.58(b)(2).

With respect to § 1026.58, the Board determined that requiring resubmission of credit card agreements following minor, technical changes would impose a significant administrative burden with no corresponding benefit of increased transparency.[312] The Bureau believes the same would be true for prepaid account issuers and therefore proposes a similar definition here.

Proposed comment 19(a)(2)-1, which mirrors Regulation Z comment 58(b)(2)-1, would give examples of changes, other than changes to fee information, that generally would be considered substantive, including: (i) addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of the prepaid account to the consumer, such as changes in a provision describing how the prepaid account's monthly fee will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

Proposed comment 19(a)(2)-2, which mirrors Regulation Z comment 58(b)(2)-2, would give examples of changes that generally would not be considered substantive, such as: (i) correction of typographical errors that do not affect the meaning of any terms of the agreement;

[312] 75 FR 7658, 7760 (Feb. 22, 2010).

(ii) changes to the issuer's corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the prepaid account to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

The Bureau requests comment, however, on whether certain changes, such as to an issuer's corporate name or to the name of the prepaid account to which the program applies, should be considered substantive for purposes of proposed § 1005.19. The Bureau questions whether such changes, if not reflected in agreements posted to the Bureau's or the issuer's website, might inhibit a consumer's ability to locate an agreement for an existing prepaid account or to effectively comparison shop for a new prepaid account.

19(a)(3) Fee Information

The Bureau is proposing § 1005.19(a)(3) to define "fee information" for purposes of proposed § 1005.19 as the information listed for the long form fee disclosure in proposed § 1005.18(b)(2)(ii). The Bureau believes that to enable consumers to shop for prepaid accounts and to compare information about various prepaid accounts in an effective manner, it is necessary that the agreements posted on the Bureau's website include fees and other pricing information. The Bureau expects that most issuers will include the long form disclosure required by proposed § 1005.18(b)(2)(ii) directly in their prepaid account agreements. Others may perhaps maintain the long form disclosure as an addendum or other supplement to their prepaid account agreements.

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

The Bureau requests comment on whether it should also require that the short form disclosure that would be required by proposed § 1005.18(b)(2)(i) also be included in the definition of fee information for purposes of proposed § 1005.19 and thus generally required to be submitted to the Bureau and posted on the issuer's website, as discussed below. The Bureau also solicits comment on whether, in light of the revisions proposed herein regarding credit accessed by prepaid accounts, an exclusion is needed for temporary rates and terms or rates and terms that apply only to protected balances similar to the exclusion in § 1026.58(b)(7).

19(a)(4) Issuer

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

As discussed in more detail above, the Bureau understands that, in some cases, more than one financial institution is involved in the administration of a prepaid program. For example, a smaller bank may partner with a larger bank to market prepaid accounts to the smaller bank's customers, or a bank may partner with a program manager to offer prepaid accounts. The Bureau also understands that the terms of the arrangements can vary, for example with respect to which party uses its name and brand in marketing materials, sets fees and terms, conducts

customer identification and verification, provides access to account information, holds the pooled account, and absorbs the risk of default or fraud.

The Board believed that with respect to the definition of card issuer in what is now § 1026.58(b)(4), without a bright-line rule defining which institution is the issuer, institutions might find it difficult to determine their obligations under § 1026.58.[313] Similarly, absent clarification from the Bureau, it may be difficult to determine which entity would be responsible for compliance with proposed § 1005.19 for a particular prepaid account. For example, if two financial institutions are involved in issuing a prepaid program, one may have fewer than 3,000 open accounts while the other has more than 3,000 open accounts. It may be difficult to determine whether, for example, the de minimis exception (*see* proposed § 1005.19(b)(4)) applies in such cases. In addition, it may be unclear which institution is obligated to post and maintain the agreements on its website pursuant to proposed § 1005.19(c) or (d)(1)(i) or respond to telephone requests for copies of agreements pursuant to proposed § 1005.19(d)(1)(ii), discussed below. The Bureau therefore believes it would be beneficial to clarify which institution would be the prepaid account issuer for purposes of proposed § 1005.19.

The Bureau is thus proposing to define issuer, in proposed § 1005.19(a)(4), with respect to a particular agreement as the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of that agreement. The Bureau is proposing this approach for several reasons.

First, the proposed definition would create a bright-line rule that would enable institutions involved in issuing prepaid accounts to determine their obligations under proposed

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

§ 1005.19. Second, the proposed definition would be consistent with the actual legal relationship into which a consumer enters under a prepaid account agreement. Third, the Bureau believes that the institution to which the consumer is legally obligated under the agreement may be in the best position to provide accurate, up-to-date agreements to both the Bureau and consumers.

Fourth, the Bureau understands that an institution that partners with multiple other entities to issue prepaid accounts, such as in the payroll card account context, will in many cases use the same agreement for all the prepaid accounts issued in connection with those arrangements. Therefore, while the number of prepaid accounts issued with a given partner may be small, the total number of consumers subject to the corresponding agreement may be quite large. The Bureau believes it would be beneficial to have such agreements submitted to the Bureau for posting on the Bureau's website.

The Bureau believes that in some cases consumers may be unsure about which institution issues their prepaid account. For example, a consumer may apply for a prepaid account through a link on the website of a bank with which the consumer has a pre-existing relationship, and the face of the prepaid card may prominently display that bank's logo. In some such cases, the consumer may assume that the card is issued by that bank, even though website disclaimers, the prepaid account agreement, the back of the prepaid card, and other materials explain that the card is issued by another institution. The Bureau believes, however, that institutions can take steps to alleviate this confusion, for example by disclosing the identity of the other institution and providing contact information for the other institution or a link to the other institution's website. The Bureau also believes that consumers would benefit from having a clearer understanding of to which institution they are legally obligated under a prepaid account agreement.

Proposed comment 19(a)(4)-1, which mirrors Regulation Z comment 58(b)(4)-1, would provide the following example of how the definition of issuer would apply. Bank X and Bank Y work together to issue prepaid accounts. A consumer that obtains a prepaid account issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states "This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Prepaid Account." The prepaid account issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the prepaid account through a link on Bank Y's website and the cards prominently feature the Bank Y logo on the front of the card.

Proposed comment 19(a)(4)-2, which mirrors Regulation Z comment 58(b)(4)-2, would explain that while an issuer has a legal obligation to comply with the requirements of proposed § 1005.19, it generally may use a third-party service provider to satisfy its obligations under proposed § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the entity with which it partners to issue prepaid accounts to fulfill the requirements of proposed § 1005.19 on the issuer's behalf. For example, Program Manager and Bank work together to issue prepaid accounts. Under the proposed § 1005.19(a)(4) definition, Bank is the prepaid account issuer for purposes of proposed § 1005.19. However, Program Manager services the prepaid accounts, including mailing account opening materials and periodic statements to consumers. While Bank is responsible for ensuring compliance with proposed § 1005.19, Bank may arrange for Program Manager (or another appropriate third-party service provider) to submit prepaid account agreements to the

Bureau under proposed § 1005.19 on Bank's behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

Proposed comment 19(a)(4)-3, which mirrors Regulation Z comment 58(b)(4)-3.i, would note that, as explained in proposed comment 19(c)-2, if an issuer provides consumers with access to specific information about their individual accounts, such as providing electronic history of consumers' account transactions pursuant to § 1005.18(c)(1)(ii), through a third-party website, the issuer is deemed to maintain that website for purposes of proposed § 1005.19. Such a website is deemed to be maintained by the issuer for purposes of proposed § 1005.19 even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's website is an example of a third-party website that may be deemed to be maintained by the issuer for purposes of proposed § 1005.19. For example, Program Manager and Bank work together to issue prepaid accounts. Under the proposed § 1005.19(a)(4) definition, Bank is the issuer that issues these prepaid accounts for purposes of proposed § 1005.19. Bank does not maintain a website specifically related to its prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic history of their account transactions, through a website maintained by Program Manager. Program Manager designs the website and owns and maintains the information technology infrastructure that supports the website. The website is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this website, the website is deemed to be maintained by Bank for

purposes of proposed § 1005.19. Bank therefore may comply with proposed § 1005.19(c) or (d)(1)(i) by ensuring that agreements offered to the public are posted on Program Manager's website in accordance with proposed § 1005.19(c) or (d)(1)(i), respectively. Bank need not create and maintain a website branded and held out to the public as belonging to Bank in order to comply with proposed § 1005.19(c) and (d)(1)(i) as long as Bank ensures that Program Manager's website complies with these sections.

The Bureau is not proposing a comment similar to that of Regulation Z comment 58(b)(4)-3.ii which addresses website posting of private label credit card plans, as the Bureau does not believe such a comment is relevant for prepaid accounts, as discussed below.

The Bureau solicits comment on its proposed definition of issuer, whether additional guidance would be helpful, and on whether there are preferable alternative approaches to defining issuer for purposes of proposed § 1005.19. Additionally, the Bureau is aware that some program managers offer prepaid accounts in conjunction with multiple issuers, where the terms of the prepaid account agreements are largely similar. The Bureau also solicits comment on whether submission of a separate agreement for each issuer is the best approach in this situation or whether such agreements should be submitted in some other manner.

19(a)(5) Offers

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

Proposed comment 19(a)(5)-1 would explain that an issuer is deemed to offer a prepaid account agreement to the public even if the issuer solicits applications for or otherwise makes

available prepaid accounts only to a limited group of persons. For example, an issuer may market affinity cards to students and alumni of a particular institution of higher education, 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.

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

19(a)(6) Open Account

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

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

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

19(a)(6)-1 is similar to Regulation Z comment 58(b)(6)-1, with modifications to reflect the terms of proposed § 1005.19(a)(6).

19(a)(7) Prepaid Account

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

The Bureau solicits comment on whether there are any types of prepaid accounts as defined in proposed § 1005.2(b)(3) that should be excluded from the definition of prepaid account for purposes of this section or that should be excluded from certain of the requirements of this section.

The Bureau expects that issuers offering prepaid accounts with overdraft services or other credit features proposed to be governed as credit cards under Regulation Z, as discussed below, would submit to the Bureau pursuant to proposed § 1005.19 both the initial prepaid account agreement (including the disclosures required by proposed § 1005.18(b)(2)(ii)(B) as part of the fee information pursuant to proposed § 1005.19(a)(3)) and the subsequent prepaid account agreement disclosing overdraft or credit terms, and also submit the latter agreement to the Bureau as a credit card agreement pursuant to § 1026.58. The Bureau does not believe this approach would impose significant burden on prepaid account issuers, but nonetheless solicits comment on this approach.

Private Label Credit Cards

The Board defined the term "private label credit card account" in what is now § 1026.58(b)(8)(i) as a credit card account under an open-end (not home secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. The term "private label credit card plan" in § 1026.58(b)(8)(ii) is similarly defined as all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants. Regulation Z contains an exception and other specific provisions tailored specifically to private label credit card accounts and plans. *See, e.g.*, § 1026.58(b)(8), (c)(6); comments 58(b)(8)-1 through -4; comments 58(c)(6)-1 through -6; and comment 58(d)-3.

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

19(b) Submission of Agreements to the Bureau

Proposed § 1005.19(b) would require each issuer to electronically submit to the Bureau prepaid account agreements offered by the issuer on a quarterly basis. The Bureau will post the prepaid account agreements it receives on its website pursuant to proposed § 1005.19(b)(7), discussed below.

19(b)(1) Quarterly Submissions

The Bureau is proposing § 1005.19(b)(1) to require issuers to make quarterly submissions of prepaid account agreements to the Bureau, in the form and manner specified by the Bureau. Such quarterly submissions would be required to be sent to the Bureau no later than the first

business day on or after January 31, April 30, July 31, and October 31 of each year. Proposed comment 19(b)(1)-1 would refer to Regulation Z comment 58(c)(1)-1 for additional guidance as to the quarterly submission timing requirement.

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

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

Second, the quarterly submission must contain the prepaid account agreements that the issuer offered to the public as of the last business day of the preceding calendar quarter that the issuer has not previously submitted to the Bureau.

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

Finally, the quarterly submission must contain notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing, as described in proposed § 1005.19(b)(3), (4)(iii), and (5)(iii) discussed below.

Proposed comment 19(b)(1)-2.i would explain that 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; and (C) ceasing to offer an agreement previously submitted to the Bureau. Proposed comment 19(b)(1)-2.ii would refer to Regulation Z comment 58(c)(1)-2.ii for additional guidance as to when a quarterly submission is not required.

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

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

Proposed § 1005.19(b) would require submission to the Bureau of agreements for all prepaid accounts offered to the public, unless one or more of the exceptions discussed below are met for withdrawn agreements (proposed § 1005.19(b)(3)), issuers that qualify for the de minimis exception (proposed § 1005.19(b)(4)), or agreements offered as part of a product test (proposed § 1005.19(b)(5)). The Bureau solicits comment, however, on whether it should instead require submission of agreements for all open prepaid accounts (rather than only for agreements that are currently offered to the public), unless the de minimis or product testing exceptions are met. The Bureau believes that, in many instances, when a prepaid account issuer decides to cease offering a specific prepaid account program to the public, it also closes all existing accounts under that program after a period of time. The Bureau requests comment on whether this practice is widespread, or whether prepaid account issuers may have large numbers of open prepaid accounts under programs that are no longer offered to the public. If there are such programs, the Bureau believes there may be benefits to consumers in being able to locate agreements for such programs via the Bureau's website even if those programs are no longer being offered to the public.

In addition, the Bureau solicits comment on whether submission of agreements on a quarterly basis is appropriate, or whether a shorter period, or a longer period such as semi-annually or annually, should be used. The Bureau also solicits comment on whether, alternatively, it should require issuers to submit revised agreements whenever agreements are revised, and whether such a requirement would impose a lower burden on issuers than would a set submission schedule.

As discussed above, proposed § 1005.19(b)(1) would require quarterly submission of agreements for all prepaid accounts offered to the public, unless one or more exceptions are met

and proposed comment 19(b)(1)-3 would explain an issuer is permitted to submit a complete, updated set of the prepaid account agreements each quarter. The Bureau solicits comment on whether, alternatively, it should instead require issuers to resubmit all agreements on a quarterly (or other) basis.

19(b)(2) Amended Agreements

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

Proposed § 1005.19(b)(2) would also require that if a prepaid account agreement that previously has been submitted to the Bureau is amended, and the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. Proposed comment 19(b)(2)-2 would further explain that the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective and would refer to Regulation Z comment 58(c)(3)-2 for additional guidance regarding the submission of amended agreements. Proposed comment 19(b)(2)-3 would reiterate that agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau and would refer to

Regulation Z comment 58(c)(3)-3 for additional guidance on agreements that have been amended but are no longer offered to the public.

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

The Bureau believes that permitting issuers to submit change-in-terms notices or riders containing amendments or revisions would make it difficult to determine a prepaid account's current fees and terms. Consumers could be required to sift through change-in-terms notices and riders in an attempt to assemble a coherent picture of the terms currently offered. The Bureau believes that issuers are better placed than consumers to assemble this information and that prepaid issuers customarily incorporate revised terms into their prepaid account agreements on a regular basis rather than only issue separate riders or notices.

The Bureau solicits comment on whether it should require that other specific information be submitted regarding the prepaid account program or programs to which a specific agreement applies. For example, for payroll card accounts, the Bureau could require submission of the name of each employer that offers a payroll card account under a specific agreement, to assist consumers in identifying on the Bureau's or the issuer's website the agreement to which their payroll card account is subject.

The Bureau also seeks comment on the possible format or formats in which it might require issuers to submit prepaid account agreements. For example, proposed § 1005.19(c)(4), discussed below, would require issuers to post agreements on their websites in any electronic format that is readily usable by the general public. The Bureau requests comment on whether it should adopt a similar standard for agreements that are provided to it pursuant to proposed § 1005.19(b), or whether it should instead (or additionally) require issuers to provide agreements (or a portion of the agreement, such as the long form disclosure) using, for example, a machine-readable text format such as JSON, XML, or similar format that could be used by the Bureau or third parties to more easily create comparison shopping tools. *See* proposed comment 18(b)(3)(i)(B)-3 (discussing machine-readable text).

The Bureau expects to provide additional details regarding the electronic submission process in connection with the release of its final rule on this subject. Issuers will have no submission obligations until the Bureau has issued technical specifications addressing the form and manner for submission of agreements. The Bureau intends for the streamlined electronic submission process to be operational before proposed § 1005.19(b) becomes effective.

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

19(b)(3) Withdrawal of Agreements

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

With respect to credit cards, the Board found that the number of credit card agreements currently in effect but no longer offered to the public was extremely large, and thus providing such agreements to the Board would have posed a significant burden on industry as well as diluted the active agreements posted on the Board's website to such an extent that they might no longer be useful to consumers.[314] The Bureau does not believe that prepaid issuers have open prepaid accounts subject to agreements no longer offered to the public the same way that credit card issuers do. However, the Bureau believes that the primary benefit of making prepaid account agreements available on the Bureau's website would be to assist consumers in comparing prepaid account agreements offered by various issuers when shopping for a new prepaid account. Including agreements that are no longer offered to the public would not facilitate comparison shopping by consumers because consumers could not obtain the accounts

[314] 74 FR 54124, 54189 (Oct. 21, 2009).

subject to these agreements. Thus, the Bureau is proposing that an issuer only submit to the Bureau under proposed § 1005.19(b) those agreements that the issuer currently offers to the public.

19(b)(4) De Minimis Exception

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

For Regulation Z, the Board was not aware of a way to define a "credit card plan" that would not divide issuers' portfolios into such small units that large numbers of credit card agreements could fall under the de minimis exception.[315] The Board therefore established a de minimis exception based on an issuer's total number of open accounts. § 1026.58(c)(5). The Bureau believes that the same issues apply in attempting to define a "prepaid account program" for purposes of a de minimis threshold, and therefore similarly proposes to adopt a de minimis threshold that applies to all of an issuer's prepaid programs, rather than on a program-by-program basis.

The Bureau is proposing to use a lower de minimis threshold of 3,000 open prepaid accounts, in place of the 10,000 open accounts threshold used in Regulation Z. The prepaid accounts market is smaller than the credit card market (based on number of open accounts) and

[315] 74 FR 54124, 54191 (Oct. 21, 2009).

there are some indications that smaller issuers (*i.e.*, with small numbers of open accounts rather than small based on entity size) may account for more of the prepaid market than do smaller issuers in the credit card market. The Bureau seeks to create a de minimis threshold that would exempt a similar portion of open prepaid accounts from this requirement as are exempted by the current analogous requirement for credit cards. However, the Bureau lacks specific data that would permit it to accurately determine a comparable threshold for prepaid accounts.

Public data indicate that none of the top 100 Visa and MasterCard credit card issuers (ranked by dollar amount of outstandings, and which covers both consumer and commercial credit cards) come close to falling below the 10,000 Regulation Z de minimis threshold, even as those issuers (when combined with Discover and American Express, which are the two largest U.S. issuers that are not MasterCard or Visa issuers) amount to more than 92 percent of total general purpose credit card loans outstanding.[316] The smallest credit card issuers in this top-100 list, based on total accounts and total active accounts, exceed the de minimis threshold by a factor of between two (for active accounts) and nearly four (for total accounts).

In comparison, the same public source indicates that three of the top 50 Visa and MasterCard prepaid account issuers would fall below a 10,000 threshold, and one of these is right at the proposed 3,000 threshold.[317] Furthermore, the data in this report include a number of types of other prepaid products beyond commercial cards that are outside the proposed definition

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

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

of prepaid account, such as consumer gift, healthcare, and rebates/rewards, creating the likelihood that additional top-50 prepaid issuers could fall below a de minimis threshold of 10,000 open prepaid accounts.[318] Although it is not straightforward to calculate exactly how much of the market these top-50 prepaid issuers represent, available indications are that it is significantly below the 92 percent accounted for by the top-100 credit card issuers.[319]

The Bureau solicits comment on its proposed adoption of a 3,000 open accounts threshold for the de minimis exception. In addition, the Bureau recognizes that the proposed de minimis exception would not alleviate the administrative burden on large issuers of submitting agreements for prepaid account programs with a very small number of open accounts. The Bureau solicits comment on whether it should create a de minimis exception applicable to a prepaid account program offered by an issuer of any size and, if so, how the Bureau should define "prepaid account program" for purposes of such an exception.

Proposed comment 19(b)(4)-1 would explain that the de minimis exception in proposed § 1005.19(b)(4) is distinct from the product testing exception in proposed § 1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the

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

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

financial institution's total number of open accounts. Proposed comment 19(b)(4)-2 would refer to Regulation Z comment 58(c)(5)-2 for additional guidance on the de minimis exception.

Proposed § 1005.19(b)(4)(ii) would state that if an issuer that previously qualified for the de minimis exception ceases to qualify, the issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify. Proposed comment 19(b)(4)-3 would refer to Regulation Z comment 58(c)(5)-3 for additional guidance on the date for determining whether an issuer qualifies for the de minimis exception. Proposed comment 19(b)(4)-4 would refer to Regulation Z comment 58(c)(5)-4 for additional guidance on the date for determining whether an issuer ceases to qualify for the de minimis exception.

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

Proposed § 1005.19(b)(4) mirrors the Regulation Z provisions regarding the de minimis exception in § 1026.58(c)(5), except for the lower proposed de minimis threshold figure. Proposed comments 19(b)(4)-1 to -5 mirror Regulation Z comments 58(c)(5)-1 to -5, although proposed comments 19(b)(1)-2 to -5 have been shortened to cross-reference the parallel comments in Regulation Z for specific examples regarding the de minimis exception as the Bureau intends that these provisions would function the same for prepaid accounts as they do for credit card accounts. In addition, the references to the private label credit card exception in

Regulation Z comment 58(c)(5)-1 have been removed as the Bureau does not believe that exception is relevant in the prepaid card context, as discussed above.

19(b)(5) Product Testing Exception

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

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

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

The Bureau believes that the administrative burden on issuers of preparing and submitting to the Bureau agreements used for a small number of prepaid accounts in connection with a product test by an issuer outweighs the benefit of increased transparency of including these agreements on the Bureau's website. The Bureau understands that issuers often test new prepaid account strategies and products by offering prepaid accounts to discrete, targeted groups

of consumers for a limited time. Posting these agreements on the Bureau's and issuers' websites would not facilitate comparison shopping by consumers, as these terms are offered only to a limited group of consumers for a short period of time. Including these agreements could mislead consumers into believing that these terms are available more generally. In addition, posting these agreements could make issuer testing strategies transparent to competitors.

The Bureau seeks comment on whether it should impose a time limit on how long an issuer can avail itself of the product testing exception, and if so, what that time limit might be, or whether the Bureau should adopt other conditions on use of the product testing exception. The Bureau is concerned about possible circumvention of the proposed requirements in § 1005.19(b) via the product testing exception. For example, the Bureau is concerned about the possibility that issuers might deem small payroll card account programs part of a product test, even when all or substantially all of a particular employer's employees are enrolled in the payroll card account program. The Bureau seeks comment on whether it should specify that if all, or substantially all, of a company's employees are enrolled in a payroll card account program (excluding programs for the employees of the issuer or a service provider to the issuer, such as a program manager), that program does not qualify for the product testing exception.

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

Proposed § 1005.19(b)(6) would set forth the form and content requirements for prepaid account agreements submitted to the Bureau.

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

The Bureau is proposing § 1005.19(b)(6)(i) to provide that each prepaid account agreement must contain the provisions of the agreement and the fee information in effect as of the last business day of the preceding calendar quarter. Proposed comment 19(b)(6)-1 would

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

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

Proposed § 1005.19(b)(6)(i) generally mirrors the Regulation Z provisions in § 1026.58(c)(8)(i) regarding the form and content of agreements that would be submitted to the Bureau. This paragraph excludes, however, two additional items listed in § 1026.58(c)(8)(i)(C) that are not deemed to be part of a credit card agreement – ancillary agreements between the

issuer and the consumer, such as debt cancellation contracts or debt suspension agreements, and offers for credit insurance or other optional products and other similar advertisement – because the Bureau does not believe these items are relevant in the prepaid account context. Proposed § 1005.19(b)(6)(i) is not intended to provide an exhaustive list of the ancillary State and Federal law disclosures that are not deemed to be part of an agreement under proposed § 1005.19. As indicated by the use of the phrase "such as," the listed disclosures are merely examples of "ancillary disclosures required by Federal or State law." The Bureau does not believe it is feasible to include in this paragraph a comprehensive list of all such disclosures, as such a list would be extensive and would change as State and Federal laws and regulations are amended. The Bureau notes that an issuer would not be prohibited by this or any other provision of proposed § 1005.19 from choosing to include these items in submitted agreements.

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

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

Proposed § 1005.19(b)(6)(ii) deviates from the provisions governing pricing information in § 1026.58(c)(8)(ii) in that the proposed language permits, but does not require, prepaid account fee information to be provided in an addendum to the prepaid account agreement. The Bureau requests comment on whether it should require, rather than permit, prepaid account fee information in an addendum to the agreement and whether such a requirement might aid consumers in more easily locating fee information in prepaid account agreements.

Proposed § 1005.19(b)(6)(ii) also omits the provisions contained in § 1026.58(c)(8)(ii)(B) and (C) that address how to disclose pricing information that varies from one cardholder to another (such as annual percentage rates) and how to disclose variable rates and margins. Because prepaid account fees and terms currently do not vary between consumers based on creditworthiness or other factors in the same way that credit card account pricing and other terms do, the Bureau does not believe these provisions are either applicable or necessary with respect to prepaid account agreements. The Bureau likewise has not proposed an equivalent to § 1026.58(c)(8)(iii) which allows for an optional variable terms addendum that allows provisions other than those related to pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness, State of residence or other factors to be set forth in a single addendum separate from the pricing information addendum. The Bureau has likewise not proposed a comment equivalent to that of 58(c)(8)-2 regarding pricing information, nor that of 58(c)(8)-4 regarding the optional variable terms addendum. The Bureau solicits comment on whether, in light of the revisions proposed herein regarding credit accessed by prepaid accounts, it should incorporate provisions similar to § 1026.58(c)(8)(ii)(B), (8)(ii)(C), (8)(iii) or comments 58(c)(8)-2 or 58(c)(8)-4 into proposed § 1005.19.

With credit cards, issuers offer a range of terms and conditions and issuers may make those terms and conditions available in a variety of different combinations, particularly with respect to items included in the pricing information. In Regulation Z, pricing information is required to be set out in a separate pricing information addendum, regardless of whether pricing information is also contained in the main text of the agreement. The Board concluded that it could be difficult for consumers to find pricing information if it is integrated into the text of the credit card agreement. The Board believed that requiring pricing information to be attached as a

separate addendum would ensure that this information is easily accessible to consumers.[320] The Bureau does not believe that prepaid account agreements vary in the same manner. The Bureau also believes that if prepaid account agreements contain the long form fee disclosure required by proposed § 1005.18(b)(2)(ii) (*see* Sample Form A-10(e)), consumers would be able to easily locate such fee information within a prepaid account agreement and to compare fee information across agreements.

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

[320] 75 FR 7658, 7769 (Feb. 22, 2010).

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

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

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

As discussed previously, the Bureau believes that permitting issuers to submit agreements that include change-in-terms notices or riders containing amendments and revisions would be confusing for consumers and would greatly lessen the usefulness of the agreements posted on the Bureau's website. In addition, the Bureau believes that prepaid account issuers customarily incorporate revised terms into their prepaid account agreements on a regular basis.

The Board believed that there could potentially be significant burden on issuers for updating credit card agreements following changes in terms because of the potential variety in terms offered under a single agreement.[321] The Bureau does not believe a similar burden exists for prepaid account agreements because a single prepaid account agreement would not contain a variety of variable terms predicated on the consumer's credit worthiness or other factors. In addition, the Bureau does not believe that prepaid account issuers modify the terms of prepaid account agreements as frequently as credit card issuers do. The Bureau nonetheless seeks comment on this aspect of the proposal.

19(b)(7) Bureau Posting of Prepaid Account Agreements

The Bureau is proposing § 1005.19(b)(7) to provide that the Bureau shall receive prepaid account agreements submitted by prepaid account issuers pursuant to proposed § 1005.19(b), and shall post such agreements on a publicly-available website established and maintained by the Bureau. There is no equivalent to proposed § 1005.19(b)(7) in § 1026.58 as the Bureau's posting of credit card agreements it receives is directed by TILA section 122(d). 15 U.S.C. 1632(d).

19(c) Posting of Agreements Offered to the Public

The Bureau is proposing § 1005.19(c) to require an issuer to post and maintain on its publicly available website the prepaid account agreements that the issuer would be required to submit to the Bureau under proposed § 1005.19(b). Agreements posted pursuant to proposed § 1005.19(c) must conform to the form and content requirements for agreements submitted to the Bureau specified in proposed § 1005.19(b)(6)(i)(B) through (D) and may be posted in any electronic format that is readily usable by the general public. Agreements posted pursuant to

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

proposed § 1005.19(c) must be accurate and updated whenever changes are made. Agreements must be placed in a location that is prominent and readily accessible by the public and must be accessible without submission of personally identifiable information.

Section 1026.58(d)(1) requires credit card issuers to update the agreements posted on their websites at least as frequently as the quarterly schedule required for submission of agreements to the Bureau, but permits an issuer to update its agreements more frequently if it so chooses. For Regulation Z, the Board considered a consumer group comment requesting that the online agreement be updated within a specific period of time no greater than 72 hours. The Board declined to adopt such a requirement because it believed that the burden to card issuers of updating agreements in such a short time would outweigh the benefit. In addition, the Board noted that if a consumer applies or is solicited for a credit card, the consumer will receive the updated disclosure under existing rules in Regulation Z subpart B.[322] The Bureau believes that prepaid account issuers generally update their agreements posted online as changes are made. The Bureau does not believe that prepaid account issuers face the same burdens as credit card issuers in updating prepaid account agreements posted online because the terms of such agreements do not vary in the same manner as credit card agreement terms, which may offer a variety of rates and fees depending on the creditworthiness of the consumer. Thus, for prepaid account agreements, the Bureau is proposing in § 1005.19(c)(3) that prepaid account agreements posted only be accurate and that issuers update their agreements whenever changes are made. The Bureau seeks comment on whether this portion of the proposal aligns with current industry

[322] 75 FR 7658, 7772 (Feb. 22, 2010).

practice and whether the Bureau should nonetheless specify a specific timeframe for updating prepaid account agreements posted online.

Proposed comment 19(c)-1 would explain that an issuer's obligation to post and maintain prepaid account agreements on its website pursuant to proposed § 1005.19(c) is distinct from that of § 1005.7, which requires an issuer to provide certain disclosures at the time a consumer contracts for an 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 proposed § 1005.18(b)(2)(ii), which would require 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 website. If, for example, an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under proposed § 1005.19(b)(4), the issuer is not required to post and maintain any agreements on its website under proposed § 1005.19(c). The issuer would still be required to provide each individual consumer with access to his or her specific prepaid account agreement under proposed § 1005.19(d), discussed below, by posting and maintaining the agreement on the issuer's website or by providing a copy of the agreement upon the consumer's request. The issuer may also be required to post the long form disclosure required by proposed § 1005.18(b)(2)(ii) online as well, depending on the methods by which the issuer offers prepaid accounts to consumers.

Proposed comment 19(c)-2 would explain that if an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party website, the issuer is considered to maintain that

website for purposes of proposed § 1005.19. Such a third-party website is deemed to be maintained by the issuer for purposes of proposed § 1005.19(c) even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party website can comply with proposed § 1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party website in accordance with proposed § 1005.19(c).

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

19(d) Agreements for All Open Accounts

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

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

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

The Bureau does not believe it would be appropriate to apply the de minimis exception, the product testing exception, or the exception for accounts not currently offered to the public to the requirement that issuers provide consumers with access to their specific prepaid account agreement through the issuer's website. In addition, the Bureau believes that, for the reasons discussed above, posting prepaid account agreements that are not currently offered to the public on the Bureau's website would not be beneficial to consumers. However, the Bureau believes that the benefit of increased transparency of providing an individual cardholder access to his or her specific prepaid account agreement is substantial regardless of whether the cardholder's agreement continues to be offered by the issuer. The Bureau believes that this benefit outweighs the administrative burden on issuers of providing such access, and the Bureau therefore is not proposing to exempt agreements that are not offered to the public from the requirements of proposed § 1005.19(d)(1). Similarly, the proposal requires that prepaid account issuers with fewer than 3,000 open prepaid accounts would not be required to submit agreements to the Bureau. However, the Bureau believes that the benefit of increased transparency associated with providing an individual cardholder with access to his or her specific prepaid account agreement is substantial regardless of the number of the issuer's open accounts. The Bureau believes that this benefit of increased transparency for consumers outweighs the administrative burden on issuers of providing such access, and the Bureau therefore is not proposing to apply the de minimis exception to the requirements in proposed § 1005.19(d)(1).

The Board believed that the administrative burden associated with posting each cardholder's credit card agreement on the issuer's website might be substantial for some issuers, particularly smaller institutions with limited information technology resources, and thus gave issuers the option of providing copies of agreements in response to cardholders' requests. The

ability to provide agreements in response to a request made via telephone or website would ensure that cardholders still be able to obtain copies of their credit card agreements promptly.[323]

The Bureau does not know whether similar challenges are faced by prepaid account issuers, particularly for issuers that would qualify for the de minimis or product testing exceptions. The Bureau is thus proposing to similarly allow prepaid account issuers to satisfy the requirements of proposed § 1005.19(d)(1) by providing a copy of a consumer's prepaid account agreement to the consumer upon the consumer's request. The Bureau requests comment on whether this allowance is necessary or if prepaid account issuers should all be required to post agreements on their websites. The Bureau also requests comment on whether issuers should be required by this regulation to provide copies of prepaid account agreements to all consumers upon request, regardless of whether the agreements are also posted online.

Section 1026.58(e)(1) requires a credit card issuer to accept cardholders' requests for copies of their credit card agreements via the issuer's website as well as by telephone. The Bureau believes that prepaid account issuers will generally post prepaid account agreements to their websites pursuant to proposed § 1005.19(d)(1)(i), even if the agreement is posted in a location that is only accessible to prepaid account consumers after they have logged in to their accounts. The Bureau thus expects that few, if any, issuers would be required to provide agreements in response to a consumer's request pursuant to proposed § 1005.19(d)(1)(ii). The Bureau therefore does not believe it is necessary to require issuers to receive requests via the issuers' websites, although issuers could certainly allow consumers to make requests in that manner if they so choose.

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

Section 1026.58(e)(1)(ii) also requires credit card issuers to allow cardholders to request copies of their agreements by calling a readily available telephone line the number for which is displayed on the issuer's website and clearly identified as to its purpose. Regulation Z comment 58(e)-2 provides additional clarification as to what is required to satisfy the "readily available telephone line" standard. Because the Bureau is proposing to require prepaid account issuers to provide telephone numbers for a variety of other purposes,[324] the Bureau does not believe it is necessary to provide the same level of specificity regarding the telephone number to be used to request a copy of a prepaid account agreement pursuant to proposed § 1005.19(d)(1)(ii) nor to provide a comment equivalent to that of Regulation Z comment 58(e)-2.

Section 1026.58(e)(1) also allows a credit card issuer, in response to such a cardholder's request for a copy of the cardholder's agreement, to provide that agreement to the cardholder electronically, such as by posting a copy of the agreement to its website in a location that is accessible by the cardholder. Because the Bureau expects that few, if any, issuers would be required to provide agreements upon request pursuant to proposed § 1005.19(d)(1)(ii), as discussed above, it does not appear to be necessary or useful to allow an issuer to post a prepaid account agreement to a consumer's online account in response to a consumer's request. The Bureau is thus not proposing to permit issuers to provide copies of prepaid account agreements electronically in response to consumers' requests, except as permitted in proposed § 1005.19(d)(2)(vi), discussed below. In addition, a provision corresponding to § 1026.58(e)(2), containing a special provision for issuers without interactive websites, has not been included in proposed § 1005.19, as the Bureau is not aware of any prepaid issuers that do not maintain

[324] S*ee, e.g.*, proposed § 1005.18(b)(7) (requiring disclosure of a telephone number on the prepaid account access device, to be used to contact the financial institution about the prepaid account).

websites (or do not use a third-party service provider to maintain such a website) from which consumers can access specific information about their individual prepaid accounts and thus does not believe such a provision is necessary for prepaid accounts. The Bureau is not proposing an equivalent to Regulation Z comment 58(e)-3, which provides examples regarding the deadline for providing copies of requested agreements, as the Bureau does not believe such examples are necessary given the more limited ways that issuers are permitted to respond to requests under proposed § 1005.19(d)(1)(ii).

Section 1026.58(e)(ii) provides that the card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request. The Board originally proposed requiring issuers to respond to such a request within 10 business days, but some commenters contended that 10 business days would not provide sufficient time to respond to a request. The commenters noted that they would be required to integrate changes in terms into the agreement and providing pricing information, which, particularly for older agreements that may have had many changes in terms over the years, could require more time. The Board believed it would be reasonable to provide more time for an issuer to respond to a cardholder's request for a copy of the credit card agreement, and thus allowed for 30 days in the final rule.[325]

The Bureau does not believe that issuers would face the same challenges in integrating changes in terms into prepaid account agreements in the same manner as with credit card agreements. The Bureau believes that requiring issuers to provide prepaid account agreements within five business days gives issuers adequate time to respond to requests while providing

[325] 75 FR 7658, 7773 (Feb. 22, 2010).

consumers with prompt access to their prepaid account agreements. The Bureau solicits comment regarding whether this period should be shorter or longer.

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

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

Proposed § 1005.19(d)(2)(iv) would state that agreements posted or otherwise provided pursuant to proposed § 1005.19(d) must set forth the specific provisions and fee information applicable to the particular consumer. Proposed § 1005.19(d)(2)(v) would provide that agreements posted pursuant to proposed § 1005.19(d)(1)(i) must be accurate and updated whenever changes are made. Agreements provided upon consumer request pursuant to proposed § 1005.19 (d)(1)(ii) must be accurate as of the date the agreement is mailed or electronically

delivered to the consumer. Proposed § 1005.19(d)(2)(vi) would state that agreements provided upon consumer request pursuant to proposed § 1005.19(d)(1)(ii) must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

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

19(e) E-Sign Act Requirements

The Bureau is proposing § 1005.19(e) to state that, except as otherwise provided in proposed § 1005.19, issuers may provide prepaid account agreements in electronic form under

proposed § 1005.19(c) and (d) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because TILA section 122(d) specifies that a credit card issuer must provide access to cardholder agreements on the issuer's website, the Board did not believe that the requirements of the E-Sign Act applied to the regulations now contained at § 1026.58.[326] The Bureau is proposing § 1005.19(e) for ease of administration of these requirements and for consistency with § 1026.58(f).

The Bureau requests comment on proposed § 1005.19 generally, including whether it should require submission and posting of agreements at all and whether the procedures proposed herein are appropriate.

Other Regulation E Subpart A Provisions Applicable to Prepaid Accounts

Because the Bureau is proposing to bring prepaid accounts within the definition of account generally under Regulation E, the requirements of Regulation E would apply to prepaid accounts except as modified or supplemented by this proposal. Except as otherwise addressed by this proposal, the Bureau envisions that such provisions would extend to prepaid accounts in the same manner they currently apply to payroll card accounts. Such requirements include, but are not limited to, § 1005.5 regarding the issuance of access devices, § 1005.8(a) regarding change in terms notices, § 1005.10(a) through (d) regarding preauthorized transfers to and from consumers' accounts, and § 1005.14 regarding electronic fund transfer service providers that do not hold consumers' accounts.

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

The Bureau requests comment generally on the extension of these and other provisions in Regulation E to prepaid accounts. The Bureau also seeks comment on whether any of these or other provisions in Regulation E provisions warrant specific modification for prepaid accounts.

Appendix A-5 Model Clauses for Government Benefit Accounts (§ 1005.15(e)(1) and (2))

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

The Bureau is similarly proposing to revise paragraph (b) of appendix A-5, which sets forth model clauses regarding disclosure of error resolution procedures for government agencies that provide alternative means of obtaining account information. The Bureau is proposing to

revise the section citation in the paragraph heading, and to revise the first paragraph of paragraph (b) to correspond with the proposed revised language for prepaid accounts in paragraph (b) of appendix A-7. Specifically, the Bureau proposes to remove the sentence stating that the agency must hear from the consumer no later than 60 days after the consumer learns of the error, and to add language stating that the agency must allow the consumer to report an error until 60 days after the earlier of the date the consumer electronically accesses his or her account, if the error could be viewed in the electronic history, or the date the agency sent the first written history on which the error appeared. The paragraph would also state that the consumer may request a written transaction history at any time by calling or writing, or optionally by contacting the consumer's caseworker.

The Bureau requests comment on these proposed modifications to appendix A-5 and whether any additional modifications should be made. In particular, the Bureau solicits comment on whether it is necessary to retain the optional bracketed language that currently appears in paragraph (a) of appendix A-5, and that is mirrored in paragraph (b), directing consumers to request a written summary of transactional history by contacting the consumer's caseworker. The Bureau is particularly interested in whether any government benefit account programs use this optional language in their disclosures and whether inclusion of such language reduces consumer confidence in government benefit accounts or the privacy of consumers' account histories.

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

Existing appendix A-7 provides model clauses for financial institutions that offer payroll card accounts; these clauses reflect the modifications made by the Payroll Card Rule to certain

Regulation E provisions in existing § 1005.18. To reflect the proposed expansion of § 1005.18 to cover prepaid accounts, the Bureau is proposing to revise the heading for appendix A-7 as well as the heading for paragraph (a) of appendix A-7. The Bureau is also proposing to revise paragraph (a) of appendix A-7, which explains to consumers how to obtain account information for payroll card accounts, to change the term payroll card account to prepaid account, and to provide that at least 18 months of electronic and written account transaction history is available to the consumer, rather than 60 days, as proposed in § 1005.18(c)(1)(ii) and (iii). The Bureau also proposes to add a sentence at the end of paragraph (a) of appendix A-7 to inform consumers that they cannot be charged for requesting such written account transaction history, unless requests are made more than once per month. As discussed above, the Bureau is proposing to allow financial institutions to assess a fee or charge for subsequent requests for written account information made in a single calendar month, in proposed comment 18(c)-3.i.

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

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

This model language would state that it is important for consumers to register their prepaid accounts as soon as possible and that until a consumer registers his or her prepaid account, the financial institution is not required to research or resolve errors regarding the consumer's account. To register an account, the consumer is directed to a website and telephone number. The model language explains that the financial institution will ask for identifying information about the consumer (including full name, address, date of birth, and Social Security Number or government-issued identification number), so that it can verify the consumer's identity. Once the financial institution has done so, it will address the consumer's complaint or question as described earlier in appendix A-7.[327]

Appendix A-10 Model Forms and Sample Forms for Financial Institutions Offering Prepaid Accounts (§ 1005.15(c)(2) and § 1005.18(b))

The Bureau is proposing Model Forms A-10(a) through (d) and (f) and Sample Forms A-10(e) and (g) in appendix A in relation to the disclosure requirements set forth in proposed § 1005.15(c)(2) and proposed § 1005.18(b). Proposed Model Form A-10(a)would set forth the short form disclosure for government benefit accounts as described in proposed § 1005.15(c)(2). Proposed Model Form A-10(b) would set forth the short form disclosure for payroll card accounts as described in proposed § 1005.18(b)(2)(i)(A). Proposed Model Form A-10(c) would set forth the short form disclosure for prepaid accounts that could offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(*9*). Proposed Model Form A-10(d) would set forth the short form disclosure for prepaid accounts that would not offer an overdraft service or other credit feature as described in proposed § 1005.18(b)(2)(i)(B)(*9*).

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

Proposed Model Form A-10(f) would set forth the short form disclosure for prepaid accounts that offer multiple service plans and choose to disclose them on one short form disclosure as described in proposed § 1005.18(b)(3)(iii)(B)(*1*).

Proposed Sample Form A-10(e) would set forth the long form disclosure for prepaid accounts as described in proposed § 1005.18(b)(3)(iii)(A). Proposed Sample Form A-10(g) would set forth the long form disclosure for prepaid accounts that offer multiple service plans as described in proposed § 1005.18(b)(3)(iii)(B)(*2*).

Subpart B – Requirements for Remittance Transfers

Section 1073 of the Dodd-Frank Act added section 919 to EFTA to establish consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Among other things, EFTA section 919 requires the following protections for covered transactions sent by remittance transfer providers: (i) the provision of disclosures prior to and at the time of payment by the sender of the transfer; (ii) cancellation and refund rights; and (iii) the investigation and remedy of errors by providers. It also establishes liability standards for providers for the acts of their agents. On February 7, 2012, the Bureau published a final rule implementing these provisions largely in new subpart B of Regulation E.[328]

The Remittance Rule only applies to those entities that are remittance transfer providers. A remittance transfer provider is any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. § 1005.30(f). A remittance transfer is the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. § 1005.30(e)(1).

[328] 77 FR 6194 (Feb. 7, 2012). This final rule was subsequently amended. *See* 77 FR 40459 (July 10, 2012), 77 FR 50244 (Aug. 20, 2012), 78 FR 6025 (Jan. 29, 2013), 78 FR 30662 (May 22, 2013), 78 FR 49365 (Aug. 14, 2013), and 79 FR 55970 (Sept. 18, 2014) (collectively, the Remittance Rule).

The term remittance transfer applies regardless of whether the sender holds an account with the provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in § 1005.3(b). The Remittance Rule applies to remittance transfers sent to and from prepaid products. *See generally*, § 1005.30(c) and (e), and comments 30(c)-2.iii, 30(e)-2.ii, 30(e)-3.i.C, and 30(h)(3).

Section 1005.30 Remittance Transfer Definitions

30(g) Sender

The Bureau proposes to make a conforming change to comment 30(g)-3. Currently, the comment contains a reference to an exception from the definition of account for bona fide trust accounts. As discussed earlier in this section-by-section analysis, the Bureau is proposing to renumber the exception for bona fide trust accounts as § 1005.2(b)(2). Accordingly, the Bureau is proposing conforming change to comment 30(g)-3 to reflect the proposed renumbering.

As discussed above, the Remittance Rule applies to remittance transfers sent to and from prepaid products. The Bureau does not intend this proposed rule to alter the applicability of the Remittance Rule to transfers sent to and from prepaid products. At the same time, the Bureau welcomes comment on the proposed rule's potential implications for the Remittance Rule. As discussed in the section-by-section analysis above, with certain exceptions such as payroll card accounts, accounts for the receipt of certain government benefits, and gift cards (or certain other types of limited purpose cards), prepaid products generally have not been covered under current subpart A of Regulation E. In proposing to expand the current definition of account in Regulation E, additional prepaid products such as GPR cards and certain digital wallets would fall within the definition of account under Regulation E. Accordingly, the Bureau seeks

comment on whether additional clarification or guidance is necessary with respect to the Remittance Rule.

Regulation Z

Overview of Bureau's Approach to Its Regulation Z Proposal

In developing this proposal, the Bureau has considered whether and how to regulate credit accessed through a prepaid account. Specifically, the Bureau has considered potential transactions where financial institutions allow consumers to overdraw their prepaid accounts through an overdraft service, a draw from a linked line of credit, or by pushing credit onto a specified prepaid account to cover transactions for which there are insufficient or unavailable funds. As is explained in detail below, the Bureau proposes to treat most credit plans for which finance charges are imposed as "open-end (not-home secured) credit plans" accessed by a "credit card" under Regulation Z, and thus subject to credit card protections. In addition and as is explained above, the Bureau is also proposing to revise provisions in Regulation E regarding compulsory use (proposed § 1005.10(e)(1)) and to adopt other rules specific to prepaid accounts that offer credit features (proposed §§ 1005.12(a) and 1005.18(b)(2)(i)(B)(*9*), (b)(2)(ii)(B) and (g)) to provide consumers with greater control over how they enroll in a credit feature and pay any credit balances associated with their prepaid accounts, and also to prevent evasion of the Regulation Z protections.

In its evaluation of credit features offered in connection with prepaid accounts, the Bureau has carefully considered a variety of information and factors, including existing relevant consumer protection regulations governing overdraft services and a range of credit products subject to Regulation Z; consumers' use of those features to the extent offered in today's market, consumer expectations, and understanding of prepaid accounts and credit features offered in

connection with prepaid accounts (including through discussion in the Bureau's consumer testing); review of comments received from industry, consumers, and consumer advocacy groups in response to the Prepaid ANPR; analysis of data from the Bureau's overdraft research on deposit accounts and other available research; further outreach to industry, consumer advocacy, and other groups; and ongoing market analysis.

The bulk of the feedback the Bureau has received has focused specifically on the permissibility of overdraft services on prepaid accounts. In the Prepaid ANPR, the Bureau noted that while most GPR cards do not offer overdraft features, some do allow cardholders to opt in to an overdraft program in which the issuer may authorize overdrafts and charge an overdraft transaction fee.[329] The Bureau then sought public input on the costs, benefits, and consumer protection issues related to any credit features that financial institutions may offer on GPR cards.

The Bureau received a significant number of comments on the issue of credit features and prepaid accounts. Most industry commenters encouraged the Bureau not to adopt regulations that would limit these credit features. In particular, commenters stated that overdraft for prepaid accounts should function as it does for accounts with linked debit cards – *i.e.*, subject to the current Regulation E opt-in framework for overdraft. Commenters argued that to the extent the Bureau wants to treat prepaid accounts as transaction account substitutes, they should be subject to the same regulatory requirements (and exceptions) as those accounts, including opt-in requirements for overdraft services. One trade association argued that it would be unfair for the Bureau to prohibit overdraft on prepaid cards while such features remain permitted on checking accounts. Some industry commenters argued that their customers want – or even need – access

[329] 77 FR 30923, 30925 (May 24, 2012).

to short-term credit in connection with their GPR cards. Several other trade associations similarly argued that consumers want access to credit features on prepaid cards. They urged the Bureau to ensure that consumers understand such features, and they argued that the Bureau should conform regulations for such products to those that now exist for traditional deposit accounts in Regulations E, Z, and DD.

However, some industry commenters urged the Bureau not to permit credit features in connection with prepaid products. For example, one credit union stated that, in its opinion, only the funds loaded onto a prepaid card should be made available for transactions. A large financial institution similarly stated that, in its opinion, GPR cards should remain "prepaid," without being linked or having access to overdraft services. A community bank stated that it was its practice to urge prepaid card customers who wanted overdraft services to transition into checking accounts, where it had systems in place to deal with the credit risk, and that it would not permit overdrafts on its prepaid products.

Most consumer advocates that commented also urged that the Bureau ban overdraft services in connection with prepaid products, because the overdraft fees and accumulating debt can be harmful. They argued that prepaid consumers are often more vulnerable or do not anticipate having to deal with credit on their prepaid accounts. These commenters explained that prepaid cards are marketed to and used by a variety of vulnerable groups, including low-income consumers, consumers with blemished credit histories, unbanked and underbanked consumers with limited access to traditional accounts, young consumers and students, undereducated consumers, public benefit recipients, and consumers who are trying to control their spending. Many of these vulnerable groups have, historically, struggled with credit products, including overdraft. Additionally, at least one consumer advocacy group commenter urged the Bureau to

subject overdraft services on prepaid accounts to Regulation Z's rules for credit cards. Consumer group commenters further argued that permitting credit features on prepaid cards could eviscerate State payday and usury laws as well as protections for servicemembers, such as the MLA. Consumer advocacy group commenters also argued that application of existing opt-in overdraft rules, which currently apply to deposit accounts and payroll card accounts, would not prevent harm to consumers who use prepaid cards because opt-in does not, in the opinion of the commenters, protect vulnerable consumers from predatory lending. In addition, the consumer advocacy group commenters contended that credit features on prepaid products are unnecessary because less vulnerable consumers who can access credit will still have access to credit cards, deposit accounts that offer overdraft services, lines of credit, and other credit products.

The Bureau also received a number of comments from consumers who use prepaid products currently offering overdraft services. Most of these consumers voiced support for such services, stating that the overdraft fee charged by their prepaid products was less than the overdraft fees charged by banks, allowing them to bridge cash shortfalls between paychecks and fulfill other short-term credit needs. Most participants in the Bureau's consumer testing, however, expressed concern about overdraft programs and explained that they preferred prepaid products because they did not allow them to spend more than what was loaded onto the card.[330]

Since the close of the comment period for the Prepaid ANPR, the Bureau has continued its evaluation of prepaid products and related credit features, received additional feedback on this issue from interested parties, and the Bureau has also collected relevant data. In various forms, parties have submitted studies, additional comment, and other evidence to advocate for different

[330] ICF Report at 6.

approaches to regulating overdraft services and credit features on prepaid accounts. The Bureau has also reviewed data gathered by third parties and reported on by non-profit organizations and other government agencies.

As explained in more detail below, the Bureau has concluded that the most appropriate approach is to propose to treat a broad range of credit features that financial institutions could offer in connection with prepaid accounts as subject to the rules governing credit cards under TILA, EFTA, and their implementing regulations. This includes programs structured as overdraft services; the Bureau is declining to extend existing exemptions under Regulation Z and Regulation E's compulsory use provision for overdraft services on deposit accounts to prepaid accounts. In this overview, the Bureau first addresses the application of Regulation Z's rules for open-end (not home-secured) credit plans and for credit cards to overdraft services and other credit features offered on prepaid accounts. Next, the Bureau discusses the benefits of applying these rules to all credit features offered on prepaid accounts. Finally, the Bureau provides section-by-section analysis of its specific proposed revisions to Regulation Z.

Credit Offered in Connection with Prepaid Cards – Including Overdraft Services – Satisfies TILA's Definition of Open-End Credit

The Bureau believes that a range of credit features offered in connection with prepaid accounts – including those features structured as overdraft services – should be subject to regulation as credit cards under TILA, EFTA, and their implementing regulations. Specifically, the Bureau believes that overdraft lines of credit, overdraft services, and similar credit features offered in connection with a prepaid account satisfy the definitions of (1) credit; (2) open-end (not home-secured) credit plan; and (3) credit cards under TILA and Regulation Z. Although the Board had chosen to exempt overdraft services (but not other forms of credit) offered in

connection with traditional deposit accounts from Regulation Z, the Bureau chooses not to exercise its exception authority to expand further the scope of the existing exemptions to prepaid accounts.

As described above, TILA defines credit broadly as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. 15 U.S.C. 1602(f). Under the statute and Regulation Z, open-end credit exists where there is a plan in which the creditor reasonably contemplates repeated transactions; the creditor may impose a finance charge from time to time on an outstanding unpaid balance, and the credit is generally replenished to the extent that any outstanding balance is repaid. § 1026.2(a)(20). Closed-end credit is credit that does not meet the definition of open-end credit. § 1026.2(a)(10).

The Board subjected overdraft lines of credit in connection with traditional deposit accounts to Regulation Z requirements for open-end credit, but carved overdraft services on traditional deposit accounts out from Regulation Z through operation of the definitions of the terms "creditor" and "finance charge." A creditor is generally defined under Regulation Z to mean a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. *See* § 1026.2(a)(17)(i).[331] In 1969, however, the

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

Board adopted an exclusion to the definition of finance charge for "charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing." *See* § 1026.4(c)(3). Thus, the Board created an exception for financial institutions that offer overdraft services in connection with traditional deposit accounts if they do not agree in writing to pay the items and do not structure the repayment of the credit by written agreement in more than four installments. Under the exception, the fees charged for the overdrafts are not "finance charges" under Regulation Z, and thus a financial institution extending credit is not a "creditor" under Regulation Z because it is not charging a finance charge and is not structuring the repayment of the credit by written agreement in more than four installments. As discussed further below, the Bureau declines to extend this exception to include prepaid accounts. Absent this exception, the Bureau believes that overdraft services, like overdraft lines of credit and similar credit features that could be offered in connection with prepaid accounts, will meet the definitions of credit and open-end credit under TILA and Regulation Z if interest rates, transaction fees, or other types of finance charges are imposed in connection with the credit services.

Finance Charge

The Bureau analyzed whether it was reasonable to interpret "credit" to include when overdrafts are paid in relation to prepaid accounts. The Bureau believes it is because, in accordance with TILA's definition of credit, the payment of an overdraft represents the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. 15 U.S.C. 1602(f).

In its analysis, the Bureau examined whether a fee charged for an overdraft service (or other credit feature on a prepaid product) qualifies as a finance charge. TILA section 106(a)

defines finance charge as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. 15 U.S.C. 1605(a). The plain language of the definition of credit in TILA section 103(e) covers situations in which a consumer makes a transaction which exceeds the funds in the consumer's account, and the bank elects to cover the transaction by advancing funds to the consumer which the consumer must repay. 15 U.S.C. 1602(f). This statutory language does not exempt overdraft services, including those that may be offered in connection with prepaid accounts.[332] The Bureau believes that fees levied for overdraft services or other credit features on prepaid accounts – such as interest charges, transaction charges, service charges, and annual or other periodic fees to participate in the credit program – generally represent finance charges. *See* section-by-section analysis of proposed § 1026.4(a), (b)(2), (c)(3) and (c)(4). Regulation Z defines "finance charge" as the cost of consumer credit as a dollar amount. The term includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. § 1026.4(a). The Bureau believes that fees that are levied for overdraft services are thus "finance charges" because they are directly payable by the consumer and imposed directly by the creditor as a condition of the extension of credit, which would be funds advanced to cover the consumer's overdraft.

Open-End (Not Home-Secured) Credit Plan

Having determined that fees for overdraft services and other types of credit products in connection with prepaid accounts can be finance charges, the Bureau then examined the question

[332] *See also* OCC 2001 Guidance; Joint Guidance (noting that overdraft satisfies the definition of "credit" in TILA).

of whether the programs themselves are open-end (not home-secured) credit plans. As discussed below, the Bureau believes that overdraft lines of credit, overdraft services, and similar products that could be offered in connection with prepaid accounts can be regulated by Regulation Z as "open-end credit" where a financial institution routinely extends credit to cover transactions for which there are insufficient funds in the account (even if the institution retains, by contract, the discretion not to pay the transactions) and obligates the consumer contractually to repay the debt, and may impose finance charges from time to time on an outstanding unpaid balance. The Bureau recognizes (as noted above) that a line of credit where there is a written agreement to pay overdrafts and impose finance charges is already covered by Regulation Z as "open-end credit," whether it is associated with a prepaid or checking account; pursuant to this proposal and as discussed further below, overdraft services for prepaid accounts would now be treated similarly to such lines of credit, with certain proposed modifications.

TILA section 103(j) defines an open-end credit plan as "a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance." 15 U.S.C. 1602(j). Regulation Z defines "open-end credit" to mean consumer credit extended by a creditor under a plan in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a "finance charge" from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. Regulation Z explains that for there to be an open-end credit plan, there must first be a plan. Comment 2(a)(20)-2 explains that a plan connotes a contractual arrangement between the creditor and the consumer. For a plan to

be an open-end credit plan, it must then satisfy the three requirements noted above. *See* § 1026.2(a)(20).

The Bureau understands that financial institutions offering automated overdraft services include in their account agreements details about how the overdraft service will operate and information about overdraft fees. These terms and conditions documents explain that consumers using overdraft programs must agree to repay the debt created by an overdraft and the related fee, indicating that a contractual arrangement between the creditor and the consumer exists. Although these agreements typically note that the financial institution retains discretion to authorize or decline any particular overdraft, as a practical matter financial institutions operating automated overdraft programs exercise limited if any discretion in authorizing particular transactions so long as the overdraft transaction is within the overdraft limit that the institution previously established.[333] The Bureau understands that financial institutions have historically argued (in connection with deposit account overdraft services) that an overdraft service is not an open-end credit plan subject to TILA because, in the account agreement, they typically reserve discretion not to pay overdrafts.[334] In practice, the Bureau believes that this discretion is typically limited; automated overdraft systems for prepaid accounts are typically programmed to approve all would-be overdrafts that are within a predetermined credit limit. Furthermore, the Bureau believes that the contractual reservation of discretion is no different from credit card issuers' standard practice of reserving discretion to decline a credit card transaction without prior

[333] As noted above, the nature of such an arrangement also establishes an arrangement between the institution and the consumer to pay certain overdrafts.

[334] Several commenters to the Prepaid ANPR also made this point.

notice, notwithstanding that the transaction is within the credit limit.[335] Thus, the Bureau believes that simply labeling an overdraft service as discretionary is insufficient to negate the existence of a credit plan.

The FDIC reached a similar conclusion in its guidance on automated overdraft payment programs, noting a distinction between ad hoc overdraft services, which typically involve irregular and infrequent occasions on which a bank employee exercises discretion in a specific instance about whether to pay an item (so a customer can avoid an NSF fee that the payee may impose), and "risks posed by automated overdraft payment programs." According to the FDIC guidance, such programs "are established programs [that] are often partially or fully computerized, that are used by institutions to determine whether [NSF] transactions qualify for overdraft coverage based on pre-determined criteria."[336] The Bureau believes the latter formulation is how established prepaid overdraft services function and thus that a plan exists in these cases.

Having determined that a plan exists, the Bureau evaluated whether such a plan satisfies the three prongs necessary to establish the plan as an open-end (not home-secured) credit plan. The first prong asks whether overdraft services, including those offered in connection with prepaid accounts, can be plans under which the creditor reasonably contemplates repeated transactions. Particularly to the extent that prepaid and deposit account overdraft services are automated, the Bureau believes that overdraft programs typically contemplate and approve

[335] Bureau staff reviewed many agreements in the Bureau's database. *See generally* http://www.consumerfinance.gov/credit-cards/agreements/.

[336] FDIC Overdraft Payment Supervisory Guidance at 3.

repeated transactions.[337] Indeed, every prepaid overdraft service that charges a fee of which the Bureau is aware contemplates and approves repeated transactions.

The Bureau then examined the second prong of the definition of "open-end credit" to determine whether the creditor may impose a finance charge from time to time on an outstanding unpaid balance. *See* § 1026.2(a)(20)(ii). As noted above, the Bureau believes that overdraft service fees and charges on other credit features easily meet the general definition of finance charge. With regard to the element focusing on whether a finance charge may be computed and imposed from time to time on an outstanding balance, the Official Interpretations to Regulation Z explain that this provision simply 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 in advance of the usage of the plan. *See* comment 2(a)(20)-4 (explaining that the requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated and that a plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance). For a credit plan where credit is replenishing, an amount financed cannot be calculated for the plan. Such credit plans will meet this element if a finance charge may be imposed on the plan. Indeed, a plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor reserves the right, under the plan, to impose a finance charge from time to time on an outstanding balance. *See* comment 2(a)(20)-4.

[337] As is discussed below, the Bureau intends to exclude overdrafts for which no finance charge as defined in § 1026.4 and no fee described in § 1026.4(c) is charged and repayment is not expected by written agreement in more than four installments.

The Bureau does not anticipate that there will be a specific amount financed for a prepaid overdraft service at the time it is established; instead, credit extensions may be added from time to time to the outstanding balance for the plan, and fees or other finance charges may be imposed from time to time in connection with the usage of the plan, thus satisfying this criterion. To the extent that such a plan involves finance charges but no periodic rate, it may be a charge card, which is specifically subject to coverage under Regulation Z. *See, e.g.*, 1026.2(a)(15)(iii) (defining a "charge card" as "a credit card on an account for which no periodic rate is used to compute a finance charge").

Lastly, the Bureau anticipates that automated overdraft services for prepaid accounts generally will be structured such that the credit line for the plan will generally replenish to the extent that any outstanding balance is repaid, thus satisfying the final prong of the definition of open-end credit, that the amount of credit that may be extended is generally made available to the extent that any outstanding balance is repaid. Comment 2(a)(20)-5 currently provides that this criterion means that the total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. This unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment, but it does not mean that the creditor must establish a specific credit limit for the line of credit or that the credit plan must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness, if permitted by Regulation Z; indeed, the Bureau believes that this is a quite common practice with respect to credit cards. While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset

credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion. The Bureau believes that overdraft services linked to prepaid accounts generally are and will be structured to meet this criterion. Insofar as the Bureau has determined that the three prongs of an open-end credit plan are met, it finds that an overdraft service on a prepaid account is an open-end credit plan much like an overdraft line of credit or other similar products linked to prepaid accounts.

Overdraft Services and Other Credit Features on Prepaid Accounts and TILA's Definition of a Credit Card

Having determined that overdraft services, overdraft lines of credit, or other similar products linked to prepaid accounts can be open-end (not home-secured) credit plans, the Bureau evaluated whether such arrangements involve use of a "credit card" under Regulation Z. TILA section 103(k) defines the term credit card to mean any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. 15 U.S.C. 1602(l). In turn, § 1026.2(a)(15)(i) defines credit card to mean any card, plate, or other single credit device that may be used from time to time to obtain credit.

The Bureau believes that prepaid accounts that access overdraft services, overdraft lines of credit, or similar products generally meet the definition of "credit card" and, absent an exemption, generally would be subject to the rules in Regulation Z applicable to credit cards. As is noted above in the discussion of Regulation E proposed 1005.2(a)(3), the definition of prepaid account includes certain access devices that may not be a physical card. Specifically, the term prepaid account would include cards, codes, or other devices capable of being loaded with funds and usable at a wide variety of unaffiliated merchants or for person-to-person transfers. *See* proposed Regulation E 1005.2(b)(3). Thus, the proposed Regulation E definition would include

physical cards – such as a GPR card – but also would include access devices that are solely online or on a mobile phone. With respect to Regulation Z, the Bureau similarly intends for "card, code, or other device" to apply to the panoply of different access devices in addition to physical cards on which credit may be extended including "hybrid" cards that may function as both a prepaid account and a credit card.

The Bureau proposes not to extend the exclusions for debit cards and account numbers to prepaid accounts. The commentary to the definition of "credit card" explains that a debit card is not a credit card unless there is a credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft. The Board adopted this commentary to exclude bounce protection plans from becoming subject to Regulation Z when they are accessed by a debit card, consistent with the exclusion for overdraft charges from the definition of finance charge where there is no written agreement to extend credit and charge a fee, as described above.[338] With regard to overdraft lines of credit and other open-end (not home-secured) plans where there is an agreement to extend credit, a debit card that can access the credit is a credit card and is subject to the credit card provisions in Regulation Z subpart B that implement the FCBA, such as the no-offset provision. However, the Board used its TILA exception authority to exempt debit cards that access open-end overdraft lines of credit from the Credit CARD Act provisions, generally set forth in subpart G, because it determined that the protections in Regulation E generally apply to debit cards that access an overdraft line of credit. In addition, the Board noted that overdraft lines of credit were not, at that time, in wide use and that creditors

[338] 46 FR 50288, 50293 (Oct. 9, 1981).

issuing such lines of credit generally did not engage in the practices addressed by the Credit CARD Act.[339]

The existing commentary to the definition of "credit card" also excludes an account number (where there is no physical device) from the definition of credit card, 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 Regulation Z. 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 Regulation Z. Relatedly, the commentary explains that a "hybrid" card – a card that accesses both a credit and an asset account (that is, a debit-credit card) – is considered a credit card. *See* comment 2(a)(15)-2.i.B. Thus, there is a scenario in existing Regulation Z when the same number (the number of the debit-credit card) can access both the credit and the asset account.

Rather than expanding this existing patchwork approach, the Bureau is proposing to treat all credit offered on or in connection with a particular prepaid account in the same way (to the extent that the credit plan imposes a finance charge or a fee described in § 1026.4(c) and is not payable in more than four installments) – subject to the specific credit card protections in subparts B and G. As is noted above, in addition to overdraft services, prepaid accounts may also be offered with other types of credit features such as linked lines of credit. Although a line

[339] *See* 75 FR 7657, 7664 (Feb. 22, 2010); *see also* § 1026.2(a)(15)(ii).

of credit accessed by an account number that pushes credit into a checking account would not be considered a credit card under Regulation Z if the account number cannot be used to access an open-end line of credit to purchase goods or services, the Bureau believes it is appropriate to treat all lines of credit linked to prepaid accounts as credit cards when they are linked to a prepaid account.

Relatedly, the Bureau also believes it appropriate to include as credit cards products involving a range of access devices. For example, the Bureau intends its proposal to apply if the provider offers a credit product in which the consumer has an account number that can access the line of credit, and the credit can be deposited directly only into the prepaid account (even if there was no physical device to access the line of credit).

The Bureau believes that this is appropriate because of the increased protections offered by the credit card rules, discussed below, and the unique nature of prepaid accounts. While the existence of linked lines of credit and "push" credit products associated with prepaid accounts today may be limited, the Bureau is concerned that were such products not covered by the proposed provisions governing credit, they would be offered as a means of evading the requirements articulated in this proposal. Thus, as is discussed in more detail below, the Bureau's proposal also would cover such credit plans.

Specifically, the proposal would generally provide that prepaid accounts are credit cards under Regulation Z, except where a prepaid account can only access credit that is not subject to any finance charge or fee described in § 1026.4(c) (such as an application fee to apply for credit, late payment fee, over the credit limit fee or returned payment fee) and repayment is not expected by written agreement in more than four installments. To the extent no periodic rate is

imposed, such as if an overdraft service charges a flat per transaction fee, then the credit product linked to a prepaid account would be a charge card. *See* § 1026.2(a)(15)(iii).

The Bureau believes that the proposal would provide consumers with stronger and more consistent protections than would apply if the Bureau extended exemptions for overdraft services on prepaid accounts that would exempt them entirely from Regulation Z but did not subject lines of credit and products that push credit onto the prepaid account as credit cards. Thus, under the proposal, prepaid accounts generally would be credit cards when they access a credit feature, and generally would be subject to the rules in Regulation Z applicable to credit cards. The proposal also would add additional, unique protections to Regulation Z for prepaid accounts that are credit cards that access overdraft services or credit features.

Where applicable, the extension of credit card provisions to prepaid accounts would mean that a variety of Regulation Z provisions would apply, such as enhanced protections for credit cardholders pursuant to the FCBA and the Credit CARD Act. Those requirements, in tandem with the proposed application of TILA's no-offset provision (TILA section 169) to prepaid accounts subject to these credit card provisions, and corresponding proposed changes to the compulsory use provision in Regulation E § 1005.10(e)(1), would allow consumers to retain control over the funds in their prepaid accounts if a credit card feature becomes associated with those accounts because they will be able to control when and how debts are repaid. *See* § 1026.12(d).[340]

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

Specifically, proposing to apply TILA's timing and due date requirements for periodic statements and the no-offset provision and proposing to amend Regulation E's compulsory use provision would, respectively, mean that card issuers would have several restrictions. First, they would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle. Second, card issuers could only move funds automatically from an asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date, and only pursuant to the consumer's signed, written agreement that the issuer may do so. Third, card issuers must offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the prepaid asset account to the credit account that the consumer affirmatively initiates on the prepaid account's online banking website).

In addition, the Bureau proposes that by virtue of treating credit features offered on prepaid accounts as open-end credit accessed by a credit card, other protections of the Credit CARD Act, mostly implemented in subpart G of Regulation Z, would also apply.[341] Among other things, these requirements would require such credit card issuers to perform underwriting when opening a credit card account for consumers in accordance with the Credit CARD Act's ability-to-pay requirements. *See* § 1026.51(a). Such issuers would also generally be required to limit fees (as opposed to periodic interest rates) to 25 percent of the credit limit during the first

[341] As noted above, under the proposal, a prepaid account would not be a credit card if it only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and repayment is not expected in more than four installments and thus the provisions discussed herein would not apply.

year after the consumer opens the credit card account (*i.e.*, the credit account linked to the consumer's prepaid account could be opened no earlier than thirty calendar days after the consumer registered the prepaid account). *See* section-by-section analysis of § 1026.52(a). This limit would apply to any per-transaction fees – such as the prototypical "overdraft fee" – that issuers might assess each time they authorize a prepaid transaction that accesses the credit account.

Consideration of Extension of Existing Exemptions for Overdraft Services on Prepaid Accounts

In this rulemaking, the Bureau considered the alternative of preserving the existing bifurcation in regulatory treatment between overdraft services for traditional deposit accounts and other forms of credit that may be associated with such accounts, but extending traditional deposit account treatment to prepaid accounts. The Bureau believes instead that invoking TILA and Regulation Z protections prepaid consumers that may use prepaid account overdraft services and other credit features is appropriate for several reasons.

First, the Bureau believes that covering overdraft services offered in connection with prepaid accounts under Regulation Z aligns with TILA's purpose (TILA section 102(a)) – to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. 1601(a). In addition and as discussed above, the provisions of the FCBA and the Credit CARD Act would offer additional protections to consumers who use overdraft services and other forms of credit offered in connection with prepaid accounts. In addition to the application of the FCBA and Credit CARD Act credit card provisions to overdraft services accessed by prepaid accounts that would be considered credit cards under the proposal, the

Bureau believes that regulation of prepaid account overdraft services as open-end (not home-secured) credit would serve to accomplish the stated purpose of TILA by requiring creditors and other persons to explain the terms of overdraft services to consumers in the context of Regulation Z, protect consumers from high fees during the first year (through Regulation Z's fee harvester provision) and from harms arising from various billing and improper credit card practices, and give consumers strong tools to manage their credit relationships.

Second, the Bureau believes the Board's justification of the existing regulatory approach is much less convincing as applied to prepaid accounts, both because the historical justification for checking account overdraft services does not apply to prepaid accounts and because there are notable differences between how prepaid accounts and checking accounts function. In constructing the exemption, the Board relied in part on the fact that at that time overdraft in the checking account context was determined to be a "courtesy" that enabled consumers to avoid both the embarrassment of bouncing checks and the attendant costs. The Board also relied on the fact that, at the time, overdraft decisions were made on an ad hoc basis; that is no longer true of automated overdraft programs. At the time the Board established the Regulation Z exemption, bounce-protection programs (as overdraft services were known) were necessarily check-based because checks and cash were – at that time – consumers' only ways of accessing funds in their deposit accounts. Further, a financial institution's decision whether to pay a given check that triggered an overdraft was at that time necessarily manual, or ad-hoc, because computers (and automated credit decision-making) were only in their infancy. Typically, a consumer's institution (the "paying bank," which is equivalent to the card-issuing bank in a card transaction) cannot authorize or decline a purchase by check when the consumer seeks to make payment (*i.e.*, while at the merchant). As the Board noted in 2009, institutions that historically provided

overdraft coverage for check transactions on an ad-hoc basis often provided a benefit to consumers, insofar as paying the check was often a preferable outcome to a bounced, returned check or NSF fee; additional fees imposed by merchants; and even potential criminal liability for passing bad checks.[342]

However, the account structure and logistics for prepaid accounts have never matched those for checking accounts that existed in 1969, because overdraft services in the prepaid account context are not structured by institutions or considered by consumers to be an occasional courtesy to avoid a bounced check. Checking accounts, by definition, allow consumers to write checks and present them to payees without first receiving authorization from their financial institution. Checking accounts also allow incoming debit ACH transactions without preauthorization. These types of transactions are relevant because the exact timing of the check clearance and incoming ACH process can be difficult for the consumer to predict. For instance because sometimes it may take several days or longer for a check to be presented and funds to be withdrawn from the consumer's account, while other times checks may be presented faster. Uncertainty around the timing of check and ACH presentment and the substantial negative consequences of rejected transactions may lead to overdrafts for traditional accounts, but are extremely unlikely for prepaid accounts.

Indeed, by contrast, virtually all prepaid account transactions are preauthorized, which means that the merchant seeks authorization from the financial institution before providing goods or services to the consumer.[343] In such cases, the consumer is not at risk of having a payment

[342] 77 FR 59033, 59033 (Nov. 17, 2009); *see also generally* FDIC Overdraft Payment Supervisory Guidance.

[343] An exception is third-party ACH debits, which could be sent without prior authorization. However, an informal review by the Bureau of major GPR card programs indicates that most will not accept incoming ACH debits or that,

rejected after a transaction has already occurred and the consumer will not be subjected to NSF and merchant fees; rather, the financial institution can simply reject the transaction before the purchase occurs if there are insufficient funds in the account.[344] This is true for point-of-sale transactions as well as online bill pay transactions completed via ACH initiated from the prepaid account to the biller (or even with mailed, pre-debited checks). Thus, a consumer using a prepaid account is less like the checking account customer that the Board focused on in creating the exemption for overdraft – a consumer being extended a courtesy in order to avoid potentially harsher repercussions – and instead is like any other consumer using credit to purchase goods or services. To the extent offered, financial institutions' ongoing and routine decisions to pay prepaid account transactions that will result in the creation of a debt and the deferment of payment on that debt function as if they are an extension of credit and constitute a credit plan (unless exempted from Regulation Z). Insofar as this is how most prepaid cards work, they have been distinguishable from traditional checking accounts.

Third, the Bureau believes that treating prepaid overdraft services as open-end credit plans acting as credit cards would provide stronger protections that are more closely calibrated to how the industry has broadly marketed prepaid products to consumers and how consumers, in turn, expect to be able to use the products. As noted above, financial institutions deliberately market prepaid accounts to consumers as products that are safer and easier to use than comparable products with credit features, in particular checking accounts with overdraft.

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by contract, cardholders are not permitted to establish them. The Bureau notes that, as currently structured, most prepaid products do not allow consumers to write checks that are not preauthorized.

[344] The Bureau is aware that, in some instances, a transaction will be authorized when the account balance is positive but will ultimately settle when the account balance is negative, because for some types of transactions the final settlement amount may be higher than the authorization amount (*e.g.*, at restaurants because tips are sometimes added after authorization). However, the Bureau believes that such occurrences are rare and generally only for marginal amounts rather than full transactions.

Specifically, many companies market prepaid accounts to consumers as products that increase consumers' financial control by preventing overspending and the incurring of debt.[345] By control, the Bureau believes that these companies mean that prepaid account users can exert control by limiting expenditures to the funds loaded onto the prepaid account and cannot spend funds they do not have. Financial institutions often market prepaid cards as requiring no credit checks, not reporting to credit bureaus unpaid debts (of which there are rarely any), and not including any credit features. Underscoring this marketing approach, many industry commenters to the Bureau's ANPR repeatedly emphasized these unique features of prepaid products as a primary reason behind their growth in popularity.

Many consumers have chosen prepaid cards specifically because the cards offer greater spending control in general and do not typically offer overdraft services of the same type as commonly found on checking accounts in particular. Thus, the prepaid industry has attracted a large number of both voluntary and involuntary former checking account customers who had their checking account closed. Many prepaid consumers previously had a checking account and either lost that account or gave up that account due to failure to repay debts or related issues.[346] The Bureau believes that many of these consumers lost their checking accounts because they could not handle repeated overdraft fees. Those who left voluntarily may also have done so due

[345] *See, e.g.*, NBCPA, *What are Prepaid Cards?*, http://www.nbpca.com/en/What-Are-Prepaid-Cards/Prepaid-Card-Benefits.aspx (last visited Oct. 28, 2014) ("For many Americans, prepaid cards serve as a tool with which to more effectively budget their spending. With a prepaid card, consumers avoid the risk of over-spending or overdraft, thus avoiding the interest, fees and potential negative credit score implications of traditional credit cards. And for parents, prepaid cards provide tools to maintain control over their teens' or college students' spending."); *see also* Examining Issues in the Prepaid Card Market: Hearing before the Subcomm. On Fin. Inst. and Consumer Prot., S. Comm. on Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Dan Henry, Chief Executive Officer, NetSpend Holdings, Inc.) ("Our customers are typically working Americans who want control…").

[346] 2014 Pew Survey, at 7-8 (Noting both that "Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage" and that "Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees.").

to their difficulty in managing to avoid overdraft fees. Relatedly, the Bureau also believes that many of these consumers, and even many consumers who continue to maintain separate checking accounts, chose to purchase prepaid products because of their promise to allow consumers to control their spending. Indeed, many participants in the Bureau's consumer testing emphasized control as a primary reason they used prepaid cards.[347] Participants explained that did not want a product with overdraft services because they were afraid they would be tempted to use such a service and incur debt and fees beyond what they could control. As noted above, other studies have similarly found that a primary reason consumers use prepaid cards is that they want increased control over their finances and want to avoid incurring debt and related fees.[348]

Thus, to prevent erosion of what the Bureau believes is a clear distinction regarding overdraft services in the current market and in the minds of consumers between prepaid accounts and checking accounts that offer overdraft services, and to ensure that credit products that are associated with prepaid accounts receive consistent treatment regardless of their particular structures, the Bureau is proposing to adopt stronger protections that would treat various credit features associated with prepaid accounts as an open-end credit card product subject to Regulation Z. By doing so, the Bureau believes that consumers will more clearly know and understand when they are accessing credit using a prepaid account and also will benefit from increased protections not available for checking accounts. The Bureau is also concerned that were the Bureau to permit overdraft services without the proposed protections, the approach of

[347] *See* ICF Report at 5.

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

marketing prepaid accounts as a safe alternative to checking accounts could be confusing to consumers. To the extent that the issuer of a prepaid account wants to veer from current norms by offering overdraft services or other credit features, the Bureau believes that requiring appropriate markers and full protections for credit card products, including the Bureau's proposed overdraft disclosure requirements in proposed § 1005.18(b) will help consumers recognize that they are taking this extra, and for prepaid products, perhaps unusual step of accessing credit and to treat that credit with appropriate caution. This is in contrast to the historical treatment of checking accounts, where overdraft services have been common across almost all such accounts and consumers expect such services to be offered in connection with checking accounts.

By labeling overdraft services offered on prepaid products as credit subject to the disclosure requirements of Regulation Z, the Bureau believes that the resulting product will be better understood and managed as credit by consumers to the extent that some prepaid accountholders decide they want to access such credit. In addition, by not permitting financial institutions to accept applications for an overdraft service until 30 calendar days after registration of the prepaid account, *see* proposed § 1005.18(g)(1) and § 1026.12(h)(1), the Bureau believes it will prevent consumers from being pressured to make a decision on overdraft or credit when acquiring the prepaid account, such as when they buy a GPR card in a retail store. It would also allow consumers time to decide whether the basic prepaid card is a good fit for them before deciding whether to layer on a credit relationship that may be more difficult to walk away from.

Fourth, there is evidence that a significant portion of consumers with prepaid accounts would particularly benefit from the stronger protections that Regulation Z provides. More clearly defined credit features will be beneficial in part because of the marketing dynamics

discussed above and because some consumers have experienced difficult managing overdraft services on traditional checking accounts.[349] In general, prepaid consumers are disproportionately unbanked or underbanked,[350] often have limited education, and are often unemployed or recipients of public benefits.[351] Although the size of this group is not clear, the Bureau believes that some users of prepaid products do vary, in some degree, from users of traditional deposit accounts. Thus, the Bureau believes that they may be seeking or expecting different features from that of a traditional checking account when they use prepaid cards. Moreover, because the costs to buy prepaid accounts are lower than for checking accounts – they are often easily bought in retail stores for a small sum – the Bureau believes that it is likely that

[349] 2014 Pew Survey, at 7-8 (noting both that "Most prepaid card users who have had a checking account in the past have paid associated overdraft fees for debit card usage" and that "Among those prepaid card users who have ever had a bank account, 41 percent of them say they have closed or lost a checking account because of overdraft or bounced check fees."). Separately, one large program manager estimates that 80 percent of its GPR card customers earn less than $50,000. *See* Kate Fitzgerald, *Green Dot Chief Sees Prepaid Mobile Payments As Company's Next Challenge* (May 7, 2012) http://www.isoandagent.com/news/Green-Dot-Chief-Sees-Prepaid-Mobile-Payments-As-Companys-Next-Challenge-3010590-1.html (explaining that "single mothers in their late 30s and early 40s comprise 55 percent of [one major prepaid card company's] target market, with most of them earning less than $50,000 annually."), while one study found that 84 percent of GPR card users had incomes below the nationwide median Similarly, others have informed Bureau staff that the average credit score of prepaid account users is far below average.

[350] In its report on unbanked and underbanked consumers, the FDIC explained that households are identified as "unbanked" if they answered "no" to the question, "Do you or does anyone in your household currently have a checking or savings account?." The FDIC further explained that "underbanked households are defined as those households that have a checking and/or a savings account and had used non-bank money orders, non-bank check cashing services, non-bank remittances, payday loans, rent-to-own services, pawn shops, or refund anticipation loans (RALs) in the past 12 months." *See* FDIC, *2011 FDIC National Survey of Unbanked and Underbanked Households* (2011) *available at* https://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf. For discussion of prepaid consumers' background, *see* Kansas City Fed Study, at 12-13 (although the report also notes no correlation due to income or education; possibly due to the different types of use by prepaid consumers); *available at* https://www.kansascityfed.org/publicat/reswkpap/pdf/rwp14-01.pdf.

[351] 2011 FDIC Survey, at 16, 18, 40; *see also* Nat'l Council of La Raza, Perspectives on Prepaid Cards from Low-Income Hispanic Tax Filers at 1-2 (2011) *available at* http://www.nclr.org/images/uploads/publications/perspectives_on_prepaid_cards_(3).pdf.

this product may continue to attract consumers who are relatively new to the financial system over time.[352]

To the extent some consumers may want to take advantage of credit features if offered in connection with their prepaid account, the Bureau further believes that its proposed approach would provide these consumers with stronger tools and protections that would appropriately limit their credit exposure and reduce the risk of some of the harms that may be associated with using prepaid accounts for which an overdraft service is offered.

Fifth, unlike with respect to checking accounts where overdraft services have been structured to fit a unique and separate regulatory regime for several decades, the Bureau is proposing to regulate prepaid credit features on a largely blank slate. As noted above, deposit accounts and their pricing structures have evolved under compliance frameworks that were developed in accordance with existing regulations, exceptions to those regulations, and other agencies' guidance. The deposit account industry would view any departure as significantly disruptive. In contrast, very few prepaid products offer overdraft services or other credit features. Most prepaid account programs do not have such a feature and, as a result, providers would have to implement a new compliance regime in any event were they to decide to add such features.

Similarly, while many have settled expectations that if they write a check or authorize a bill payment through a third party for which there is insufficient funds; the transactions will be

[352] Relatedly, Congress has similarly sought to address such services on prepaid accounts. EFTA section 920(a), as implemented in Regulation II, limits interchange fees when an overdraft fee may be charged on the prepaid card (by, as noted above, carving cards that may impose overdraft fees out of the exception from the rule's fee caps). While not prohibiting such services outright, the Bureau believes that Congress, in differentiating treatment, acted out of concern regarding overdraft services on prepaid accounts (vis-à-vis prepaid cards that cannot impose overdraft fees).

paid rather than bounced, the Bureau does not believe that prepaid accountholders expect similar treatment because it is so rare for check and bill payment services to be offered absent pre-authorization. Implementation costs for industry and the risk of disruption to expectations for all stakeholders is thus much different in the context of prepaid accounts. Indeed, by proposing to act now on prepaid accounts before credit features become widespread, the Bureau expects that credit features on prepaid accounts will evolve in a more straightforward and consumer-friendly manner consistent with the general framework and protections for credit.

Proposal's Treatment of Overdraft Services is Limited to Prepaid Accounts

The Bureau is proposing to make adjustments to Regulation Z and Regulation E that would not extend existing exemptions for overdraft services on traditional deposit accounts to overdraft services on prepaid accounts, but it is not proposing to alter existing provisions that apply to deposit account overdraft, including exemptions for overdraft services from Regulation Z and Regulation E's compulsory use provision. As described above, the Bureau sees significant differences in the underlying accounts and transaction types, the history of marketing and market segmentation, and the transaction costs and other disruptions that would be involved in shifting to a different regulatory framework with respect to checking accounts. Indeed, the Bureau is acting at this time to subject prepaid accounts to Regulation Z and the compulsory use provisions of Regulation E in part because there is no clearly established and predominant regulatory or compliance regime applicable to such programs, such that adopting the Bureau's proposal would not create significant upheaval in the market.

The Bureau recognizes that historical, operational and other factors have supported a different regulatory approach with respect to overdraft in the checking account context than with respect to prepaid accounts. The Bureau continues to study deposit account overdraft services

and will propose any further enhancements to the existing regulatory framework that it deems appropriate as part of that separate endeavor in accordance with its rulemaking procedures.[353]

Other Implications of the Bureau's Approach to Prepaid Credit Products

The detailed discussion below sets forth the Bureau's proposed changes to Subparts A, B, and G of Regulation Z to effectuate the approach to overdraft services and credit features offered in connection with prepaid accounts. The Bureau seeks comment both on its general approach to such credit products and to the specific changes proposed. In addition, the Bureau seeks comment on certain potential implications of its approach, as described immediately below:

Military Lending Act. As discussed above, the Department of Defense (the Department) recently proposed to expand the scope of the coverage of its regulation (32 CFR part 232) that implements the MLA to include a broad range of open-end and closed-end credit products, including open-end (not home secured) credit card accounts that are subject to Regulation Z.[354] Under the MLA, a creditor generally may not apply a military annual percentage rate (MAPR) greater than 36 percent in connection with an extension of consumer credit to a military service member or dependent. For covered credit card accounts, any credit-related charge that is a finance charge under Regulation Z (as well as certain other charges) would be included in calculating the MAPR for a particular billing cycle and the MAPR for that billing cycle could not exceed 36 percent.[355] However, the Department's proposal provides that a credit card issuer does not have to include in the calculation of the MAPR any charge that is a "bona fide fee" if

[353] *See* CFPB's Unified Agenda for Spring 2014, *available at* http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3170&Image58.x=58&Image58.y=5&Image58=Submit.

[354] 79 FR 58602 (Sept. 29, 2014).

[355] 79 FR 58602 at 58619.

the fee is "reasonable and customary."[356] The Department has proposed a safe harbor that would determine whether fee levels are reasonable and customary based on the average amounts charged by large credit card issuers for substantially similar fees during the last three years.[357]

Thus, as with fees for other types of consumer credit extended to military service members, fees levied for credit features (including overdraft services) on prepaid accounts held by military service members or their dependents would, as a result of the Department and Bureau proposals in combination (if both proposals are finalized as proposed), generally be included in calculating the MAPR for a billing cycle unless excluded under the bona fide fee exception. The Bureau requests comment on the consequences, if any, from the combined effect of the two proposals (were they to be finalized) with respect to overdraft services and credit features on prepaid accounts held by military service members.

Multipurpose Cards and Card Network Rules. The Bureau's approach to credit features in connection with prepaid products would result in a single plastic card or other access device functioning either as a prepaid card or as a credit card, depending on the balance in the asset account that the card accesses at the time of a transaction that the consumer makes. For example, if the asset account balance is sufficient to fund the transaction, the card could function as a prepaid card; if not, the card could function as a credit card. The Bureau has proposed a number of provisions and sought comment as detailed elsewhere to promote consumer

[356] 79 FR 58602 at 58638. *See* proposed 32 CFR 232.4(d) of the Department's proposal, stating that the exclusion the proposal provides for a bona fide fee applies only to the extent that the charge by the creditor is a bona fide fee and is reasonable and customary for that type of fee. The exclusion for bona fide fees does not apply to periodic rates. It also does not apply to any credit insurance premium, including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, or to any fees for credit related ancillary products sold in connection with and either at or before consummation of the credit transaction or upon account opening, because those charges are expressly included in the definition of "interest" in the applicable statute (10 U.S.C. 987(i)(3)) and therefore must be included in the MAPR calculation.

[357] 79 FR 58602 at 58638. *See* proposed 32 CFR 232.4(d) of the Department's proposal.

understanding, facilitate clear application of the various potentially applicable regulatory regimes, and address other challenges that may arise due to the multipurpose nature of the card product. For example, the Bureau is proposing to amend the provision in Regulation Z (§ 1026.13(i)) that addresses the relationship between the Regulation E and Z error resolution regimes to clarify the applicability of those regimes to an extension of credit incident to an electronic fund transfer when the consumer's prepaid account is overdrawn. *See* § 1026.13(i) in the section-by-section analysis below. The Bureau is also seeking comment on (but not proposing) the possibility of requiring additional real-time notifications of transactions triggering an overdraft or the accessing of a linked credit feature, or requiring real-time opt-in by consumers in order to approve each overdraft or other credit transaction. *See* § 1005.18(c) in the Regulation E section-by-section analysis above.

The Bureau seeks comment on these specific amendments and whether further amendments or guidance would be appropriate. For instance, while there is regulatory precedent for similar multipurpose debit/credit card products, these cards do not appear to be in wide use today. *See, e.g.*, comment § 1026.12(a)(1)-7 (stating that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request).[358] The Bureau also seeks comment on consumer and industry experiences with similar multipurpose products historically, and whether they may yield useful lessons for further refining the Bureau's proposal with regard to prepaid cards.

Finally, the Bureau notes that card network rules may treat a card differently depending on whether it accesses an asset account or a credit account. The Bureau's proposal could result

[358] When the Board amended comment 12(a)(1)-7 in 1999, it stated that the revisions clarified the comment's applicability to then-recent programs where unsolicited cards were marketed from the outset as both stored-value cards and credit cards. *See* 64 FR 16614, 16615 (Apr. 6, 1999).

in an increase in the number of cards that can access both an asset account and a credit account, and the Bureau requests comment on any card network rule issues that might arise from its proposal to treat most credit plans accessed by prepaid cards, for which finance charges are imposed, as open-end credit accessed by a credit card under Regulation Z.

Subpart A

Section 1026.2 Definitions and Rules of Construction

2(a) Definitions

Overview of Proposed Changes to Definitions

As discussed above in the Overview of Regulation Z Proposal section and below in the section-by-section analysis of § 1026.4, the Bureau proposes several amendments to the definition of "finance charge," and commentary for the definitions of "open-end plan" and "credit card." As a result of these proposed changes, a person that offers credit plans accessed by prepaid cards, such as overdraft services, or certain other credit plans linked to prepaid accounts that are accessed by account numbers, where the person charges a finance charge for the credit, generally would be extending "open-end credit" that is accessed by a "credit card" and thus would be covered by Regulation Z's open-end (not home-secured) rules and credit card rules in subparts B and G.[359] (The term "prepaid card" is defined in the proposal to mean any card, code, or other device that can be used to access a prepaid account as defined under Regulation E, *see* proposed § 1026.2(a)(15)(v) and (vi).) The open-end (not-home secured) rules

[359] As discussed in more detail in the section-by-section analysis of § 1026.2(a)(20), 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 person, a person would not be a creditor that is extending open-end credit where the person is not charging a finance charge for the credit. Nonetheless, as discussed in more detail in the section-by-section analysis of § 1026.2(a)(17), such persons may still be subject to Regulation Z in certain circumstances.

in subpart B include account-opening disclosures, periodic statement disclosures, change-in-terms notices, provisions on promptly crediting payments, and billing error resolution procedures. The credit card rules in subpart B include provisions that restrict the unsolicited issuance of credit cards, limit the liability for unauthorized use of credit cards, and prohibit the offset of the credit card debt against funds held in asset accounts by the card issuer. The credit card rules in subpart G include provisions that prohibit credit card issuers from extending credit without assessing the consumer's ability to pay and restrict the amount of required fees that an issuer can charge during the first year after a credit card account is opened. Application of the particular rules is discussed further below.

The proposal would cover credit plans, including overdraft services and lines of credit, directly accessed by a prepaid card. This would apply where credit is being "pulled" by a prepaid card, such as when the consumer uses the prepaid card at point of sale to access an overdraft plan to fund a purchase. The proposal also would cover credit plans that are not accessed directly by a prepaid card but are structured as a "push" account. Under such a credit plan, a person would provide credit accessed by an account number where such extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the person, and cannot be deposited directly into another asset account, such as a deposit account. For example, such a credit plan may allow a consumer to use an account number to request an extension of credit be deposited directly into a particular prepaid account specified by the creditor when the consumer does not have adequate funds in the prepaid account to cover the full amount of a transaction using the prepaid card and the consumer is contractually obligated to repay the credit. A credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the person would mean that 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 from the plan into asset accounts other than particular prepaid accounts specified by the creditor. As discussed in more detail below, the Bureau believes these types of credit plans could act as substitutes for credit plans directly accessed by a prepaid card. The Bureau is not, however, intending to cover general purpose lines of credit where a consumer has the freedom to choose where to deposit directly the credit funds.

Definition of finance charge. As discussed in more detail in the section-by-section analysis of § 1026.4, under Regulation Z, the term "finance charge" generally is defined in § 1026.4(a) to mean "the cost of consumer credit as a dollar amount." It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It generally does not include any charges of a type payable in a comparable cash transaction. Currently, certain fees or charges are specifically excluded from the term "finance charge," such as (1) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. *See* § 1026.4(c)(3) and (4).

The proposal would amend § 1026.4 and its commentary to provide that these two exceptions do not apply to credit accessed by a prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, the proposal would make other amendments to § 1026.4 and its commentary to provide additional clarification and guidance as to what types of fees and

charges constitute “finance charges” related to credit 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. For such credit, any service, transaction, activity, or carrying charges imposed on the 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 (4) and comments 4(a)-4 and 4(b)(2)-1.

Such charges would include periodic participation fees for the credit plan, as well as transaction charges imposed in connection with a credit extension. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. The $1.50 transaction charge would be 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. The proposal would provide, however, that the term finance charge does not include transaction fees imposed on the prepaid account where the consumer is only withdrawing funds from 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.

As a result of these proposed changes to the definition of finance charge and related commentary, a person that is offering credit accessed by a prepaid card, or other credit plan

linked to prepaid accounts that is accessed by an account number as described above, that is charging fees that are finance charges would be a "creditor" under Regulation Z. The term "creditor" generally means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. *See* § 1026.2(a)(17)(i). As discussed above, the Bureau is declining to extend provisions that exempt financial institutions that offer overdraft services on traditional deposit accounts from the definition of creditor to financial institutions that offer overdraft services on prepaid accounts.

Definition of "open-end credit." As discussed above in the Overview of Regulation Z Proposal section and below in the section-by-section analysis of § 1026.2(a)(20), the Bureau believes that most creditors that are offering credit plans (including overdraft services, accessed by a prepaid card, or other credit plans linked to prepaid accounts that are accessed by an account number as discussed above) and that are charging finance charges for the credit would be creditors offering "open-end credit" that is not home-secured. Such creditors must comply with the open-end (not home-secured) provisions set forth in subpart B.

The term "open-end credit" is defined in § 1026.2(a)(20) to mean consumer "credit" extended by a "creditor" under a "plan" in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a "finance charge" from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. The proposal would amend several of the

definitions of these terms and provide clarifications and commentary to facilitate the classification of credit plans associated with prepaid accounts.

Specifically, the proposal would provide that the term "credit" under § 1026.2(a)(14) includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also would include 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.

With respect to the term "plan," the proposal would provide additional guidance on when overdraft credit is considered credit extended under a plan. In particular, the proposal would provide that with respect to 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, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, for credit accessed by a prepaid card, 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. Similarly, for credit that is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, 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. In both cases, such programs constitute plans notwithstanding that the creditor retains discretion not to extend credit. Except as described below, the Bureau believes that most overdraft plans accessed by a prepaid card, and other credit plans linked to a prepaid account that are accessed by an

account number as described above, generally will meet the other criteria for open-end credit. *See* the discussion in the Overview of Regulation Z Proposal section and the section-by-section analysis of § 1026.2(a)(17) and (a)(20).

As described in more detail in the section-by-section analysis of § 1026.2(a)(17), a person would not be extending open-end credit where the person is not charging a finance charge for the credit that is accessed by a prepaid card or accessed by an account number as described above. Nonetheless, the person could still be subject to certain provisions in Regulation Z in certain circumstances, as discussed below.

Definition of "credit card" and "card issuer." Regulation Z defines the term "credit card" in § 1026.2(a)(15)(i) to mean "any card, plate, or other single credit device that may be used from time to time to obtain credit." The term "card issuer" is defined in § 1026.2(a)(7) to defined to mean "a person that issues a credit card or that person's agent with respect to the card." Under the proposal, certain devices related to prepaid accounts would be credit cards under § 1026.2(a)(15)(i). In particular, the proposal provides that a prepaid card that is a single device that may be used from time to time to access a credit plan generally is a "credit card" and the person issuing the card is a "card issuer." As discussed above, a prepaid card would be accessing a credit plan when the consumer is obligated contractually to repay the credit. The proposal provides that a prepaid card would not be a credit card, however, where the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee that is described in § 1026.4(c) and is not payable by written agreement in more than four installments. A person that offers a credit plan that is accessed only by prepaid cards that falls within the exclusion to the definition of "credit card" would be subject solely to the requirements under Regulation E. *See* section-by-section analysis of § 1026.2(a)(15)(i).

Also, as discussed in more detail in the section-by-section analysis of § 1026.2(a)(15)(i), the proposal also provides that 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 would be a credit card under § 1026.2(a)(15)(i).

Definition of "credit card account under an open-end (not home secured) consumer credit plan." Certain credit card rules in Regulation Z, which generally are set forth in subpart G, apply to card issuers with respect to a "credit card account under an open-end (not home secured) consumer credit plan." § 1026.1(d)(7). These credit card rules include provisions that prohibit credit card issuers from extending credit without assessing the consumer's ability to pay and restrict the amount of required fees that an issuer can charge during the first year after a credit card account is opened. *See, e.g.*, §§ 1026.5(b)(2)(ii), 1026.7(b)(11), and 1026.51 through 1026.59.

Regulation Z defines the term "credit card account under an open-end (not home-secured) consumer credit plan" in § 1026.2(a)(15)(ii) to mean "any open-end credit account that is accessed by a credit card, except: (A) [a] home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or (B) [a]n overdraft line of credit that is accessed by a debit card or an account number." Generally, to be a "credit card account under an open-end (not home-secured) consumer credit plan," the credit must be "open-end credit" as defined in § 1026.2(a)(20) that is not home-secured and the credit must be accessed by a "credit card" as defined in § 1026.2(a)(15)(i). The Bureau also proposes to revise the definitions of "credit card account under an open-end (not home-secured) consumer credit plan" in § 1026.2(a)(15)(ii) and its commentary to include an open-end (not home-secured) credit plan accessed by a prepaid card that is a credit 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.

2(a)(7) Card Issuer

TILA defines the term "card issuer" as "any person who issues a credit card, or the agent of such person with respect to such card." 15 U.S.C. 1602(o). Consistent with the TILA definition, Regulation Z defines the term "card issuer" in § 1026.2(a)(7) as "a person that issues a credit card or that person's agent with respect to the card." The Regulation further defines the term "credit card" in § 1026.2(a)(15)(i) to mean "any card, plate, or other single credit device that may be used from time to time to obtain credit." Card issuers must comply with certain provisions in Regulation Z as applicable. *See* §§ 1026.12 and .60; for card issuers offering a "credit card account under an open-end (not home-secured) consumer credit plan," *see, e.g.*, §§ 1026.5(b)(2)(ii), .7(b)(11), and .51 through .59. In addition, card issuers that extend credit would be considered creditors for purposes of Regulation Z. *See* § 1026.2(a)(17)(iii) and (iv).

As discussed in the section-by-section analysis of proposed § 1026.2(a)(15)(i), proposed comment 2(a)(15)-2.i.F would provide that the term "credit card" generally includes a prepaid card (as defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a prepaid account as that term is proposed to be defined in Regulation E) that is a single device that may be used from time to time to access a credit plan. A person that is issuing a prepaid card that is a credit card would be a "card issuer" under § 1026.2(a)(7).

Nonetheless, under proposed comment 2(a)(15)-2.i.F, the term credit card would not include a prepaid card if the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee describe in § 1026.4(c) and is not payable by written

agreement in more than four installments. *See* section-by-section analysis of § 1026.4 for a discussion of the term "finance charge" and fees described in § 1026.4(c).

If the prepaid account is accessed only by a prepaid card that does not meet the definition of credit card because the card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments, the person issuing the card would not be a "card issuer" and the person would not need to comply with the credit card rules in Regulation Z. In addition, the person in extending credit accessed by such a card would not be a "creditor" under Regulation Z because the person would not be charging a finance charge and the credit would not be payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(i). Thus, the person would not need to comply with the disclosure and other requirements in Regulation Z that apply to creditors. The person would be subject, however, to the requirements under Regulation E. *See* section-by-section analysis of § 1026.2(a)(15)(i).

Given that no finance charges or fees described in § 1026.4(c) would be charged in connection with the credit, the Bureau anticipates that the credit limit under such plans will be quite low, perhaps $10 or less. Given the expected-low credit limits and the fact that no finance charge or fees described in § 1026.4(c) would be charged for this credit, the Bureau believes that it is appropriate to cover these credit transactions under Regulation E as incidental to the prepaid transaction and exclude prepaid cards that access only this type of credit from the definition of "credit card" for purposes of Regulation Z.

Consistent with the proposed definition of "credit card," proposed comment 2(a)(7)-2 would explain that 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 as defined in § 1026.4 or

fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. For 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 as defined in § 1026.4 or fee described in § 1026.4(c); 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 the person issuing the card is not a card issuer. *See proposed* comment 2(a)(15)-2.i.F.

Prepaid Card that Accesses a Credit Plan Offered by a Third Party

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

The proposal would provide specific guidance on the term "agent" for purposes of §1026.2(a)(7) where a credit plan offered by a third party is accessed by a prepaid card that is a credit card. This would apply where credit is being "pulled" by a prepaid card that is a credit card. In this case, the prepaid card is being used to pull credit from a credit plan that is offered by a third party other than the prepaid card issuer. Under the proposal, the third party offering

the credit plan that is accessed by the prepaid card would be considered an agent of the prepaid card issuer and would be a card issuer for purposes of § 1026.2(a)(7). Specifically, proposed comment 2(a)(7)-1.ii would build on the last sentence of the current comment and provide that with respect to a prepaid card that is a credit card where the card directly accesses a credit plan that is offered by a third party, the proposal would specify that a party offering the credit plan that is accessed by the 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.

The Bureau notes that current comment 2(a)(7)-1 provides that a financial institution *may* become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card. However, the Bureau believes that it is important in this context to make clear when there is an agent relationship to prevent circumvention of the proposed rules applicable to credit card accounts directly accessed by a prepaid card. The Bureau is concerned that without the proposed provision, prepaid card issuers could structure arrangements with third parties that offer open-end credit plans that are accessed directly by the prepaid card to avoid an agency relationship under state law. Such a result could frustrate the operation of certain consumer protections provided in the proposal.

For example, § 1026.51(a) provides that a card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations. In a case where the issuer of the prepaid card is not the person offering a credit card account under an open-end (not home-

secured) consumer credit plan, the responsibilities imposed on the card issuer under § 1026.51(a) might be unclear since the card issuer will not be the person opening the credit card account. Nonetheless, the provision applies to a "card issuer," so it is also unclear what responsibilities are imposed on the third party given that the third party is not a card issuer. Thus, the proposal would specify in proposed comment 2(a)(7)-1.ii that the third party offering the credit plan that is accessed directly 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 that prepaid card. As a result, in the example above related to § 1026.51(a), the third party would be a "card issuer" for purposes of that provision and would be required to comply with it. The Bureau also proposes to renumber existing comment 2(a)(7)-1 as 2(a)(7)-1.i.

2(a)(14) Credit

In TILA, the term "credit" is defined to mean "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." 15 U.S.C. 1602(f). Consistent with the definition of credit in TILA, under Regulation Z, the term "credit" is defined in § 1026.2(a)(14) to mean "the right to defer payment of debt or to incur debt and defer its payment." A person is subject to certain disclosure and other requirements in Regulation Z if the person is a creditor. A person is a creditor if the person regularly extends consumer "credit" that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. *See* § 1026.2(a)(17)(i). The term "creditor" also includes any card issuer (which is a person that issues credit cards or the person's agent) that extends credit even if no finance charge is imposed and repayment is not permitted in more than four installments. *See* § 1026.2(a)(17)(iii).

For the reasons discussed in the Overview of Regulation Z Proposal section, the Bureau believes it is reasonable to interpret "credit" to include when overdrafts are paid in relation to prepaid accounts. The proposal provides additional guidance that would express and effectuate this interpretation. In particular, proposed comment 2(a)(14)-3 would provide that credit for purposes of § 1026.2(a)(14) includes an authorized transaction on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization. It also 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. Thus, the definition includes a situation where the consumer has sufficient or available funds in the prepaid account to cover the amount of the transaction at the time the transaction is authorized, but insufficient or unavailable funds in the prepaid account to cover the amount of the transaction at the time the transaction is paid. As discussed in more detail in the Overview of Regulation Z Proposal section, the Bureau believes that plain language of the definition of "credit" in TILA covers the situation in that a consumer makes a transaction which exceeds the funds in the consumer's account and a person elects to cover the transaction by advancing funds to the consumer which the consumer must repay. Nothing in that part of TILA (or elsewhere in the statute) exempts overdraft services, including those that may be offered in connection with a prepaid account. By authorizing or paying a transaction where the consumer does not have sufficient or available funds in the prepaid account to cover the amount of the transaction when the transaction is authorized or paid, the person is allowing the consumer to incur a debt with the person where payment of that debt is not immediate.

A person that authorizes or pays such transactions would be extending credit and would be subject to certain disclosure and other requirements in Regulation Z if the person is a creditor.

As discussed above, a person is a creditor if the person regularly extends consumer "credit" that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. *See* § 1026.2(a)(17)(i). The term "creditor" also includes any card issuer (which is a person that issues credit cards or the person's agent) that extends credit even if no finance charge is imposed and repayment is not permitted in more than four installments. *See* § 1026.2(a)(17)(iii). As discussed in more detail in the section-by-section analysis of § 1026.4, with respect to credit accessed by a prepaid card that is a credit 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, a person generally would be charging a finance charge for the credit if the person imposes any service, transaction, activity, or carrying charges on the credit account, or imposes any such charges on a prepaid account if that charge is related to an extension of credit, carrying a credit balance, or credit availability. *See* § 1026.4(a), (b)(2), (c)(3) and (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 credit accessed by a prepaid card that is a credit 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, a person also would be a creditor if the person is a card issuer that extends credit accessed by the credit card. With respect to such credit, a person would be a card issuer if the person issues (1) a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time

to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments; or (2) an account number that is not a prepaid card that may be used from time to time to access a credit plan where extensions of credit are permitted to be deposited directly only 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.

The Bureau notes that for credit that is being accessed by a prepaid card that is a credit card, the creditor would be required to disclose credit extensions on the periodic statement under § 1026.7(b)(2), including a transaction where there are insufficient funds in the prepaid account at authorization to cover the amount of the transaction. The creditor also would be restricted under the offset provision in § 1026.12(d) from automatically applying any deposit to the prepaid account to repay the credit card balance. For example, for a transaction that is authorized where there are insufficient funds in the prepaid account to cover the amount of the transaction, the creditor could not use subsequent deposits received on the same day as the transaction to repay automatically that credit transaction on the credit card account.

The Bureau generally solicits comment on the definition of credit with respect to prepaid accounts. As discussed above, under the proposal, credit includes (1) transactions that are authorized where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization; and (2) transactions on a prepaid account where the consumer has insufficient or unavailable funds in the prepaid account at the time the transaction is paid. Such transactions are credit regardless of whether the person establishes a separate credit account to extend the credit or whether the credit is simply reflected as a negative balance on the prepaid

account. Nonetheless, the Bureau believes that creditors will tend to establish separate credit accounts to extend that credit accessed by the prepaid card, instead of having the credit balance be reflected as a negative balance on the prepaid account, because creditors generally will find that separate credit accounts aid compliance with the periodic statement requirements in §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) and the offset provisions in § 1026.12(d)(3) that would apply to credit card accounts accessed by prepaid cards. *See* section-by-section analysis of §§ 1026.5(b)(2)(ii), 1026.7(b)(11) and 1026.12(d)(3). The Bureau solicits comment on whether creditors are likely to establish separate credit accounts, instead of having the credit balance be reflected as a negative balance on the prepaid account. The Bureau also solicits comment on any implications for compliance depending on how the account is structured (*i.e.*, whether a separate credit account is created or whether the credit balance is reflected as a negative balance on the prepaid account), and whether any differentiation in regulation or guidance would be useful.

As discussed in more detail in the Overview of Regulation Z Proposal section, with respect to overdraft services on checking accounts, while a person that is providing overdraft services generally would be providing credit under TILA and Regulation Z, the person generally does not meet the definition of "creditor" for purposes of Regulation Z because of certain exclusions to the definition of finance charge. *See* § 1026.4(c)(3). Thus, with respect to overdraft services on checking accounts, a financial institution that does not agree in writing to pay the items and does not structure the repayment of the credit by written agreement in more than four installments would not be a "creditor" under the general definition of creditor, even if the institution charges a fee for paying the overdraft item because the fee would not be a "finance charge." In addition, a person does not become a creditor by issuing a debit card to access an overdraft service. *See* comment 2(a)(15)-2.ii.A (explaining that the definition of "credit card"

provides that a debit card is not a credit card if there is no credit feature or agreement to extend credit, even if the creditor occasionally honors an inadvertent overdraft). The Bureau is not proposing to change how overdraft services on accounts other than prepaid accounts are treated under Regulation Z.

2(a)(15)

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

In TILA, the term "credit card" is defined to mean "any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit." 15 U.S.C. 1602(*l*). Under Regulation Z, the term "credit card" is defined in § 1026.2(a)(15)(i) to mean "any card, plate, or other single credit device that may be used from time to time to obtain credit." Current comment 2(a)(15)(i)-2 provides examples of devices that are credit cards and devices that are not credit cards. A person that issues credit cards or the person's agent is a "card issuer" and must comply with certain credit card provisions in Regulation Z as applicable. *See* §§ 1026.12 and .60; for card issuers offering a "credit card account under an open-end (not home-secured) consumer credit plan," *see, e.g.*, §§ 1026.5(b)(2)(ii), .7(b)(11), and .51 through .59. Any card issuer that extends credit is also a creditor under Regulation Z and must comply with certain disclosure and other requirements in Regulation Z, a discussed in the section-by-section analysis of § 1026.2(a)(17).

The proposal would provide guidance on when the following devices related to prepaid accounts are "credit cards:" (1) prepaid cards, as defined in proposed § 1026.2(a)(15)(v) to mean any card, code, or other device that can be used to access a prepaid account as defined in Regulation E; and (2) account numbers that may be used from time to time to access a credit plan that allows deposits directly only into particular prepaid accounts specified by the creditor but do

not allow consumers to deposit directly extensions of credit from the plan into asset accounts other than particular prepaid accounts specified by the creditor, as defined in § 1026.2(a)(15)(vii).

Under the proposal, credit plans, including overdraft services and overdraft lines of credit, that are directly accessed by certain prepaid cards would be a credit card account under Regulation Z. In particular, proposed comment 2(a)(15)-2.i.F would provide that the term "credit card" includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. A prepaid card that is solely an account number would be a credit card if it satisfies the requirements of proposed comment 2(a)(15)-2.i.F.

With respect to overdraft services or overdraft lines of credit, the prepaid card would be "pulling" credit from the credit card account where there are insufficient funds in the prepaid account to cover the amount of the transaction at authorization or settlement. An account where credit is pulled from a credit card account using a prepaid card is referred in this supplemental information as a "pull account."

As discussed further below in connection with § 1026.2(a)(15)(vii), the proposal also covers credit plans that are not directly accessed by a prepaid card, but are structured as "push" accounts. Specifically, the proposal would address situations where a separate credit plan is accessed by an account number where consumers are allowed to deposit directly credit extensions taken under the plan into particular prepaid accounts specified by the creditor but would not be allowed to deposit directly extensions of credit from the plan into asset accounts

other than the specified prepaid accounts. Such a credit plan would still be covered under the proposal where a consumer could access the credit plan by use of checks or in-person withdrawals, so long as the credit plan allows deposits directly only into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit into an asset account other than specified prepaid accounts. *See* proposed comment 2(a)(15)-5. In referring to account numbers that access credit plans linked to prepaid accounts as discussed above, the proposal uses the term "account number where extensions of credit are permitted to be deposited directly only into particular prepaid account specified by the creditor." *See* proposed § 1026.2(a)(15)(vii). The proposal would provide that these credit plans would be credit card accounts under Regulation Z. *See* proposed comment 2(a)(15)-2.i.G.

The Bureau believes that credit plans will either be structured as "pull" accounts where a prepaid card is used directly to access credit from the credit plan or structured as "push" accounts where an account number is used to access credit that typically is deposited directly into the prepaid account. For example, the Bureau does not believe that a prepaid card account number would be used to push credit into the prepaid account, but instead will only be used to pull credit from the credit plan, such as when a consumer uses the prepaid card at point of sale or at an ATM to access credit directly. Thus, under the proposal, a prepaid card account number would not be an "account number where extensions of credit are permitted to be deposited directly only into particular prepaid account specified by the creditor," as that term is defined in proposed § 1026.2(a)(15)(vii). Likewise, an account number as defined in proposed § 1026.2(a)(15)(vii) would not be used to access funds in the prepaid account and thus, would not be a prepaid card under proposed § 1026.2(a)(15)(v). The Bureau solicits comment on the distinction between a prepaid card account number that is a credit card under proposed § 1026.2(a)(15)(v) and

comment 2(a)(15)-2.i.F and an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid account specified by the creditor as defined in proposed § 1026.2(a)(15)(vii) and comment 2(a)(15)-2.i.G. The Bureau also solicits comment on whether there could be situations where a prepaid card account number could be viewed as pushing credit into a prepaid account.

Generally, the proposal would treat credit card accounts that are accessed by a prepaid card and credit card accounts that are accessed by an account number linked to prepaid accounts as discussed above similarly under the rules. Nonetheless, for some provisions, credit extensions under these two types of credit card accounts would be treated differently. *See* proposed comments 8(a)-2.ii, 8(b)-1.vi, 12(c)-5, 12(c)(1)-1.i, 13(a)(3)-2.ii, 13(i)-1 and -4, 52(a)(2)-2 and -3, 60(b)(4)-3, and 60(b)(8)-4 and -5.

This proposed difference in treatment generally results from the fact that for a credit card account that is accessed by a prepaid card, the prepaid card can be used to directly access the credit to purchase goods or services. For example, credit accessed by a prepaid card at point of sale would be treated as a "sale credit" under § 1026.8(a) because the prepaid card is directly accessing credit to purchase goods or services. On the other hand, for a credit card account accessed by an account number described in proposed § 1026.2(a)(15)(vii), credit that is extended typically would be deposited into the prepaid account. The account number that accesses the credit is not typically viewed as directly used to purchase goods or services with the credit. For example, credit accessed by an account number linked to a prepaid account would be "nonsale credit" under § 1026.8(b) because it would not be used directly to purchase goods or services.

The Bureau believes that these types of "push accounts" could be offered as substitutes for overdraft credit plans accessed by a prepaid card, and if they were not covered, creditors could be able to circumvent the consumer protections set forth in the proposal. Nonetheless, the Bureau is not attempting to cover general lines of credit where consumers are not restricted from depositing directly credit extensions taken under the plan into asset accounts of their choosing, including prepaid accounts. The Bureau believes that those types of credit plans are not acting as substitutes for overdraft credit plans because these general lines of credit are not designed to provide credit in connection with particular prepaid accounts. The Bureau solicits comment on this approach, and whether the proposal appropriately covers the types of credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards.

The Bureau also solicits comment on whether there are alternative ways to address credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards. For accounts that permit deposits directly into accounts other than prepaid accounts specified by the creditor, and thus would not be covered above under the proposal, the Bureau seeks comment on whether it should attempt to cover such accounts when they are being used by agreement to push funds to cover specific negative balance purchases. For example, should the rule cover the following situation as a push account: where the prepaid card issuer and a third-party creditor have an arrangement where the prepaid card issuer will notify the consumer that there are insufficient funds in the prepaid account to complete a transaction and contemporaneously prompt the consumer to transfer funds to complete the transaction. The Bureau solicits comment on whether there are other types of account structures that the Bureau should consider covering under the rule, and if so, whether the account structure should be considered a "push" account or

a "pull account" for purposes of the rule, given that in some cases, different rules would apply under the proposal depending on the how account is structured, as discussed above.

To be a credit card, the prepaid card, or account number that accesses an account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, must be a single device that may be used from time to time to access a credit plan.[360] Current comment 2(a)(15)-1 reiterates that a credit card must be usable from time to time. The comment also provides that 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.

The proposal would revise this comment to provide additional guidance on the treatment of preauthorized checks in relation to prepaid accounts. As is described above, preauthorized checks are checks where by a consumer must seek authorization before presenting them for payment. At the time of preauthorization, funds to pay the check are deducted from the account and held by the institution until the check is presented. The proposal would explain in comment 2(a)(15)-1 that with respect to a preauthorized check that is issued on a prepaid account for which the funds are withdrawn at the time of preauthorization using the prepaid account number, the credit would be considered obtained using the prepaid account number and not the check. Under the proposal, a prepaid account number typically would be a credit card unless it qualifies for an exception, as discussed below.

[360] As discussed in the section-by-section analysis of proposed § 1026.2(a)(20), under the proposal, a person would be extending credit pursuant to a plan where the person pays transactions using a prepaid card where there are insufficient funds in a prepaid account to fund the transactions and the consumer is obligated contractually to repay the credit. In addition, a person would be extending credit pursuant to a plan where the person extends credit to a consumer where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor and the consumer is obligated contractually to repay the credit.

Nonetheless, even if the prepaid card is a single device that may be used from time to time to access a credit plan, the prepaid card still would not be a credit card under § 1026.2(a)(15)(i) if the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of § 1026.4, with respect to 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, any service, transaction, activity, or carrying charges imposed on the 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 (4) and comments 4(a)-4 and 4(b)(2)-1. Fees described in § 1026.4(c) that are not finance charges include application fees to apply for credit, late payment fees, over-the-limit fees, and returned payment fees.

To the extent that a prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments, the prepaid card would not be a credit card. To effectuate the purpose of TILA to promote informed use of credit and to facilitate compliance, the Bureau believes it is necessary and proper to exercise its exception authority under TILA section 105(a), to propose to exclude such prepaid cards from the definition of "credit card" under TILA section 103(*l*) and Regulation Z § 1026.2(a)(15)(i). 15 U.S.C. 1602(*l*). If the credit plan is accessed only by a prepaid card that does not meet the definition of credit card because the card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four

installments, the person issuing the card would not be a "card issuer" and the person would not need to comply with the credit card rules in Regulation Z. In addition, the person in extending this type of credit would not be a "creditor" under Regulation Z because the person would not be charging a finance charge and the credit would not be payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(i). Thus, the person would not need to comply with the disclosure and other requirements in Regulation Z that apply to creditors.

The proposed provision would facilitate compliance by allowing a person who is providing such credit to comply only with Regulation E with respect to the prepaid account and this credit, instead of also complying with Regulation Z with respect to the overdraft credit. The Bureau believes that the term "credit card" was defined broadly in Regulation Z to ensure that consumers who obtain access devices that access credit receive certain protections, such as receiving periodic statements, limits on liability for unauthorized use and billing error resolution rights, even if a person in issuing the access device would not have met the general definition of creditor in 1026.2(a)(17)(i) because no finance charge is imposed and the credit is not payable in more than four installments. Such access devices that are not linked to an asset account would not receive such protections, such as limits on liability for unauthorized use and billing error resolution rights, if the credit accessed by these access devices were not covered by Regulation Z. Nonetheless, for prepaid cards, the Bureau believes that the proposed protections in Regulation E for prepaid cards would be sufficient to protect consumers when credit extended under a credit plan accessed by a prepaid card is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments.

Given that no finance charges or fees described in § 1026.4(c) would be charged under the credit plan under this exception and that the Bureau anticipates that the credit limit under such plans would be quite low, perhaps $10 or less, and the credit would not be structured to be paid over a significant amount of time, the Bureau believes that consumers are unlikely to be become overextended in using this credit and incurring substantial fees. Thus, to facilitate compliance, the Bureau believes that this type of credit plan is more properly regulated under Regulation E as credit incidental to the prepaid card transaction. For example, as discussed in more detail in the section-by-section analysis of Regulation E proposed § 1005.12(a), Regulation E's provisions in §§ 1005.11 and 1005.18(e) regarding a consumer's liability for an unauthorized electronic fund transfer and regarding the investigation of errors would apply to extensions of this credit. In addition, such credit extensions would be disclosed on Regulation E periodic statements if the financial institution elects to provide such statements under proposed § 1005.18(c)(1), or alternatively, would be disclosed on the electronic history of the consumer's prepaid account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account under Regulation E proposed § 1005.18(c)(1)(ii).

The Bureau also notes that the opt-in provision in Regulation E § 1005.17 would not apply to credit extended under a credit plan accessed by a prepaid card that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. Section 1005.17 sets forth requirements that financial institutions must follow in order to provide "overdraft services" to consumers related to consumer's accounts. For prepaid accounts, any fees or charges for ATM or one-time "debit card" transactions (as that term is used in Regulation E to generally include prepaid cards; *see*

proposed comment 1005.2(b)(3)(i)-8) that access an institution's overdraft service would be considered "finance charges" under the proposal and thus would exceed the scope of the proposed exception because it is limited to credit on prepaid accounts for which no finance charges or fees described in § 1026.4(c) are imposed. The Bureau nevertheless seeks comment on whether it should apply Regulation Z to such credit.

The Bureau notes that the proposal does not provide a similar exception for account numbers that are not prepaid cards 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. *See* proposed § 1026.2(a)(15)(vii) and comment 2(a)(15)-2.i.G. Such a credit plan would be covered under the proposal even if the credit plan could be accessed by use of checks or in-person withdrawals, so long as the credit plan is accessed by an account number where extensions of credit are allowed to be deposited directly into particular prepaid accounts specified by the creditor and the consumer is not permitted to deposit directly extensions of credit into an asset account other than particular prepaid accounts specified by the creditor. *See* proposed comment 2(a)(15)-5. Under the proposal, these account numbers would be credit cards regardless of whether credit extended under such credit plans is subject to a finance charge or a fee described in § 1026.4(c) or is payable by written agreement in more than four installments. The Bureau believes that an exception is not appropriate for these types of credit plans because not all credit extensions under such credit plans would be subject to Regulation E protections if Regulation Z did not apply. Although Regulation E would apply to credit extensions that are deposited in a prepaid account by use of an electronic fund transfer, Regulation E would not apply to extensions of credit that

are accessed by check or in person withdrawals where the transaction does not involve an electronic fund transfer to or from the prepaid account. The Bureau also believes that an exception for this type of credit is not necessary because creditors that establish a separate credit plan that is accessed by an account number that is not a prepaid card typically will charge a finance charge or fee described in § 1026.4(c) for the credit. The Bureau solicits comment on this approach.

Under the proposal, a person that issues such an account number would be a "card issuer" under § 1026.2(a)(7) even if the account number only accesses credit that is not subject to a finance charge or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. In addition, the person would be a "creditor" by issuing a credit card that accesses credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(iii). The person would be required to comply with rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subpart B. The rules implementing the Credit CARD Act, generally set forth in subpart G, would not apply because the person would not be charging a finance charge for the credit, and thus, would not be extending "open-end credit." For more a detailed discussion, *see* the section-by-section analysis of § 1026.2(a)(17).

Prepaid Cards or Account Numbers that Are Credit Cards

As discussed above, proposed comment 2(a)(15)-2.i.F would provide that the term "credit card" includes a prepaid card (including a prepaid card that is solely an account number) that is a single device that may be used from time to time to access a credit plan, except if that prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more than four

installments. Proposed § 1026.2(a)(15)(vii) and comment 2(a)(15)-2.i.G would provide that the term "credit card" includes an account number that is not a prepaid card that may be used from time to time to access a credit plan that allows deposits directly 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.

If a person issues a prepaid card or account number as described above that is a credit card, the person would be a "card issuer" under § 1026.2(a)(7). The person would also be a "creditor" if the card issuer extends credit accessed by the prepaid card or account number as described above. *See* § 1026.2(a)(17)(iii) and (iv). If the card issuer extends open-end credit, the person generally would need to comply with the open-end (not home-secured) rules set forth in subpart B and the credit card rules set forth in subparts B and G. As discussed above in the Overview of Regulation Z Proposal section and below in the section-by-section analysis of § 1026.2(a)(20), the Bureau believes that most creditors that are offering credit plans, including overdraft credit services, accessed by a prepaid card, or other credit plans linked to prepaid accounts that are accessed by an account number as discussed above, that are charging finance charges for the credit would be creditors offering "open-end credit" under Regulation Z. *See* the section-by-section analysis of § 1026.2(a)(17) for a discussion of situations in which a creditor may not be offering open-end credit in relation to a prepaid account.

Account numbers

Comment 2(a)(15)-2.ii.C currently provides that the term "credit card" does not include 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).

In 2011, the Board adopted comment 2(a)(15)-2.ii.C as part of implementing the Credit CARD Act provisions. In the supplemental information to the final rule, the Board stated that because most if not all credit accounts can be accessed in some fashion by an account number, the Board did not believe that Congress generally intended to treat account numbers that access a credit account as credit cards for purposes of TILA.[361] However, the Board was concerned that, when an account number can be used to access an open-end line of credit to purchase goods or services, the Board believed it would be inconsistent with the purposes of the Credit CARD Act to exempt the line of credit from the protections provided for credit card accounts. For example, creditors may offer open-end credit accounts designed for online purchases that function like a traditional credit card account but can only be accessed using an account number. In these circumstances, the Board believed that TILA's credit card protections should apply.

The proposal would revise comment 2(a)(15)-2.ii.C to indicate that the comment does not apply to prepaid cards and account numbers described in proposed comments 2(a)(15)-2.i.F and

[361] 76 FR 22948, 22949 (Apr. 25, 2011).

G. Comment 2(a)(15)-2.ii.C generally would not apply to prepaid cards because such cards generally could be used to purchase goods or services, even if the prepaid card was solely an account number. In addition, as discussed in the Overview of Regulation Z Proposal section, the Bureau is concerned that if lines of credit that are accessed by an account number are not considered credit cards when credit extensions can be deposited directly only into particular prepaid accounts specified by the creditor, they would be offered as a means of evading the requirements articulated in this proposal that apply to credit cards under TILA. Thus, the Bureau does not believe that such credit plans should be exempted from the definition of credit card and proposes to cover such credit plans as credit card accounts.

Technical revisions

The proposal also provides a technical revision to accommodate the changes discussed above. Specifically, comment 2(a)(15)-2.i.B currently provides guidance on when a debit card is a credit card, and the comment provides examples of credit cards that include "a card that accesses both a credit and an asset account (that is, a debit-credit card)." Proposed § 1026.2(a)(15)(iv) would define the term "debit card" for purposes of Regulation Z to mean "any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account." Because the term "debit card" under the proposal would not include all cards that access asset accounts, comment 2(a)(15)-2.i.B would be revised to be consistent with the proposed definition of debit card. No substantive changes are intended to the current rules for when debit cards are credit cards under § 1026.2(a)(15)(i).

2(a)(15)(ii) Credit Card Account Under an Open-end (Not Home-secured) Consumer Credit Plan

Under Regulation Z, the term "credit card account under an open-end (not home-secured) consumer credit plan" is defined in § 1026.2(a)(15)(ii) to mean "any open-end credit account that is accessed by a credit card, except: (A) [a] home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or (B) [a]n overdraft line of credit that is accessed by a debit card or an account number." Certain requirements in the Credit CARD Act, which are generally set forth in subpart G, apply to card issuers offering a credit card account under an open-end (not home-secured) consumer credit plan. *See, e.g.*, §§ 1026.5(b)(2)(ii), .7(b)(11), .51 to .59.

Generally, to be a "credit card account under an open-end (not home-secured) consumer credit plan," the credit must be "open-end credit" as defined in § 1026.2(a)(20) and the credit must be accessed by a "credit card" as defined in § 1026.2(a)(15)(i). As discussed above in the Overview of Regulation Z Proposal section and in the section-by-section analysis of § 1026.2(a)(20), the Bureau anticipates that most credit accessed by a prepaid card would meet the definition of "open-end credit" if the creditor offering the plan may impose a finance charge for the credit.[362] In addition, under the proposal, a prepaid card that is a single device that may be used from time to time to access such an open-end credit plan would be a credit card. Likewise, the Bureau anticipates that most credit that is deposited into a prepaid account where

[362] As discussed in more detail below in the section-by-section analysis of § 1026.2(a)(17), a person would not be a creditor that is extending open-end credit where the person extends credit accessed by a prepaid card but the person is not charging a finance charge for the credit. Similarly, a person extending credit accessed by an account number where such extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the person also would not be extending open-end credit if the person is not charging a finance charge for the credit. Nonetheless, as discussed in the section-by-section analysis of § 1026.2(a)(17), such persons may still be subject to certain Regulation Z requirements under certain circumstances.

the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor would meet the definition of "open-end credit" if the creditor offering the plan may impose a finance charge for the credit. Also, an account number that may be used from time to time to access such an open-end credit plan would be a credit card. Thus, an open-end credit plan accessed by a prepaid card that is a credit card or an account number that is a credit card (as described above) would be a "credit card account under an open-end (not home-secured) consumer credit plan."

For the reasons discussed in the Overview of Regulation Z Proposal section, the proposal also would clarify that the exception in current § 1026.2(a)(15)(ii)(B) does not apply to open-end credit plans accessed by a prepaid card or an account number as described above. Currently, § 1026.2(a)(15)(ii)(B) provides that the definition of "credit card account under an open-end (not home-secured) consumer credit plan" does not include an "overdraft line of credit that is accessed by a debit card or an account number." The Bureau notes that the proposed definition of "debit card" in § 1026.15(a)(2)(iv) would exclude a prepaid card. Thus, the exception in § 1026.2(a)(15)(ii)(B) does not apply to overdraft lines of credit that are accessed by a prepaid card. In addition, the proposal would revise § 1026.2(a)(15)(ii)(B) to only include the exception for overdraft lines of credit accessed by a debit card. The proposal would move the exception for overdraft lines of credit that are accessed by account numbers from § 1026.2(a)(15)(ii)(B) to proposed § 1026.2(a)(15)(ii)(C). The proposal also would amend proposed § 1026.2(a)(15)(ii)(C) and comment 2(a)(15)-4 to provide that the exception does not apply to an overdraft line of credit that is accessed by an account number where the account number is a prepaid card that is a credit card, or 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.

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

Under Regulation Z, the term "charge card" is defined in § 1026.15(a)(15)(iii) to mean "a credit card on an account for which no periodic rate is used to compute a finance charge." Current comment 2(a)(15)-3 provides guidance on how the term "charge card" is used throughout the Regulation. In particular, the current comment provides that generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. This comment also explains that under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term "charge card" is, however, distinguished from "credit card" or "credit card account under an open-end (not home-secured) consumer credit plan" in §§ 1026.60, 1026.6(b)(2)(xiv), 1026.7(b)(11) and (b)(12), 1026.9(e) and (f), 1026.28(d), 1026.52(b)(1)(ii)(C), and Appendices G-10 through G-13. *See also* the discussion in § 1026.2(a)(20) relating to charge card accounts as open-end credit.

The Bureau proposes to revise comment 2(a)(15)-3 in a number of ways to accommodate the proposed inclusion of some forms of prepaid cards as charge cards. First, the existing text of the comment would be placed in comment 2(a)(15)-3.i and a new comment 2(a)(15)-3.ii would be added. Specifically, proposed comment 2(a)(15)-3.ii would explain that a prepaid card is a charge card if it also is a credit card where no periodic rate is used to compute the finance charge. Likewise, an account number where extensions of credit are permitted to be deposited

directly only into particular prepaid accounts specified by the creditor would be a charge card if it is a credit card where no periodic rate is used to compute the finance charge. This proposed comment would also explain that 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 would be subject to the requirements in § 1026.7(b)(11), which implements certain protections in the Credit CARD Act regarding periodic statements and payment due dates. *See* the section-by-section analysis of proposed § 1026.7(b). 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 would be required to 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.

Under the proposal, the existing language in comment 2(a)(15)-3 (which would be redesignated as proposed comment 2(a)(15)-3.i) would be revised to be consistent with new proposed comment 2(a)(15)-3.ii and the definition of "charge card." Currently, the first sentence of comment 2(a)(15)-3 provides that generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. This sentence would be revised to be more consistent with the definition of charge card in § 1026.2(15)(iii) to state that charge cards are credit cards where no periodic rate is used to compute the finance charge; no substantive change

is intended by this proposed revision. The Bureau notes that while most charge cards are structured such that the outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received, this is not a requirement in order for a card to meet the definition of charge card in § 1026.2(a)(15)(iii). In addition, the last sentence of the existing comment would be revised to cross reference new proposed comment 2(a)(15)-3.ii. The Bureau seeks comment on this proposed approach to charge cards.

2(a)(15)(iv) Debit Card, 2(a)(15)(v) Prepaid Card, and 2(a)(15)(vi) Prepaid Account

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

As discussed in the Overview of Regulation Z Proposal section, under the proposal, different rules generally would apply in Regulation Z depending on whether credit is accessed by a card or device that accesses a prepaid account (which would be defined in proposed § 1026.2(a)(15)(vi) to match the definition under proposed Regulation E § 1005.2(b)(3)) or one that accesses another type of asset account. To assist compliance with the regulation, the proposal would define "debit card" for purposes of Regulation Z in § 1026.2(a)(15)(iv) to mean "any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account." The proposed definition of "debit card" would specify that it does not include a prepaid card. Proposed § 1026.2(a)(15)(v) would define "prepaid card"

to mean "any card, code, or other device that can be used to access a prepaid account" and would define "prepaid account" in proposed § 1026.2(a)(15)(vi) to mean a prepaid account as defined in Regulation E proposed § 1005.2(b)(3). Proposed comment 2(a)(15)-6 would provide that 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 proposed comment provides that the phrase "credit accessed by a prepaid card" means any credit that is accessed by any card, code or other device that also can be used to access a prepaid account.

The term "prepaid account" as defined in proposed Regulation E 1005.2(b)(3) would not include gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards. Under current Regulation Z and the proposal, these cards would not be credit cards unless they were subject to a written agreement to extend credit. Nonetheless, the Bureau solicits comment on whether gift cards, government benefit accounts that are excluded under Regulation E § 1005.15(a)(2), employee flex cards, and HSA and other medical expense cards should be included within the definition of "prepaid accounts" for purposes of Regulation Z, even if those accounts would not be considered prepaid accounts for purposes of error resolution, disclosure, and other purposes under Regulation E. By including these accounts into the definition of "prepaid account" for purposes of Regulation Z, such a card would be a "prepaid card" and the card would be a "credit card" if the card is a single device that may be used from time to time to access a credit plan, except if that card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or any fee described in § 1026.4(c) and is not payable by written agreement in more

than four installments.[363] As a credit card, the person issuing the card would be a "card issuer" under Regulation Z. *See* § 1026.2(a)(7). In addition, the person issuing the card would be a "creditor" under Regulation Z if the person issuing the card extends the credit. *See* § 1026.2(a)(17)(iii) and (iv). The specific provisions of Regulation Z that the person would need to comply with as a "card issuer" and "creditor" would depend on the type of credit that is being extended and the type of fees being imposed. *See* § 1026.2(a)(17)(iii) and (iv).

The Bureau is unaware of any credit features currently associated with such cards. The Bureau solicits comment on current and potential credit features that may be offered on these types of cards, the nature of potential risks to consumers if credit features were offered on these types of cards, and incentives for the industry to offer credit features on these types of cards. The Bureau also solicits comment on any implications of treating these products as prepaid accounts under Regulation Z but not Regulation E.

2(a)(15)(vii) Account Numbers Where Extensions of Credit are Permitted to be Deposited Directly Only into Particular Prepaid Accounts Specified by the Creditor

As noted above, the proposal covers credit plans that are not accessed directly by a prepaid card, but where a separate credit plan is accessed by an account number that is not a prepaid card 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 would still be covered under the proposal where a consumer could access the credit plan by use of checks or in-person withdrawals, so long as the credit plan allows

[363] Conforming changes also might be needed under Regulation E if these cards became credit cards under Regulation Z.

deposits directly into particular prepaid accounts specified by the creditor but does not allow the consumer to deposit directly extensions of credit into an asset account other than particular prepaid accounts specified by the creditor. *See* proposed comment 2(a)(15)-5. The proposal would provide that these credit plans would be credit card accounts under Regulation Z.

The Bureau believes that these types of credit plans could be offered as substitutes for overdraft credit plans accessed by a prepaid card, and if they were not covered, creditors would be able to avoid the consumer protections set forth in the proposal. Thus, the Bureau believes it is reasonable to include account numbers that access these types of credit products under the definition of credit card. Nonetheless, the Bureau is not attempting to cover general lines of credit where consumers generally are not restricted from depositing directly credit extensions taken under the plan into asset accounts of their choosing, including prepaid accounts. The Bureau believes that those types of credit plans are not acting as substitutes for overdraft credit plans because these general lines of credit are not designed to provide credit in relation to particular prepaid accounts. The Bureau solicits comment on this approach, and whether the proposal appropriately covers the types of credit plans that may act as substitutes for overdraft credit plans accessed by prepaid cards.

In referring to account numbers that access credit plans linked to prepaid accounts, the proposal uses the term "account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor." Proposed § 1026.2(a)(15)(vii) defines this term to mean 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. As noted above, these account numbers would be credit cards under the proposal. *See* proposed § 1026.2(a)(15)(vii), comments 2(a)(15)-2.i.G and -5.

2(a)(17) Creditor

Certain disclosure requirements and other requirements in TILA and Regulation Z generally apply to creditors. Under TILA section 103(g), the term "creditor" generally is defined to mean "a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement." 15 U.S.C. 1602(g). Also, for purposes of certain disclosure provisions in TILA that relate to credit card account-opening disclosures and periodic statement disclosures, the term "creditor" includes a "card issuer[] whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required." 15 U.S.C. 1602(g).

Consistent with TILA, under Regulation Z, the term "creditor" is defined generally in § 1026.2(a)(17)(i) to include a "person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract." Under § 1026.2(a)(17)(v) and comment 2(a)(17)-4, for open-end credit, a person regularly extends consumer credit if it had more than 25 accounts outstanding in the preceding calendar year. If a person did not meet this numerical standard in the preceding calendar year, the numerical standards must be applied to

the current calendar year. In addition, under § 1026.2(a)(17)(iii) and (iv), the term "creditor" includes a card issuer (which is a person that issues a credit card or its agent) that extends credit. For purposes of subpart B, a person also is a "creditor" if the person is a card issuer that extends credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. *See* § 1026.2(a)(17)(iii). Thus, under Regulation Z as generally structured, card issuers that only meet this narrow definition of creditor (*i.e.*, extend credit that is not subject to a finance charge and is not payable in more than four installments) generally are subject to the open-end (not home-secured) rules and the credit card rules in subpart B but generally need not comply with the credit card rules in subpart G, except for the credit card disclosures required by § 1026.60.

Except as described below, the Bureau's proposal generally would apply this existing framework to the prepaid context. Thus, a card issuer that extends open-end credit would meet the general definition of "creditor" because the person charges a finance charge and would be subject to the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subparts B and G. A card issuer that extends closed-end credit, and meets the general definition of "creditor" because the person charges a finance charge or extends credit payable by written agreement in more than four installments generally would be subject to the closed-end provisions in subpart C and certain open-end disclosure (not home-secured) rules and the credit card rules in subpart B. *See* § 1026.2(a)(17)(iv).

With respect to account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, card issuers that meet only the special definition of "creditor" because they extend credit accessed by the account number where the credit is not subject to a finance charge and is not payable by written

agreement in more than four installments would generally be subject to the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subpart B, but not the rules implementing the Credit CARD Act, generally set forth in subpart G. Although a credit plan accessed by such an account number would not be open-end credit because it is not subject to a finance charge, the person generally would be subject to the provisions in subpart B even if the credit is not subject to any fees, including finance charges. *See* § 1026.2(a)(17)(iii).

However, the Bureau is clarifying in proposed comment 2(a)(17)(iii)-2 that § 1026.2(a)(17)(iii) does not apply to a person that is extending credit that is accessed by a prepaid card where the credit (1) is not subject to a finance charge, (2) is not subject to fees described in § 1026.4(c), and (3) is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of § 1026.2(a)(15)(i), in this case, the prepaid card is not a credit card and therefore the person issuing the card is not a card issuer. Prepaid card issuers that satisfy this exclusion would still be subject to Regulation E's requirements, such as error resolution, and limits on liability for unauthorized use.

Proposed comment 2(a)(17)(iii)-2 would specify that a person is not a creditor where a prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments.

The Bureau notes, however, that with respect to a credit plan that is accessed by a prepaid card, the person would be a card issuer if the prepaid card accesses a credit plan that is subject to a fee that is not a finance charge that is described in § 1026.4(c), such as a fee for applying for a credit plan, a late payment fee, an over-the-limit fee, or a returned payment fee. In this case, the person would not be extending open-end credit because the credit is not subject to a finance

charge. Nonetheless, the person would be a card issuer under § 1026.2(a)(7) and would be a creditor under § 1026.2(a)(17)(iii). As a result, the person would be required to comply generally with the rules governing open-end (not home-secured) credit plans in subpart B and the credit card rules set forth in subpart B, but not the rules implementing the Credit CARD Act, generally set forth in subpart G.

2(a)(20) Open-End Credit

Under TILA section 103(j), the term "open-end credit plan" is defined to mean a "plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance." *See* 15 U.S.C. 1602(j). Under Regulation Z, the term "open-end credit" is defined in § 1026.2(a)(20) to mean consumer "credit" extended by a "creditor" under a "plan" in which (1) the creditor reasonably contemplates repeated transactions; (2) the creditor may impose a "finance charge" from time to time on an outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. Thus, to have open-end credit under Regulation Z, there must be (1) consumer "credit;" (2) that is extended under a "plan;" (3) where the person extending the credit may impose a "finance charge" from time to time on an outstanding unpaid balance; (4) the person extending the credit is a "creditor;" (5) the person extending credit reasonably contemplates repeated transactions; and (6) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

As discussed above in the Overview of Regulation Z Proposal section, with narrow exceptions discussed below, the Bureau anticipates that most credit accessed by a prepaid card will constitute credit extended under a "credit plan" and will meet the definition of "open-end credit" if the creditor offering the plan may impose a finance charge for the credit. Likewise, the Bureau anticipates that most credit that is deposited into a prepaid account where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor will constitute credit extended under a "credit plan" and will meet the definition of "open-end credit" if the creditor offering the plan may impose a finance charge for the credit.

The proposal would provide additional guidance on the meaning of three terms used in the definition of "open-end credit:" (1) "credit;" (2) "plan;" and (3) "finance charge." For a discussion of the proposed revisions related to the term "credit," see the section-by-section analysis of proposed § 1026.2(a)(14) above. The term "plan" is discussed below. The term "finance charge" is discussed below and in the section-by-section analysis of § 1026.4.

Plan

The term "plan" currently is discussed in comment 2(a)(20)-2, which provides in relevant part that the term "plan" connotes a contractual arrangement between the creditor and the consumer. For the reasons described in the Overview of Regulation Z Proposal section, the proposal would revise comment 2(a)(20)-2 to provide additional guidance on what constitutes a plan with respect to credit extended through paying overdrafts in connection with prepaid accounts. A new comment 2(a)(20)-2.ii would be added that would provide that with respect to credit accessed by a prepaid card, a plan would mean a program where the consumer is obligated contractually to repay any credit extended by the creditor. 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. Under the proposal, 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 to cover the amount of the transaction at the time the transaction was authorized but not sufficient or available funds to cover the amount of the transaction at the time the transaction is paid.

In addition, for the reasons discussed in the Overview of Regulation Z Proposal section, a similar new proposed comment 2(a)(20)-2.iii would be added to provide guidance on when depositing credit proceeds into a prepaid account would be considered extending credit under a plan. In particular, this proposed comment would provide that 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, 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 will routinely 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.

As discussed in more detail in the Overview of Regulation Z Proposal section, with respect to the programs described above, the Bureau believes these programs are plans notwithstanding that the person offering the program reserves the right not to extend credit on individual transactions. The Bureau believes that the person's reservation of such discretion in connection with credit extended with respect to prepaid accounts does not connote the absence of an open-end credit plan. Consumers using overdraft programs, or linked lines of credit, in connection with prepaid accounts must agree to repay the debt created by an overdraft or advance, indicating that a contractual arrangement between the creditor and the consumer exists. The Bureau notes that credit card issuers similarly reserve the right to reject individual transactions, and thus the Bureau believes that automated overdrafts services are comparable.

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

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

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

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

The proposal would add 2(a)(20)-4.ii to note that 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 (4) and comments 4(a)-4 and 4(b)(2)-1. In addition, proposed comment 2(a)(20)-4.ii would provide that with respect to that credit, such service, transaction, activity or carrying charges would constitute finance charges imposed from time to time on an outstanding unpaid balance if there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

The Bureau does not anticipate that there will be a specific amount financed for credit plans accessed by prepaid cards, or credit plans that are linked to prepaid accounts and accessed by account numbers as discussed above, at the time the credit plan is established. Instead, the Bureau anticipates that the credit lines on these credit plans generally will be replenishing. In such cases, an amount financed for the plan could not be calculated because the creditor will not know at the time the plan is established the amount of credit that will be extended under the plan.

Thus, to the extent that any finance charge may be imposed on such credit plans, the credit plan will meet this criterion.

As discussed in the section-by-section analysis of § 1026.4, the Bureau is proposing to expand the types of fees that would be finance charges for purposes of credit linked to prepaid accounts. Currently, certain fees or charges are specifically excluded from the term "finance charge," such as (1) charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. *See* § 1026.4(c)(3) and (4). The proposal would amend § 1026.4 and its commentary that relates to the definition of "finance charge" to provide that these two exceptions do not apply 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. In addition, the proposal would make additional amendments to § 1026.4 and related commentary related to 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. For such credit, any service, transaction, activity, or carrying charges imposed on the 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 (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.

As a result of the proposal to expand the definition of finance charge for credit linked to prepaid accounts, the Bureau believes that charge card accounts accessed by prepaid cards or account numbers as discussed above would be open-end credit when transaction fees, participation fees, or other finance charges may be imposed on the account. If the Bureau were to read the criterion of open-end credit that a finance charge may be imposed time to time on an outstanding unpaid balance narrowly, there is a chance that some types of charge card accounts offered in connection with prepaid accounts would constitute closed-end credit. A person offering such a charge card account would be required to comply with the closed-end provisions in subpart C as well as certain open-end (not home-secured) rules and the credit card rules in subpart B. *See* § 1026.2(a)(17)(iv). The Bureau believes that receiving closed-end disclosures for these types of accounts would be confusing to consumers, because the disclosures would be different from their other credit card accounts. Where the transactions otherwise would seem to fit an open-end plan based on repeated transactions and replenishing credit, the Bureau believes that consumers would be better protected and better informed if such transactions were treated as open-end plans in the same way as their other credit card accounts. In addition, with respect to credit accessed by prepaid cards, the Bureau believes that complying with the closed-end credit rules would be difficult for card issuers (for example, at point of sale) because closed-end disclosures specific to each credit extension would need to be provided prior to each transaction. Thus, the Bureau proposes to retain the current interpretation of the finance charge criterion for the term "open-end credit" which would result in most charge card accounts meeting the definition of "open-end credit" if a transaction fee, participation fee or other finance charge may be imposed on the credit plan. The Bureau solicits comment on this approach.

The Bureau also notes that persons that offer charge card accounts where no finance charge is imposed may still be subject to certain Regulation Z provisions. *See* the section-by-section analysis of § 1026.2(a)(17).

As a technical revision, the proposal would move the existing language of comment 2(a)(20)-4 to proposed comment 20(a)(20)-4.i.

Section 1026.4 Finance Charge

Under TILA section 106(a), the term "finance charge" generally provides that "the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit." The finance charge does not include charges of a type payable in a comparable cash transaction. 15 U.S.C. 1605(a).

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

The proposal would amend § 1026.4 and its commentary that relates to the definition of "finance charge" in two ways. First, it would provide that the exception regarding overdrafts

would not apply to credit accessed by a prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, as discussed further below and in the Overview of Regulation Z Proposal section. Second, it would provide that the second exception regarding participation fees does not apply to credit accessed by prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The proposal also would make certain other additional amendments to § 1026.4 and related commentary related to 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 to clarify which types of charges are finance charges and which are not. As discussed below, this portion of the proposal is designed to ensure proposed protections for prepaid accounts.

4(a) Definition

Under Regulation Z, the term "finance charge" generally is defined in § 1026.4(a) to mean "the cost of consumer credit as a dollar amount." It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. Comment 4(a)-4 provides guidance on when transaction charges imposed on credit card accounts are finance charges under § 1026.4(a). (Transaction charges that are imposed on checking accounts or other transaction accounts are discussed in the section-by-section analysis of § 1026.4(b).)

Specifically, comment 4(a)-4 provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the

same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example, any charge imposed on a credit cardholder by a card issuer for the use of an ATM to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. In addition, any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States with a foreign merchant, or in a foreign currency, is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. This comment essentially provides that debit card transactions are not considered "comparable cash transactions" to credit card transactions with respect to transaction charges imposed by a card issuer on a credit cardholder when those fees are imposed on the credit card account.

In the supplemental information accompanying the rule that adopted this comment, the Board noted the inherent complexity of seeking to distinguish transactions that are "comparable cash transactions" to credit card transactions from transactions that are not.[364] For example, the Board discussed the situation of a transaction fee imposed by a card issuer on the credit card account for a cash advance through an ATM. A transaction fee for a cash advance through an ATM would not always be a finance charge if the "comparable cash transaction" exception considered fees that are imposed on debit cards offered by the credit card issuer in determining whether a transaction fee for a cash advance through an ATM imposed on the credit account is a finance charge. Instead, whether this fee is a finance charge would depend on whether the credit

[364] 74 FR 5244, 5263 (Jan. 29, 2009).

card issuer provides asset accounts and offers debit cards on those accounts and whether the fee exceeds the fee imposed for a cash advance transaction through an ATM on the asset account. The Board believed this type of distinction is not helpful for consumers in understanding transaction fees that are imposed on credit card accounts. Thus, the Board adopted comment 4(a)-4, which provides that any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. The Board noted that it was not revising comment 4(b)(2)-1, which states that if a checking or transaction account charge imposed on an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge. The Board further noted that comment 4(b)(2)-1 addresses different situations as comment 4(a)-1, as discussed below in the section-by-section analysis of § 1026.4(b)(2).

The Bureau proposes to add two new examples to this comment to provide guidance on how this comment applies to prepaid cards that are credit cards and to account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In particular, proposed comment 4(a)-4.iii would provide that any transaction charge imposed on a cardholder by a card issuer for credit accessed by a prepaid card that also is a credit 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. For example, assume a prepaid card issuer charges $15 for each transaction accessing credit with a prepaid card. This $15 fee would be a finance charge regardless of whether the prepaid card issuer charges the same, greater or lesser fee to the consumer to access funds in the prepaid account using the prepaid card.

In addition, proposed comment 4(a)-4.iv would provide that 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. For example, assume a card issuer charges a $15 fee each time a consumer uses an account number to access credit that is deposited into a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. This $15 fee is a finance charge regardless of whether the card issuer charges the same, greater or lesser fee to the consumer to access funds in the prepaid account using a prepaid card.

4(b) Examples of Finance Charges

4(b)(2)

Section 1026.4(b) provides examples of the types of charges that are finance charges, except if those charges are specifically excluded under § 1026.4(c) through (e). In particular, § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges. However, the Board added a partial exception to this example stating that for any charge imposed on a checking or other transaction account, such service or transaction account charge is only a finance charge to the extent that the charge exceeds the charge for a similar account without a credit feature. Comment 4(b)(2)-1 similarly provides that a checking or transaction account charge imposed in connection with a credit feature is a finance charge under § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for a checking or transaction account with a credit feature

does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 1026.4(b)(2).[365]

The Bureau believes that the Board adopted this partial exception to exclude certain overdraft lines of credit from coverage under Regulation Z. As discussed in the Overview of Regulation Z Proposal section, overdraft lines of credit where a financial institution agrees in writing to pay overdrafts and impose a fee generally would be subject to Regulation Z if the financial institution is imposing a finance charge. Nonetheless, under § 1026.4(b)(2), a person would not be imposing a finance charge on an overdraft line of credit if the fee for the overdraft is imposed on the checking or transaction account and does not exceed the amount of the fee that is imposed on the checking or transaction account if the financial institution returns the item unpaid (NSF fee) or does not exceed the amount of the fee the financial institution would impose if a courtesy overdraft service applied to the account instead of an overdraft line of credit. The Bureau believes that the Board adopted this partial exception as an expansion of the "comparable cash transaction" exception to the definition of "finance charge," which excludes charges imposed uniformly in cash and credit transactions from the definition of "finance charge." *See* § 1026.4(a) and comment 4(a)-1; *see also* 15 U.S.C. 1605(a).

For the reasons discussed in the Overview of Regulation Z Proposal section, the Bureau proposes not to extend this partial exclusion to credit extended in connection with a prepaid account. The proposal would add proposed § 1026.4(b)(2)(ii), and proposed comment 4(b)(2)-

[365] To illustrate: a $5 service charge is imposed on a checking or transaction 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).) As another example, assume a $5 service charge is imposed for each item that results in an overdraft on a checking or transaction 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.

1.ii through .iv, to clarify that prepaid accounts are not subject to this partial exception from the definition of finance charge. Specifically, the proposed language would provide that any charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability is a finance charge 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.

To illustrate, assume a $15 transaction charge is imposed on the prepaid account each time a consumer uses a prepaid card or an account number described above 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. As another example, assume a $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. 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. As a third example, assume 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 above. 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.

Proposed comment 4(b)(2)-1.iii would provide that examples of charges imposed on a prepaid account in connection with an extension of credit, for carrying a credit balance, or for credit availability include (1) transaction fees for credit extensions; (2) fees for transferring funds from a credit account to a prepaid account; (3) a daily, weekly, or monthly (or other periodic) fee assessed each period a prepaid account is in "overdraft" status, or would be in overdraft status but for funds supplied by a linked line of credit; (4) a daily, weekly, or monthly (or other periodic) fee assessed each period a line of credit accessed by a prepaid card or account number described in § 1026.4(b)(2)(ii) has an outstanding balance; and (5) participation fees or other fees that the consumer is required to pay for the issuance or availability of credit.

Proposed comment 4(b)(2)-1.iv would provide that proposed § 1026.4(b)(2)(ii) would not apply to transaction fees imposed on the prepaid account that are imposed only on transactions that solely access funds in the prepaid account (and are not imposed on transactions that either are funded in whole or in part from credit), 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 would not be 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).

The Bureau believes that this approach is most reasonable and consistent with the general definition of finance charge because where a prepaid account lacks sufficient funds to pay a transaction completely, a transaction fee imposed in the course of processing the transaction with credit funds is payable directly or indirectly by the consumer as an incident to or condition of the extension of credit. That is why comment 4(a)-4 for credit card transactions covers transaction charges, regardless of whether the issuer imposes the same, greater, or lesser charges on withdrawals on funds from an asset account.

As discussed above, the Bureau believes that the Board based the partial exemption in § 1026.4(b)(2) on the comparable cash transaction exception, which excludes charges imposed uniformly in cash and credit transactions from the definition of "finance charge." The Bureau believes that the Board expanded this exception in connection with asset accounts to include situations where a consumer is using a cash-like product, such as a debit card that is accessing an asset account. The Bureau further believes that it is reasonable not to expand the comparable cash transaction exception in connection with prepaid accounts, for the reasons discussed below. In retail transactions, the comparable cash transaction to which the credit transaction is compared could only include retail transactions where the goods or services are paid for with "cash" as opposed to being paid for by a check or a prepaid card that accesses funds in a checking or transaction account. When a consumer pays for goods or services with "cash," the consumer does not pay these fees. Therefore, the Bureau believes that the "comparable cash" exception is

reasonably interpreted not to apply to these types of fees that are imposed on prepaid accounts with respect to credit extended in connection with prepaid accounts, as described above. First, the Bureau believes that the best approach with respect to credit extended in connection with prepaid accounts is to provide a clear line about which fees that are imposed on the prepaid account are finance charges, rather than basing that decision on the fees that a prepaid card issuer charges to access the funds in the prepaid account or to hold the account. Otherwise, the same type of fee, such as a transaction or service charge imposed in connection with an extension of credit, for carrying a credit balance, or for credit availability will not always be a finance charge for each prepaid account, but instead would depend on the other fees that are charged on that particular prepaid account. This may make it more difficult for compliance purposes to determine whether a fee is a finance charge.

The Bureau also believes that it is necessary to include in the definition of finance charge fees that are imposed on the prepaid account if those fees are in connection with an extension of credit, for carrying a credit balance, or for credit availability. Otherwise, a person could avoid the protections set forth in the proposal by charging fees for credit on the prepaid account rather than on the credit account. The Bureau believes that the proposed approach will ease compliance and make it easier for consumers to compare total costs of accessing credit.

The proposal would cause issuers who are trying to fit within certain exceptions to the regime to waive certain transaction fees in connection with overdraft transactions. For example, if a financial institution wants to take advantage of the exception from Regulation Z where a credit plan is accessed by a prepaid card and the credit plan only allows extension of credit that are not subject to a finance charge or fees subject to § 1026.4(c) and are not payable by written agreement in more than four installments, the financial institution would need to waive

transaction fees where the transaction is funded in whole or in part by credit. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each transaction that is made with the prepaid card, including when the prepaid card is used to access credit where the consumer has insufficient or unavailable funds in the prepaid account at the time of authorization or at the time the transaction is paid. 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. In this case, the prepaid card issuer would need to waive the $1.50 transaction charge on any transaction that accesses credit. Otherwise, the $1.50 transaction fee charged for a transaction that accesses credit would be a finance charge. The Bureau believes that the cost imposed in waiving fees would be outweighed by benefits to consumers in understanding the costs of credit transactions.

The Bureau believes the best approach is to treat such fees consistent with the provision in comment 4(a)-4 for transaction fees imposed on credit card accounts. This means that fees that are imposed to access the funds in a prepaid account or to hold the prepaid account are not relevant in deciding whether transaction or service charges imposed on a prepaid account for credit are "finance charges" under § 1026.4(a). However, the Bureau seeks comment on this approach and its benefit and costs for consumers, industry, and alternative approaches if any.

For the reasons discussed in the Overview of Regulation Z Proposal section, to preserve the existing rules so that they remain applicable to other types of credit, the Bureau proposes to move the existing rule to § 1026.4(b)(2)(i) and move the existing language in comment 4(b)(2)-1 to proposed comment 4(b)(2)-1.i.

4(c)

Section 1026.4(c) provides a list of certain charges that are excluded from the definition of finance charge under § 1026.4. The charges listed in § 1026.4(c) include (1) Application fees charged to all applicants for credit, whether or not credit is actually extended; (2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence; (3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. As discussed in more detail below, the proposal would provide that the following charges are not excluded from the definition of finance charge in connection with credit accessed by prepaid card, or credit accessed by account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor: (1) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing; and (2) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.

4(c)(3)

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

would not be subject to Regulation Z. As discussed in the Overview of Regulation Z Proposal section, the Bureau intends generally that, under its proposal, Regulation Z will apply to credit accessed by prepaid cards or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, the Bureau proposes to revise § 1026.4(c)(3) to specify that this provision does not apply to credit accessed by a prepaid card or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. As a result, charges imposed by a financial institution for paying items that overdraw a prepaid account will be finance charges even if the payment of the item and the imposition of the charge were not previously agreed upon in writing, and the financial institution extending the credit represented by the overdraft will be a creditor.

4(c)(4)

Section 1026.4(c)(4) provides that the term "finance charge" does not include fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. Comment 4(c)(4)-1 explains that 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. 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.

The Bureau proposes to amend § 1026.4(c)(4) to provide that 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. The Bureau believes that this exception is not dictated by TILA's definition of "finance charge." Rather, the Board added this exception to § 1026.4(c)(4) in 1981 based on an interpretation letter that the Board has previously issued.[366] In the interpretation letter, the Board excluded annual fees for membership in a credit plan from the definition of "finance charge" because these fees are not imposed incident or as a condition to any specific extension of credit.[367] Nonetheless, the Bureau believes that the term "finance charge" in TILA is broad enough to reasonably include periodic fees for participation in a credit plan under which a consumer may obtain credit because those fees would be "incident to the extension of credit." Without paying the periodic fees for access to the credit plan, the consumer could not use the credit plan to access credit.

As discussed in the Overview of Regulation Z Proposal section, the Bureau intends generally to cover credit accessed by a prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, as "open-end credit" under Regulation Z. The Bureau believes these credit plans should be "open-end credit" even if the only fees charged for the plan are annual or other periodic fees for participation in the credit plan. See the section-by-section analysis of § 1026.2(a)(20) for a discussion of the finance charge criterion for the definition of "open-end credit." The Bureau believes that annual or other periodic fees that are charged for participation in credit plans linked to prepaid accounts (as discussed above) could be significant costs to consumers, even if interest or transaction fees are not charged with respect to the plan, and thus

[366] 46 FR 20848, 20855 (Apr. 7, 1981).

[367] 36 FR 16050 (Aug. 19, 1971).

the protections in Regulation Z that apply to open-end credit, including those in subpart G, should apply to credit plans linked to prepaid accounts as discussed above that charge an annual or other periodic fee to access the plan and otherwise meet the definition of "open-end credit."

The Bureau especially believes that the protections in Regulation Z subpart G that generally apply to open-end credit that is accessed by a credit card would be beneficial to consumers for such credit plans. For example, § 1026.51 prohibits credit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21. In addition, § 1026.52(a) restricts the amount of fees (including annual or other periodic fees to access the plan) that an issuer can charge during the first year after an account is opened, such that the fees generally cannot exceed 25 percent of the initial credit limit. These provisions would provide important protections to consumers to help ensure that consumers accessing credit plans linked to prepaid accounts as discussed above where only annual or other periodic fees are imposed do not become overextended in using credit, and that the periodic fees imposed during the first year generally do not exceed more than 25 percent of the initial credit line. Thus, the Bureau would revise § 1026.4(c)(4) and comment 4(c)(4)-1 to provide that the exception for participation fees from the definition of "finance charge" 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

The provisions in subpart B generally apply to a "creditor" as defined in § 1026.17 that is extending "open-end credit" as defined in § 1026.2(a)(20). They also generally apply to card issuers that are extending credit. *See* § 1026.2(a)(17)(iii) and (iv). These provisions generally

require that account-opening disclosures and periodic statement disclosures be provided, as well as set forth rules for the treatment of payments and credit balances, and procedures for resolving credit billing errors. While most of the provisions in subpart B apply generally to open-end credit, as described below, some of the provisions only apply to a "credit card account under an open-end (not home-secured) consumer credit plan," as that term is defined in § 1026.2(a)(15)(ii). In addition, subpart B also sets forth, in § 1026.12, provisions applicable to credit card transactions; those provisions generally apply to a "card issuer" as defined in § 1026.2(a)(7).

As discussed above in the Overview of Regulation Z Proposal section, the Bureau anticipates that most 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, will meet the definition of "open-end credit" if the creditor may impose a finance charge. See the section-by-section analysis of the definition of "credit" in § 1026.2(a)(14), the definition of "open-end-credit" in proposed § 1026.2(a)(20), and the definition of "finance charge" in § 1026.4.

In addition, as discussed above in the section-by-section analysis of § 1026.2(a)(7), (a)(15)(i) and (a)(15)(ii), an open-end credit plan accessed by a prepaid card that is a credit card, or by an account number that is a credit card where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, would be a "credit card account under an open-end (not home-secured) consumer credit plan" and the person issuing the prepaid card or account number would be a "card issuer." For a discussion of card issuers that would still be subject to certain provisions in subpart B if they are extending credit that is not "open-end credit," see the section-by-section analysis of § 1026.2(a)(17).

As discussed below, the proposal would revise subpart B to provide guidance on how certain provisions in subpart B apply to open-end credit plans or credit card accounts that are accessed by a prepaid card (such as overdraft credit) or to open-end credit plans or credit card accounts where extensions of credit are deposited into a prepaid account where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the proposal would provide additional guidance regarding: (1) disclosure requirements applicable to periodic statements in § 1026.5, 1026.7 and 1026.8; (2) treatment of payment requirements as set forth in § 1026.10; and (3) billing error procedures in § 1026.13.

The proposal also would revise certain provisions that apply to credit card transactions in § 1026.12 to provide guidance on how those provisions apply to credit card transactions that are made using a prepaid card that is a credit card or using an account number that is a credit card where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the proposal would provide additional guidance on: (1) unsolicited issuance in § 1026.12(a); (2) the right of a cardholder to assert claims or defenses against a card issuer in § 1026.12(c); and (3) the prohibition on offsets by a card issuer in § 1026.12(d). In addition, the proposal would add a new § 1026.12(h) that would impose a new requirement on card issuers that offer prepaid cards that are credit cards or 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. Under proposed § 1026.12(h), these card issuers would be prevented from opening a credit card account for, or providing a solicitation or application to open a credit or charge card account to, a consumer who holds a prepaid card until at least 30 days after the consumer has registered the prepaid account.

Section 1026.5 General Disclosure Requirements

5(b) Time of Disclosures

5(b)(2) Periodic Statements

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

TILA sections 127(b) and 163, which are implemented in § 1026.5(b)(2), set forth the timing requirements for providing periodic statements for open-end credit accounts and credit card accounts. 15 U.S.C. 1637(b) and 1666b. Section 1026.5(b)(2)(i) provides that a creditor that extends open-end credit or credit accessed by a credit card account generally is required to provide a periodic statement as required by § 1026.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. Section 1026.5(b)(2)(ii)(A) provides that for credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(1) Periodic statements 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 purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment. See the section-by-section analysis of § 1026.2(a)(15)(ii) for a discussion of the term "credit card accounts under an open-end (not home-secured) consumer credit plan."

TILA sections 127(b)(12) and (o), which are implemented in § 1026.7(b)(11)(i)(A), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan. 15 U.S.C 1637(b)(12),

(o). Section 1026.7(b)(11)(i)(A) provides that for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement the due date for a payment. The due date disclosed must be the same day of the month for each billing cycle.

Although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are accessing open-end credit, the Board in implementing these provisions, as explained in comment 5(b)(2)(ii)-4.i, determined that the payment due date requirement in § 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts. *See* § 1026.7(b)(11)(ii)(A). Thus, the requirement in § 1026.5(b)(2)(ii)(A)(*1*) to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement does not apply to charge card accounts. In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.[368] Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to charge card account, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be

[368] 75 FR 7658 at 7672-7673, Feb. 22, 2010.

appropriate to apply the payment due date disclosure in § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

As discussed in more detail in the section-by-section analysis of § 1026.7(b)(11), the proposal would provide that the due date disclosure set forth in § 1026.7(b)(11)(A) does apply to periodic statements provided solely for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card; or where the charge card account is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. *See* proposed § 1026.7(b)(11)(ii)(A). Thus, as a technical revision, comment 5(b)(2)(ii)-4.i would be revised to reflect the proposed changes to § 1026.7(b)(11) that the due date requirement does apply to 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. The Bureau is not proposing to adjust the payment due date requirement in § 1026.7(b)(11)(i)(A) for charge cards that are neither prepaid cards nor account numbers where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

As discussed in more detail in the section-by-section analysis of §§ 1026.7(b)(11) and 12(d)(3), the Bureau believes that it is important to provide strong protections to prepaid accountholders to ensure that they can control when and if funds are swept from their accounts to repay previous overdrafts. In particular, the Bureau believes that for all credit card accounts under an open-end (not home-secured) consumer credit plan, including 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, the card issuer should be required to adopt reasonable procedures designed to ensure that periodic statements

are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A). As discussed in more detail in the section-by-section analysis of proposed § 1026.7(b)(11) and 12(d), the Bureau believes that this requirement, along with proposed changes to the offset prohibition in § 1026.12(d), will ensure that the due date of the credit card account is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent TILA's offset prohibition.

Section 1026.7 Periodic Statement

7(b) Rules Affecting Open-End (not Home-Secured) Plans

TILA section 127(b), implemented in § 1026.7, identifies information about an open-end account or credit card account that must be disclosed when a creditor is required to provide periodic statements. 15 U.S.C. 1637(b). Section 1026.7(b) sets forth the content requirements for periodic statements given with respect to open-end (not home-secured) plans or credit card accounts that are not home secured. Generally, under § 1026.7(b), such periodic statements must include, among other things, information about (1) the amount of the balance outstanding at the beginning of the billing cycle; (2) any credit to the account during the billing cycle, such as payments; (3) any credit transactions that occurred during a billing cycle described in accordance with § 1026.8; (4) the annual percentage rates (APRs) that may be used to compute interest charges during the billing cycle; (5) the amount of the balance to which an APR was applied and an explanation of how that balance was determined; (6) the amount of interest charges that was incurred during the billing cycle, itemized by type of transaction, as well as the total interest charges that were imposed during the billing cycle and year to date; (7) the amount of each fee that was incurred during the billing cycle, itemized by type, as well as the total fee charges that were imposed during the billing cycle and year to date; (8) the date by which or the time period

within which the new balance or any portion of the new balance must be paid to avoid additional finance charges; (9) the closing date of the billing cycle and the account balance outstanding on that date; and (10) the due date for a payment with respect to a credit card account under an open-end (not home-secured) consumer credit plan.

As discussed in the section-by-section analysis of proposed § 1026.7(b)(11), the proposal would amend the due date disclosure requirements in § 1026.7(b)(11) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by a prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See the section-by-section analysis of § 1026.2(a)(15)(ii) for a discussion of the term "credit card account under an open-end (not home-secured) consumer credit plan."

The periodic statement requirements in § 1026.7(b) generally would apply to open-end plans or credit card accounts that are accessed by a prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The Bureau notes that under Regulation E, periodic statements would separately be required under § 1005.9(b) to disclose non-credit transactions on the prepaid account, but that proposed § 1005.18(c) would create an exception. Specifically, proposed § 1005.18(c) would permit the financial institution to make available to the consumer (1) the consumer's account balance, through a readily available telephone line; (ii) an electronic history of the consumer's account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account; and (iii) a written history of the consumer's account transactions that is provided promptly in response to an oral or

written request and that covers at least 18 months preceding the date the financial institution receives the consumer's request.

If a financial institution elects to provide a periodic statement under Regulation E § 1005.9(b) to a holder of the prepaid account and a periodic statement is required under Regulation Z § 1026.7, the financial institution may combine the two periodic statements, so long as the requirements of both Regulation E and Regulation Z are met in providing the combined statement. If a financial institution instead elects to provide account access pursuant to Regulation E proposed § 1005.18(c), the financial institution must also provide periodic statements pursuant to Regulation Z § 1026.7. The financial institution may provide the Regulation Z periodic statements in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). *See* § 1026.5(a)(1)(iii).

As discussed in the section-by-section analysis of §§ 1026.8 and 1026.13(i), the Bureau recognizes that with respect to transactions made with a prepaid card that accesses an overdraft credit plan, a single transaction may involve both a withdrawal of funds from the prepaid account and a credit extension. For example, assume that a cardholder makes a $50 purchase with the prepaid card but only has $20 in funds in the prepaid account. The transaction would involve both a withdrawal of $20 from the prepaid account and an extension of credit of $30. For these types of transactions, the Bureau recognizes that the part of the transaction that accesses the prepaid funds will be shown on the periodic statement or account history under Regulation E and the part of the transaction that accesses credit will be shown as a credit transaction on the Regulation Z periodic statement. The Bureau solicits comment on whether this situation currently presents itself in relation to transactions on overdraft lines of credit accessed by debit

cards and if so, how creditors typically disclose these transactions on periodic statements under Regulation E and Z. The Bureau also solicits comment on whether, for these types of transactions, the Bureau should consider a disclosure that would appear on the Regulation Z periodic statement that would notify consumers when a particular transaction is funded partially through the prepaid account and partially funded through credit so that consumers would know to look at the Regulation E periodic statement or account history for additional information related to that transaction.

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

TILA sections 127(b)(12) and (o), which are implemented in § 1026.7(b)(11)(i), set forth requirements related to the disclosure of payment due dates on periodic statements in the case of a credit card account under an open-end consumer credit plan. 15 U.S.C. 1637(b)(12), (o). Under § 1026.7(b)(11)(i), for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer generally must provide on each periodic statement: (1) The due date for a payment and the due date disclosed must be the same day of the month for each billing cycle; and (2) The amount of any late payment fee and any increased periodic rate(s) (expressed as an APR(s)) that may be imposed on the account as a result of a late payment. Section 1026.7(b)(11)(ii) provides, however, that the requirements of § 1026.(b)(11)(i) do not apply to the following: (1) Periodic statements provided solely for charge card accounts; and (2) Periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

As also noted in the section-by-section analysis of proposed § 1026.5(b)(2)(ii), although TILA sections 127(b)(12) and (o) do not, on their face, exclude charge card accounts that are accessing open-end credit from the requirement to disclose the due date on each periodic

statement, the Board in implementing these provisions determined that the payment due date requirement in § 1026.7(b)(11)(i)(A) does not apply to periodic statements provided solely for charge card accounts. *See* § 1026.7(b)(11)(ii)(A). In the supplemental information to the final rule adopting the exclusion for charge cards from the due date disclosure requirement, the Board noted that charge cards are typically products where outstanding balances cannot be carried over from one billing cycle to the next and are payable when the periodic statement is received.[369] Therefore, the contractual payment due date for a charge card account is the date on which the consumer receives the periodic statement (although charge card issuers generally request that the consumer make payment by some later date). If the due date disclosure requirement and the 21-day rule for delivery of periodic statements applied to charge card accounts, the card issuer could no longer require payment upon delivery of the statement. Thus, the Board concluded that it would not be appropriate to apply the payment due date disclosure in § 1026.7(b)(11)(i)(A) to periodic statements provided solely for charge card accounts.

The proposal would amend § 1026.7(b)(11)(ii)(A) to provide that the due date disclosure does apply to periodic statements provided solely for charge card accounts where the charge card account is accessed by a charge card that is a prepaid card; or where the charge card account is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, the due date disclosure in § 1026.7(b)(11)(i)(A) would apply to periodic statements provided for a credit card account under an open-end (not home-secured) consumer credit plan, including a charge card account, where the account is accessed by a charge card that is a prepaid card; or where the charge card

[369] 75 FR 7658 at 7672-7673, Feb. 22, 2010.

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

As discussed in more detail in the section-by-section analysis of §§ 1026.5(b)(2)(ii) and 12(d)(3), the Bureau believes that it is important to provide strong protections to prepaid accountholders to ensure that they can control when and if funds are swept from their accounts to repay previous overdrafts. In particular, as discussed in the section-by-section analysis of proposed § 1026.5(b)(2)(ii), by requiring the due date in these instances, the card issuer would be required under § 1026.5(b)(2)(ii)(A) to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A). As discussed in more detail in the section-by-section analysis of proposed § 1026.12(d), the Bureau believes that this proposed requirement, along with proposed changes to the timing requirement for a periodic statement in § 1026.5(b)(2)(ii), the offset prohibition in § 1026.12(d) and the compulsory-use provisions in Regulation E (proposed § 1005.10(e)(1)), would allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account, which is consistent with the prohibition on offsets.

The Bureau believes that this proposed requirement, the proposed requirement in § 1026.5(b)(2)(ii) and the proposed changes to the offset prohibition in § 1026.12(d), will ensure that the due date of the credit card account is not so closely aligned with the timing of when funds are deposited into the prepaid account that card issuers can circumvent the offset prohibition. As discussed in more detail in the section-by-section analysis of proposed § 1026.12(d)(3), the Bureau is concerned that, 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, some card issuers may attempt to circumvent the prohibition on offsets by specifying that each transaction on the credit card account linked to the prepaid account (as described above) is due on the date on which funds are subsequently deposited into the account, and obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt when deposits are received into the prepaid account to help ensure that the debt is repaid. The Bureau believes that card issuers that offer credit card accounts linked to a prepaid account may rely significantly on obtaining a consumer's written authorization of daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders. The Bureau also believes that card issuers that offer credit card accounts linked to a prepaid account may be able to obtain a consumer's written authorization to debit the prepaid account for the credit card debt more easily than for other types of credit card accounts because consumers may believe that, in order to obtain credit, they have no alternative but to provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

The proposed revisions to § 1026.7(b)(11), along with the proposed changes to § 1026.5(b)(2)(ii), to the § 1026.12(d) offset prohibition and to the compulsory-use provisions in Regulation E (proposed § 1005.10(e)(1)), would mean, respectively, that with respect to credit card accounts related to prepaid accounts as discussed above, card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the credit card account held

by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date, (pursuant to the consumer's signed, written agreement that the issuer may do so), and (3) would be required to offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking website following a cash reload to the asset account).

Section 1026.8 Identifying Transactions on Periodic Statements

TILA section 127(b)(2) requires creditors to identify on periodic statements credit extensions that occurred during a billing cycle. 15 U.S.C. 1637(b)(2). The statute calls for the Bureau to implement requirements that are sufficient to identify the transaction or to relate the credit extension to sales vouchers or similar instruments previously furnished.

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

The proposal would provide guidance on how creditors may comply with the requirements in §§ 1026.8(a) and (b) with respect to open-end credit plans or credit 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.

8(a) Sale Credit

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

Comment 8(a)-2 provides guidance on how to disclose the amount of the credit transaction if sale transactions are not billed in full on any single statement. The proposal would move the existing language of comment 8(a)-2 to proposed comment 8(a)-2.i. The proposal also would add comment 8(a)-2.ii to provide guidance on how to disclose the amount of the credit transaction for purposes of certain prepaid transactions. First, it would explain that the term "sale credit" includes a purchase in which the consumer uses a prepaid card that is a credit card to obtain goods or services from a merchant and the transaction is wholly or partially funded by credit, regardless of whether the merchant is the card issuer or creditor. Proposed comment 8(a)-

2.ii also would provide that if a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account, and partially funded by credit, the amount to be disclosed under § 1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction. Because § 1026.7(b)(2) requires that credit transactions be disclosed on periodic statements in accordance with § 1026.8, the Bureau believes it is appropriate to only consider the credit portion of the transaction as "sale credit" that would be disclosed on the Regulation Z periodic statement. Under the Regulation E proposal, as discussed in the section-by-section analysis of Regulation E proposed § 1005.18(c), the amount of the transaction that is funded from the prepaid account would be disclosed either on the Regulation E periodic statement if the financial institution elects to provide one under Regulation E proposed § 1005.18(c)(1), or alternatively, on the electronic history of the consumer's prepaid account transactions, such as through a Web site, that covers at least 18 months preceding the date the consumer electronically accesses the account under Regulation E proposed § 1005.18(c)(1)(ii). For a discussion of issues related to disclosures of these transactions on periodic statements under Regulation Z and E, see the section-by-section analysis of § 1026.7(b).

The Bureau recognizes that for purchases of goods or services that involve overdrafts on asset accounts that are executed via debit cards, the credit transaction may be disclosed as nonsale credit. In particular, comment 8(b)-1.iii provides that nonsale credit includes the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services. In a 1981 rulemaking implementing the Truth in Lending Simplification and Reform Act, the Board indicated that several commenters asked the Board to clarify whether a creditor should identify a transaction as sale or nonsale credit when a consumer

uses a debit card with an overdraft feature to purchase goods, and in doing so, activates the overdraft. The Board expressed its belief that the credit portions of such transactions could be viewed as cash advances, and therefore permitted them to be disclosed as nonsale credit at the creditor's option even though a purchase is involved.[370] As discussed in the Overview of Regulation Z Proposal section, the Bureau is not intending to revise rules in Regulation Z that apply to overdraft plans accessed by debit cards. Nonetheless, for credit plans accessed by prepaid cards that are credit cards, the Bureau believes that disclosing the credit transaction as sale credit would be more helpful to consumers than disclosing the transaction as nonsale credit because the consumer would receive the seller's name, and the city and state or foreign country where the transaction took place. If the credit transaction were treated as a nonsale credit, the consumer would not receive the information about the seller's name and address. The Bureau believes that the information about the seller's name and address may be useful to consumers in identifying the credit transactions where a prepaid card that is a credit card is used to obtain goods or services from a merchant. The Bureau also notes that under Regulation E, on the periodic statement, or the alternative account history, a transaction that involves a withdrawal from the prepaid account at point of sale must include the merchant's name and location. See Regulation E § 1005.9(b)(1)(iv) and (v) and proposed § 1005.18(c)(2). Thus, with respect to a single transaction that involves both a withdrawal from the prepaid account and an extension of credit, disclosing such credit transaction as a sale credit when the prepaid card accesses credit at point of sale also could help consumers match up the part of the transaction that appears on the

[370] 46 FR 20848, 20861 (Apr. 7, 1981).

Regulation Z periodic statement with the part of the transaction that appears on the Regulation E periodic statement or account history.

Comment 8(a)-2.ii also would set forth guidance on how to disclose a transaction at point of sale where credit is accessed by a prepaid card that is a credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit such as cash back given to the cardholder. In this situation, new proposed comment 8(b)-1.vi provides that the creditor must disclose the amount of credit as "sale credit" under § 1026.8(a), including the portion of the transaction that involves credit that is not for a purchase of goods or services. The Bureau understands that creditors may not be able to identify the amount of the credit transaction the relates to the purchase of goods or services at a merchant and the amount of the credit transaction that relates to other types of credit, such as cash back given to the cardholder. In this case, the card issuer may only be able to determine the total amount of credit extended for that transaction. To ensure that consumers are more able to recognize credit transactions disclosed on periodic statements, the proposal would require a creditor to disclose the entire amount of the credit transaction as "sale credit" under § 1026.8(a). When using this proposed approach, a creditor would disclose the entire amount of the credit transaction, the date of the transaction, the seller's name, and the city and state or foreign country where the transaction took place. The Bureau believes such information would be sufficient to allow a consumer to identify a transaction, even where part of the amount of the transaction was for cash back or other forms of credit given to the cardholder at point of sale. For these types of transactions, the Bureau anticipates that the cardholder will associate the entire credit transaction, including the cash back portion of the credit, with the seller's name. The Bureau solicits comment on this approach.

8(b) Nonsale Credit

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

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

The proposal would also add a new comment 8(b)-1.vi to explain that "nonsale credit' includes 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. This example is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor; (2) the consumer requests an advance on the account using an account number; and (3) the advance is deposited into the prepaid account. In this situation, the advance taken on the line of credit would be "nonsale credit" even if the consumer subsequently uses the deposited funds to purchase goods or services at a merchant. This provision would not apply to open-end credit or a credit card account that is accessed directly by a prepaid card. As discussed above, the "sale credit" rules in § 1026.8(a) would apply where a prepaid card accesses credit to obtain goods or services from a merchant.

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

Section 1026.10 Payments

10(a) General Rule

TILA section 164(a), which is implemented in § 1026.10(a), provides that payments received from an obligor under an open-end consumer credit plan or a credit card account by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Bureau. 15 U.S.C. 1666c. Section 1026.10(a) generally provides that a creditor for open-end credit or a credit card account shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in § 1026.10(b). Comment 10(a)-2 provides guidance on the term "date of receipt" as used in § 1026.10(a). Specifically, comment 10(a)-2 provides that the "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor.

Comment 10(a)-2.ii provides an example illustrating when the date of receipt is for payments related to payroll deduction plans. Specifically, comment 10(a)-2.ii provides that in a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

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

more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so.

The proposal would revise comment 10(a)-2.ii to explain that § 1026.12(d)(3)(ii) prevents card issuers, with respect to credit card accounts accessed by 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, from automatically deducting credit card account payments from a prepaid account or other deposit account held by the card issuer more frequently than once per calendar month. In a payroll deduction plan in which funds are deposited to a prepaid account held by the creditor, and from which payments are made on a monthly basis to a credit card account accessed by a prepaid card that is a credit card, 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.

Section 1026.12 Special Credit Card Provisions

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

The proposal would revise certain provisions that apply to credit card transactions in § 1026.12 to provide guidance on how those provisions apply to credit card transactions that are made using a prepaid card that is a credit card, or using an account number that is a credit card

where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, the proposal would provide additional guidance on: (1) unsolicited issuance in § 1026.12(a); (2) the right of a cardholder to assert claims or defenses against a card issuer in § 1026.12(c); and (3) the prohibition on offsets by a card issuer in § 1026.12(d).

In addition, the proposal would add a new provision to § 1026.12(h) that would impose a new requirement on card issuers that offer prepaid cards that are credit cards, or 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. Under proposed § 1026.12(h), these card issuers would be prevented from opening a credit card account for, or providing a solicitation or application to open a credit or charge card account to, a consumer who holds a prepaid card until at least 30 calendar days after the consumer has registered the prepaid account.

12(a) Issuance of Credit Cards

TILA section 132, which is implemented by § 1026.12(a) of Regulation Z, generally prohibits creditors from issuing credit cards except in response to a request or application. Section 132 explicitly exempts from this prohibition credit cards issued as renewals of or substitutes for previously accepted credit cards. 15 U.S.C. 1642.

Section 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) As a renewal of, or substitute for, an accepted credit card. The proposal would provide guidance on how the prohibition on issuing unsolicited credit cards applies to prepaid cards that are credit

cards, and account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

12(a)(1)

Addition of a Credit Feature

Under current § 1026.12(a), a prepaid card cannot access automatically a credit card feature at the time the card is purchased by the consumer at point of sale. A card issuer could add a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

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

In addition, as discussed in more detail in the section-by-section analysis of proposed

§ 1026.12(h), the Bureau is proposing to require a card issuer to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may open a credit card account for the holder of the prepaid account, or provide a solicitation or an application to the holder of the prepaid account to open a credit or charge card account, that will be accessed by the prepaid card.

Issuance of a Non-Credit Card

Comment 12(a)(1)-7.i explains that a non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan.[371] The comment notes that a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request. Comment 12(a)(1)-7.ii provides as an example, that a purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. The comment further explains that an issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The comment also states that the issuer violates the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

Under the proposal, the current language of comment 12(a)(1)-7.i and .ii would be moved to proposed comment 12(a)(1)-7.i.A and .B respectively and would be limited to the issuance of non-credit cards that are not prepaid cards. The proposal also would add a new comment

[371] The Bureau notes that a prepaid card would be an access device under Regulation E, as that term is defined in Regulation E § 1005.2(a)(1), and would be subject to the issuance rules set forth in Regulation E § 1005.5 when it is issued.

12(a)(1)-7.ii to provide guidance on when the issuance of a prepaid card would be viewed as the issuance of a credit card. The proposal would add proposed comment 12(a)(1)-7.ii to provide that § 1026.12(a)(1) would not apply to the issuance of a prepaid card where an issuer does not connect the card to any credit plan that would make the prepaid card into a credit card at the time the card is issued and only opens a credit card account, or provides an application or solicitation, to open a credit or charge card account, that would be accessed by that card in compliance with proposed § 1026.12(h). As discussed in more detail in the section-by-section analysis of proposed § 1026.12(h), the Bureau is proposing to require a card issuer to wait at least 30 calendar days after the prepaid account has been registered before the card issuer may open a credit card account for the holder of the prepaid account, or provide a solicitation or an application to the holder of the prepaid account, to open a credit or charge card account that will be accessed by the prepaid card. Proposed comment 12(a)(1)-7.ii also would explain that a credit feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with § 1026.12(h).

Proposed comment 12(a)(1)-7.ii further explains, however, that 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 § 1005.18(b)(2)(i)(B)(*9*) and 18(b)(2)(ii)(B) with the prepaid card. As discussed above under the Regulation E section-by-section analysis of proposed § 1005.18(b), a financial institution would be required to provide certain disclosures about credit card accounts that may be offered in connection with prepaid accounts. As discussed in more detail in the section-by-section analysis of Regulation E § 1005.18(b), a financial institution would be required to disclose in the short and long form disclosures provided in connection with the prepaid card information about any credit plan that may be offered at any

point to the holder of the prepaid account where the credit plan would be accessed by a credit card that also is a prepaid card, or the credit plan would 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 offering the plan. These disclosures would be provided to consumers so that they can shop more effectively for prepaid cards by informing them whether a credit card account may be offered in connection with the prepaid account and some of the terms of the credit card account that may be offered. The Bureau is proposing to provide guidance that providing these disclosures does not violate the rule against unsolicited issuance of a credit card because, otherwise, the inclusion of these required disclosures with the prepaid card would make it a violation of Regulation Z to sell such cards in retail locations or otherwise provide them on an unsolicited basis to consumers. The Bureau notes that the issuance rules set forth in Regulation E § 1005.5 would apply to the issuance of a prepaid card that does not access a credit card account when issued.

The proposal also would make two technical revisions to comment 12(a)(1)-7. First, the current language of comment 12(a)(1)-7.i and .ii would be moved to proposed comment 12(a)(1)-7.i.A and .B respectively. Second, the language in proposed comment 12(a)(1)-7.i also would be revised to indicate that it applies only to the issuance of non-credit cards other than prepaid cards.

12(a)(2)

Section 1026.12(a) provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) In response to an oral or written request or application for the card; or (2) As a renewal of, or substitute for, an accepted credit card. Comments 12(a)(2)-5 and -6 provide

guidance on the exception to the unsolicited issuance rule when a card is issued as a renewal of, or substitute for, an accepted credit card.

Specifically, comment 12(a)(2)-5 (the so-called "one for one" rule) provides that an accepted card generally may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances. Comment 12(a)(2)-6 provides, however, two exceptions to this general "one for one" rule. First, comment 12(a)(2)-6.i provides that the unsolicited issuance rule in § 1026.12(a) does not prohibit the card issuer from replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E. Comment 12(a)(2)-6.ii also provides that § 1026.12(a) does not prohibit a card issuer from replacing an accepted card with more than one renewal or substitute card, provided that (1) no replacement card accesses any account not accessed by the accepted card; (2) for terms and conditions required to be disclosed in account-opening disclosures under § 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 (3) under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

Under the proposal, the example in existing comment 12(a)(2)-6.ii would be moved to proposed comment 12(a)(2)-6.iii. The proposal also would add new proposed comment 12(a)(2)-6.ii to explain that the one-for-one rule would not prevent an issuer from replacing a single card that is both a prepaid card and a credit card with a credit card and a separate prepaid card where the latter card is not a credit card. The Bureau notes that the issuance rules set forth

in Regulation E § 1005.5 would apply to the issuance of a prepaid card that does not access a credit card account when issued. For example, the one-for-one rule would not prevent a card issuer from replacing a prepaid card that is a credit card (for example, where the prepaid card accesses an overdraft feature) with a prepaid card that is not a credit card (where the prepaid card does not access an overdraft feature) and 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.

In addition, the proposal would also make two technical revisions to comment 12(a)(2)-6. First, the example in comment 12(a)(2)-6.i related to debit cards would be revised for clarity; no substantive changes are intended. In addition, the example in existing comment 12(a)(2)-6.ii would be moved to proposed comment 12(a)(2)-6.iii.

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

Under TILA section 170, as implemented in § 1026.12(c) of Regulation Z, a cardholder may assert against the card issuer a claim or defense for disputes as to goods or services purchased in a consumer credit transaction with a credit card. The claim or defense applies only as to unpaid balances for the goods or services and any finance or other charges imposed on that amount, if the merchant honoring the card fails to resolve the dispute. The right is further limited generally to disputes exceeding $50 for purchases made in the consumer's home state or within 100 miles of the cardholder's address. *See* 15 U.S.C. 1666i. The proposal would revise commentary to § 1026.12(c) to provide guidance on how this provisions applies to prepaid cards that are credit cards, or 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.

Comment 12(c)(1)-1 and comment 12(c)-3 provides guidance on the types of transactions that are covered by § 1026.12(c) and the types of transactions that are not covered. Comment 12(c)(1)-1 provides that the consumer may assert claims or defenses only when the goods or services are "purchased with the credit card." This could include mail, Internet or telephone orders, if the purchase is charged to the credit card account. The proposal would amend this comment and add proposed comment 12(c)-5 to explain that § 1026.12(c) would apply when goods or services are purchased by a consumer using credit accessed by a credit card that also is a prepaid card.

The Bureau notes that the provisions in 1026.12(c) generally do not apply to purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. *See* comments 12(c)-3 and 12(c)(1)-1.iv. In addition, comment 12(c)(1)-1.ii also provides that the provisions in § 1026.12(c) do not apply to 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 the credit extended on the overdraft line. The Board adopted these exceptions in 1981 as part of implementing the Truth in Lending Simplification and Reform Act.[372] In the supplemental information provided with that rulemaking, the Board indicated that it had decided to exempt check guarantee cards and debit cards when used to draw on an overdraft line because of serious operational problems cited by

[372] 46 FR 20848, 20865 (Apr. 7, 1981); *see also* 46 FR 50288, 50313 (Oct. 9, 1981).

commenters as arising from applying the claims and defenses provisions to check guarantee and debit card transactions.

The Bureau proposes not to exempt from the provisions of § 1026.12(c) purchases made with prepaid cards that are credit cards, including when the prepaid cards are used to draw on overdraft credit plans. For the reasons set forth in the Overview of Regulation Z Proposal section, the Bureau believes that prepaid cards that are credit cards generally should be subject to the provisions in Regulation Z that apply to credit cards. The Bureau solicits comment, however, on what, if any, operational issues might arise from applying the protections in § 1026.12(c) to overdraft credit plans that are accessed by prepaid cards.

Proposed comment 12(c)-5 also would provide guidance on how § 1026.12(c) applies to transactions at point of sale where a prepaid card that is a credit card is used to obtain goods or services from a merchant and the transaction is partially funded by the consumer's prepaid account, and partially funded by credit. Proposed comment 12(c)-5.ii provides that the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of § 1026.12(c), and provides that the amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c). The Bureau notes that § 1026.12(c) applies only to disputes as to property or services purchased with a credit card in a consumer credit transaction. The portion of the transaction that is funded from the prepaid account would not be credit and thus, under the proposal, this amount of the transaction would not be subject to § 1026.12(c). The Bureau solicits comment on what operational issues, if any, might arise as a result of applying § 1026.12(c) to transactions that are partially funded from the prepaid account and partially funded with credit.

Comment 12(c)(1)-1.i through .iv provides examples of transactions that are not covered by the provisions in § 1026.12(c). Comment 12(c)(1)-1.i provides that § 1026.12(c) does not apply to the use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. The comment explains that such a transaction would not involve "property or services purchased with the credit card."

The proposal would revise comment 12(c)(1)-1.i to clarify that § 1026.12(c) does not apply to 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. This example is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number other than a prepaid card, and (3) the advance is deposited into the prepaid account. In this situation, the advance taken on the line of credit would not be a transaction covered by § 1026.12(c) even if the consumer subsequently uses the deposited funds to purchase goods or services at a merchant. This proposed provision would not apply to open-end credit or a credit card account that is directly accessed by a prepaid card. As discussed above, the provisions in § 1026.12(c) would apply where a prepaid card that is a credit card accesses credit to obtain goods or services from a merchant.

For the reasons discussed in the Overview of Regulation Z Proposal section, the proposal would retain the exemptions from the provisions from § 1026.12(c) for purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans that are currently contained in comments 12(c)-3 and 12(c)(1)-1.ii and iv. The proposal, however,

would revise the example in comment 12(c)(1)-1.ii to specify that the comment does not apply to overdraft plans that are accessed by a prepaid card.

12(d) Offsets by Card Issuer Prohibited

TILA section 169 generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the card issuer. Nonetheless, a card issuer would not violate this provision if the card issuer periodically deducts all or a portion of a consumer's credit card debt from the consumer's deposit account, if the periodic deductions are in accordance with a preauthorized written authorization by the consumer and the card issuer does not deduct payment for any portion of the outstanding balance that is in dispute. 15 U.S.C. 1666h(a). This TILA section also provides that the prohibition described above does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally. 15 U,S.C. 1666h(b). TILA section 169 is implemented by § 1026.12(d).

Section 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Section 1026.12(d)(2) provides that the prohibition on offsets in § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: 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. Section 1026.12(d)(3) provides that the

prohibition on offsets set forth in § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

The offset provision in TILA section 169 was added to TILA as part of the Fair Credit Billing Act.[373] In adding this offset provision, Congress was concerned that

> Funds in these accounts can be attached without any recourse to the courts and in spite of any valid legal defense the cardholder may have against the bank. Banks which issue cards and also have the cardholder's funds on deposit may thus obtain a unique leverage over the consumer. Other creditors would have to apply to a court before being permitted to attach funds in a borrowers' deposit account.[374]

As discussed in more detail below, the proposal would enhance the offset protections in § 1026.12(d) for credit card accounts linked to prepaid accounts to ensure that card issuers are not able to obtain unfair leverage over the consumer or over other creditors with respect to these accounts. First, the proposal would provide that with respect to credit card accounts linked to prepaid accounts, a card issuer would be permitted to deduct all or a part of the cardholder's credit card debt automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. Second, the proposal would enhance the requirements that card issuers of credit card accounts linked to prepaid accounts must follow in order to obtain a security interest in a prepaid account.

Without these additional protections, the Bureau is concerned that given the overall creditworthiness of prepaid accountholders, some card issuers may attempt to circumvent the

[373] Pub. L. 93-495, 88 Stat. 1500.

[374] S. Rep. No. 93-278, at 9 (June 28, 1973).

prohibition on offsets by obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt on a daily or weekly basis from the prepaid account to help ensure that the debt is repaid. Because the card issuer holds the prepaid account, the card issuer may know the patterns of when consumers are likely to be depositing funds into the prepaid accounts. These prepaid card issuers could take advantage of this knowledge to set up preauthorized withdrawals to correspond to when the consumer is likely to be depositing funds. In addition, the Bureau believes prepaid consumers may grant the authorization, or a security interest, more readily than other credit card holders because consumers may believe that they must provide written authorization, or a security interest, to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

The Bureau believes that these proposed requirements, along with proposed changes to the timing requirement for a periodic statement in § 1026.5(b)(2)(ii), and the compulsory-use provisions in Regulation E (proposed § 1005.10(e)(1)), are reasonable interpretations that are necessary to fully effectuate the intent of these provisions and would allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account, which is consistent with the prohibition on offsets.

In particular, with these proposed changes, such card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and to ensure that the due date that is disclosed on the periodic statement must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the

consumer's signed, written agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking website).

12(d)(1) General Rule

Section 1026.12(d)(1) provides that a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. The proposal would add comment 12(d)-1 to make clear that for purposes of the prohibition on offsets in § 1026.12(d), funds of the cardholder held on deposit include funds in a consumer's prepaid account and the term deposit account includes a prepaid account.

Comment 12(d)(1)-2 provides that if the consumer tenders funds as a deposit (to a checking account, for example) held by the card issuer, the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account. The proposal would amend this comment to provide guidance on the tender of funds as a deposit to a prepaid account. Specifically, this comment would be revised to specify that if the card issuer receives funds designated for the consumer's prepaid account with the issuer, such as by means of an ACH deposit or cash reload, the card issuer may not automatically apply the funds to repay indebtedness on the consumer's credit card account.

12(d)(2) Rights of the Card Issuer Under Other Law

TILA section 169(a) generally prohibits card issuers from taking any action to offset a cardholder's credit card indebtedness against funds of the cardholder held on deposit with the

card issuer. 15 U.S.C. 1666h(a). TILA section 169(b) provides, however, that the prohibition on offset does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally. 15 U.S.C. 1666h(b).

Implementing TILA section 169, § 1026.12(d)(2) provides that that the prohibition on offsets in § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under state or Federal law to attach or otherwise levy upon the funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally. Section 1026.12(d)(2) also provides two additional methods for obtaining funds that the Board found were not prohibited by the prohibition on offsets in TILA section 169. Specifically, § 1026.12(d)(2) provides that the prohibition on offsets in § 1026.12(d)(1) does not alter or affect the right of a card issuer acting under state or Federal law to obtain or enforce a consensual security interest in the funds or obtain or enforce a court order relating to the funds.

The Board adopted these additional two methods in 1981 as part of its rulemaking to implement the Truth in Lending Simplification and Reform Act.[375] In the supplemental information to that rulemaking, with respect to the method related to security interests, the Board stated its belief that TILA section 169 was not intended to apply to the granting of security interests in cardholders' deposit accounts. In addition, the Board imposed certain limitations on the use of security interests that it believed would prevent circumvention of the offset prohibition because (1) only consensual security interests are permitted, and thus the cardholder must affirmatively agree to grant the security interest; (2) the security interest can be enforced only

[375] 46 FR 20848 (Apr. 7, 1981).

through procedures by which other creditors could enforce their security interests in the same funds; and (3) any security interest granted to secure credit card indebtedness will be disclosed in the card issuer's initial disclosures to the cardholder. The Board considered but rejected limiting the amount of the security interest to a specified amount, reasoning that other third-party creditors are not required to do so. The Board believed that these requirements should eliminate the possibility of unfair surprise to consumers, and of unfair advantage for depository institutions over other creditors that Congress sought to avoid in enacting TILA section 169.[376]

Current comment 12(d)(2)-1 is intended to ensure that the security interest is consensual. Specifically, comment 12(d)(2)-1 provides that 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). In addition, for a security interest to qualify for the exception under § 1026.12(d)(2) the following conditions must be met: (1) The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account; and (2) The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 1026.12(d)(2).

Comment 12(d)(2)-1.i provides that indicia of the consumer's awareness and intent to provide a security interest must include at least one of the following (or a substantially similar

[376] 46 FR 20848, 20866 (Apr. 7, 1981).

procedure that evidences the consumer's awareness and intent): (1) Separate signature or initials on the agreement indicating that a security interest is being given; (2) Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions; or (3) Reference to a specific amount of deposited funds or to a specific deposit account number.

The Bureau believes, however, that additional protections may be needed to ensure that consumers understand that they are giving a security interest when a credit card account is directly linked to a prepaid account through an overdraft feature or through a separate account where extensions of credit are permitted to be deposited directly only in particular prepaid accounts specified by the creditor. The Bureau believes that prepaid account issuers may have significant interest in securing credit card debt by means of the prepaid account. These credit cards will always be associated with this linked asset account, and prepaid card users who use the cards to obtain consumer credit are likely to have lower credit ratings than credit card users overall. Unlike traditional secured credit cards, these prepaid cards likely would not be marketed as secured credit cards and would not require consumers to establish a new separate account or to set aside specific funds. As a result, prepaid consumers are less likely than secured credit card users to understand that they are required to provide a security interest in the prepaid account in order to receive the credit card account, and have a need to be able to manage their prepaid accounts very carefully to cover both daily expenses and any overdraft repayments.

Thus, to prevent the security interest from becoming the functional equivalent to an offset, the proposal would set forth in proposed comment 12(d)(2)-1.iii the steps that card issuers must take in order for a consumer to show awareness and intent to grant a security interest in a prepaid account. Specifically, a card issuer would be required to meet all the following

conditions: (1) In addition to being disclosed in the issuer's account-opening disclosures under § 1026.6, the security agreement must be provided to the consumer in a document separate from the prepaid account agreement and the credit card account agreement; (2) The separate document setting forth the security agreement must be signed by the consumer; (3) The separate document setting forth the security agreement must refer to the prepaid account number and to a specific amount of funds in the prepaid account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer; and (4) The separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest and each of those conditions must be separately signed or initialed by the consumer.

The Bureau believes that all of the indicia in proposed comment 12(d)(2)-2.ii, including delineating a specific dollar amount as being subject to the security interest, will help to ensure that a security interest arrangement does not circumvent the offset provision in TILA section 169 by ensuring that consumers focus careful attention on the consequences of granting the security interest so that consumers are better prepared to manage their accounts to both cover daily expenses and repay any credit extensions. The Bureau solicits comment on this approach. The Bureau also solicits comment on whether the Bureau should engage in consumer testing of disclosures that describe security interests in connection with prepaid accounts to develop model language or model forms for presenting this information.

The Bureau also solicits comment on whether these additional protections are sufficient to ensure that security interests do not become the functional equivalent to an offset when a credit card account is directly linked to a prepaid account through an overdraft feature or through a separate account where extensions of credit are permitted to be deposited directly only into

particular prepaid accounts specified by the creditor. If these additional protections are not sufficient, the Bureau seeks comment on what additional protections would be sufficient to ensure that the security interests taken in prepaid accounts are consensual. Alternatively, the Bureau seeks comment on whether it should prohibit a card issuer from obtaining or enforcing any consensual security interest in the funds of a cardholder held in a prepaid account with the card issuer, to ensure that card issuers cannot circumvent the prohibition on offsets by taking routinely a security interest in the prepaid account funds without consumers being aware that the security interest is being taken.

For security interests related to other types of deposit accounts, the proposal would retain the current guidance in comment 12(d)(2)-1.i detailing indicia of the consumer's awareness and intent to provide a security interest. The proposal would move this guidance to comment 12(d)(2)-1.ii. In addition, under the proposal, the requirement in current 12(d)(2)-1.ii that the security interest must be one that other creditors could obtain in the consumer's deposit accounts to the same extent as the card issuer would be moved to proposed comment 12(d)(2)-1.iv; no substantive change is proposed.

12(d)(3) Periodic Deductions

Implementing TILA section 169, § 1026.12(d)(3) of Regulation Z provides that the prohibition on offsets set forth in § 1026.12(d)(1) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in § 1026.13(d)(1)).

Neither TILA section 169 nor § 1026.12(d)(3) defines "periodically" for purposes of § 1026.12(d)(3). The Bureau is concerned that, 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 into particular prepaid accounts specified by the creditor, some card issuers may attempt to circumvent the prohibition on offsets by obtaining a consumer's written authorization to deduct all or part of the cardholder's credit card debt on a daily or weekly basis from the prepaid account to help ensure that the debt is repaid. If "periodically" is not defined for purposes of § 1026.12(d)(3), the Bureau believes that card issuers that offer credit card accounts linked to a prepaid account may obtain a consumer's written authorization to daily or weekly debits to the prepaid account to repay the credit card debt given the overall creditworthiness of prepaid accountholders. In addition, the Bureau believes prepaid consumer may grant the authorization more readily than other credit card holders because consumers may believe that they must provide written authorization to allow a card issuer to deduct all or part of the cardholder's credit card debt from the linked prepaid account.

An appropriate interval for "periodic[]" deduction plans may depend on the facts and circumstances of the particular credit plan, but because of the above reasons, the Bureau believes that an appropriate interval for credit cards linked to prepaid cards is no more frequently than once per calendar month. The proposal would set forth a new proposed § 1026.12(d)(3)(ii) that provides that, 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 § 1026.12(d)(3), "periodically" means no more frequently than once per calendar month. For example, a deduction could be scheduled for each monthly due date disclosed on the applicable periodic statement in accordance with the requirements of § 1026.7(b)(11)(i) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer. Thus, under

proposed § 1026.12(d)(3), with respect to such credit card accounts linked to a prepaid account, a card issuer may deduct all or a part of the cardholder's credit card debt automatically from the prepaid account or other deposit account held by the card issuer no more frequently than once per month, pursuant to a signed, written authorization by the cardholder to do so. The Bureau believes that allowing a card issuer to execute a preauthorized transfer once per calendar month to repay all or some of a consumer's credit card balance is appropriate because card issuers of credit cards linked to prepaid accounts are prohibited from providing periodic statements more frequently than on a monthly basis and the due date must be the same day of the month for each billing cycle. As discussed in the section-by-section analysis of §§ 1026.5(b)(2)(ii) and .7(b)(11), the card issuer must adopt reasonable procedures to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date must be the same day of the month for each billing cycle.

Proposed comment 12(d)(3)-3 would provide an example to illustrate when card issuers could deduct automatically all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under § 1026.12(d)(3) 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. Proposed comment 12(d)(3)-3 would provide that with respect to those types of credit cards, a card issuer would not be 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. The proposed comment would provide the following example: 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, the card issuer would not be 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). Proposed comment 12(d)(3)-3 also would explain that the card issuer would be 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.

The Bureau solicits comment on situations where at the time a preauthorized payment is set to occur, the prepaid account does not have sufficient funds to cover the amount of the credit card payment. How do issuers anticipate handling this situation, including cases where the prepaid account contains funds sufficient to pay some but not all of the credit card payment due? Do issuers anticipate charging a specific fee because the preauthorized payment could not be completed, in addition to any late fee that might be charged if the credit card balance was not paid by the due date? Should the Bureau adopt any specific rules to address these issues? If so, what rules should the Bureau adopt?

The Bureau believes that the proposed requirement in § 1026.12(d)(3), along with proposed changes to the timing requirement for a periodic statement in § 1026.5(b)(2)(ii), and the compulsory-use provision in Regulation E (proposed § 1005.10(e)(1)), are necessary to fully effectuate the intent of the provisions and would allow consumers to retain control over the funds in their prepaid accounts even when a credit card feature becomes associated with that account, which is consistent with the prohibition on offsets. In particular, with these proposed changes, such card issuers (1) would be required to adopt reasonable procedures designed to ensure that periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement and the due date disclosed must be the same day of the month for each billing cycle; (2) could move funds automatically from the asset account held by the card issuer to the credit card account held by the card issuer to pay some or all of the credit card debt no more frequently than once per month, such as on the payment due date (pursuant to the consumer's signed, written agreement that the issuer may do so); and (3) would be required to offer consumers a means to repay their outstanding credit balances other than automatic repayment (such as by means of a transfer of funds from the asset account to the credit account that the consumer initiates on the prepaid account's online banking website).

The proposal would also make two technical revisions to § 1026.12(d)(3) and related commentary. First, § 1026.12(d)(3) would be moved to proposed § 1026.12(d)(3)(i). Second, the proposal would revise comment 12(d)(3)-1.iii, which references EFTA section 913 to also reference Regulation E § 1005.10(e), which implements that section of EFTA.

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

As discussed in more detail in the section-by-section analysis of § 1026.12(a), credit cards generally may not be issued on an unsolicited basis. Thus, TILA section 132 and

§ 1026.12(a) prevent a card issuer from issuing on an unsolicited basis a prepaid card that also is a credit card at the time of issuance. For example, prepaid cards that are sold in retail locations could not access automatically an overdraft credit feature that would make the prepaid card into a credit card at the time the prepaid card is sold. Under TILA section 132 and § 1026.12(a), a card issuer could add a credit card feature to a prepaid card only in response to a consumer's explicit request or application.

The Bureau proposes to use its authority in TILA section 105(a) and Dodd-Frank Act section 1032(a) to add new proposed § 1026.12(h)(1) that would require card issuers to wait at least 30 calendar days after a prepaid card is registered before the card issuer may make a solicitation or provide an application to the holder of the prepaid account to open a credit or charge card account. In addition, card issuers would be required to wait until at least 30 calendar days after registration to open a credit card account for the holder the prepaid account that would be 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. Moreover, 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 would be prevented from allowing an additional prepaid card obtained by the consumer from the card issuer to access the credit or charge card account, or permitting 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.

Proposed § 1026.12(h)(2) would define "solicitation" for purposes of § 1026.12(h)(1) to

mean an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. This proposed definition of "solicitation" is the same as one used with respect to credit card disclosures set forth in § 1026.60 that must be provided on or with credit card applications and solicitations. *See* the section-by-section analysis of § 1026.60. Consistent with § 1026.60, proposed § 1026.12(h)(2) also would specify that 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 would be a solicitation for purposes of proposed § 1026.12(h). Comment 12(h)-1 would explain that 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 would be 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. Comment 12(h)-2 would provide a cross-reference to § 1026.12(a)(1) and comment 12(a)(1)-7 for additional rules that would apply to the addition of a credit or charge card account to a previously-issued prepaid account. As discussed in the section-by-section of § 1026.12(a)(1), comment 12(a)(1)-7 would provide that a credit card feature may be added to a previously issued prepaid card only upon the consumer's specific request and only in compliance with § 1026.12(h). Proposed comment 12(h)-2 also would cross-reference § 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.

The Bureau notes that if the prepaid card issuer offers the credit plan accessed by the prepaid card, the prepaid card issuer is the "card issuer" for purposes of Regulation Z, including

§ 1026.12(h). This is because the prepaid card accessing the credit plan is a credit card and § 1026.2(a)(7) defines "card issuer" as a person that issues a credit card or that person's agent with respect to the card. *See* § 1026.2(a)(7). If a third party offers the credit plan that is accessed by a prepaid card, both the person offering the credit plan and the prepaid card issuer are card issuers for purposes of § 1026.12(h). In this case, the person offering the credit plan would be an agent of the prepaid card issuer. *See* proposed comment 2(a)(7)-1.ii. For credit plans accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the person extending the credit and issuing the account number would be a card issuer for purposes of § 1026.12(h). For those types of credit plans, the prepaid card issuer would not be a card issuer for purposes of § 1026.12(h). Nonetheless, the prepaid card issuer would be covered under Regulation E proposed § 1005.18(g)(1), which would prevent the financial institution from allowing credit extensions from a credit plan subject to Regulation Z to be deposited in the prepaid account, where the credit plan 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 the section-by-section analysis of Regulation E proposed § 1005.18(g)(1). The Bureau believes that covering both the prepaid card issuer and the person extending credit under the credit card account (if different from the prepaid card issuer) would help avoid circumvention of the provisions in § 1026.12(h). The Board solicits comment on whether additional provisions are needed to avoid circumvention, such as requiring card issuers to adopt policies and procedures reasonably designed to ensure that its affiliates, service providers, or commercial entities with whom the card issuer has a contractual relationship do not

make a solicitation or provide an application as described in § 1026.12(h)(1) to the consumer during the 30-day interval.

The Bureau believes that use of its authority under TILA section 105(a) to add the proposed provisions in § 1026.12(h) is necessary and proper to effectuate the purposes of TILA to help ensure the informed use of the credit or charge card account when it is opened. Specifically, TILA section 102 provides that one of the main purposes of TILA is to promote the informed use of credit by ensuring meaningful disclosure of credit terms so that consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit. 15 U.S.C. 1601. Furthermore, TILA section 132 requires that "[n]o credit card shall be issued except in response to a request or application therefor." 15 U.S.C. 1642. In addition, the Bureau believes that the proposed waiting period will, consistent with Dodd-Frank section 1032(a), ensure that the features of the credit card connected to the prepaid account are fully, accurately, and effectively disclosed to consumers in a manner that permits the consumers to understand the costs, benefits, and risks associated with the account.

The Bureau believes that the requirement in proposed § 1026.12(h) of a 30-day waiting period for prepaid-linked credit cards would promote the informed and voluntary use of credit. Under § 1026.12(h)(1), a card issuer would be required to wait 30 calendar days after a prepaid account has been registered by the consumer holding the prepaid account before the card issuer may open a credit or charge card account, or may provide a solicitation or application to open a credit or charge card account, that will be accessed by the prepaid card, or by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the card issuer. The Bureau believes that it would promote the informed use of the credit to separate the decision to purchase and register a prepaid account from the

decision to accept an offer to add a credit card account to that prepaid account. The Bureau believes that without this proposed provision, prepaid card issuers would be likely to provide solicitations or applications to open credit card accounts linked to prepaid accounts to prepaid cardholders at the time the prepaid accounts are registered because prepaid card issuers will already be collecting information from the cardholders in order to register the prepaid accounts.

As discussed in the section-by-section analysis of § 1005.18(g)(1), the Bureau believes that separating these decisions would better allow consumers to focus on the terms and conditions that apply to the prepaid account at the time of purchase and registration which may enable the consumer to better understand those terms and conditions, consistent with EFTA section 905(a) which requires financial institutions to disclose the terms and conditions of electronic fund transfers involving a consumer's account. The Bureau also believes that requiring at least 30 calendar days to elapse between the registration of a prepaid account and any offer of a linked credit or charge card account would enhance consumer understanding of the terms of the prepaid account and would help consumers to make more informed decisions regarding linking a credit or charge card account to the prepaid account.

In addition, as discussed in the section-by-section analysis of Regulation E proposed § 1005.18(e)(3), the registration process is critical to application of full Regulation E protections. Specifically, Regulation E proposed § 1005.18(e)(3) provides that for all prepaid accounts other than payroll card accounts and government benefit accounts, a financial institution is not required to provide error resolution and limited liability protections for unverified prepaid accounts, so long as the financial institution discloses to consumers in advance the risks of not registering a prepaid account. If a consumer asserts an error on an unregistered account, the financial institution must collect identifying information and verify the

consumer's identity, and then investigate the error. If a card issuer were allowed to market credit card accounts to consumers at the time of prepaid account registration, the Bureau fears that that consumers could believe that they are required to request that the credit or charge card account be linked to the prepaid account in order to register or access the prepaid account. This could cause some consumers to not register their prepaid accounts and lose important protections under Regulation E.

Moreover, the Bureau believes that the 30-day time period between the registration of a prepaid account, and when a linked credit or charge card account can be offered to the holder of the prepaid account, would help consumers to make more informed decisions about whether to request that the credit or charge card account be linked to the prepaid account. The Bureau believes that consumers may be able to focus more effectively on the credit terms of the linked credit feature, and make a more informed decision whether to request such a credit card account, if the decision to accept the linked credit card account occurs apart from the process to register the card. Without these protections, card issuers may attempt to market the credit card account to prepaid cardholders at the time they purchase the prepaid card or at registration. Consumers may feel pressured to make decisions on whether to add the credit card accounts without the time to fully consider the terms of the credit card accounts and the consequences of obtaining the accounts. The Bureau believes that a consumer's decision to add a credit card account to the prepaid account should be a distinct phase from the decision to obtain or register the prepaid card so that consumers have the time to consider fully the terms of the credit card account and consider the consequences of obtaining the credit card account.

Section 1026.13 Billing Error Resolution

TILA section 161, as implemented in § 1026.13 of Regulation Z, sets forth error resolution procedures for billing errors that relate to any extension of credit that is made in connection with an open-end account or credit card account. Specifically, it requires a consumer to provide written notice of an error within 60 days after the first periodic statement reflecting the alleged error is sent. 15 U.S.C. 1666. The written notice triggers a creditor's duty to investigate the claim within prescribed time limits. The proposal would revise certain provisions that apply to the resolution procedures for billing errors set forth in § 1026.13 to provide guidance on how those provisions apply to open-end plans or credit card account 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.

Specifically, as discussed in more detail below, the proposal would address issues related to the definition of "billing error" in § 1026.13(a)(3) related to disputes about property or services that are not delivered to the consumer as agreed. The proposal would amend commentary to § 1026.13(a)(3) to address the circumstances in which a consumer may assert a billing error under § 1026.13(a)(3) with respect to purchases that are made with funds that have been deposited into a prepaid account and those funds were credit from a credit plan where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. In addition, the proposal would revise § 1026.13(i), which sets forth rules on whether billing error procedures set forth in Regulation E or Regulation Z apply if an extension of credit is incident to an electronic fund transfer.

13(a) Definition of Billing Error

13(a)(3)

Section 1026.13(a) defines a "billing error" for purposes of the error resolution procedures. Under § 1026.13(a)(3), the term "billing error" includes disputes about an extension of credit for property or services not accepted by the consumer or not delivered to the consumer as agreed. Comment 13(a)(3)-2 explains that, in certain circumstances, a consumer may assert a billing error under § 1026.13(a)(3) with respect to property or services obtained through any extension of credit made in connection with a consumer's use of a third-party payment service.

Specifically, comment 13(a)(3)-2 provides that § 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) does not apply to purchases using a third party payment intermediary that is funded through use of a credit plan if: (1) 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 (2) 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.

Similar to the provision relating to third-party intermediaries, the proposal would add proposed comment 13(a)(3)-2.ii to address situations where goods or services are purchased using funds deposited into a prepaid account and those funds are credit drawn from a credit plan that is accessed by an account number where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Proposed comment 13(a)(3)-2.ii is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the credit plan using an account number other than a prepaid card, and (3) the advance is deposited into the prepaid account. This provision is not intended to apply to credit extensions for property or services that are accessed by the prepaid card directly. In that situation, there is no intervening account in which credit is deposited; instead, credit is directly accessed by the prepaid card to purchase the property or services. When credit is accessed by a prepaid card and that credit is used to fund the entire amount of a purchase of property or service, § 1026.13 applies to these transactions, and a billing error would occur under § 1026.13(a)(3) when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. See the section-by-section analysis of § 1026.13(i) for a discussion of transactions made with prepaid cards that are credit cards where transactions are partially paid with funds from the prepaid account and partially funded with credit.

Proposed comment 13(a)(3)-2.ii would provide that § 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). 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: (1) 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 (2) 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.

The Bureau believes that for purposes of billing error resolution procedures, it is appropriate to consider purchases in the situations described above to be purchases made with the credit plan. In cases where the extension of credit is made at the time the consumer purchases the good or service and matches the amount of the transaction to purchase the good or service (including ancillary taxes and fees), from the consumer's perspective, there is likely to be little difference between this transaction and a transaction where a consumer would use his or her prepaid card to access a credit plan to fund the entire amount of the purchase. In the latter situation, a purchase made with the prepaid card using a credit plan accessed by the card to fund the entire amount of the purchase would be a billing error under § 1026.13(a)(3) when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. Due to the similarities, consumers may reasonably believe that those two types of similar transactions would be afforded the same billing error protections.

The proposal also would make a technical revision to comment 13(a)(3)-2, by moving the existing language of the comment to proposed comment 13(a)(3)-2.i.

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

Section 1026.13(i) provides guidance on whether billing error provisions under Regulation E or Regulation Z apply in certain overdraft related transactions. Specifically, § 1026.13(i) provides that if an extension of credit is incident to an electronic fund transfer, under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the creditor must comply with the requirements of Regulation E, § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of Regulation Z § 1026.13 (d) and (g) would still apply to these transactions.

As discussed in the Overview of Regulation Z Proposal section, currently under Regulation Z, overdraft credit is subject to Regulation Z only if there is an agreement to extend credit, which is typically described as an overdraft line of credit. In those cases, § 1026.13(i) applies when a transaction is partially funded through an electronic fund transfer from an asset account and partially funded through an overdraft credit line. Such transactions will be subject to both Regulation Z and E. Under § 1026.13(i), for those transactions, the creditor must comply with the requirements of Regulation E § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). The provisions of Regulation Z § 1026.13 (d) and (g) would still apply to these transactions. *See* comment 13(i)-2. For overdraft lines of credit, (1) if a transaction only accesses credit and does not access funds in the asset account, the error resolution provisions in Regulation Z apply and the ones in Regulation E do not apply; and (2) if a transaction only accesses the funds in the asset account and does not access credit, the error resolution provisions in Regulation E apply and the ones in Regulation Z do not apply. For overdraft credit where there is not an agreement to extend credit, Regulation Z does not apply.

For those overdraft credit programs, overdraft transactions are governed solely by the error resolution provisions in Regulation E. *See* comment 13(i)-2. 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. *See* comment 13(i)-1.

As discussed above in the Overview of Regulation Z Proposal section, both overdraft services and overdraft lines of credit linked to prepaid accounts would be subject to Regulation Z's open-end rules set forth in subpart B if they meet the definition of open-end credit or they are accessed by a credit card. For such overdraft credit plans accessed by a prepaid card, where a transaction is partially funded through an electronic fund transfer from an prepaid account and partially funded from credit, the proposal would provide that a creditor must comply with the requirements of Regulation E § 1005.11 governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f), and (h). *See* proposed § 1026.13(i)(2). The provisions of Regulation Z § 1026.13(d) and (g) would still apply to these transactions.

For asset accounts other than prepaid accounts, proposed § 1026.13(i)(1) would continue to focus on whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account. On the other hand, for prepaid accounts, proposed § 1026.13(i)(2) would apply if credit is extended under a credit plan that is subject to subpart B and the credit extended is incident to an electronic fund transfer when the consumer's prepaid account is overdrawn. A credit plan accessed by a prepaid card that is a credit card would be subject to subpart B, and thus proposed § 1026.13(i)(2) would apply. Under the proposal, a prepaid card can be a credit card under Regulation Z even if the creditor retains discretion to not pay the credit transactions. As discussed in the section-by-section analysis of § 1026.2(a)(15)(i),

proposed comment 2(a)(15)-2.i.F would provide that the term "credit card" for purposes of Regulation Z includes a prepaid card that is a single device that may be used from time to time to access a credit "plan," except if the prepaid card only accesses credit that is not subject to any finance charge described in § 1026.4 or any fee described in § 1026.4(c), such as an application fee to apply for credit or a late payment fee, and is not payable by written agreement in more than four installments. As discussed in the section-by-section analysis of § 1026.2(a)(20), with respect to credit that is accessed by a prepaid card, a "plan" includes a program where the consumer is obligated contractually to repay the credit. For example, such a plan includes a program under which a creditor routinely pays transactions when a consumer has insufficient or unavailable funds in a prepaid account and the consumer is obligated contractually to repay those transactions. Under the proposal, such a program would constitute a plan notwithstanding that the creditor retains discretion not to pay such transactions. Thus, with respect to prepaid accounts, proposed § 1026.13(i)(2) focuses on whether credit is extended under a credit plan that is subject to subpart B incident to an electronic fund transfer and extended when the consumer's prepaid account is overdrawn, rather than whether there is an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

Comment 13(i)-1 would be revised to explain that 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. Under the proposal, the creditor for such transfers must comply with the billing error provisions in § 1026.13. This guidance is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of

credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number other than a prepaid card, and (3) the advance is deposited into the prepaid account. The provisions in § 1026.13(i) would not apply to these types of credit accounts because these credit plans do not involve overdraft transactions that are partially funded through electronic fund transfers from prepaid accounts and partially funded from credit transactions. For these types of credit accounts, transactions where credit is deposited into the prepaid account are separate from transactions that withdraw the funds from the prepaid account. Proposed comment 13(i)-1 would specify that transfers from such credit plans to a prepaid account are subject to the error resolution procedures in Regulation Z § 1026.13 and are not covered by the rules in § 1026.13(i).

The proposal also would add proposed comment 13(i)-4 to provide guidance on how proposed § 1026.13(i) applies to overdraft credit plans that are subject to subpart B such as credit plans that are accessed by prepaid cards that are credit cards. Specifically, proposed comment 13(i)-4 would provide that for transactions involving a credit plan that is subject to subpart B when the credit extension is incident to an electronic fund transfer and the credit is extended where the prepaid account is overdrawn, whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit under an overdraft plan, and does not include a debit to the prepaid account, the error resolution requirements of Regulation Z would apply. If the transaction debits a prepaid account only (with no credit extended under the overdraft plan), the provisions of Regulation E would apply.

Nonetheless, under the proposal, if the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B, a creditor would be required to comply with the

requirements of Regulation E, §§ 1005.11 and proposed § 1005.18(c), governing error resolution rather than those of § 1026.13 (a), (b), (c), (e), (f) and (h).

Comment 13(i)-3 provides additional guidance on how the error resolution provisions of Regulations Z and E interact. Comment 13(i)-3 provides an example of the application of § 1026.13(i) to a transaction where a consumer withdraws money at an automated teller machine and activates an overdraft line of credit on the checking account. In this case, an error asserted with respect to the transaction would be subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction. In addition, the creditor would not need to provisionally credit the consumer's account, under Regulation E § 1005.11(c)(2)(i), for any portion of the unpaid extension of credit. Also, the creditor would need to credit the consumer's account under § 1005.11(c) with any finance or other charges incurred as a result of the alleged error. The provisions of §§ 1026.13(d) and (g) would apply only to the credit portion of the transaction. Proposed comment 13(i)-4 would provide similar guidance for how § 1026.13(i)(2) applies to 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).

Proposed comment 13(i)-5 would explain that an overdraft credit plan would not be subject to subpart B if the credit plan is only accessed by a prepaid card that is not a credit card. A prepaid card would not be a credit card if the prepaid card only accesses credit that is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. *See* proposed comment 2(a)(15)-2.i.F. For these types of credit plans, only the error resolution provisions in Regulation E would apply.

The Bureau believes that it is appropriate to apply the error resolution procedures in Regulation E generally to transactions that debit a prepaid account but also draw on an overdraft plan subject to subpart B. The Bureau believes that this proposed approach is consistent with EFTA section 909(c), which applies EFTA's limits on liability for unauthorized use to transactions which involve both an unauthorized electronic fund transfer and an extension of credit pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn. 15 U.S.C. 1693g(c). An unauthorized electronic fund transfer on a prepaid account generally would be subject to the limits on liability in Regulation E § 1005.6 and proposed § 1005.18(e); an unauthorized electronic fund transfer on a prepaid account also is an error for purposes of the error resolution procedures set forth in Regulation E § 1005.11 and proposed § 1005.18(e). *See* Regulation E § 1005.11(a)(1). Although billing errors under Regulation Z § 1026.13(a) include a broader category than only unauthorized use, the Bureau believes it is necessary and proper to exercise its adjustment and exception authority under TILA section 105(a) to apply Regulation E's error resolution provisions and limited Regulation Z error resolution provisions to these transactions, to facilitate compliance with EFTA section 908 and TILA section 161 on error resolution. The Bureau is concerned that conflicting provisions could apply to transactions that debit a prepaid account but also draw on an overdraft plan subject to subpart B if Regulation E's provisions applied to limits on liability for unauthorized use, and Regulation Z's provisions generally apply to investigation of billing errors, including transactions involving unauthorized use. To avoid these potential conflicts and to facilitate compliance, under § 1026.13(i)(2), if the transaction debits a prepaid account but also draws on an overdraft plan subject to subpart B, a creditor would be required to comply with the requirements of Regulation

E, § 1005.11 and proposed § 1005.18(e), governing error resolution rather than those of § 1026.13(a), (b), (c), (e), (f) and (h). This approach is also consistent with the existing provisions in Regulation E § 1005.12(a)(1)(iv) and Regulation Z § 1026.13(i), which applies Regulation E's liability limitation and error resolution procedures to an extension of credit that is incident to an electronic fund transfer for overdraft lines of credit. The Bureau specifically solicits comment on this approach and any operational issues that might arise under this approach.

The proposal also would make technical revisions to § 1026.13 and related commentary. First, the existing language of § 1026.13(i) would be moved to proposed § 1026.13(i)(1) and revised to specify that this provision would apply to asset accounts that are not prepaid accounts. Second, comments 13(i)-2 and -3 would be revised to specify that they only apply to debit cards and not to prepaid cards.

Subpart G

Except for § 1026.60, which concerns certain credit card disclosures, all of the provisions in subpart G implement the Credit CARD Act. The provisions in subpart G that implement the Credit CARD Act generally apply to a "card issuer" as defined in § 1026.2(a)(7) that is extending credit under a "credit card account under an open-end (not home-secured) consumer credit plan" as defined in § 1026.2(a)(15)(ii).[377] Among other things, subpart G contains provisions to implement the Credit CARD Act that:

[377] Section 1026.57(c) applies to all open-end credit. That section prohibits a card issuer or creditor from offering a tangible item to a college student on or near a college campus or at an event sponsored by the college to induce the student to apply for or open an open-end credit plan.

- Prohibit credit card issuers from extending credit without assessing the consumer's ability to pay, with special rules regarding the extension of credit to persons under the age of 21. (§ 1026.51)
- Restrict the amount of required fees that an issuer can charge during the first year after an account is opened. (§ 1026.52(a)(1))
- Limit the amount issuers can charge for "back-end" penalty fees, such as when a consumer makes a late payment or exceeds his or her credit limit. (§ 1026.52(b)(1))
- Ban "declined transaction fees" and other penalty fees where there is no cost to the issuer associated with the violation of the account agreement. (§ 1026.52(b)(2))
- Restrict the circumstances under which issuers can increase interest rates on credit card accounts and establish procedures for doing so. (§ 1026.55 and 59)
- Restrict fees for over-the-limit transactions to one per billing cycle and require that the consumer opt-in to payment of such transactions in order for the fee to be charged. (§ 1026.56)
- Require institutions of higher education to publicly disclose agreements with credit card issuers and limit the marketing of credit cards on or near college campuses. (§ 1026.57)

In addition, subpart G also contains § 1026.60, which sets forth disclosures that card issuers generally must provide on or with a solicitation or an application to open a credit or charge card account.

As discussed above in the Overview of Regulation Z Proposal section, the Bureau anticipates that most 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, would meet the definition of "open-end credit" if the creditor imposes a finance charge for the credit. See section-by-section analysis of the definition of "credit" in § 1026.2(a)(14), the definition of "open-end-credit" in § 1026.2(a)(20), and the definition of "finance charge" in § 1026.4. In addition, as discussed above in the section-by-section analysis of §§ 1026.2(a)(7), (a)(15)(i) and (a)(15)(ii), an open-end credit plan accessed by a prepaid card that is a credit card, or by an account number that is a credit card where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, would be a "credit card account under an open-end (not home-secured) consumer credit plan," and the person issuing the prepaid card or account number would be a "card issuer."

As a result, pursuant to the Bureau's proposed amendments, certain provisions in subpart G generally would apply to open-end credit that is accessed by a prepaid card that is a credit card (such as overdraft credit) or open-end credit that is accessed by an account number that is a credit card and deposited into a prepaid account where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.[378]

As discussed in more detail below, the Bureau is proposing to amend commentary to the following provisions to provide guidance on how certain provisions in subpart G would apply to open-end credit plans that are accessed by prepaid cards that are credit cards or account numbers as described above that are credit cards:

[378] A person would not be extending open-end credit where the person is not charging a finance charge for the credit that is accessed by a prepaid card or by an account number where the extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. See section-by-section analysis of § 1026.2(a)(17) and (a)(20).

(1) Section 1026.52(a), which restricts required fees charged during the first year the account is opened;

(2) Section 1026.52(b), which restricts the imposition of penalty fees, including the ban on declined transaction fees; and

(3) Section 1026.57, which limits the marketing of credit cards to college students.[379]

The Bureau also is proposing to provide guidance on how § 1026.60, which requires disclosures to be provided on or with a solicitation or application to open a credit or charge card account, applies to card issuers that are issuing prepaid cards that are credit cards or account numbers, as described above, that are credit cards.

Section 1026.52 Limitations on Fees

52(a) Limitations during First Year After Account Opening

TILA section 127(n)(1) restricts the imposition of certain fees during the first year after opening a credit card account under an open-end consumer credit plan in order to restrict certain "fee harvester" or subprime credit cards that charged a large amount of fees early in the account relationship to the credit line, which significantly reduced the credit available to a consumer during the first year. Specifically, the statute provides that "no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account" where the account terms would require consumers to pay "an aggregate amount [of non-exempt fees] in excess of 25 percent of the total amount of credit authorized under the account when the account is opened."

[379] The Overview of the Regulation Z Proposal describes some of the benefits from these regulations for prepaid account consumers.

This provision is implemented in § 1026.52(a), which provides generally that the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. Fees not subject to the 25 percent restriction are late payment fees, over-the-limit fees, and returned-payment fees; or fees that the consumer is not required to pay with respect to the account. *See* § 1026.52(a)(2). Existing comment 52(a)(1)-1 provides that 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 to the card issuer or from another credit account provided by the card issuer).

Particularly in the context of prepaid cards with linked credit card accounts that are designed to provide liquidity to the prepaid account, the Bureau believes that the statute and regulation provide important protections to consumers. From the consumer's perspective, there is no practical difference between a fee charged against the credit card account and a fee charged to the linked prepaid account in order to access credit because both functionally reduce the total amount of credit available to the consumer through the prepaid account until such fees are paid. If the statute were not interpreted to include fees charged across any linked accounts, the Bureau is concerned that card issuers could hide non-exempt fees reducing the credit made available under such accounts by artificially charging such fees as negative balances on asset accounts or by creating separate artificially distinct credit accounts and attempting to collect the non-exempt fees from those linked credit accounts. The Bureau believes that such arrangements would subvert the purpose and meaning of TILA section 127(n)(1).

As described below, the Bureau is proposing to amend several comments to § 1026.52(a) to provide examples and other guidance on how this provision would apply to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards, or accessed by account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. The Bureau seeks comment on whether additional amendments to the regulation or commentary would be helpful to effectuate its interpretation of the statute or to facilitate compliance. For example, the Bureau seeks comment on whether it would be helpful to mandate the disclosure to consumers of the initial credit line that is made available under the terms of the account, including any linked credit accounts.

52(a)(1) General Rule

Section 1026.52(a)(1) provides that generally the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. Fees not subject to the 25 percent restriction are late payment fees, over-the-limit fees, and returned-payment fees; or fees that the consumer is not required to pay with respect to the account. *See* § 1026.52(a)(2).

The Bureau is proposing to amend existing comment 52(a)(1)-1, which explains that 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 to the card issuer or from another credit account provided by the card issuer). This comment also provides two examples illustrating the limitations on fees set forth in § 1026.52(a).

The proposal would amend comment 52(a)(1)-1 to add a prepaid account as an example of a consumer's asset account. Thus, for a credit card account under an open-end (not home-secured) consumer credit plan that are accessed by a prepaid card that is a credit card, or accessed by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, the 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 to the card issuer from the consumer's prepaid account or other asset account or from another credit account provided by the card issuer). The Bureau is also proposing to add two new examples to existing comment 52(a)(1)-1 to illustrate how the prohibition in § 1026.52(a) applies to credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards. *See* proposed comment 52(a)(1)-1.iii and .iv. While the proposed examples that would be added to comment 52(a)(1)-1.iii and .iv assume that a consumer opens a credit account accessed by the prepaid card that is a credit card, the same proposed guidance would apply to credit card accounts that are accessed by account numbers that are credit cards where extensions of credit are only permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

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

Section 1026.52(a)(2) provides that the 25 percent restriction does not apply to late payment fees, over-the-limit fees, and returned-payment fees, or fees that the consumer is not required to pay with respect to the account. Existing comment 52(a)(2)-1 provides guidance on the types of fees that are included in the 25 percent threshold. Specifically, existing comment 52(a)(2)-1 provides that except as provided in §1026.52(a)(2), §1026.52(a) applies to any fees or

other charges that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening, other than charges attributable to periodic interest rates. The existing comment further clarifies that for example, § 1026.52(a) applies to: (1) fees that the consumer is required to pay for the issuance or availability of credit described in § 1026.60(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit; (2) fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account; (3) fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases); (4) fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by §1026.52(a)(2)(i)); (5) fixed finance charges; and (6) minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

The Bureau also is proposing to add two additional comments to §1026.52(a)(2) to provide specific guidance on the types of fees that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards, or accessed by account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

First, proposed comment 52(a)(2)-2 would provide additional examples of the types of

fees that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by prepaid cards that are credit cards. Specifically, proposed comment 52(a)(2)-2 provides that 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. Under proposed comment 52(a)(2)-2, this would include, but is not limited to: (1) per-transaction fees for "shortages" or "overdrafts;" (2) fees for transferring funds from a credit account to a prepaid account that are both accessed by the prepaid card; (3) a daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a prepaid account is in "overdraft" status, or would be in overdraft status but for funds supplied by a linked line of credit accessed by the prepaid card; or (4) a daily, weekly, or monthly (or other periodic) fee (other than a periodic interest rate) assessed each period a line of credit accessed by the prepaid card has an outstanding balance.

Second, proposed comment 52(a)(2)-3 would provide additional examples of the types of fees that that would be covered by the 25 percent limitation for credit card accounts under an open-end (not home-secured) consumer credit plan that are accessed by account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Specifically, proposed comment 52(a)(2)-3 would provide that 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 only 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. Proposed comment 52(a)(2)-3 would further clarify that, this would include, but is not limited to: (1) per-transaction fees for "shortages" or "overdrafts;" (2) fees for transferring funds from the credit account to a prepaid account; and (3) 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.

Proposed comment 52(a)(2)-3 is designed to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the open-end account using an account number, and (3) the advance is deposited directly into the prepaid account. Proposed comment 52(a)(2)-3 would not apply to a credit card account that is accessed by an account number that is a prepaid card; proposed comment 52(a)(2)-2 would provide guidance on that type of credit card account.

Finally, the Bureau proposes several technical revisions. Current comments 52(a)(2)-2 and -3 would be moved to comments 52(a)(2)-4 and -5 respectively; no substantive change is intended. In addition, the section heading to § 1026.52(a) would be revised to delete the reference to limitations prior to account opening to be consistent with the scope of the limitations set forth in § 1026.52(a); no substantive change is intended.

52(b) Limitations on Penalty Fees

TILA section 149(a) provides that ''[t]he amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan

in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.'' 15 U.S.C. 1665d(a). TILA section 149(e) provides that the Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, may issue rules to provide an amount for any penalty fee or charge described in TILA section 149(a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates. 15 U.S.C. 1665d(e).

Implementing TILA section 149, § 1026.52(b) provides that a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee: (1) Is consistent with either the cost analysis in § 1026.52(b)(1)(i) or the safe harbors in § 1026.52(b)(1)(ii); and (2) Does not exceed the dollar amount associated with the violation.[380]

Section 1026.52(b)(2)(i)(B) provides a card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. Section 1026.52(b)(2)(i)(B)(*1*) through (*3*), respectively, would prohibit the following fees because there is no dollar amount associated with the following violations: (1) Transactions that the card issuer declines to authorize; (2) Account inactivity; and (3) The closure or termination of an account.

The Bureau is proposing to add comment 52(b)(2)(i)-7 to provide guidance on when the

[380] A card issuer also must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. *See* § 1026.52(b)(2)(ii).

ban on declined transaction fees in § 1026.52(b)(2)(i)(B)(*1*) would apply in the context of prepaid accounts. Specifically, this proposed comment would provide that § 1026.51(b)(2)(i)(B)(*1*) 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, the proposed comment would clarify that with respect to a credit card that is a prepaid card, the prohibition in § 1026.52(b)(2)(i)(B)(*1*) applies to the consumer's transactions using the prepaid card where a declined transaction would have accessed the consumer's credit account with the card issuer had it been authorized. A fee for declining such a transaction is no different than a fee for declining a credit card transaction, which is prohibited by current § 1026.52(b)(2). Thus, if a transaction using a prepaid card that is a credit card would have accessed the credit card account had it been authorized, the card issuer may not impose a declined transaction fee for declining that transaction. Finally, the proposed comment would provide that fees imposed for declining a transaction that would have only accessed the prepaid account and would not have accessed the consumer's credit card account would not be covered by § 1026.52(b)(2)(B)(i)(*1*). Such transactions do not directly involve a credit card account, although they do involve a prepaid card that is a credit card. The Bureau requests comment on whether, once a credit card account has been added to a prepaid card, it should prohibit a card issuer from thereafter assessing a fee for declining to authorize a prepaid card transaction, notwithstanding that a given transaction would not have accessed the credit card account even had it been authorized.

Section 1026.57 Reporting and marketing rules for college student open-end credit

Overview of Proposed Changes

TILA section 140(f) requires the public disclosure of contracts or other agreements between card issuers and institutions of higher education for the purpose of marketing a credit card and imposes restrictions related to marketing open-end credit to college students. 15 U.S.C. 1650(f). TILA section 140(f)(1) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. 15 U.S.C. 1650(f)(1). TILA section 140(f)(2) provides that no card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made (1) on the campus of an institution of higher education; (2) near the campus of an institution of higher education, as determined by rule of the Bureau; or (3) at an event sponsored by or related to an institution of higher education. 15 U.S.C. 1650(f)(2).

In addition, TILA section 127(r) requires card issuers to submit an annual report to the Bureau containing the terms and conditions of all business, marketing, promotional agreements, and college affinity card agreements with an institution of higher education, or other related entities, with respect to any college student credit card issued to a college student at such institution. 15 U.S.C. 1637(r). TILA section 140(f) and 127(r) are implemented in § 1206.57.

Section 1026.57(b) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. The Bureau is proposing to add comment 57(b)-3 to § 1026.57(b) to explain that this provision of Regulation Z would apply 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 would 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 the proposal, § 1026.57(b) would require an institution of higher education to publicly disclose such agreements.

Section 1026.57(c) provides that no card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event sponsored by or related to an institution of higher education. The proposal would add comment 57(c)-7 to § 1026.57(c) to explain that § 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 would 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 the proposal, § 1026.57(c) would prevent a card issuer or creditor from offering a college student any tangible item to induce such student to apply for or open a prepaid account with a

linked credit card account (as discussed above) or a credit card account linked to the previously-issued prepaid account (as discussed above), offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event sponsored by or related to an institution of higher education.

Section 1026.57(d) requires card issuers that are a party to one or more "college credit card agreements" to submit annual reports to the Bureau regarding those agreements. The proposal would amend existing comments 57(a)(1)-1 and 57(a)(5)-1 relating to the definitions of "college student credit card" and "college credit card agreement" respectively to provide that § 1026.57(d) applies to 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 would 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. Proposed comment 57(a)(1)-1 and 57(a)(5)-1 also would provide that § 1026.57(d) applies to 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 accounts where that credit account would be accessed by a prepaid card that is a credit card, or would 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 the proposal, a card issuer that is a party to one or more such agreements would be required to submit annual reports to the Bureau regarding those agreements.

The proposal would add or amend the comments discussed above to provide that the provisions of § 1026.57 apply to prepaid accounts that do not contain a credit card feature at the time the prepaid account is issued, so long as a credit card feature may be added to the previously issued prepaid account issued to a college student 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. The Bureau notes that under proposed § 1026.12(h), a prepaid account at the time it is opened or issued cannot include a credit card feature. As discussed in more detail in the section-by-section analysis of proposed § 1026.12(h), under the proposal, card issuers would be required to wait at least 30 days after a prepaid account is registered before the card issuer may open a credit card account for the holder of the prepaid account, or make a solicitation or provide an application to the holder of the prepaid account 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. Nonetheless, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also may have an impact on whether consumers may request that a credit card account be linked to the prepaid account, as discussed above, when such credit card accounts are offered to them. Thus, the proposal would add or amend the comments discussed above to provide that the provisions in that section apply to the issuance of prepaid accounts that

do not have credit card accounts linked to them at the time the prepaid accounts are opened, if credit card accounts may be linked to the prepaid accounts in the future as described above.

The Bureau requests comment on this approach. The Bureau believes it is reasonable to interpret credit cards in this section to include prepaid cards where credit features may subsequently be added, and that it is consistent with congressional concerns that college students could become trapped in a cycle of credit card debt.[381] Further, these concerns might be heightened with respect to prepaid cards to which credit card accounts may be linked, because students might be more prone to use such cards as their primary transaction account. The Bureau notes that, in light of these types of concerns, the Department of Education is undertaking a negotiated rulemaking considering, among other things, overdraft fees on prepaid cards marketed to college students.[382]

57(a) Definitions

Section 1026.57(d) requires card issuers that are a party to one or more college credit card agreements to submit annual reports to the Bureau regarding those agreements. Section 1026.57(a)(5) defines "college credit card agreement" to mean any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution. Section 1026.57(a)(1) defines "college student credit card" as used in the term "college credit card agreements" to mean a credit card issued

[381] See, for example, an August 11 letter from Senator Menendez to CFPB Director Richard Cordray and Department of Education Secretary Arne Duncan urging the agencies to prohibit overdraft fees on student prepaid accounts established in connection with the financial aid process or students' relationships with colleges. The letter is available at www.menendez.senate.gov/newsroom/press/menendez-calls-for-protections-from-campus-card-trap.

[382] See www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html for further information about the department's negotiated rulemaking.

under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

Existing comment 57(a)(1)-1 provides guidance on the definition of "college student credit card" which is used in the definition of "college credit card agreements." The proposal would amend this comment to include 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. Proposed comment 57(a)(1)-1 also would provide that the definition of college student credit card includes a prepaid account that is issued to any college student where an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account and the credit account may be accessed by a prepaid card that is a credit card, 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.

Existing comment 57(a)(5)-1 provides guidance on the definition of "college credit card agreements." The proposal would amend this comment to include guidance on when agreements related to prepaid accounts would be considered "college credit card agreements." Proposed comment 57(a)(5)-1 would provide that the definition of "college credit card agreements" includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement either provides for the addition of open-end (not home-secured) consumer credit plans to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card, 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. Proposed comment 57(a)(5)-1 also would provide that the definition of "college credit card agreements" includes a business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) an agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) an open-end (not home-secured) consumer credit plan may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card, 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, pursuant to the Bureau's proposed amendments to commentary, § 1026.57(d) would require a card issuer that is a party to one or more agreements in connection with prepaid accounts with linked credit cards, as described above, to submit annual reports to the Bureau regarding those agreements. Under the proposal, a card issuer would be required to submit agreements that provide for the issuance of prepaid accounts to full-time or part-time students even if credit accounts are not linked to the prepaid account when they are issued, so long as credit accounts may be added in connection with the prepaid accounts where the credit accounts 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.

As discussed above, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also have an impact on whether consumers may request that a credit card account be linked to the prepaid

account when such credit card accounts are offered to them. Thus, even though a prepaid account will not have a credit card account linked to it at the time the prepaid account is opened, if a credit card account may be linked to a prepaid account as described above in the future, the prepaid account at the time of issuance would be a "college student credit card" for purposes of § 1026.57(a)(1) if the prepaid account is issued to a college student. As a result, under the proposal, a card issuer that is a party to one or more agreements between the card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) must submit annual reports to the Bureau regarding those agreements if (1) an agreement provides for the issuance of prepaid accounts to full-time or part-time students; and (2) a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card, 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

Section 1026.57(b) provides that an institution of higher education must publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. The Bureau is proposing comment 57(b)-3 to explain that § 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of open-end (not home-secured) consumer credit accounts to 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; or (2) prepaid accounts where a credit account may be added in connection with the prepaid account and that credit account may be accessed by a prepaid card that is a credit card 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.

As discussed above, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also may have an impact on whether consumers may request that a credit card account be linked to the prepaid account, as discussed above, when such credit card accounts are offered to them. Thus, the Bureau believes that the marketing related to a prepaid account where a credit card feature may be added in connection with the prepaid account as discussed above would constitute marketing of a credit card. Thus, under the proposal, an institution of higher education must publicly disclose agreements for the marketing of prepaid accounts where a credit account may be added in connection with the prepaid account and that credit account may be accessed by a prepaid card that is a credit card 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(c) Prohibited Inducements

Section 1026.57(c) provides that no card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event

sponsored by or related to an institution of higher education. The Bureau is proposing to add comment 57(c)-7 to explain that § 1026.57(c) applies to (1) the application for or opening of a credit card account that is being added to previously-issued prepaid accounts that were issued to full-time or part-time students, where that credit account would be accessed by a prepaid card that is a credit card, or 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; or (2) the application for or opening of a prepaid account where a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card that is a credit card 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.

As discussed above, the Bureau believes that the marketing efforts related to a prepaid account, and the inducements given by a card issuer to open a prepaid account, also may have an impact on whether consumers may request that a credit card account be linked to the prepaid account, as discussed above, when such credit card accounts are offered to them. Thus, any tangible item given to induce college students to apply or open a prepaid account where a credit card feature may be added in connection with the prepaid account as discussed above would also be seen as inducing a college student to apply for or open a credit card account in connection with the prepaid account when it is offered to the consumer. As a result, under the proposal, under § 1026.57(c), a card issuer or creditor would be prohibited from offering a college student any tangible item to induce such student to apply for or open a prepaid account offered by such card issuer or creditor where a credit account may be added in connection with the prepaid account where that credit account may be accessed by a prepaid card or may be 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 such offer is made: (1) On the campus of an institution of higher education; (2) Near the campus of an institution of higher education; or (3) At an event sponsored by or related to an institution of higher education.

Section 1026.58 Internet Posting of Credit Card Agreements

TILA section 122(d), implemented by § 1026.58, generally requires card issuers to post their card agreements on the internet and to provide those agreements to the Bureau. Separately, as part of this proposal, the Bureau is proposing to adopt similar provisions for prepaid card accounts in Regulation E in proposed § 1005.19. Although the Bureau is not proposing to revise § 1026.58, it does note that the requirements of § 1026.58 and those of Regulation E in proposed § 1005.19 are distinct and independent of one another. In other words, card issuers would have to comply with both as appropriate.

Section 1026.60 Credit and Charge Card Applications and Solicitations

TILA section 127(c), implemented by § 1026.60, generally requires card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account. 15 U.S.C. 1637(c). Under § 1026.60, card issuers generally are required to provide the following disclosures, among other cost disclosures, on or with the credit or charge card applications or solicitations: (1) the annual percentage rates applicable to the account, for purchases, cash advances, and balance transfers; (2) any annual or other periodic fee, expressed as an annualized amount, that is imposed for the issuance or availability of a credit card, including any fee based on account activity or inactivity; (3) any non-periodic fees related to opening the account, such as one-time membership or participation fees; (4) any minimum or fixed finance charge that could be imposed during a billing cycle; (5) any transaction charge

imposed on purchases, cash advances or balance transfers; and (6) any late payment fees, over the limit fees or returned payment fees.

Section 1026.60(a)(5) provides several exceptions to the requirements in § 1026.60 to provide cost disclosures on or with credit or charge card applications or solicitations. Specifically, § 1026.60(a)(5) provides that § 1026.60 does not apply to: (1) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 1026.40; (2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; (3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; (4) Lines of credit accessed solely by account numbers; (5) Additions of a credit or charge card to an existing open-end plan; (6) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (7) Consumer-initiated requests for applications.

As discussed above in the Overview of Regulation Z Proposal section, under the proposal, a person would be a card issuer if the person issues a prepaid card that is a credit card, or issues 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, such a card issuer generally would be required to provide the disclosures required by § 1026.60 on or with a solicitation or application to open a credit plan that is accessed by a prepaid card that is a credit 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.

As discussed above, § 1026.60(a)(5)(iv) currently provides that the disclosure requirements in § 1026.60 do not apply to lines of credit accessed solely by account numbers. As discussed further below, the proposal would amend § 1026.60(a)(5)(iv) to provide that this

exception does not apply where the account number is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor. Thus, under the proposal, a card issuer would have to provide the disclosures required by § 1026.60 on or with a solicitation or application to open a credit or charge card account that 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.[383]

The proposal also would amend the commentary to § 1026.60(b)(4) and (b)(8) to provide additional guidance on how disclosures related to transaction fees for purchases and for cash advances would have to be provided for credit card accounts that will be accessed by a prepaid card that is a credit 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.

60(a) General Rules

Comment 60(a)-1 explains that § 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. This comment provides a cross reference to several relevant provisions of Regulation Z related to credit cards, such as a cross reference to § 1026.60(a)(5) and (e)(2) for exemptions to the disclosure requirements in § 1026.60, to § 1026.60(a)(1) and accompanying commentary for the definition of solicitation, and to § 1026.2(a)(15) and accompanying commentary for the definition of charge card. The proposal would amend this comment to

[383] The Bureau notes that, pursuant to Regulation E proposed § 1005.18(b)(2)(ii)(B), a financial institution also would have to include these disclosures as part of the long form provided before a consumer acquires a prepaid account.

provide a cross reference to proposed § 1026.12(h) that sets forth restrictions on when credit or charge card accounts can be added to previously-issued prepaid accounts. As discussed in more detail in the section-by-section analysis of proposed § 1026.12(h), new proposed § 1026.12(h)(1) would require card issuers to wait at least 30 calendar days after a prepaid card is registered before the card issuer may make a solicitation or provide an application to the holder of the prepaid account to open a credit or charge card account, or open a credit card account for the holder the prepaid account, accessed by a prepaid card that is a credit 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.

60(a)(5) Exceptions

As discussed above, § 1026.60(a)(5) provides several exceptions to the requirements in § 1026.60 to provide cost disclosures on or with credit or charge card applications or solicitations. Specifically, § 1026.60(a)(5) provides that § 1026.60 does not apply to: (1) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 1026.40; (2) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; (3) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; (4) Lines of credit accessed solely by account numbers; (5) Additions of a credit or charge card to an existing open-end plan; (6) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or (7) Consumer-initiated requests for applications. These exemptions are not specifically listed in TILA section 127(c).

In 1989, to implement the disclosure provisions in TILA section 127(c) as amended by the Fair Credit and Charge Card Disclosure Act of 1988,[384] the Board exempted the following credit card accounts from the disclosure requirements set forth in its § 226.5a (which are contained in the Bureau's Regulation Z § 1026.60): (1) home equity plans accessible by a credit or charge card that are subject to the Home Equity Loan Consumer Protection Act of 1988**,** Pub. L. No. 100-709; (2) overdraft lines of credit tied to asset accounts accessed by check guarantee cards or by debit cards; or (3) lines of credit accessed by check guarantee cards or by debit cards that can be used only at automated teller machines.[385] In the supplemental information to that rulemaking, the Board indicated that a number of commenters raised issues concerning coverage of the proposed rule given the broad definition of the term "credit card" in the regulation.[386] Among other things, the Board reported that commenters argued that congressional intent was to require disclosures only for "traditional" credit card accounts used primarily to purchase goods and services, and not for other types of accounts that do not fall within such a category or for which the use of a credit or charge card as an access device is merely incidental to the product being offered.[387]

In 1990, the Board added commentary to its Regulation Z § 226.5a (now § 1026.60) to provide that the disclosures set forth in its Regulation Z § 226.5a also did not apply to (1) lines of credit accessed solely by account numbers; (2) the addition of a credit or charge card to an existing open-end plan; or (3) general purpose applications unless the application, or material

[384] Pub. L. No. 100-583, 102 Stat. 2960.

[385] 54 FR 13855, 13857 (Apr. 6, 1989).

[386] *Id.*

[387] *Id.*

accompanying it**,** indicates that it can be used to open a credit or charge card account; or (4) consumer-initiated requests for applications.[388] In the supplemental information to the 1990 rulemaking, the Board did not explain why it was including these exemptions.

For the reasons discussed below, the proposal would revise the exemption in § 1026.60(a)(5)(iv) that relates to lines of credit accessed solely by account numbers so that this exception would not apply to lines of credit that are accessed only by account numbers that are credit cards where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

This proposed revision is intended to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number only, and (3) the advance is deposited into the prepaid account. Thus, under the proposal, a card issuer would be required to provide the disclosures set forth in § 1026.60 on or with solicitations or applications to open a credit or charge card account that would be accessed only by an account number that is a credit card where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor.

The Bureau does not believe that TILA section 127(c) dictates that the above credit card accounts be exempted from the disclosures requirements set forth in TILA section 127(c). The Bureau also believes that the cost disclosures in § 1026.60 would be helpful to consumers in deciding whether to open such a credit or charge card account. The Bureau notes that under the

[388] *See* 55 FR 13103, 13103 (Apr. 9, 1990).

current regulation, a card issuer generally would be required to provide the cost disclosures in § 1026.60 on or with solicitations or applications to open a credit or charge card account that is accessed by a prepaid card that is a credit card. The Bureau believes that consumers would benefit from receiving the cost disclosures set forth in § 1026.60 when a credit or charge card is linked to a prepaid account as discussed above, regardless of whether the credit account is accessed by a prepaid card or whether the credit account is assessed by only 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.[389]

60(b)

60(b)(4) Transaction Charges

Section 1026.60(b)(4), which implements TILA section 127(c)(1)(A)(ii)(III), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any transaction charge imposed on purchases. 15 U.S.C. 1637(c)(1)(A)(ii)(III). The proposal would add proposed comment 60(b)(4)-3 to provide guidance on when fees would be considered transaction fees for purchases under § 1026.60(b)(4) for prepaid cards that are credit cards. Specifically, proposed comment 60(b)(4)-3 would provide that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for credit accessed by a credit card that is a prepaid card to make a purchase, that fee is a transaction charge as described in § 1026.60(b)(4). Proposed comment 60(b)(4)-3 would provide that such fees must be disclosed as transaction charges under § 1026.6(b)(4) whether the fee is a flat per-transaction fee to make a purchase, a flat fee for each

[389] The Bureau also believes consumers would benefit from receiving these disclosures before they acquire a prepaid account. *See* section-by-section analysis of Regulation E proposed § 1005.18(b)(2)(ii)(B).

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.

60(b)(8) Cash-Advance Fee

Section 1026.60(b)(8), which implements TILA section 127(c)(1)(B)(i), generally requires that card issuers disclose on or with solicitations or applications to open credit or charge card accounts any fee imposed for an extension of credit in the form of cash or its equivalent. 15 U.S.C. 1637(c)(1)(B)(i). The proposal would add proposed comment 60(b)(8)-4 to provide guidance on when fees would be considered cash advance fees that must be disclosed under § 1026.60(b)(8) for credit card accounts that are accessed by prepaid cards. In addition, proposed comment 60(b)(8)-4 would provide guidance on how cash advance fees must be disclosed. Specifically, proposed comment 60(b)(8)-4 would provide that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance accessed by a credit card that is a prepaid card, such as a cash withdrawal at an ATM, that fee is a cash advance fee. Under proposed comment 60(b)(8)-4, if the cash advance fee is the same dollar amount as the transaction charge for purchases described in § 1026.60(b)(4), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Proposed comment 60(b)(8)-4 would provide the following three examples of how cash advance fees must be disclosed.

Under proposed comment 60(b)(8)-4.i, the first example would provide that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or

services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer assesses a $25 fee for credit accessed by a prepaid card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer must disclose separately a purchase transaction charge of $15 and a cash advance fee of $25.

Under proposed comment 60(b)(8)-4.ii, the second example would provide that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account. Under this proposed example, the card issuer also assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, under the proposal, the card issuer may disclose the $15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, under the proposal, the card issuer 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. The Bureau believes that either alternative would provide effective disclosure of the transaction fee for purchases and the cash advance fee.

Under proposed comment 60(b)(8)-4.iii, the third example would provide that a card issuer assesses a $15 fee for credit accessed by a credit card that is a prepaid card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of $1.50 for out-of-network ATM cash withdrawals and $1.00 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)." The Bureau believes that the proposed disclosure of the total amount of cash advance fees that the consumer will pay for each transaction along with an indication of the separate ATM withdrawal fee that the consumer will pay for each transaction, will allow consumers to more easily understand the cost of each cash advance transaction.

The proposal also would add proposed comment 60(b)(8)-5 to provide guidance on when fees will be considered cash advance fees under § 1026.60(b)(8) 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. Specifically, proposed comment 60(b)(8)-5 would provide that if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for an extension of credit that will be deposited into a prepaid account that fee is a cash advance fee. This proposed revision is intended to address situations where (1) a separate line of credit is linked to a prepaid account where extensions of credit are permitted to be deposited directly only into particular prepaid accounts specified by the creditor, (2) the consumer requests an advance on the account using an account number only, and (3) the advance is deposited into the prepaid account. In this situation, any fee for an advance taken on the line of credit would be disclosed as a cash advance fee under § 1026.60(b)(8) even if the consumer subsequently uses the deposited funds to purchase goods or services at a merchant. This provision would not apply to credit that is accessed by a prepaid card. As discussed above, proposed comments 60(a)(4)-3 and 60(b)(8)-4

would provide guidance on how transaction fees for purchases and for cash advances would be disclosed when charged on credit card accounts accessed by prepaid cards.

Other Topics in the Bureau's Prepaid ANPR

In its Prepaid ANPR, the Bureau sought comment on several topics that it is not proposing to address in this rulemaking, including how credit reporting and savings accounts relate to prepaid accounts.

Credit Reporting

In the Prepaid ANPR, the Bureau sought input and data on the efficacy of credit reporting features that some GPR cards claim to offer to enable consumers to improve or build credit and on whether regulatory provisions should address how such services are marketed to consumers. Numerous comments from industry, trade associations, and consumer groups pointed out that, because GPR cards typically do not involve the extension of credit, none of the three primary credit reporting agencies factor prepaid card-related payment histories into their credit scoring models. Several commenters suggested that the Bureau consider issuing rules to prevent deceptive credit building claims or to establish reasonable guidelines on accurate disclosures. Others suggested it was premature to issue regulations until there is a well-established basis for using such information to determine creditworthiness and noted that, in the interim, the Bureau has authority to police misleading or deceptive claims via its UDAAP authority.

Based on its understanding of the current state of the market, the Bureau does not believe it is appropriate to take further action on credit reporting in the context of this proposal although the Bureau does note that it has concerns about deceptive marketing regarding claims of a credit building aspect to certain prepaid accounts. The Bureau does, however, continue to seek comment on recent developments in this area and whether future action might be warranted.

Savings Features

In the Prepaid ANPR, the Bureau noted that, at the time, most GPR cards did not offer a savings account associated with the card and sought input on the costs, benefits, and consumer protection issues related to savings features offered with GPR cards. A savings account feature could allow a consumer to save or separate funds, such as for budgeting purposes, and potentially earn interest on such funds. Many industry, trade association, and consumer group commenters remarked that savings accounts are or can be beneficial to consumers and should be encouraged by the Bureau but not be made mandatory. Several commenters noted that such accounts, depending on how they are structured, are generally already subject to Regulation E as well as Regulation DD. A few consumer group commenters suggested that fees should be prohibited on such linked savings accounts, while several industry commenters noted that implementing a savings feature or linked savings account can be very expensive and is difficult for financial institutions to do.

The Bureau agrees with the majority of commenters that both linked savings accounts and savings features associated with prepaid accounts can be beneficial to consumers. Such savings programs may allow participating consumers to better manage their current spending and set aside funds for planned or unexpected expenses. Further, research suggests that having savings and engaging in regular saving activity each can contribute to both short-term financial stability and medium- to long-term economic mobility, even when the amounts are small.[390] Adding savings features may help consumers establish long-term relationships with financial

[390] Signe-Mary McKernan, Caroline Ratcliffe & Katie Vinopal, Urban Institute, *Do Assets Help Families Cope with Adverse Events?* (Nov. 2009), *available at* http://www.urban.org/uploadedpdf/411994_help_family_cope.pdf; Diane R. Calmus, The Heritage Foundation, *Improving Economic Mobility Through Increased Savings*, (Dec. 21, 2012) *available at* http://www.heritage.org/research/reports/2012/12/improving-economic-mobility-through-increased-savings.

services providers that facilitate effective money management. Finally, one non-profit commenter to the Bureau's ANPR noted that results from its qualitative research using focus groups with consumers who purchase and use prepaid debit cards found that an overwhelming majority of focus group participants want a savings feature on their GPR prepaid cards.

Nevertheless, the Bureau is not taking regulatory action at this time on this issue and hopes that financial institutions will continue to expand their offerings in this area, in such a way as to provide protections and opportunities for consumers. The Bureau remains interested in learning more about these products and therefore requests comment on recent developments regarding such features and whether future regulation might be warranted.

Proposed Effective Date

Except as modified by proposed § 1005.18(h), discussed above, the Bureau is proposing that this rule take effect nine months after publication of a final rule in the **Federal Register**. As is explained in proposed § 1005.18(h)(2), the Bureau proposes an exception to this nine month implementation period; specifically that after12 months, all prepaid accounts and related packaging, access devices, and other physical materials that are offered, sold, or otherwise made available to consumers in connection with a prepaid account must comply with the requirements of this section. As discussed in the Section-by-Section Analysis of proposed § 1005.18(h)(1), the Bureau believes that nine months strikes the appropriate balance between providing consumers with necessary protections while giving financial institutions adequate time to comply with all aspects of this proposal. The Bureau notes that many providers already comply with many of the new requirements proposed herein.[391] The Bureau seeks comment on its approach

[391] *See, e.g.,* Study of Prepaid Account Agreements.

to the effective date of this proposal, whether it should be simplified and whether the proposed time periods are appropriate, should be lengthened, or should be shortened.

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

A. Overview

In developing the proposed rule, the Bureau has considered the potential benefits, costs and impacts.[392] The Bureau requests comment on the preliminary discussion presented below as well as submissions of additional data that could inform the Bureau's consideration of the potential benefits, costs, and impacts of the proposed rule. The Bureau has consulted, or offered to consult, with the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission, regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

As discussed above, the Bureau is proposing to amend Regulation E and Regulation Z, as well as the official commentary to those regulations. Regulation E implements the Electronic Fund Transfer Act (EFTA), and Regulation Z implements the Truth in Lending Act (TILA). The proposal would bring a wide range of general use prepaid products within a unified regulatory regime for "prepaid accounts" by expressly defining them as accounts subject to Regulation E. Additionally, the proposal would subject credit features linked to prepaid accounts to Regulation Z. Further, the Bureau also proposes to modify certain Regulation E provisions as they would apply to prepaid accounts and certain existing Regulation E provisions that currently apply to

[392] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026; and the impact on consumers in rural areas.

payroll card accounts and government benefit accounts.[393] For those prepaid accounts that offer overdraft services or other credit features in connection with the account, the Bureau is proposing that such accounts are additionally subject to relevant provisions in Regulation Z and is proposing to modify certain provisions of Regulations E and Z accordingly. In proposing to apply the consumer protections in Regulation E to a broader set of prepaid accounts, the Bureau is furthering the statutory purposes of EFTA, which include providing a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems and providing individual consumer rights. In addition, the Bureau believes that applying the consumer protections articulated in Regulation Z to overdraft services offered in connection with prepaid accounts conforms to TILA's statutory purposes, which include assuring a meaningful disclosure of credit terms, avoiding the uninformed use of credit, and protecting consumers against inaccurate and unfair billing and credit card practices.

B. Provisions to be Discussed

With respect to each major provision of the proposed rule, the discussion considers the benefits and costs to consumers and covered persons and, in certain instances, considers other impacts. Specifically, the discussion below considers the following major proposed provisions:

1. The establishment of certain disclosures that financial institutions would be required to provide to consumers (or, in certain circumstances, provide consumers access to) prior to the consumer's acquisition of a prepaid account;

2. The application of Regulation E's periodic statement requirement to prepaid accounts and the establishment of an alternative to this requirement that would require financial

[393] The requirements for government benefit accounts are described in § 1005.15. Proposed § 1005.2(b)(3)(iii) would state that a government benefit account is a prepaid account.

institutions to give consumers access to certain types of account information at no cost to the consumer;

3. The extension of Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts that have been through a customer identification and verification process;

4. The requirement that all issuers of prepaid accounts post their prepaid account agreements on their websites or, in limited circumstances, respond to consumers' requests for written copies of their agreements and, with some exceptions, submit copies of their agreements to the Bureau on a quarterly basis; and

5. The modification and application of particular provisions in Regulation E and open-end credit provisions in Regulation Z to prepaid accounts that offer overdraft services or other credit features in connection with the account.

This discussion also addresses certain alternative provisions that were considered by the Bureau in the development of the proposed rule.

In considering the relevant potential benefits, costs, and impacts, the Bureau has utilized the available data discussed in this preamble and has applied its knowledge and expertise concerning consumer financial markets. When available, the Bureau has used the economic analyses that it regards as most reliable and helpful to consider the relevant potential benefits, costs, and impacts of the proposal. However, the Bureau notes that, in some instances, there are limited data available with which to quantify the potential benefits, costs, and impacts. For instance, prepaid account providers that are presently applying Regulation E's limited liability or error resolution provisions, including provisional credit, do not generally publicize information

regarding the incremental costs associated with these activities. Moreover, some potential benefits are difficult to quantify.

General economic principles, considered in combination with available quantitative information, provide insight into the potential benefits, costs, and impacts arising from the proposed rule. Where possible, the Bureau has made quantitative estimates based on these principles as well as available data. However, in light of data limitations, the Bureau generally provides a qualitative discussion of the benefits, costs, and impacts of the proposed rule.

C. Baseline for Consideration of Benefits and Costs

The baseline for this discussion is the current market for prepaid accounts.[394] However, in order to more fully inform the proposed rulemaking, the Bureau also discusses potential future impacts relative to how the market might evolve absent the proposed rule. This baseline considers both the existing regulatory structure as well as the economic attributes of the relevant market.[395]

With respect to proposed provisions regarding access to account information, limited liability, and error resolution protections, the Bureau is generally proposing to extend existing provisions of Regulation E, as they apply to payroll card accounts, to prepaid accounts. Since payroll card accounts and prepaid accounts that receive Federal payments (and thus are subject to the FMS Rule) are presently subject to provisions of Regulation E (as they apply to payroll card

[394] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and the most appropriate baseline for that particular rulemaking.

[395] As discussed above, several Federal regulatory regimes, including those regarding consumer protection; receipt of Federal payments onto prepaid cards; interchange fees; and prevention of money laundering, terrorist financing, and other financial crimes, apply to some or all types of prepaid accounts or to transactions involving these accounts. Prudential regulators have also issued guidance pertaining to the application of their rules to prepaid cards, program managers, and issuing financial institutions. In addition, the benefits, costs, and impacts that would arise as a consequence of the proposed rule are attenuated to the extent that certain provisions are already required under State law.

accounts) that address consumer access to account information, limited liability, and error resolution protections, financial institutions currently are required to offer these protections to some consumer accounts that would be covered by the proposed rule. In addition, the proposed rule would amend similar provisions of Regulation E applicable to government benefit accounts to make these provisions generally conform to proposed requirements for other types of prepaid accounts. The existing provisions governing access to account information for government benefit accounts differ somewhat from those applicable to payroll card accounts.[396] *See* existing § 1005.15(c) and (d).

Given that many of the proposed requirements are consistent with current industry practice, the benefits, costs, and impacts arising from the proposal are moderated relative to those that would be experienced if current industry practice were significantly different from the proposal's requirements. As discussed above, the Bureau's Study of Prepaid Account Agreements suggested that many covered providers are already fully or partially implementing the proposed requirements pertaining to access to account information, limited liability, and error resolution regardless of whether they are currently required to do so. Providers may already be fully or partially implementing the proposed requirements with respect to limited liability and error resolution due, in part, to the need for issuers to comply with payment card association network rules in addition to the existing Federal regulatory requirements described above.[397]

[396] Specifically, the alternative to the periodic statement described in existing § 1005.15(c) does not require that an electronic history of the consumer's account transactions be made available to the consumer.

[397] As discussed above, payment card association network rules impose some form of zero liability protections for prepaid cardholders in certain circumstances. *See, e.g., Visa Inc., Zero Liability*, http://usa.visa.com/personal/security/zero-liability.jsp#anchor_2 (last visited Nov. 3, 2014). *See, e.g., MasterCard Inc., Zero Liability Protection*, http://www.mastercard.us/zero-liability.html (last visited Nov. 3, 2014).

In addition to these requirements, the proposal includes requirements for financial institutions and creditors that offer overdraft services or other credit features in connection with prepaid accounts. The Bureau's understanding is that, at present, overdraft services are offered in connection with a small number of products that would be considered to satisfy the proposed definition of prepaid account.[398] However, one of the largest providers of prepaid accounts offers an overdraft service in connection with its prepaid accounts (which include GPR cards and payroll card accounts), so the number of prepaid accounts currently eligible for overdraft is not negligible.[399] The credit limits extended to consumers for these overdraft services are generally of modest size (*e.g.*, $100).[400]

The Bureau believes that providers of overdraft services offered in connection with these prepaid accounts do not presently comply with all of the practices that would be required by the

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[398] The Study of Prepaid Account Agreements suggested that some prepaid programs, according to their terms and conditions, reserve the right to impose a fee for a negative balance on a prepaid account. (These programs' agreements typically state that the cardholder is not permitted to spend beyond the balance in the prepaid account, but if circumstances were to occur that cause the balance to go negative, a fee will or may be imposed. Some agreements state that repeated attempts to spend beyond the card balance will or may result in the prepaid account being closed). Roughly 10 percent of reviewed agreements noted such a charge. Based on its outreach, the Bureau has doubts as to whether, in practice, these charges are assessed and requests comment regarding current industry practice.

In addition, one source suggests that overdraft fees may be collected by a handful of government benefit card programs, but the Bureau is not certain whether such fees are currently being assessed as it understands several such programs have ceased charging overdraft fees, and the aggregate value of these fees is relatively modest. *See* Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on Government-Administered, General Use Prepaid Cards*, at 9, (July 2014), *available at* http://www.federalreserve.gov/publications/files/2014_Prepaid_Cards_Final.pdf (showing $2 million in overdraft fees in 2013).

[399] NetSpend is a significant provider of prepaid accounts. *See* Aite Grp. LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity*, at 23-24 (Nov. 2012). A recent news article reported that six percent of NetSpend's customers regularly use overdraft. *See* Suzanne Kapner, *Prepaid Plastic is Creeping into Credit*, Wall Street J. (Sept. 5, 2012), http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602. In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A recent financial filing suggested that NetSpend had 3.4 million active cards as of June 30, 2014 and 47 percent of those active cards had direct deposit. *See* Total Sys. Serv. Inc., Form 10-Q, at 28, *available at* http://www.sec.gov/Archives/edgar/data/721683/000119312514300851/d737574d10q.htm (for the quarterly period ended June 30, 2014)

[400] *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit*, Wall Street J. (Sept. 5, 2012), http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602.

proposal. For those prepaid accounts that offer overdraft services, the Bureau understands that providers currently require consumers to opt-in to the service and that they condition eligibility on receipt of a regularly-occurring direct deposit.[401] When funds are added to a prepaid account that has an associated overdraft service, the Bureau understands that these funds are generally applied automatically to any negative balance (including to repay fees) before the consumer may access the remaining funds.[402] The Bureau understands that providers that presently offer these overdraft services in connection with prepaid accounts have adopted program rules designed to discourage persistent use of the overdraft feature, such as capping the number of fees that may be incurred in a month.[403] However, there is presently no Federal regulatory requirement that providers limit the frequency with which overdraft services are used or the frequency with which a consumer may incur overdraft-related fees.

The Bureau believes that additional providers may be considering offering credit features, such as an overdraft service, in connection with prepaid accounts. This suggests that there could be increased consumer access to these products in the future. The proposed rule would provide clarity regarding the terms on which overdraft services and other credit features may be offered in connection with prepaid accounts. The proposed provisions would help to ensure that such

[401] *See* Kansas City Fed Study, at 9.

[402] The Treasury FMS rule, described above, prohibits prepaid cards from having an attached line of credit if the credit agreement allows for the automatic repayment of the loan from a card account triggered by the delivery of the Federal payment into the account (31 CFR 210(b)(5)(i)(C)). Certain State laws subject some government benefit accounts to similar provisions (*see* CA AB 1280 and CA AB 2252). In addition, payroll card accounts are currently subject to Regulation E's compulsory use provision.

[403] *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit*, Wall Street J. (Sept. 5, 2012), http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602; *see also* NetSpend Corp., Amended Terms for Your Cardholder Agreement, https://www.netspend.com/account/overdraftTerms.m (last visited Nov. 11, 2014) (overdraft terms and conditions).

credit would be offered to consumers in a transparent manner and that consumers would obtain certain important protections.

D. Coverage of the Proposal

The provisions of the proposed rule would apply to any account that meets the definitional criteria described in proposed § 1005.2(b)(3). Covered persons would include prepaid account issuers who may work with program managers or other industry participants in marketing, establishing, and maintaining these accounts. As discussed above, prepaid account issuers may choose to perform all of the functions required to manage a prepaid program, including marketing prepaid accounts directly to consumers. More commonly, however, prepaid account issuers elect to take a more limited role, leaving program management to others although the scope of such roles may vary.[404] In addition to the requirements specified in Regulation E, persons offering overdraft or other credit features in connection with prepaid accounts would also be subject the provisions of Regulation Z governing extensions of credit. These persons may or may not be distinct from the prepaid account issuer or the prepaid account program manager. For the purpose of discussing the benefits and costs of the proposed rule, the Bureau considers potential impacts on both prepaid account issuers and program managers (who would both be directly affected by the proposed provisions) and discusses burdens without allocating them among market participants.[405]

[404] The issuer typically enters into a contract with the program manager to provide the association bank identification number for the program and to monitor regulatory compliance in exchange for fee income and indemnification from risk. *See* 2012 FRB Philadelphia Study, at 10.

[405] With respect to overdraft services or credit features offered in connection with prepaid accounts, the impacts on creditors are also considered. The creditor may be the prepaid account issuer, program manager, or another person.

E. Potential Benefits and Costs to Consumers and Covered Persons

In proposing to apply the consumer protections in Regulations E and Z to a wider group of accounts, the Bureau intends to reduce consumer uncertainty regarding responsibilities and liabilities among market participants. The Bureau also aims to lessen consumer risk associated with the use of prepaid accounts that do not currently comply with the proposed protections or that would not comply in the future, absent the adoption of the proposed rule. In particular, the Bureau is concerned that certain consumers with prepaid accounts that do not currently offer the protections provided by Regulation E may incorrectly believe that these accounts have such protections. The Bureau believes that it is likely that some consumers do not realize that, under current Federal law, their prepaid accounts may offer fewer protections than substitute products. Both prepaid cards and debit cards provide consumers with access to their own funds and have similar functionalities and appearances, which may encourage the perception that the accounts associated with such cards have similar protections. With the possible exception of certain provisions applicable to overdraft services and other credit features offered in connection with prepaid accounts, the proposed rule is not anticipated to meaningfully reduce consumer access to consumer financial products and services.

The proposed requirements would address the potential under-provision of information about prepaid accounts to consumer holders of these accounts by the private sector and the possible exercise of market power by prepaid account providers.[406] The socially optimal amount of information about a prepaid account depends on the cost to prepaid providers (or third party information providers) of acquiring and providing product information and the benefit to

[406] Classically, the issues discussed here would be considered to be market failures.

consumers from improved understanding and choice.[407] Prepaid account providers have strong incentives to make consumers aware of generally attractive product features, such as functionality that may be used by consumers without a fee. They have less incentive to identify and highlight unattractive product features, such as high fees that may be associated with certain types of activities, even if those features are utilized frequently by prepaid account holders.[408] In principle, third parties could try to generate (or approximate) this information independently. However, simply collecting, synthesizing, and providing product information for a fee likely would not be profitable since the information generally would be non-excludable; that is, it could not be withheld from consumers who did not pay for it.[409] Information is generally a public good in that it is both non-rival, meaning that it may be used without reducing the amount available for others, and non-excludable. As with any other public good, standard microeconomic analysis establishes that this information would be under-produced by the private sector.[410]

In addition, consumers rely on providers of prepaid accounts to offer services on an ongoing basis, including access to account information and error resolution. Although the

[407] In general, at the social optimum, the benefit to consumers from additional information would exactly equal the additional cost to providers of providing that information.

[408] Recent research covering prepaid programs that represent approximately 90 percent of the GPR card market (in terms of number of cards) shows that the majority of the market sampled (70 percent) provides explicit tips regarding how to avoid fees and minimize the costs associated with using the card. However, marketing and communication to promote positive consumer use is identified as an area for improvement. *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 11 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

[409] In contrast, personalized estimates of the cost of using a product or product recommendations based on private information would not be a public good. However, charging customers a fee for this information might not be possible if other providers receive revenue from industry or other sources and do not charge for information that appears to be comparable.

[410] *See, e.g.*, Joseph E. Stiglitz, *Market Failure, in* Economics of the Public Sector, (W.W. Norton & Co., Inc., 3d ed. 2000).

account terms and conditions may articulate the provider's commitments with respect to these features, many consumers may not review these documents in advance and may not be able to anticipate their needs accurately even if they did. In addition, the quality with which these functions are performed is difficult or impossible to observe in advance. While a provider would lose customers and the reputation of its products would suffer if it consistently provided poor service, these long-term consequences may not protect consumers sufficiently against incentives for short-term gain.[411] Having opened an account, the costs incurred by a consumer to change prepaid account providers may serve as an additional friction that decreases a provider's incentive to provide high quality ongoing services.

The proposed disclosure formatting requirements and the provisions requiring the posting of prepaid account agreements are designed to decrease consumer search costs, which can be a source of market power for providers. Consumers generally incur costs, in terms of time or money, in order to find and understand the price and quality of a particular product before purchasing it. Consumers have less of an incentive to shop around and to compare various products when the costs associated with performing these comparisons are high. Prepaid account providers can obtain market power when consumers are unwilling to incur these search costs to learn about available options. A sufficiently inexpensive reduction in these costs can benefit consumers and enhance efficiency.[412] In the context of the proposed rule, disclosure formatting requirements that are relatively inexpensive and, through standardization, reduce the cost of

[411] The relationship between reputation and quality is highly complex, even under competition; *see* Rachel Kranton, *Competition and the Incentive to Produce High Quality*, 70 Economica 385 (2003). For a general survey of reputation and quality, *see* Heski Bar-Isaac &Steve Tadelis, *Seller Reputation*, 4 Foundations and Trends in Microeconomics 273 (2008).

[412] *See* Dale O. Stahl II, *Oligopolistic Pricing with Sequential Consumer Search*, 79 Am. Econ. Rev. 700 (1989).

finding and understanding critical information about prepaid accounts address this market failure. It is worth noting that the benefits of lower search costs extend beyond those consumers who actually search since all consumers of the product potentially benefit from any resulting reduction in prices.

Although the Bureau's Study of Prepaid Account Agreements suggested that most prepaid account programs reviewed already generally offer the proposed limited liability and error resolution protections, the Bureau is concerned that as more consumers adopt and use prepaid accounts, the number of consumers at risk of an unexpected loss could increase. Most prepaid accounts generally leverage large payment network rails and, as such, are widely accepted by a broad range of merchants. A survey conducted by the Board in 2013 found that 15 percent of respondents reported using a general purpose prepaid card in the past 12 months.[413] Among those who reported having a general purpose prepaid card or a payroll card, 38 percent reported that it was reloadable, and about half of those respondents who reported that they had a reloadable general purpose or payroll card reported that they or someone else added money to their card in the past month.[414] In the prior wave of the survey, 10.8 percent of respondents had used a "general purpose prepaid card that you can add funds to" in the past 12 months.[415] Another survey conducted in May 2014 found that 16 percent of respondents had used a "prepaid

[413] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014*, at 8(Mar. 2014), *available at* http://www.federalreserve.gov/econresdata/mobile-devices/files/consumers-and-mobile-financial-services-report-201403.pdf (2014 Mobile Report). General purpose prepaid cards are one type of product that would be subsumed within the proposed rule's definition of prepaid account. As described above, payroll card accounts are already required to comply with Regulation E's limited liability and error resolution regime.

[414] *See* 2014 Mobile Report at 48 tbl.C.9 & C.10. Note that this implies that roughly three percent of respondents had a general purpose prepaid card or payroll card which they or someone else had (re)loaded in the past month.

[415] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2013*, at 53 tbl C.12 (Mar. 2013), *available at* http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201303.pdf.

card" that was not a gift card in the last 12 months.[416] A survey performed by the FDIC in 2013 found that 12 percent of households had ever used prepaid cards, 7.9 percent had used prepaid cards in the last 12 months, and 3.9 percent had used prepaid cards in the last 30 days; further, use was more common among households that were unbanked or underbanked.[417] Another study found that five percent of adults use prepaid cards at least once a month.[418]

Although there are many uses for prepaid accounts, covered accounts may be designed, implemented, and marketed as substitutes for traditional checking accounts. According to one study, of the five percent of adults surveyed that reported using a prepaid card at least once a month, 41 percent did not currently have a checking account, implying that roughly two percent of the adult population uses a prepaid card monthly and does not have a checking account.[419] According to a survey conducted by the Board, 1.6 percent of respondents reported that either they or their partner had a reloadable prepaid card and did not have a checking, savings, or money market account in 2012.[420] Prepaid accounts offer individuals who do not have access to

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[416] *See* GFK, *GfK Prepaid Omnibus Research Findings*, at 6 (2014), *available at* http://www.nbpca.org/~/media/2519B8BADB1B4388BA5F11C511B3ACAE.ashx. The definition of prepaid card in this survey appears to have included products that would not be covered by the proposed definition of prepaid account. *Id.* at 7.

[417] *See* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households*, at 29-30 (Oct. 2014), *available at* https://fdic.gov/householdsurvey/2013report.pdf.

[418] *See* The Pew Charitable Trusts, *Why Americans Use Prepaid Cards: A Survey of Cardholders' Motivations and Views*, at 1 (Feb. 2014) (2014 Pew Survey), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsSurveyReportpdf.pdf . For the purpose of this survey, respondents were explicitly told not to include gift cards, rebate cards, credit cards, or phone cards.

[419] *See* 2014 Pew Survey, at 1, 7.

[420] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2013*, at 5 (Mar. 2013), *available at* http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201303.pdf. This statistic is derived from the following: "In 2012, the share of unbanked consumers [meaning those who reported that neither they nor their spouse or partner had a checking, savings, or money market account] declined to 9.5 percent of the population. Adopting a more expansive definition of being banked that includes use of a reloadable prepaid card, the share of consumers who are unbanked declined…to 7.9 percent in 2012." The 2014

traditional debit accounts or credit accounts a means to perform electronic fund transfers. These accounts enable consumers who may not otherwise have access to an electronic payment mechanism to make purchases from online merchants and others who do not accept cash. Additionally, prepaid accounts provide individuals who do not have access to traditional checking accounts a means of storing funds that can be more secure than holding cash. Prepaid accounts also offer consumers the ability to accept payments of wages and/or benefits via direct deposit; for the unbanked, this can serve as an alternative to relying on a check cashing provider.

Although consumers may access funds through certain types of prepaid accounts that are currently subject to Regulation E, some consumers regularly deposit funds into prepaid accounts that are not currently subject to Regulation E.[421] Consumers may use these prepaid accounts instead of traditional checking accounts, holding these prepaid accounts for extended periods and loading significant portions of their available funds into such accounts. If their prepaid account provider does not offer limited liability and error resolution protections (including provisional credit), these consumers may be at risk of an unexpected loss or a delay in access to funds in the event of an error or unauthorized transfer. The proposed rule would reduce the risk associated with prepaid accounts for these consumers by requiring that providers offer a limited liability and error resolution regime that includes provisional credit once cards are registered.

In addition, the proposed rule would aid consumers in properly assessing the risks and costs associated with using these products by requiring more comprehensive and standardized

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Mobile Report, which summarizes a survey conducted in 2013, did not permit the Bureau to calculate this statistic using information from the later survey.

[421] As discussed above, payroll card accounts and government benefit accounts are currently subject to Regulation E. The FMS Rule ensures that the protections that apply to payroll card accounts under Regulation E also apply to any prepaid cards that receive Federal payments.

information disclosures. Standardization of information disclosures may permit consumers to make better informed comparisons among products when they are choosing a prepaid account. To the extent that this information is not already provided, more comprehensive disclosure of account information may help consumers to understand the financial costs associated with using these products and may aid in the recognition of errors and the exercise of error resolution rights. As discussed below, with some exceptions, the costs incurred by covered financial institutions arising from the standardization of information disclosure are one-time implementation costs, and many providers of covered accounts presently implement several of the provisions relating to communication of account information, including providing access to account history information.

The proposed rule would generally also require issuers to treat an overdraft service or other credit feature offered in connection with a prepaid account as a credit card account subject to the provisions of Regulation Z that apply to such accounts.[422] As a result, consumers using prepaid accounts with associated credit card plans would be guaranteed certain important consumer protections. Specifically, persons offering overdraft services or other credit features in connection with prepaid accounts would be required to comply with the provisions governing application and disclosure that apply to credit cards and would be subject to certain fee and payment restrictions, among other requirements.

Further, the proposed rule would modify Regulation E to require that financial institutions offering prepaid accounts that could be associated with a credit card feature disclose

[422] A credit plan that is accessed by a prepaid card would not be a credit card account where the credit is not subject to any finance charge as defined in § 1026.4 or fee described in § 1026.4(c) and is not payable by written agreement in more than four installments. Such credit plans would not be subject to Regulation Z, but would be subject to Regulation E. See section-by-section analysis of § 1026.2(a)(15) and (17).

the fees associated with the credit card plan to consumers in the prepaid account's pre-acquisition disclosures and in the prepaid account agreement. In addition, financial institutions would be prohibited from providing a solicitation or an application to a consumer to open an associated credit card account prior to 30 calendar days after the prepaid account has been registered, and they would be prohibited from offering terms and conditions, applicable to transactions solely accessing the prepaid account, that differ depending on whether the consumer elects to link a credit feature to a prepaid account.

Although few providers of prepaid accounts currently offer overdraft services or other credit features in connection with prepaid accounts, the Bureau believes that such product offerings could become more widespread in the future. Therefore, the Bureau believes that it is important to ensure that these products are structured so that consumers receive appropriate protections when offered prepaid accounts that include credit features. By proposing to put requirements in place now, the Bureau hopes to mitigate costs to consumers and providers that may occur if these products become more prevalent and the proposed protections are not in place.

To assess the potential impacts of the proposed rule on consumers and covered persons, the Bureau separately discusses the benefits and costs associated with each major proposed provision. For clarity of discussion, costs arising from compliance burdens that would be imposed on providers by the proposed rule will be discussed under the subheading "Benefits and Costs to Covered Persons" for each major proposed provision. The proposed provisions may impose one-time implementation costs and may affect ongoing operational costs. Both of these

types of costs may be fixed or variable.[423] Economic theory predicts that fixed cost increases will be absorbed by providers. However, consumers may be adversely affected by increases in these costs to the extent these cost increases prompt current providers of prepaid accounts to exit the market or deter entry by new providers in the future. This could result in consumers having more restricted choices than they would otherwise have. In certain situations, a decrease in the number of market participants could better enable those remaining providers to exercise market power, resulting in higher prices for consumers, decreased product quality, or both.

With respect to variable costs, the ability of providers to recoup cost increases by charging consumers higher prices for covered products depends on the relative elasticities of supply and demand for the product (*e.g.*, how responsive the quantity supplied by providers is to a price change relative to how responsive the quantity demanded by consumers is to a price change) and the extent of competition in the market. The burdens will ultimately be shared by both providers and consumers, with the larger share of the burden falling on the party that is less responsive to a price change.

It is worth noting that the relative elasticities of supply and demand can vary across products that would be covered by the proposed rule and may be influenced by the presence of substitute products as well as the availability of information (which would influence the perceived availability of substitute products).

1. Establishing Certain Disclosures that Providers Must Give to Consumers

The proposed rule would require two new, pre-acquisition disclosures; extend existing Regulation E disclosure requirements to prepaid accounts; and require new disclosures to be

[423] Fixed costs are those costs that do not depend on the number of prepaid accounts offered by the provider.

made on prepaid account access devices. Under the proposal, newly-printed disclosures would need to be compliant after nine months, and, financial institutions would be required to be in full compliance with the rule's disclosure requirements after twelve months. *See* proposed § 1005.18(h).

Proposed § 1005.18(b)(1) would require that a financial institution must provide a "short form" disclosure and a "long form" disclosure before a consumer acquires a prepaid account. Proposed § 1005.18(b)(2) through(6) would establish the content, form, and timing of these two disclosures. Proposed § 1005.18(b)(2)(i) would set forth the information a financial institution would be required to provide on the short form disclosure. The short form disclosure would include a "static" portion that would be disclosed for all prepaid account products. In addition to certain other fees, this static portion would have a "top-line" component that highlights at the top of the form, in a large font-size, four types of fees (a periodic fee, per purchase fees, ATM withdrawal fees, and a cash reload fee) that the Bureau believes to be the most important to consumers when shopping for a prepaid account. The short form disclosure would also include an "incidence-based" portion that would require inclusion of up to three additional fees. These would be the fees that consumers incurred most frequently during the prior 12-month period when using a given prepaid account product. The fees disclosed could therefore vary across products. If the amount of a fee listed in the short form disclosure could vary, a financial institution would have to disclose the highest fee it could impose for utilizing the service associated with the fee, along with a symbol, such as an asterisk, and explanatory text indicating that the fee could be lower. A financial institution would be required to use the same symbol and explanatory text for all fees that could be lower.

The short form disclosure would also state the number of other fees that apply to the product that are not disclosed on the short form disclosure; an instruction for the prepaid account holder to register his or her prepaid account in order to protect his or her funds; the URL for the website of the Consumer Financial Protection Bureau; and a statement regarding whether the product offers overdraft services or other credit features. In most cases, the short form would also disclose if a prepaid account is not eligible for FDIC (or NCUSIF) pass-through deposit (or share) insurance. A short form disclosure for a payroll card account or government benefit account would also include a notice at the top of the form, when applicable, that consumers are not required to accept such an account.

Proposed § 1005.18(b)(2)(ii) would set forth the information a financial institution would be required to provide on the long form disclosure. The long form disclosure would set forth all fees imposed in connection with a prepaid account and their qualifying conditions. Financial institutions would be required to provide consumers with the long form disclosure prior to acquisition of a prepaid account, unless that account is acquired orally by telephone or in a retail store, as discussed below. The long form disclosure would also include the telephone number, website, and address of the person or office that the consumer may contact to learn about the terms and conditions of the prepaid account, to call for a balance inquiry, to request or to notify the person or office when a consumer believes that unauthorized electronic fund transfer has occurred; the disclosure described above regarding FDIC pass-through or NCUSIF share insurance, when appropriate; and the URL of the website and the telephone number of the Consumer Financial Protection Bureau that consumers could use to report a complaint in connection with a prepaid account . Finally, if at any point a credit plan may be offered to any holder of a given prepaid account, then the financial institution would be required to include in

that prepaid account's long form disclosures the disclosures described in Regulation Z 12 CFR § 1026.60(a), (b) and (c).

The proposed rule would also set forth requirements for how the short form and long form disclosures must be presented. Specifically, proposed § 1005.18(b)(3) would set forth general form requirements for written, electronic, and oral disclosures; provide requirements regarding whether these disclosures should be in a retainable form; and set forth parameters for the tabular form in which the disclosures must be presented, including specific requirements for short form disclosures presenting multiple service plans. Proposed § 1005.18(b)(4) would provide specific formatting requirements on grouping, prominence, and size.

If a financial institution principally uses a foreign language on a package, when speaking to a consumer by telephone, in person, or on a website consumers utilize to acquire a prepaid account, proposed § 1005.18(b)(6) would require financial institutions to provide the short and long form disclosures in that same foreign language. The financial institution would also be required to provide the long form disclosure in English upon the consumer's request or on its website where it provides the long form disclosure in a foreign language.

The proposed rule would create exceptions to the proposed pre-acquisition disclosure regime if the prepaid account is acquired in a retail store or orally by telephone. In a retail store, financial institutions would be required to provide the short form disclosure before the consumer acquires a prepaid account, but they could provide the long form disclosure after the consumer acquires a prepaid account as long as certain conditions are met. *See* proposed § 1005.18(b)(1)(ii).

Before a consumer acquires a prepaid account orally by telephone, a financial institution must disclose the short form information that would be required by proposed § 1005.18(b)(2)(i).

However, a financial institution could disclose the long form content required by § 1005.18(b)(2)(ii) after the consumer acquires a prepaid account provided that the financial institution communicates to the consumer, before the consumer acquires the prepaid account, that the information required to be disclosed by § 1005.18(b)(2)(ii) is available by telephone or via a website.

The proposed rule would require modifications to the initial disclosures required by Regulation E. Regulation E § 1005.7(b) currently requires financial institutions to provide certain initial disclosures when a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account. The Bureau is proposing that these existing disclosure requirements be extended to prepaid accounts;[424] however, the Bureau is further proposing (*see* proposed § 1005.18(f)) to modify the initial disclosure of fees requirement in § 1005.7(b)(5) for prepaid accounts to require that in addition to disclosing any fees imposed by a financial institution for electronic fund transfers or the right to make such transfers, the financial institution must also provide all other fees imposed by the financial institution in connection with a prepaid account, in the form of a table substantially similar to proposed sample form A-10(e) in appendix A.

Finally, the proposed rule would require that financial institutions include on a prepaid account access device the financial institution's name, the URL of a website, and a telephone number. *See* § 1005.18(b)(7).

[424] *See* Section "Disclosure Requirements Generally" for a summary of disclosures § 1005.7(b) currently requires.

a. Benefits and Costs to Consumers

The benefits and costs to consumers arising from the proposed disclosure requirements for prepaid accounts are addressed in four parts: (i) a general discussion of the benefits to consumers of information; (ii) a discussion of the anticipated benefits of the proposed disclosure requirements; (iii) a discussion of consumer engagement with disclosure; and (iv) a discussion of potential costs of the proposed disclosure requirements. Finally, this analysis discusses alternatives to the Bureau's proposed disclosure requirements.

i. Information

According to standard social science models, when consumers are faced with a choice among products in a given market, they consider which choices are available to them as well as the information they have about each of those choices. Further, in order for consumers to make the best choices for their situations, their information must be accurate and descriptive of all of their available options.[425] In reality, however, consumers may not be fully informed. As discussed above, among other reasons, this could transpire because firms perceive an advantage to withholding information, or because consumers perceive gathering information as overly burdensome.

Information provision (*e.g.*, mandated disclosure) can therefore facilitate consumer decision-making in at least three ways. First, information provision can inform consumers about the choices that are available to them. This provides a direct benefit of improving the likelihood

[425] Here, "make the best choice" is intended to be descriptive of the consumer's process of choice; to consciously optimize over her choice set and through that process, select the best option. This is distinct from the possible interpretation of obtaining the best outcome, which could be achieved without optimizing; through random selection among known options, for example.

that consumers find products that fit their needs.[426] In addition, as discussed above, informing consumers about their choices (or facilitating information gathering by consumers) may increase competition in the product market, which in turn could cause firms to offer consumers better terms. Second, information provision can inform consumers about the attributes of the products that are available to them. This provides the direct benefit of enabling consumers to consider the relative merits of each product and to select the best products from among their choices. In addition, revealing or highlighting certain attributes of a product-type could induce firms to compete on those attributes, raising benefits to consumers or lowering costs. Third, information provision can inform consumers about the attributes of the products they have already chosen. This can both increase the benefits a consumer receives from a chosen product and reduce the costs associated with its use.

ii. Benefits

Together, the Bureau believes that the short and long form disclosures provide consumers with the information necessary to make fully informed choices regarding the prepaid account products available to them. The short form disclosure would disclose key fees, conditions, and notices. So that they may be quickly located and compared, the fees that participants in the Bureau's testing identified as being most important to them would be listed at the top of the short form disclosure.[427] Consumers seeking information not found on the short form disclosure could utilize the long form disclosure. The long form disclosure would list all fees for a particular prepaid account product and their qualifying conditions, if any. Accompanying fees with their

[426] Increasing knowledge of the consumer's choice set may be particularly beneficial when products within a market are highly differentiated or in which consumers within a market have diverse tastes.

[427] Examining payroll account usage data, Wilshusen el al. find that these fees also constitute a large majority of the fees charged to consumers, both by incidence and total value. *See* 2012 FRB Philadelphia Study, at 10.

qualifying conditions would help consumers to become fully informed about the details of each prepaid account product and therefore improve consumer choice among available products. As noted, the long form would be required to be made available to consumers pre-acquisition in all acquisition channels. As a result, interested consumers would always be enabled to make fully-informed acquisition decisions. In addition, proposed § 1005.18(f) would effectively require the long form disclosure to be disclosed whenever a product's terms and conditions are disclosed. The Bureau believes that because these disclosures are what consumers will likely reference throughout their ongoing use of their prepaid accounts, this provision could potentially help inform consumers' use of their prepaid account products after acquisition.

In part, the Bureau designed the short form disclosure to guide consumers to what it believes are important features of most prepaid account products. By limiting displayed information, the disclosure would make the information that is disclosed more salient and easier to locate.[428] As noted above, the fees that participants in the Bureau's testing identified as being most important to them would be listed at the top of the short form disclosure, which the Bureau believes is a likely point for consumers' first engagement.[429] This effect would be reinforced by the display of top-line information, which would be presented in a relatively large, bold font offset by whitespace. Other disclosed fees would be presented in clear, concise language and listed in a table with horizontal lines to direct the eye and padded by whitespace for ease of reading.

[428] Reducing the size of the choice set for choices made under time pressure has been shown to increase both the percentage of the remaining items seen as well as the time of fixation on those items. *See* Elena Reutskaja et al., *Search Dynamics in Consumer Choice under Time Pressure: An Eye-Tracking Study*, 101 Am. Econ. Rev. 900 (2011).

[429] Andrew Caplin et al., *Search and Satisficing*, 101 Am. Econ. Rev. 2899 (2011).

One potential outcome of the Bureau's emphasis of a limited number of fees in the short form is that consumers could begin to rely on this information to guide their purchase decisions more heavily than they do currently. If so, then financial institutions may in turn increase their competitive efforts on these dimensions, which could result in a benefit for consumers in the form of a reduction in these particular fees.

Another benefit of the proposed rule would be to standardize prepaid account product disclosures. Currently, there is significant variation in the content and formatting of the disclosures offered in connection with prepaid accounts that are available to consumers prior to acquisition.[430] These disclosures generally convey only certain fees, terms, and conditions, and the items disclosed vary across prepaid account products. In addition, the form of these disclosures varies significantly across products, variously utilizing bulleted lists, tables, plain text, and combinations of these methods. In some cases, fee inclusion, fee descriptions, and fee prominence are seemingly selected to highlight the relative strengths or to diminish the relative weaknesses of the particular product. As described above, the Bureau believes that standardization would reduce the cost to consumers associated with finding and understanding critical information about prepaid accounts and therefore increase consumers' knowledge of their available choices and facilitate comparison shopping among prepaid account products. The short

[430] This variation is pronounced in both retail stores and non-retail channels. For example, The Pew Charitable Trusts documented wide disparity in disclosures available on prepaid card websites. *See* The Pew Charitable Trusts, *Loaded with Uncertainty: Are Prepaid Cards a Smart Alternative to Checking Accounts?* (Sept. 2012), available at http://www.pewtrusts.org/en/research-and-analysis/reports/2012/09/06/loaded-with-uncertainty; *see also* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards* (Feb. 2014), *available at* http://www.pewtrusts.org/en/research-and-analysis/reports/2014/02/06/consumers-continue-to-load-up-on-prepaid-cards. Relatedly, CFSI and Pew cited the lack of current standards, among other things, as motivation for developing their own model forms. See CFSI, *Thinking Inside the Box: Improving Consumer Outcomes Through Better Fee Disclosure for Prepaid Cards* (Mar. 2012), *available at* http://www.cfsinnovation.com/content/improving-consumer-outcomes-through-prepaid-cards ; *see also The Need for Improved Disclosures for General Purpose Reloadable Prepaid Cars* (Feb. 2014), *available at* http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/02/26/the-need-for-improved-disclosures-for-general-purpose-reloadable-prepaid-cards.

form disclosure would standardize the summary disclosure of key fees, conditions, and notices. Similarly, the long form disclosure would standardize the display of fees and the details of their qualifying conditions. The proposed long form disclosure's categories and its tabular display would organize the complete list of a prepaid account product's fees, making them easier for consumers to locate and compare across products.

If a financial institution principally uses a foreign language on packaging material, by telephone, in person, or on the website consumers utilize to acquire a prepaid account, the short form and long form must be provided in that same foreign language. A financial institution must also provide the long form disclosure in English upon a consumer's request and on any part of the website where it provides the long form disclosure in a foreign language. The Bureau believes that utilizing a foreign language to acquire a prepaid account could imply that that foreign language is the consumer's language of greatest proficiency, and this proposed requirement therefore ensures that such consumers receive the information they need to make an informed choice. Since this implication does not necessarily follow, the English version of the long form disclosure would also be available to consumers who are more proficient in English or who may seek informed help and advice from family or friends with English proficiency.

The proposal would also require disclosure of the availability of an overdraft service or other credit feature or the lack thereof on the short form disclosure. Because both the existence of, and the absence of, possible credit plans are required to be similarly disclosed, consumers would be able to easily compare prepaid account products along this dimension. The Bureau's consumer testing, in addition to external studies,[431] suggests that many consumers choose

[431] *See* 2014 Pew Study.

prepaid products specifically to avoid overdraft services. Requiring the existence of credit features to be disclosed on the short form disclosure would help those consumers make informed acquisition decisions. Conversely, those consumers who are seeking a prepaid account with the possibility of accessing credit would be able to more easily identify products that offer such a feature.

In addition, if at any point a credit feature may be offered to any holder of a given prepaid account, then the financial institution would be required to include in that prepaid product's long form the disclosures described in Regulation Z, 12 CFR § 1026.60(a), (b) and (c). These are the same disclosures that Regulation Z requires financial institutions to provide along with mail or electronic applications for, or solicitations to open, credit card accounts. Because this information would be included in prepaid accounts' long form disclosures, consumers would be made aware of the fees associated with such a plan, were it to be offered. Those consumers who are able to accurately predict their future use of such services could compare the prices of various prepaid account products, taking into account the price of an associated credit feature, in making their initial acquisition decision. The Bureau requests comment and the submission of data that could inform the Bureau's consideration of the effectiveness of the proposed credit-related disclosures on both the short form and long form disclosures, including information about the use of the terms "credit-related," "credit," and "overdraft."

Before acquiring a payroll card account or government benefit account, the proposed rule would require financial institutions to include above the top-line on their short form disclosure a statement that the consumer does not have to accept the payroll card account and that other methods are available from which the consumer may choose to receive his wages or salary from the employer instead of receiving them on the payroll card account. This provision would ensure

that employees are informed that receiving their wages on a payroll card account is neither a condition of their employment nor their only option. Moreover, it would ensure that recipients of government benefits are informed that they do not have to accept payments in the government benefit account and that they can ask about other ways to get their benefit payments.

Finally, proposed § 1005.18(b)(2)(i)(B)(*10*) would require disclosure of the total number of fees charged by the financial institution other than those disclosed on the short form disclosure. In the Bureau's testing, this number became a focal point for participants. If this number becomes a focal point for consumers generally, then financial institutions may choose to compete on this metric, which could potentially reduce the number of fees imposed in connection with prepaid accounts. As a result, consumers may benefit from fewer hidden fees and simpler products, generally.

iii. Engagement

According to the standard social science models of consumer decision-making presented above, consumers must have relevant and accurate information in order to make good choices. However, recent research in social science, law, and design suggests that even if consumers were provided an unlimited amount of information, many consumers would not comprehend or utilize all that information.[432] This research highlights the importance of an initial step, "engagement,"[433] and posits that when a consumer encounters any new informational provision,

[432] James Lacko & Janis Pappalardo, *The Failure and Promise of Mandated Consumer Mortgage Disclosures: Evidence from Qualitative Interviews and a Controlled Experiment with Mortgage Borrowers*, 100 Am. Econ. Rev. 516 (2010); s*ee also* Kleimann Commc'n Group, *Know Before You Owe: Evolution of the Integrated TILA RESPA Disclosures* (July 2012); For example, Eric Johnson, et. al. *Can Consumers Make Affordable Care Affordable? The Value of Choice Architecture*, PLOS One, Dec. 2013, at 1, 2.

[433] Throughout, this treatment describes the *first moment* of information consumption as "engaging" with the information provision. "Engaging," as it is used here, is therefore distinct from "reading" or "comprehending," both of which could imply sustained consumption.

she conducts a split-second analysis, assessing the costs and benefits of continued consumption of that information.[434] This calculation incorporates the consumer's automatic emotional response to the design as well as the consumer's expected reward from engagement. Without an affirmative decision at this first step, neither utilization nor comprehension can occur.[435]

The Bureau designed the model short form disclosure not only to provide relevant information to consumers, but also to increase consumer engagement. To appeal to consumers' automatic emotional response, the Bureau designed the short form disclosure to be visually appealing as well. In addition, to reduce the perceived difficulty of learning about a prepaid product, the short form disclosure assigns terms a clear hierarchy through positioning, font-size, accompanying whitespace, and font-weight; includes concise descriptions of fees and conditions; and uses asterisks and fine-print sparingly. Finally, as the perceived cost of using a disclosure increases with the amount of information provided, the proposed short form disclosure presents consumers with a reduced, manageable set of information about the product.[436]

iv. Costs

The Bureau's effort to simplify pre-acquisition disclosures may also generate costs for consumers. As discussed above, the Bureau's emphasis of a limited number of fees in the short form could result in a reduction of those particular fees through competitive pressure. However,

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[434] A related decision-making framework is developed with accompanying case studies by Stephen Wendel. *See,* Stephen Wendel, *Designing for Behavior Change: Applying Psychology and Behavioral Economics* (Mary Treseler ed., 2013).

[435] *See, e.g.*, Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 Stan. L. Rev. 545 (2014).

[436] The idea that consumers may decrease their engagement with information when more information is provided is somewhat supported by research on "choice overload." This work demonstrates that when choice sets are large, some people opt to make no choice at all. *See, e.g.*, Sheena Iyengar et al., *How Much Choice is Too Much? Contributions to 401(k) Retirement Plans, in* Pension Design and Structure: New Lessons from Behavioral Finance 83 (Oxford: Oxford University Press 2004).

to the extent they exist, fees that would be relatively *de*-emphasized by the proposed disclosure regime could, as a result, experience an easing of competitive pressure and thereby increases in the amounts charged.

Proposed § 1005.18(b)(2)(i)(C) may also generate costs for consumers. If the amount of the fee that a financial institution imposes for a given fee type can vary, then proposed § 1005.18(b)(2)(i)(C) would require the financial institution to disclose the highest fee associated with that fee type. As discussed above, the Bureau believes that there is a clear benefit to consumers of providing a simple and concise short form disclosure, and the Bureau believes that this is achieved, in part, by limiting footnotes and fine print. However, in acquisition channels in which the short form disclosure is not necessarily accompanied by the long form disclosure, this provision *could* result in a consumer having less information about a prepaid product than they would have had in the current marketplace. The provision would therefore create a distinct new cost to consumers if it results in them not having all the information they want or need to make their acquisition choice.

Furthermore, proposed § 1005.18(b)(2)(i)(C) may make some fees associated with a fee type less salient to consumers than they are currently. As a result, these fees could increase either because consumers find those fees difficult to monitor or because of a reduction in competitive pressure on those fees.

v. Alternatives

An alternative to the proposed disclosure regime that some nonprofit groups have suggested is full disclosure of all fees regardless of the acquisition channel. These groups argue that, among other things, any disclosure other than a full disclosure of all fees enables financial institutions to hide fees that could be important to consumers. The Bureau believes the potential

harm of such actions to be largely mitigated by the existence of the long form disclosure, which discloses all fees, and which consumers would have to receive or have access to prior to account acquisition. The short form disclosure also would contain two additional elements that could mitigate the risk of hidden fees. First, the proposed incidence-based portion of the short form disclosure ensures that consumers are informed of the fees that consumers incur most frequently for a particular product and that are not part of the static portion of the short form disclosure. Second, as noted above, the proposal would require disclosure of the total number of fees charged by the financial institution other than those disclosed on the short form disclosure. The Bureau believes that disclosure of this number, coupled with the incidence-based disclosures, should make conspicuous any attempt to hide charges.

Another alternative suggested by some consumer advocacy groups was to disclose a single number for each product that would indicate the relative costliness of that product. Commenters suggested that this number could be an estimate of monthly costs to consumers for using a prepaid account, the average amount paid by users of a prepaid account program, or the output of an algorithm intended to replicate specific consumers' use-cases of prepaid accounts. The Bureau believes that while such an approach holds promise, it is not well-suited to prepaid products at this time. The Bureau's testing, along with other studies, revealed many typical use cases for prepaid accounts.[437] The diversity of use cases makes it difficult to design disclosures that provide relevant information for consumers with respect to their all-in cost to use a particular product since such costs could vary significantly. For example, the monthly cost for someone who uses a prepaid product primarily for occasional online purchases could be

[437] See ICF Report at 5; *see also* 2014 Pew Study.

significantly different from the monthly cost for someone who uses a prepaid product as a checking account replacement. Indeed, because of the variety of use-patterns, such overly-simplistic disclosures may be more misleading than helpful.

b. Benefits and Costs to Covered Persons

The benefits and costs to a covered person arising from the proposed disclosure requirements depend on the covered person's current business practices. This treatment therefore considers benefits and costs relative to those borne by financial institutions in the current marketplace. They are addressed in five parts: (i) a discussion of common sources of cost; (ii) a discussion of the costs associated with proposed provisions, including acquisition-channel-specific costs for channels other than the retail channel;[438] (iii) a discussion of the costs specific to the retail acquisition channel; (iv) a discussion of benefits; and (v) a discussion of the costs and benefits to new entrants.

i. Common Sources of Cost

The Bureau recognizes that certain financial benefits to consumers that stem from the proposed disclosures may have an associated financial impact on covered persons. Covered persons generate revenue through consumers' use of their products. Therefore, when a consumer experiences a financial benefit, a financial institution may experience a financial cost of the same magnitude. Such costs could stem from each of the primary consumer benefit channels identified above: bolstered consumer knowledge of alternative products; improved acquisition-choices from among available products; lower-cost, higher-benefit usage of acquired products; and increased competitive pressures.

[438] This treatment considers five significant acquisition channels for prepaid accounts: in-person, in a retail store; in-person, in a non-retail environment, such as a bank or place of employment; orally, over the telephone; electronically, via a website; and via direct mail.

A number of the provisions detailed above require financial institutions to provide or make available disclosures orally via a telephone. The Bureau expects that compliance with these proposals may require implementation costs of updating an interactive voice response (IVR) system and/or training live customer service agents. The Bureau believes that both of these costs will be relatively small. To the extent that the proposed provisions increase usage of financial institutions' telephone systems, financial institutions may incur additional ongoing costs of utilizing or operating these systems. According to industry sources, utilizing an IVR system costs up to $0.12 per minute, while live agent customer service costs up to $0.90 per minute. The total burden of these costs for any single financial institution would depend on the financial institution's potential customers' demand for obtaining disclosures orally over the telephone, and may depend on the financial institution's negotiated rates for IVR and/or live agent customer service. Finally, financial institutions would bear small ongoing costs of monitoring and updating to ensure that their telephone systems provide accurate information.

Similarly, a number of the provisions detailed above require financial institutions to provide or make available disclosures electronically, via a website. The Bureau believes that all prepaid account providers already offer at least one service electronically, via a website, and therefore that implementation costs of complying with these provisions would not include the costs of obtaining and initializing a website. To the extent that the proposed provisions increase usage of financial institutions' website(s), financial institutions may bear additional ongoing costs of bandwidth usage. In addition, financial institutions would be required to design an electronic version of the relevant disclosure(s), and therefore would bear a one-time web-design cost. The Bureau believes this cost would be relatively small and also mitigated by the Bureau's provision of model forms and sample forms. The total burden of these costs for any single

financial institution would depend on the financial institution's customers' demand for obtaining disclosures electronically, via a website, and may depend on the financial institution's negotiated web-hosting rates. Finally, financial institutions would bear small ongoing costs of monitoring and updating to ensure that their website(s) provides accurate information.

ii. Costs

As noted, Regulation E § 1005.7(b) currently requires financial institutions to provide certain initial disclosures, and this proposal would extend this provision to prepaid accounts. Generally, the Bureau believes that financial institutions already disclose full terms and conditions, which include much of what would be required by § 1005.7(b), before the first electronic fund transfer is made. The disclosure requirements of Regulation E section § 1005.7(b) as they are currently defined (not considering the modifications in proposed § 1005.18(f)) would therefore entail very small cost to covered persons.

Proposed § 1005.18(b)(2) through (4) would set forth the content and form requirements for the short form and long form disclosures. To satisfy these requirements, financial institutions would incur one-time costs of designing compliant disclosures. Based on industry outreach, the Bureau understands that the design process will require as many as 100 labor hours per prepaid product, including time for design work and legal and financial institution review. However, the design costs should be offset somewhat by the Bureau's provision of model forms and sample forms for the required disclosures.

In-person transactions and direct mail transactions would require the short form and long form disclosures to be disclosed on paper. The long form disclosure would be disclosed both pre-acquisition and as part of the terms and conditions document. For each prepaid account sold,

this would entail additional costs of materials (*e.g.*, printing, paper), logistics (*e.g.*, shipping costs), and personnel training (*e.g.*, how to disclose the forms in retail settings).

Prepaid account transactions conducted orally over the telephone would necessitate an oral disclosure of the short form disclosure prior to acquisition. Financial institutions would be able to choose between disclosing the long form orally prior to acquisition and communicating prior to acquisition that the long form is available orally over the telephone or electronically, via a website. Both the costs of providing disclosures orally over the telephone and the costs of providing disclosures electronically, via a website, were considered above. Because the labor and capital necessary to conduct business over the telephone may also be used to disclose fees, the Bureau estimates that the costs of providing disclosures orally over the telephone would be substantially mitigated for financial institutions that already transact over the telephone.

Prepaid account transactions conducted electronically, via a website would necessitate electronic disclosure of both the short and long form disclosures prior to account acquisition. The costs of providing disclosures electronically, via a website were considered above. The Bureau believes that these costs would be minimal for financial institutions that transact online since they generally already disclose fees and terms and conditions online.

Transactions that do not occur in person, such as those that occur over the telephone, via direct mail, or via a website, may necessitate financial institutions to send consumers an account access device via the mail. The Bureau understands that these deliveries typically include the prepaid products' full terms and conditions. Therefore, proposed § 1005.18(f) would require that these deliveries include a long form disclosure. As a result, financial institutions that do not transact with consumers in person may incur small new ongoing costs in the form of increased shipping costs and increased materials costs.

Financial institutions that distribute payroll card accounts or government benefit accounts may incur additional costs in order to provide on the short form the notice described in proposed § 1005.18(b)(2)(i)(A) that consumers are not required to accept a payroll card account, and a similar requirement for government benefit accounts in proposed § 1005.15(c)(2). Additional costs could accrue, for example, if the additional disclosure caused the short form disclosure to exceed the space constraints of payroll card packaging materials. However, the Bureau believes that in the payroll card account context, prepaid accounts are not usually distributed within space-constrained packaging, and that the short form disclosure requirements could be easily met if provided, for example, on an 8½ inch by 11 inch sheet of paper.[439] If it is the case that this disclosure both informs consumers and motivates them to consider other payment options, then the costs to some financial institutions could increase. In particular, a financial institution could experience a cost if consumers decline to acquire its prepaid account product as a result of this notice. Both of these types of costs could be small, depending on current industry practice. In particular, existing regulation already prohibits employers and financial institutions from requiring a consumer to use a payroll card account to receive wages or a government benefit account to receive benefit payments. If covered persons comply with this existing regulation in a manner similar to the proposed requirement, then the additional cost of this proposal would be very small.

If a financial institution principally uses a foreign language on packaging material, by telephone, in person, or on the website consumers utilize to acquire a prepaid account, then it

[439] The Bureau's industry outreach revealed that in some cases payroll card accounts and similar products are distributed in unsealed envelopes that also contain fee disclosures, the terms and conditions documents, and marketing materials. The model short form that includes this payroll card account notice easily fits within these constraints. *See* proposed Model Form A-10(a) in Appendix A.

would be required to provide the short form and long form disclosures in that same foreign language. In addition, the financial institution would be required to make an English version of the long form disclosure available upon request. If a financial institution does not already maintain the practice of disclosing its fee schedules in both languages, then this requirement may entail a small fixed cost to have its disclosures translated, as well as additional ongoing translation costs whenever the financial institution introduces a new fee or changes the wording of any part of its terms and conditions. Because, in such cases, the long form disclosure would be required to be provided in two languages, this requirement could also result in additional ongoing material costs and increased shipping costs. The total burden of costs related to this requirement would depend on the amount that these requirements diverge from current practices. Based on industry outreach, the Bureau believes that most financial institutions that transact in foreign languages also provide fee disclosures in those foreign languages, and therefore that this requirement is unlikely to generate significant additional costs.

A financial institution would need to design its short form disclosure to indicate whether it may offer an overdraft service or other credit feature to its prepaid account holders, and its long form disclosure to disclose the fees and costs associated with such a credit feature, when offered. This requirement would generate direct costs for financial institutions that offer such credit features. However, based on its Study of Prepaid Account Agreements of existing prepaid account products, the Bureau believes that very few financial institutions offer such features. Financial institutions that do offer credit features would face ongoing costs of insuring that the disclosed costs of credit in the long form disclosure are accurate.

The ongoing costs of maintaining the short form and long form disclosures would depend on current practices and the acquisition channel. The long form and the non-incidence-based

portions of the short form disclosure (the incidence-based portion is discussed below) would require updating at most as often as a prepaid product's terms and conditions are updated. Based on industry outreach, the Bureau believes that financial institutions rarely change the terms and conditions of their prepaid products in a way that would require changes to the disclosures they provide. Moreover, the Bureau believes that pursuant to State law and regardless of this proposal, provided marketing materials, fee disclosures, and terms and conditions documents must always be accurate when provided to consumers. Therefore, the Bureau does not believe that maintaining the accuracy of the long form disclosure and the non-incidence-based portions of the short form disclosure would represent a substantial new ongoing cost to financial institutions.

Financial institutions may incur a number of ongoing costs to comply with the short form disclosure's proposed incidence-based disclosure requirements. The incidence-based portion of the short form disclosure would require disclosure of the three fees incurred most frequently in the prior 12-month period for that particular prepaid product that are also not already disclosed in the static portion of the short form disclosure. These fees could vary over time for a given product due to changes in how consumers use the card or due to changes in the product itself. In either case, financial institutions would be responsible for updating the incidence-based portion of their short form disclosures. If a financial institution changed its product, then it would be required to populate the incidence-based portion with a reasonable estimate of the fees that would match the incidence-based portion's criteria. For each prepaid product, the financial institution would be required to reassess fee incidence ranking used to determine the incidence-based portion of the product's short form disclosure once per year. Financial institutions would be permitted to choose the date of reassessment for each individual product, but for a given

product, reassessment would be required to occur at the same time each year. Fee incidence rankings would be required to be assessed using data from the twelve months prior to the reassessment date each year. Financial institutions may incur some fixed costs of implementation if they must update their accounting systems or practices to evaluate fee incidence from all sources on a twelve-month basis. However, the Bureau believes that most financial institutions are already capable of tabulating fees in this manner, and thus it expects this cost to be small. Moreover, since financial institutions would be free to choose reassessment dates, the Bureau believes that ongoing costs associated with this reassessment should be small as well. For example, financial institutions could choose their reassessment date to coincide with its established calendar for evaluating its prior year performance for tax, or other reporting, purposes.

After reassessment, financial institutions would have up to 90 days to update the incidence-based portion on their short form disclosures. In addition, after reassessment, financial institutions would be prohibited from printing new retail stock that includes out-of-date incidence-based fee information. However, financial institutions would be allowed to continue to sell stock printed prior to the reassessment date indefinitely. For a given prepaid product, the full burden of the costs of updating short form disclosures due to changes in the incidence-based portion would depend on the frequency with which the top three fees change for that product and the channel through which that product is distributed. The Bureau believes the costs of updating the incidence-based portion are very small for acquisition channels where disclosures are not printed on packaging material.

iii. Retail Costs

Through industry outreach and analysis, the Bureau understands that the proposed rule could generate many costs unique to the retail acquisition channel. For this reason, the retail acquisition channel is considered separately here. Nonetheless, costs borne by financial institutions transacting in the retail acquisition channel are largely the same as those borne by the financial institutions described above. This treatment therefore takes the above treatment as a starting point and describes costs to covered persons only as they deviate from that treatment.

In a retail store, financial institutions would be required to provide their prepaid account product's short form disclosure before the consumer acquires the prepaid account. Through discussions with industry participants, the Bureau has learned that some financial institutions will not be able to accommodate the short form disclosure on the exterior of their current packaging materials without significant changes, such as redesigning of packages.[440] The one-time costs associated with a package redesign are discussed above and are relatively small. However, some financial institutions currently utilize the exterior of their packaging materials to facilitate retail transactions or to incorporate fraud prevention mechanisms (*i.e.*, by providing bar codes or other information). In these cases, the Bureau has heard from industry participants that complying with the short form disclosure requirement of proposed § 1005.18(b)(1), while maintaining their products' previous levels of functionality and fraud prevention, could as much as double the per unit cost of printing packaging materials.[441]

[440] The Bureau made early versions of its model forms available to the public for comment. *See* Eric Goldberg, *Prepaid cards: Help design a new disclosure*, CFPB Blog Post (Mar. 18, 2014), http://www.consumerfinance.gov/blog/prepaid-cards-help-design-a-new-disclosure/

[441] The Bureau heard from industry participants that the per-package printing cost, including the card access device and the packaging materials, ranges from $0.75 to $2.00.

In a retail store that is not operated by the financial institution or agent of the financial institution, the financial institution would be able to choose between two methods of providing the long form disclosure. As it would be required to do in other acquisition channels, the financial institution could provide the long form disclosure before a consumer acquires a prepaid account. Alternatively, in a retail store, a financial institution could provide the long form disclosure after the consumer acquires a prepaid account, provided that, among other things, the short form disclosure includes both a telephone number and a URL of a website that the consumer could use to access the long form disclosure. The cost of this requirement will therefore vary for financial institutions based on the option they select. Financial institutions that provide the long form disclosure pre-acquisition would bear additional costs of shipping and materials and potentially personnel training in retail settings. Financial institutions that do *not* provide the long form disclosure pre-acquisition would bear the costs of making the long form available electronically, via a website and orally over the telephone. These costs were considered in generality above.[442]

Based on industry outreach and analysis, the Bureau believes that in the retail channel a prepaid product's terms and conditions document is included in its packaging materials. In this case, proposed § 1005.18(f) would require that financial institutions also include the long form disclosure inside their retail packaging materials. This requirement could create new ongoing costs for financial institutions through increased material and shipping costs.

Moreover, currently, if a prepaid product's terms and conditions document is included in its packaging materials, then any change in a prepaid account product that would trigger a need

[442] These costs would also apply to provision of the English version of the long form as would be required upon a consumer's request by proposed § 1005.18(b)(6).

to update the prepaid account product's disclosures would also trigger a need to update the prepaid account product's terms and conditions document. Therefore, the Bureau believes that in the retail acquisition channel, monitoring the long form and the non-incidence-based portions of short form disclosure for accuracy, and updating these disclosures to reflect changes in the prepaid product, would not represent significant new costs relative to the costs currently borne by financial institutions.

In addition, the Bureau believes that in the retail channel the cost of monitoring and updating the incidence-based portion of the short form would be almost fully mitigated by two factors: first, because financial institutions would be able to sell their out-of-date retail packaging indefinitely there would be no costs of product destruction or resetting; second, because financial institutions could choose their reassessment dates to coincide with their natural product refresh cycle, there would be few additional costs to printing or shipping new prepaid cards.

The proposed two-tiered effective date of this proposed rule would require that newly printed retail materials are accurate within nine months of the date of publication of a final rule in the **Federal Register**, but would allow out-of-date stock to be sold for up to twelve months thereafter. Because this extended implementation period would allow financial institutions time to sell their old stock, it would also reduce, relative to a shorter period, financial institutions' total costs of shipping and destroying old stock. Moreover, the extended implementation period would allow financial institutions' printing and shipping of updated stock to coincide with financial institutions' natural yearly product refresh cycle. Nonetheless, through discussion with industry participants, the Bureau understands that even after an extended implementation period, out-of-date stock may remain in retail locations, financial institutions may be uncertain as to whether or not out-of-date stock remains at a given retail location, and as a result, certain costs,

such as the labor cost for merchandisers, may not be greatly reduced by the extended implementation period.

If a financial institution has not sold all of its out of date stock by the second effective date, then the proposed rule may result in financial institutions destroying and replacing out-of-date stock.[443] The Bureau estimates the one-time cost of destruction and replacement of retail stock due to implementation of the proposed rule to be $0.68 per prepaid card in distribution.[444] This cost is comprised of the costs of creating new stock; removing and destroying old stock; confirming that no old stock remains in retailers' possession and/or is offered for sale; and replenishing retail inventory. Based on industry outreach, the Bureau estimates that after twelve months 40 percent of total prepaid account stock will remain in distribution. It estimates that destroying remaining stock would cost approximately $0.05 per card for the destruction service itself, approximately $20 per retail location in resetting costs,[445] and $28 per retail location for secure shipping to a destruction facility. Further, it estimates that the cost of printing new cards and packaging materials would be between $0.75 and $2.00 per newly printed card, depending on the volume of the order and the type of packaging materials.[446]

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[443] The figures presented in this treatment are estimates derived from discussions with a limited number of industry participants. In some cases, the Bureau arrived at its estimates by combining estimates from various sources or by interpolating from industry estimates to estimate costs over new timeframes. Moreover, the Bureau recognizes that these figures vary as a function of myriad factors, including the size of the financial institution's business, its business practices, and its relationships with other participants in the value chain. The Bureau requests comment on these preliminary figures as well as the submission of data that could inform the Bureau's consideration of the costs of pre-acquisition disclosures to providers of retail prepaid accounts.

[444] "Card" is used here to refer to the access device for a single physical prepaid account sold in a retail store. "Cards in distribution" is defined to be the number of cards in retail distribution channels on the date of publication of the Bureau's final rule in the **Federal Register**.

[445] This estimate is based on discussions with industry participants, and is comprised of an estimate of $20 per hour to pay a professional stocker, or "merchandiser," and an estimate that the resetting process takes approximately one hour complete.

[446] The cost of printing a single new card could be more than the per-card cost of implementation because not every card in distribution would need to be reprinted as a result of this proposed rule. As stated, the Bureau believes that

iv. Benefits

Finally, the Bureau recognizes that when a consumer chooses one prepaid product over another, one covered person incurs a cost but another receives a benefit. Because consumers use prepaid products in a variety of ways, it is currently unclear if the proposed rule would yield more such benefits for some financial institutions than for others. However, in line with the discussion of benefit to consumers, the Bureau believes that the proposed rule may most benefit financial institutions that offer products with low fees, generally; low top-line fees (and other fees in the static portion of the short form), specifically; and fewer fees, overall.

v. New Entrants

The Bureau expects that costs and benefits to new entrants would be similar as those experienced by financial institutions that currently provide prepaid account products. Therefore, except where noted in this part, the above discussions apply to new entrants as well.

The proposed rule would imply fewer fixed costs of implementation for new entrants. Because producing disclosures, marketing materials, and packaging materials is a natural part of the process of creating a new prepaid account product, the proposed rule would not impose new costs of changing these things for new entrants. Moreover, because new entrants do not currently have stock in retail channels, the proposed rule would not generate the implementation costs of destroying and replacing out-of-date stock in the retail channel for new entrants.

The Bureau believes that new entrants' costs, as they relate to the incidence-based portion, would be similar to other covered persons'. Although financial institutions do not have actual fee data for new prepaid account products, the Bureau believes that they nonetheless

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approximately 40 percent of cards will remain after the second effective date and this is therefore also the Bureau's estimate of the percentage of cards that would need to be re-printed as a result of this proposed rule.

should have a reasonable expectation as to which fees would be incurred most frequently. Thus, proposed § 1005.18(b)(2)(i)(B)(*8*)(II) would require institutions, for those prepaid account products without prior fee data, to estimate in advance the fees that should be disclosed in the incidence-based portion of the short form disclosure. The Bureau expects that this effort would be no more costly than the effort of producing an incidence-based portion based on actual fee data (as would be required of financial institutions that possess such data). Like other covered persons, new entrants would be required to update the incidence-based portions of their disclosures to reflect the previous year's data every twelve months.

2. Applying Regulation E's Periodic Statement Requirement with Slight Modification and Providing an Alternative Means of Compliance with the Requirement

While expressly defining prepaid accounts as accounts subject to Regulation E, the Bureau's proposal also would extend the alternative means of compliance with Regulation E's periodic statement requirement, currently offered to payroll card account providers, to prepaid accounts with certain modifications. *See* proposed § 1005.18(c)(1). In addition, the proposed rule would modify the alternative means of compliance with Regulation E's periodic statement requirement for government benefit accounts so that it is consistent with the alternative means of compliance for prepaid accounts. *See* proposed § 1005.15(d).

Regulation E currently states in § 1005.18(b) that financial institutions offering payroll card accounts need not furnish periodic statements if the financial institution makes available to the consumer his or her account balance through a readily available telephone line, an electronic history of the consumer's account transactions that covers at least 60 days preceding the date that the consumer electronically accesses the account, and, upon oral or written request, a written transaction history that covers at least 60 days. Similarly, government agencies offering

government benefit accounts need not comply with the periodic statement requirement if they make available to the consumer the account balance, through a readily available telephone line and at a terminal, and promptly provide at least 60 days of written history of the consumer's account transactions in response to an oral or written request. *See* existing § 1005.15(c).

The proposed rule would require that covered financial institutions wishing to avail themselves of this alternative means of complying with the Regulation E periodic statement requirement make available to the consumer at no charge his or her account balance through a readily available telephone line, provide the consumer with access to at least 18 months of transaction history online and, if requested by the consumer, provide at least 18 months of transaction history in writing. *See* proposed § 1005.18(c)(1). For those payroll card account providers and providers of prepaid accounts that receive Federal payments that are presently required to comply with the Regulation E periodic statement requirement and are meeting their compliance obligations by relying on the alternative means of compliance, this proposed provision would extend the present requirement that 60 days of transaction history be provided to 18 months. For government agencies that are currently required to comply with the Regulation E periodic statement requirement, this proposed provision would additionally require electronic access to government benefit account history information under the alternative means of compliance, which Regulation E does not presently require.

Regardless of how a financial institution chooses to comply with the proposal, the proposed rule also would require that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of deposits to the prepaid account, and the total amount of all debits from the prepaid account for both the prior calendar month as well as the calendar year to date. This

information would be required to be disclosed on any periodic statement and any electronic or written history of account transactions provided. Finally, for financial institutions following the alternative means of complying with the periodic statement requirement, the proposed rule would extend to prepaid accounts modified requirements for initial disclosures regarding access to account information and error resolution, as well as annual error resolution notices.[447]

a. Benefits and Costs to Consumers

Extending Regulation E's periodic statement requirement to all prepaid accounts would help to ensure that consumers receive the benefits associated with increased information regarding their prepaid accounts. These benefits include having the ability to monitor account balances for both budgeting and the identification of errors.

The Bureau's proposal would require that financial institutions disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account, along with the total amount of deposits to and the total amount of debits from the prepaid account for the prior calendar month and the calendar year to date, on any periodic statement, any written history of account transactions, and any electronic history of account transactions (*see* proposed § 1005.18(c)(4)[448]). This disclosure would make the cumulative costs associated with the use of the prepaid account accessible and transparent to consumers and, given that some consumers use their prepaid account as their primary transaction account or as a budgeting mechanism for a particular category of expenditures, would also provide these consumers with a means of

[447] *See* existing § 1005.18(c)(1) and (2) for payroll card accounts, revised as proposed § 1005.18(d) for prepaid accounts, and existing § 1005.15(d)(1) and(2) for government benefit accounts, revised as proposed § 1005.15(d)(1) and (2).

[448] With respect to government benefit accounts, proposed § 1005.15(d)(2) would refer to § 1005.18(c)(2), (3), and (4).

tracking budgeting goals. The inclusion of these summary measures may also make tracking spending and load patterns less burdensome for consumers and may aid consumers in identifying atypical account activity or spending trends. For those consumers who use their prepaid accounts infrequently and may not track balance information on a regular basis, this disclosure would provide another means to become familiar with the costs associated with using the prepaid account, including any inactivity fees that may be incurred.

In extending the Regulation E periodic statement requirement to all prepaid accounts, the Bureau would also require that those financial institutions relying on the alternative means of complying with the periodic statement requirement make accessible 18 months of transaction history electronically and, if requested, in writing. Consumers, especially those who rely on a prepaid account as their primary transaction account, may need to consult more extensive account history in connection with, for example, rental and employment applications or tax filings; in these situations, they would benefit from having 18 months of account history available. Additionally, transaction histories may help consumers to discover unauthorized transfers or other errors. For instance, in certain circumstances, consumers have up to 120 days from the date of the unauthorized transfer to assert an error and thus in order to fully exercise these protections, consumers must be able to access at least 120 days of transaction history. The proposed rule additionally requires that account histories provided as part of the alternative means of compliance with the periodic statement requirement be provided electronically. Though government benefit accounts are not presently required by Regulation E to provide such access, and prepaid accounts generally are not subject to this requirement at present, the Bureau's understanding is that most financial institutions offer electronic access.

The Bureau considered alternatives, such as expanding the Regulation E periodic statement requirement without an alternative for prepaid accounts, requiring electronic periodic statements (as opposed to transaction histories), requiring that account histories be made available for various lengths of time, and not expanding the periodic statement requirement to prepaid accounts in any form. In focus group research, the Bureau generally found that consumers were satisfied with the amount of information they receive regarding their transaction history presently (either online, through text message, or over the telephone), and they generally did not express a desire to receive a paper statement.[449] Several industry participants the Bureau spoke with during its outreach, as well as several participants in the Bureau's consumer testing, noted that the time lag between receipt of a paper statement and the transactions covered by the statement decreased its utility for tracking account balance information relative to other means, such as real-time text message alerts, which provide consumers with more timely access. According to one program manager, when it provided electronic periodic statements to all of its customers, its customers only infrequently accessed those statements.[450]

Many consumers participating in the Bureau's focus groups also stated that they monitor their account balance using the internet and mobile devices.[451] This is consistent with the findings of various industry surveys, which suggest that many consumers currently have multiple

[449] *See* ICF Report, at 10.

[450] The program manager reported that consumers viewed the statements for just over one percent of active accounts, and consumers downloaded the statements for slightly less than one percent of active accounts.

[451] According to a survey conducted by the Board, roughly 87 percent of respondents owned or had regular access to a mobile phone, and roughly 61 percent of those with a mobile phone had a smartphone as of December 2013. Additionally, over 89 percent had regular access to the internet, either at home or outside of the home (but excluding internet access through a cellular phone). *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014*, at 49 tbl.C16, C.18 & C.19 (Mar. 2014), *available at* http://www.federalreserve.gov/econresdata/mobile-devices/files/consumers-and-mobile-financial-services-report-201403.pdf. A survey of prepaid card users found that 88 percent use the internet. *See* 2014 Pew Survey, at 5 ex.2.

methods through which they can access information regarding their prepaid account. According to one survey of 66 GPR card programs, almost three-quarters offer text alerts, and more than half offer email alerts regarding account balances and transactions.[452] Another organization reviewed the terms and conditions associated with 18 GPR card programs that they estimated collectively represented 90 percent of the total GPR card marketplace (based on number of active cards in circulation). It found that all of the reviewed cards allowed cardholders to check balances online, via text message, by calling customer service, or on a mobile app or a mobile-enabled website.[453]

Although consumers generally have access to transaction history information in some form at present, the proposed rule's requirement that 18 months of written transaction history, 18 months of electronic transaction history, and telephone access to balance information must generally be provided for free would lower the cost of accessing this information for some consumers. Of the 66 GPR card programs reviewed by one organization, 68 percent disclosed a paper statement fee ranging from 99 cents to $10 (median $2.95).[454] As discussed below, the Bureau's discussions with industry participants suggest that few consumers presently request paper statements. It is worth noting, however, that if financial institutions were unwilling to

[452] *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections*, at 17 (Feb. 2014), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.

[453] Additionally, they found that all of the cards reviewed provided consumers with accessible customer service assistance and IVR systems. *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 12 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

[454] Of the GPR card programs reviewed by that organization, 21 percent of programs did not disclose a paper statement fee, and 11 percent disclosed that paper statements are free. *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections*, at 19 (Feb. 2014), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.

provide such statements to consumers for free, they may decide to require all consumers to provide E-Sign consent in order to have access to the product so that they could provide statements electronically. This could result in decreased access to account information for those consumers who cannot or choose not to provide E-Sign consent.

b. Benefits and Costs to Covered Persons

The benefits and costs to covered persons arising from the application of Regulation E's periodic statement requirement to all prepaid accounts would depend on the financial institution's current business practices and whether the financial institution would choose to avail itself of the alternative means of complying with the periodic statement requirement. Specifically, financial institutions may comply with the proposed requirement by providing periodic statements, either in paper form or in electronic form having obtained E-Sign consent from the consumer, or they may choose to implement the alternative means of complying with the periodic statement requirement.

As discussed above, financial institutions are already required to comply with the Regulation E periodic statement requirement, or the specified alternative, for payroll card accounts and for accounts that receive Federal payments (pursuant to the FMS Rule). Government agencies that offer government benefit accounts are similarly required to comply with this requirement (without the requirement to provide electronic access to account history under the periodic statement alternative). Based on outreach to industry participants, the Study of Prepaid Account Agreements, and review of various industry studies, the Bureau understands that financial institutions generally provide consumers with electronic access to transaction histories or electronic periodic statements and generally provide telephone access to account

information similar to what the Bureau is proposing to require.[455] In many instances, electronic transaction histories currently provided extend well beyond the 60 days currently required for certain prepaid accounts.[456] The Bureau's understanding based on outreach to industry is that few, if any, financial institutions provide paper periodic statements or paper transaction histories to consumers with prepaid accounts on a non-ad hoc basis.

If the proposed rule were adopted, the Bureau predicts that most financial institutions would continue to offer account history information to consumers electronically (except for those cases where a written transaction history is required in response to an ad hoc consumer request) and would continue to use an automated telephone line to provide 24 hour access to account balance information. Therefore, the Bureau believes that the majority of costs to covered persons would arise from two sources.

First, periodic statements or transaction histories would be required to display a summary total of the amount of all fees assessed against the consumer's prepaid account, along with the total amount of deposits and the total amount of all debits made to the prepaid account for the

[455] One review of 66 GPR card programs found that almost every card provided free online access to account information. It also found that most card programs offered email and text alerts free of charge and that most programs provided the customer with at least a limited number of free interactive voice-recognition customer service calls through which consumers could access account information. *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections*, at 36 (Feb. 2014), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf. Another review of 18 GPR card programs, comprising an estimated 90 percent of active GPR cards in circulation, found that all of the cards reviewed allowed cardholders "to check their balance online, via text message, by calling customer service, or on a mobile app or a mobile-enabled website." *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 12 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

[456] *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 12 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf. "Eleven of the fifteen cards for which information is available…allow cardholders to access at least two years of transactional data online, which can be important for tax-filing and budgeting purposes. Three of the four cards that offer less than two years of transactional data provide one year of data, while one card offers six months of data."

prior calendar month and for the calendar year to date. Covered financial institutions would need to modify existing statements or electronic transaction histories to include these totals if such totals are not already included. Second, those covered financial institutions that do not presently make 18 months of transaction history available to consumers would potentially incur additional data storage costs and may need to implement system changes if they choose to avail themselves of the proposed alternative means of complying with Regulation E's periodic statement requirement.[457]

The structure of the costs associated with these changes would depend on whether the financial institution relies on vendors to format or host online periodic statements or transaction histories or whether it performs these functions in-house. In either case, the Bureau anticipates the cost associated with these changes to be minimal. Those financial institutions that format their own periodic statements or transaction histories and do not currently display the required totals on their periodic statements or transaction histories would incur a one-time implementation cost to modify these disclosures.[458] Those providers that currently do not make available 18 months of account history would incur costs associated with obtaining additional electronic storage media to expand existing capacity. According to discussions with industry participants, the costs associated with such an expansion should be minimal.

Many providers of prepaid accounts rely on processors to provide online portals that give consumers access to account history information. Based on discussions with industry

[457] As a result of the proposed rule, financial institutions that do not provide consumers with 18 months of transaction history may incur additional costs in the future when migrating information across information technology platforms since additional data must be retained.

[458] One program manager estimated that modifying its website to provide such functionality would cost approximately $15,000.

participants, the Bureau understands that program managers typically pay processors a flat fee per account that may be a function of both the extent of the account history provided and the number of accounts that are being serviced.[459] These entities would generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary totals. However, one program manager predicted that if such a fee disclosure were a regulatory requirement, the processor would offer it as part of a standard package of services at no additional cost.[460] However, the Bureau requests additional comment regarding the costs associated with the impact of these proposed provisions.

In formulating its proposal, the Bureau conducted outreach to prepaid card issuers and program managers regarding the utilization of paper account statements by consumers and the cost to financial institutions of providing such statements. Based on these discussions, the Bureau's understanding is that consumer requests for written account histories for GPR cards are infrequent, generally well under one percent of active cardholder-months, regardless of whether the consumer is charged a fee for the statement.[461] The Bureau notes that some providers currently charge consumers fees if they wish to receive paper statements or transaction histories, and in some cases, providers may charge consumers fees that exceed the cost to provide these

[459] One program manager that relies on a processor for this function told the Bureau that fees for data storage are charged on a per account basis one time at activation. The program manager did not have an estimate of the cost associated with 18 months of history, but costs were generally increasing from $0.08 per account for three months of transaction history to $0.19 per account for one year of transaction history. This program manager also suggested that processor prices decrease with scale and that they were operating at low scale and were consequently paying among the highest prices.

[460] One program manager stated that its processor quoted a one-time cost of $65,000 for providing this functionality on its processor-hosted website (in response to an ad-hoc request). This potentially represents an upper bound for the true development cost since this number likely includes a mark-up over the true cost of providing the service. Actual development costs would be borne jointly by the processor and the prepaid account providers relying on the processor for hosting services.

[461] One program manager reported that when it eliminated a $2.50 fee for receiving a paper statement, there was no change in the frequency with which statements were requested.

statements.[462] However, given the infrequent nature of such requests (regardless of whether a fee is charged for the statement), the Bureau believes that the revenue impact is likely de minimis. Since a covered financial institution may require that consumers provide E-Sign consent in order to receive a prepaid account, and thus would provide traditional periodic statements electronically instead of following the proposed periodic statement alternative, any revenue impact could be further mitigated.

If the proposed provisions expanded consumer access to account information, financial institutions could benefit from receiving more timely notice of unauthorized transfers by consumers and potentially fewer inquiries by telephone or email. For example, in the event that a consumer identifies an unauthorized transfer, the financial institution may be able to place the appropriate holds on the account to prevent further unauthorized use. Timely notification could also decrease the costs associated with investigations of alleged errors. In addition, if timely notification by some consumers were to provide an early warning of a widespread or systemic set of unauthorized transfer attempts, the financial institution could benefit from cutting off the avenue for the unauthorized transfers before the issue becomes more widespread. However, to the extent that consumers are able to identify unauthorized transfers and other errors that they would not have identified in the absence of these disclosures, financial institutions may incur additional costs.

[462] Estimates quoted to the Bureau by providers varied somewhat but generally were approximately $1 per statement to respond to ad hoc requests once the costs associated with fielding the incoming call, postage, and producing the statement were considered. Providers generally noted that postage is a large driver of this cost. One provider noted that, given the sensitivity associated with the information, such statements need to be sent via first class mail. Another provider that relied on its processor to provide ad hoc paper statements to consumers pays its processor $2 for each paper statement delivered.

3. Applying Regulation E's Limited Liability and Error Resolution Regime

The Bureau is also proposing to extend Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts that have been through the customer identification and verification processes.[463] Regulation E provides that a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. *See* § 1005.6(a). In addition to describing conditions under which a consumer may be held liable for an unauthorized electronic fund transfer, Regulation E provides limitations on the amount of liability a consumer may assume. *See* § 1005.6(b).

For accounts subject to the Regulation E error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was, in fact, authorized. *See* EFTA section 909(b). More specifically, after receiving notice that a consumer believes that an electronic fund transfer was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. Although the investigation must generally be completed within 10 business days (20 business days if the EFT occurred within 30 days of the first deposit to the account), the financial institution may take up to 45 days to complete the investigation if it provisionally credits the consumer's account for the amount of the alleged error within 10 business days of receiving the error notice.[464] *See*

[463] Payroll card accounts and government benefit accounts are required to follow Regulation E's limited liability and error resolution regime regardless of whether the account had been through the customer identification and verification processes. As described above, the FMS Rule requires that a prepaid card that receives a Federal payment comply with these provisions.

[464] The financial institution has 90 days (instead of 45) if the claimed unauthorized EFT was not initiated in a state, resulted from a point-of-sale debit card transaction, or occurred within 30 days after the first deposit to the account

§ 1005.11(c)(2). Upon completion of the investigation, the financial institution must report the investigation's results to the consumer within three business days and correct an error within one business day after determining that an error occurred. *See* § 1005.11(c)(1). In cases where the financial institution ultimately can establish that no error (or a different error) occurred, the financial institution may reverse the provisional credit. *See* § 1005.11(d)(2). If the financial institution cannot establish that the transfer in question was authorized, the financial institution must credit the consumer's account (or not reverse the provisional credit).

Prepaid accounts that are payroll card accounts, government benefit accounts, and those that receive Federal payments are presently required to provide Regulation E's limited liability and error resolution protections. Other types of prepaid accounts, such as GPR cards that do not receive Federal payments, currently are not required to provide these protections. One study reviewed 18 GPR card programs, estimated to represent 90 percent of the number of active GPR cards in circulation, and found that all of the programs reviewed had adopted the consumer liability protections outlined by Regulation E as it applies to payroll cards.[465] The Bureau's Study of Prepaid Account Agreements found that roughly 89 percent of all programs, and all of the largest GPR card programs, offer liability protections to consumers. The Bureau's Study of

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was made. *See* § 1005.11(c)(3). Provisional credit is not required if the financial institution requires, but does not receive, written confirmation within 10 business days of an oral notice by the consumer. *See* § 1005.11(c)(2)(i)(A).

[465] *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 12 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf. Another study asserts that only two-fifths of 66 GPR card programs reviewed included all of the protections, but most of this appears to be the lack of disclosure of mandatory extensions of time frames to submit claims for good cause. Regulation E, as applied to payroll card programs, does not require the disclosure of this information, so it is unclear whether it can be inferred that lack of disclosure of this information in the terms and conditions implies lack of protection for consumers *See* The Pew Charitable Trusts, *Consumers Continue to Load Up on Prepaid Cards: Changes in General Purpose Reloadable Prepaid Cards Make Them More Like Checking Accounts but Without Important Protections*, at 20 (Feb. 2014), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2014/PrepaidCardsStillLoadedReportpdf.pdf.

Prepaid Account Agreements also found that over two-thirds of prepaid programs (excluding government benefit accounts and payroll card accounts) appear to follow Regulation E's error resolution regime, including provisional credit requirements, with roughly 80 percent of the largest GPR card programs offering such protections.

To the extent that providers already follow policies consistent with Regulation E's limited liability and error resolution regime, the potential impacts on most consumers and covered persons arising from these proposed provisions are limited. Additionally, prepaid accounts are typically subject to payment card association network rules that provide zero-liability protection and chargeback rights in some circumstances that, unless changed by the networks, would apply regardless of what Regulation E requires.[466] In certain cases, business practices may differ from those guaranteed by the terms and conditions associated with the prepaid account, and consumers may, in practice, have additional protections beyond those articulated in the account agreement.

a. Benefits and Costs to Consumers

In general, the potential benefits to consumers arising from the proposed requirements include reduced risk (relative to a baseline where some programs do not offer the proposed protections) and reduced uncertainty regarding responsibilities and liabilities among market participants. With respect to consumer uncertainty, the Bureau does not have information that would permit it to quantify the extent to which some consumers may overestimate the risks associated with using prepaid accounts (and so may underutilize them) or the extent to which other consumers may underestimate the risks (and therefore may fail to take certain precautions

[466] *See, e.g.*, Network Branded Prepaid Card Association, *Cardholder Protections – NBPCA Position*, *available at* http://www.nbpca.org/en/Government-Affairs/Policy-Positions/Cardholder-Protections.aspx (last accessed Nov. 4, 2014).

if they utilize them). Both groups would benefit from the reduced uncertainty regarding limited liability and error resolution protections that would result from the proposed rule.

Consumers using prepaid accounts would further benefit from any reduction in expected financial losses incurred due to unauthorized electronic fund transfers or other errors that would result from the adoption of the proposed rule. Although providers typically offer limited liability and error resolution protections in connection with prepaid accounts, the proposed rule would largely eliminate any remaining losses as well as ensure that errors are investigated expeditiously and that consumers regain access to funds more quickly. Thus, this potential benefit to consumers would depend on the following: (a) the number of consumers with prepaid accounts that do not follow the limited liability and error resolution regime, including access to provisional credit, that is described in the proposed rule; (b) the average magnitude of the financial losses consumers would experience from unauthorized transfers or other errors absent the proposed rule; and (c) the probability that these unauthorized transfers or other errors would occur absent the proposed rule. The Bureau notes that these benefits could be concentrated among certain segments of the population were the proposed rule adopted.[467]

In order to quantify the potential benefits to consumers from the proposed requirements, the Bureau would need the quantities in (a), (b), and (c) or a database of representative market information from which to construct these quantities. To the Bureau's knowledge, neither these

[467] The proposed rule may also provide additional benefits to consumers. First, the proposed requirements may reduce the frequency with which unauthorized transfers or other errors occur by creating an additional incentive for financial institutions to prevent these adverse events in the first place. This change could benefit consumers in non-monetary ways if adverse events nevertheless impose meaningful costs (including inconvenience). Second, even if no unauthorized transfer or other error has occurred, the requirement to offer provisional credit provides consumers with a zero-interest loan and a timely investigation. Third, as discussed further below, consumers with prepaid accounts from providers that currently voluntarily offer the proposed protections receive some benefit from the proposed requirements since providers currently offering these protections could change their terms and conditions and stop providing these protections in the future, absent the proposed rule.

quantities nor the required database currently exists. However, industry studies provide some insight into the magnitude and distribution of these determinants of the potential benefits from these provisions.

The Bureau first considers the number of consumers with prepaid accounts that currently do not offer the limited liability and error resolution protections, including access to provisional credit, which the proposed rule would require for registered prepaid accounts (and would continue to require for all payroll card accounts and government benefit accounts). As described above, surveys suggest that between eight and 16 percent of consumers have used a general purpose prepaid card in the past 12 months.[468] Providers of these products are probably not required, at present, to offer any of the limited liability and error resolution protections required by the proposed rule to consumers, except for those consumers with prepaid accounts that receive Federal payments (and therefore are covered by the FMS Rule).

However, financial institutions offering prepaid accounts may (and often do) voluntarily offer these protections. As discussed above, the Bureau's Study of Prepaid Account Agreements found that the vast majority of programs reviewed follow Regulation E's limited liability

[468] *See* Bd. of Governors of the Fed. Reserve Sys., *Consumers and Mobile Financial Services 2014*, at 48 Tbl.C.8a (Mar. 2014), *available at* http://www.federalreserve.gov/econresdata/consumers-and-mobile-financial-services-report-201403.pdf. *See also* 2014 Pew Survey, at 1. For the purpose of this survey, respondents were explicitly told not to include gift cards, rebate cards, credit cards, or phone cards. Five percent of adults reported using a prepaid card at least once a month. *See also* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households*, at 29-30 (Oct. 2014), *available at* https://fdic.gov/householdsurvey/2013report.pdf (which reports that 12 percent of households surveyed had ever used prepaid cards, 7.9 percent have used a prepaid card in the last 12 months, and 3.9 percent have used a prepaid card in the last 30 days). *See also* Mercator Advisory Grp., *Prepaid 2013: U.S. Consumers Buying More Cards For Own Use*, at 9 (Oct. 2013) (which reports that seven percent of households surveyed in 2013 currently use a GPR card). *See also id.* at 11 (which reports that 14 percent of households surveyed in 2013 purchased a GPR card in the last year). *See also* GFK, *GfK Prepaid Omnibus Research Findings*, at 6 (2014), *available at* http://www.nbpca.org/~/media/2519B8BADB1B4388BA5F11C511B3ACAE.ashx. The definition of prepaid card in this survey appears to have included some products that would not be covered by the proposed definition of prepaid account. This survey found that 16 percent of respondents had used a "prepaid card" that was not a gift card in the last 12 months.

protections. In addition, most prepaid programs appear to follow Regulation E's error resolution regime, including provisional credit requirements. Excluding payroll card account programs and government benefit account programs (which are currently required to comply), over two-thirds of included programs provide error resolution protections, with provisional credit, consistently with Regulation E. The majority of the remainder offered some form of error resolution, albeit with limitations on the conditions under which provisional credit is offered. Among the programs reviewed that were offered by the largest GPR providers, the Study of Prepaid Account Agreements found that roughly 80 percent currently offer error resolution with provisional credit and all offer limited liability protections. Most remaining programs offer full error resolution with provisional credit in limited circumstances.

For the foregoing reasons, the Bureau believes that the number of consumers with prepaid accounts that do not currently offer the limited liability and error resolution (including provisional credit) protections that would be required by the proposed rule is small.[469] However, the proposed rule would provide consumers who lack these protections with important benefits. Further, since financial institutions that voluntarily offer these protections could change their terms and conditions at any time, the proposed rule would remove the risk to consumers that these protections would be discontinued.

The Bureau believes that data describing the average size of the financial losses consumers currently experience from unauthorized transfers or other errors that would be covered by the proposed rule or the frequency with which these events occur are not available.

[469] One study which asserts that it covers programs accounting for 90 percent of active GPR cards in circulation found that all providers offered liability and error resolution provisions consistent with those in Regulation E. *See* Ctr. for Fin. Serv. Innovation, *Prepaid Industry Scorecard, Assessing Quality in the Prepaid Industry with CFSI's Compass Principles*, at 12 (Mar. 2014), *available at* http://cfsinnovation.s3.amazonaws.com/CFSI_Prepaid_Industry_Scorecard_2014.pdf.

However, these quantities may be associated with certain observable factors. The average size of a transaction is likely correlated with the loss to the consumer if the consumer is fully liable for the loss. For example, if a consumer were charged for a given purchase twice instead of once or were charged for a transaction that should have been cancelled, the loss would be correlated with the typical size of those transactions.[470] Similarly, the balance typically held in a prepaid account should be correlated with the loss to the consumer if account access is compromised and the consumer is fully liable. Finally, the frequency of transactions is likely correlated with the probability of a loss since transacting with a prepaid account creates exposure to transaction-related errors.

Although data that would permit the Bureau to quantify the potential benefits to consumers from the proposed requirements is limited, recent research can provide some information. One study analyzed prepaid accounts from one large program manager's GPR card program and reports whether the prepaid accounts receive periodic government direct deposits (and therefore are subject to the FMS Rule if it is a Federal payment), periodic non-government direct deposits, periodic self-funded loads, occasional reloads, or are never reloaded.[471] It found that 46 percent of GPR cards analyzed have periodic self-funded reloads and cumulative monthly purchases of $266.[472] The average lifespan of the cards that have periodic self-funded reloads

[470] The Bureau recognizes that the risk of loss is likely different for different types of transactions. For example, one study using data from a large program manager's GPR card portfolio shows that fraud rates differ by transaction type. *See* Kansas City Fed Study, at 72 tbl.6.1. Thus, the size of a typical transaction need not be similar to the size of a typical loss on a transaction (conditional on a loss occurring) since the types of transactions most susceptible to fraud may be relatively high-value or low-value.

[471] *See id.* at 43 tbl.2.1. It is worth noting that the shares of load types reported in Table 2.1 of this study add up to 102 percent.

[472] *See id.* at 43 tbl.2.1, 59 tbl.4.9.

was 256 days; the median, however, was only 60 days.[473] An additional 13 percent of GPR cards analyzed had occasional reloads, cumulative monthly purchases of $94, an average life of 489 days, and a median life of 330 days; and 18 percent of GPR cards analyzed have periodic non-government direct deposit, cumulative monthly purchases of $660, an average life of 925 days, and a median life of 570 days. To the extent that these figures are representative of other prepaid programs, they suggest that approximately three-quarters of GPR cards may be used for significant purchases and are likely not within the current scope of Regulation E (or the FMS Rule). Other researchers have also identified programs that offer prepaid cards that consumers regularly load with funds, but are not payroll cards, are active for at least a year and are used for many thousands of dollars in purchases, loads, and cash withdrawals.[474]

Only limited data describing the frequency of transactions is available, and while these frequencies should correlate with the probability of a loss, the Bureau would require additional information to convert these frequencies into probabilities.[475] There is, however, some suggestive information about the risk of loss in data describing the incidence of fraud with GPR cards offered by one large program manager. According to one study using this data, approximately six out of every 10,000 transactions with GPR cards involve fraud, with a loss of $9.60 for every $10,000 transacted.[476] To the extent consumers are the victims of these frauds, and to the extent these average figures are similar for all types of prepaid accounts, these

[473] *See* Kansas City Fed Study, at 47 tbl.4.1.

[474] *See* 2012 FRB Philadelphia Study, at 67.

[475] Prepaid cards with periodic self-funded reloads average 5.7 purchases and 6.5 debits per month. Prepaid cards with occasional reloads average 2.0 purchases and 2.3 debits per month, and prepaid cards with periodic non-government direct deposits have 18.1 purchases and 21 debits per month, on average. Kansas City Fed Study, at 50 tbl.4.3, 59 tbl.4.9.

[476] Kansas City Fed Study, at 72 tbl.4.9.

numbers provide some information about one particular risk that consumers encounter in using prepaid cards and one benefit of the proposed rule.

The Bureau believes that some consumers with prepaid accounts could receive important benefits in certain circumstances from the additional protections that would be required by the proposed rule. Further, the share of consumers with prepaid accounts who could potentially receive these benefits may grow over time. One group of industry analysts predicts that the GPR segment of prepaid accounts will grow on average 11 percent each year from 2012 to 2016, and there appears to be sustained interest among consumers in using GPR cards as transaction accounts.[477] While the voluntary provision of limited liability and error resolution (including provisional credit) protections might keep pace with this expansion, it is also possible that growth could lead to new forms of product differentiation, including variation in consumer protections.

To the extent that providers sustain increased losses from the requirement to extend Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts, the proposed provisions may result in decreased access to these products if financial institutions are more apt to close accounts that have repeated or unusual error claims or to limit who can open accounts in the first place. Additionally, the proposed requirements may result in decreased access to these accounts for some consumers if financial institutions implement more rigorous screening requirements. That is to say, financial institutions would have an increased incentive to identify customers who would be likely to

[477] Mercator Advisory Grp., *Tenth Annual U.S. Prepaid Cards Market Forecasts, 2013-2016*, at 16 (Oct. 2013). The graph reports the growth rate in the aggregate amount loaded onto cards. This growth rate approximates the growth rate in the number of accounts as long as the amount loaded per account remains fairly stable, but it would overstate the growth rate in the number of accounts if the amount loaded per account is increasing.

make fraudulent error claims and deny them access to these accounts. This screening may, however, also cause some consumers who would not make such claims to be denied access to these accounts. Further, to the extent that the screening technology correctly identifies those individuals who are likely to make fraudulent error claims, negative externalities arising from these individuals' fraudulent claims activities (which benefit these consumers while imposing costs on other consumers and market participants) are reduced.

b. Benefits and Costs to Covered Persons

In general, the potential costs to covered financial institutions arising from the proposed requirements would depend on their current business practices, the number and types of errors that their consumers claim, and any potential future changes that would affect the number and types of errors claimed, separate and apart from the proposed rule. Implementation of the proposed requirements would be simplified by the fact that financial institutions offering prepaid accounts generally keep a central record of transactions and track authorized users.

If adopted, the proposed rule would require that those covered financial institutions that do not currently offer their consumers limited liability and error resolution protections in accordance with Regulation E establish procedures for complying with the proposed requirements or modify existing procedures (depending on their current practices). Specifically, covered financial institutions that do not currently offer these protections would need to develop the capacity to give the required disclosures to consumers, receive oral or written error claims, investigate error claims, provide consumers with investigation results in writing, respond to any consumer request for copies of the documents that the institution relied on in making its

determination, and correct any errors discovered under the required timeframes.[478] If unable to complete their investigation within the required timeframe (generally 10 business days), covered financial institutions would be compelled to extend provisional credit and, in the case that a provisionally credited amount is subsequently reversed, notify the consumer.

For those covered financial institutions that do not currently offer limited liability and error resolution protections in the manner required by the proposed rule, the extension of these protections would require the establishment or modification of practices and procedures, as well as employee training. The establishment or modification of these practices and procedures would constitute a one-time implementation cost for those financial institutions that do not currently offer limited liability and error resolution in the manner required by Regulation E, and implementing these procedures would constitute an ongoing cost for covered financial institutions.[479] The costs associated with implementing these procedures would be a function of the number and types of errors that consumers claim which, in turn, may be affected by the composition of the customer base and how those customers use their prepaid accounts.

Errors may vary on many dimensions that affect the cost associated with their investigation.[480] The Bureau spoke with several program managers who immediately resolve disputes involving amounts below a certain de minimis threshold since the amount of funds at issue does not justify the likely cost associated with conducting the investigation. Separately,

[478] Covered financial institutions often rely on industry partners to perform some or all of these functions.

[479] It is possible that those institutions that currently offer Regulation E compliant error resolution on a voluntary basis would choose to rely on higher-skilled staff or perform additional reviews to assess compliance if the proposed rule were adopted. CFPB, *Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations, Findings on Relative Costs for Systems, Personnel, and Processes at Seven Institutions*, at 96 (Nov. 2013), *available at* http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf .

[480] In addition, with the proposed requirement to extend provisional credit, there could be additional monetary costs associated with errors that require an extended timeline for investigation aside from the cost associated with the investigation itself.

when an investigation is conducted, resolution times may be affected by the responsiveness of third parties, including merchants and ATM owners, and may be subject to timeframes established by networks or other standard setting bodies.[481] Additionally, the amount of information provided by the consumer and the timeliness of the report can affect the duration of the investigation.[482] For instance, ATM error claims may result from an ATM malfunction that causes the consumer to receive the wrong amount of funds or from unauthorized use. Error claims that occur when an ATM dispenses the incorrect amount of funds are generally resolved when the ATM is balanced; however, in cases involving unauthorized ATM use, it is possible that the investigation may include obtaining and consulting video evidence.

Errors may also vary in terms of their legitimacy. Consumers may assert that an error occurred when one did not occur either to attempt to defraud the financial institution or due to a misunderstanding. Since, under EFTA, the burden is on the financial institution to establish that the transaction in question was not an error, it is possible that the financial institution would be liable for errors that may not be legitimate. Because the financial institution may be held liable for the error unless it can determine the error is not legitimate, it is helpful to classify alleged errors based on whether the financial institution would be ultimately liable for the error as opposed to whether the error actually occurred. Therefore, for the sake of discussion, the Bureau classifies disputes as either substantiated or unsubstantiated.

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[481] Payment card network rules may require the merchant acquirer to reply within a specified timeline in certain instances and may, in turn, require merchants to follow the acquirer's time frame for responding to such requests. *See* Visa Inc., *Chargeback Management Guidelines for Visa Merchants* at 24 (2014), *available at* http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf.

[482] One program manager reported to the Bureau that, in 85 percent of cases, there were 15 or fewer days between the transaction date and the initial notification date. Another program manager reported that in 76 percent of cases, there were 10 or fewer days between the transaction date and the dispute notification date.

Substantiated disputes include situations in which the financial institution credits the consumer's account, either because an error legitimately occurred or because an error was illegitimately asserted and the financial institution could not establish that the transaction was authorized.[483] In the case of substantiated disputes, covered financial institutions that do not currently offer limited liability and error resolution rights consistent with Regulation E would incur one-time and ongoing costs associated with training personnel, as well as one-time and ongoing costs associated with information technology support to track reported disputes, investigations, resolutions, and to produce reports for internal audit and potential supervisory review. Ongoing costs associated with conducting investigations would include compensating personnel tasked with dispute intake, obtaining receipts and other documentation from merchants or ATM owners, and communicating investigation findings to the consumer. When the financial institution can neither establish that the electronic fund transfer was authorized nor receive a credit from the merchant or ATM owner, covered financial institutions also would incur costs associated with paying funds to consumers.[484]

Additionally, the proposed rule would require covered financial institutions to extend provisional credit to consumers asserting an error claim when the length of the investigation exceeds 10 business days. In cases where the claim is ultimately substantiated, offering provisional credit represents little additional cost to the financial institution over and above any costs associated with error resolution because the amount credited is ultimately due to the

[483] Note that in some limited situations, payment card network rules permit the issuer to perform a merchant chargeback and be reimbursed. *See* Visa Inc., *Chargeback Management Guidelines for Visa Merchants*, at 43-88 (2014), *available at* http://usa.visa.com/download/merchants/chargeback-management-guidelines-for-visa-merchants.pdf.

[484] The Bureau spoke with several program managers regarding error resolution, and the rate at which error claims were paid out varied greatly. One program manager paid out roughly half of the claims made (including those credited by the merchant), with under 30 percent paid by the program manager.

consumer following the investigation. Since the financial institution would be required to pay the claim under the error resolution provision, the only cost to the financial institution associated with expediting the availability of funds is the opportunity cost of those funds as applied to another investment for the applicable period. The Bureau expects that this cost is generally negligible.

In contrast, unsubstantiated disputes occur when the financial institution is able to establish that a transfer was authorized and, therefore, that institution is not ultimately required to return funds to the consumer. In the case of unsubstantiated disputes, covered financial institutions that do not currently offer error resolution rights would incur costs associated with conducting investigations, and covered financial institutions that do not currently offer provisional credit would incur costs associated with crediting accounts when the length of the investigation exceeds 10 business days. Although the financial institution extending provisional credit could subsequently reverse the credit were it able to establish that the transfer was authorized, the consumer may draw down the funds in the interim or intentionally close the account and abscond with the funds.[485] This could result in the financial institution losing all or some of the provisional credit formerly extended. For provisional credit that could be reclaimed, the financial institution would incur a small opportunity cost of those funds as applied to another investment for the period spanning when the funds were granted and when they could be reclaimed. The Bureau expects that this cost generally would be negligible.

To a certain extent, financial institutions would be able to limit losses associated with error claims. In discussions with prepaid account providers, the Bureau learned that financial

[485] One program manager told the Bureau that it was unable to reclaim provisional credit extended in roughly 65 percent of the cases in which a merchant could provide proof that the electronic fund transfer was authorized.

institutions often close (or could close) accounts that have repeated error claims, thereby limiting their exposure to potential losses, and may add individuals to a watch list. Additionally, industry partners sometimes share information regarding individuals who appear to be instigating fraudulent activity, and one payment card network has plans to create a centralized database to better detect fraud on prepaid cards.[486] The presence or absence of direct deposit, customer tenure, and card use patterns – including the type of merchant and the existence of prior activity at the merchant or ATM – can all be used to predict the likelihood that fraud occurs. If adopted, the imposition of the proposed liability provisions may encourage covered financial institutions to invest in more robust systems to prevent errors to the extent that they do not currently abide by such provisions.

Although most programs reviewed as part of the Bureau's Study of Prepaid Account Agreements provided error resolution with provisional credit, there was some heterogeneity across programs with respect to the error resolution and provisional credit policies. To the extent that concern regarding the absence of a comprehensive Federal regulatory regime governing error resolution is currently limiting consumer adoption of prepaid accounts, providing for Regulation E limited liability and error resolution coverage, with provisional credit, for prepaid accounts – which include person-to-person transfer products -- would help to facilitate wider adoption of these accounts and could benefit providers. Additionally, since the costs associated with complying with the proposed rule would vary across covered financial institutions,

[486] All U.S. Visa prepaid issuing financial institutions and their program managers will be required to report into Visa's Prepaid Clearinghouse Service by June 2015. *See* Press Release, Visa Inc., *Visa Prepaid Clearinghouse Service Creates Centralized Database to Better Detect and Prevent Fraud Schemes on Prepaid Card*s (Feb. 27, 2014), *available at* http://investor.visa.com/news/news-details/2014/Visa-Enhances-Industry-Fraud-Detection-on-Prepaid-Cards/default.aspx. While the Bureau supports industry efforts to reduce fraud, the Bureau cautions that any entities that maintain or furnish watch lists, screening programs, or other similar services should consider whether and how the Fair Credit Reporting Act or other statutes may apply to its activities.

providers that are already offering these protections may benefit if competitors need to raise prices or degrade quality to cover the costs associated with extending these protections to consumers. However, those providers that are presently offering these protections on a voluntary basis would lose the option of ceasing to offer such protections to consumers in the future were the proposed rule adopted.

4. Requiring the Posting and Provision of Prepaid Account Agreements

The proposed rule would require issuers to submit agreements governing prepaid accounts that they offer to the Bureau on a quarterly basis for posting on a publicly-available website established and maintained by the Bureau. *See generally* proposed § 1005.19.[487] Issuers would not be required to submit agreements to the Bureau if they qualify for one of two exceptions; these include (1) a de minimis exception for those issuers that had fewer than 3,000 open prepaid accounts as of the last day of the calendar quarter[488] and (2) a product testing exception for those prepaid products offered to a limited group of consumers and otherwise meeting the requirements specified in proposed § 1005.19(b)(5). Issuers would also be required to post and maintain on their publicly available website any prepaid account agreements that the issuer must submit to the Bureau. *See* proposed § 1005.19(c).

In addition to these requirements, proposed § 1009.19(d) would require that issuers provide access to individual account agreements to any consumer holding an open prepaid account, unless such agreements would be required to be submitted to the Bureau pursuant to

[487] Only those agreements offered to the public as of the last business day of the preceding calendar quarter that have not been previously submitted as well as those agreements that have been amended would be required to be submitted. *See* proposed § 1005.19 (b)(1)(ii) and (iii). In addition, the issuer must notify the Bureau of any prepaid account agreement previously submitted that the issuer is withdrawing. *See* proposed § 1005.19 (b)(1)(iv).

[488] *See* proposed § 1005.19(b)(4).

proposed § 1005.19(b) or posted on the issuer's website pursuant to proposed § 1005.19(c). An issuer could fulfill this requirement by posting and maintaining the consumer's agreement on its website or by promptly providing a copy of the agreement in response to a consumer's request.[489]

a. Benefits and Costs to Consumers

The proposed provisions would generally increase the amount of information available to consumers regarding prepaid accounts both when shopping for a prepaid account and after acquisition of the prepaid account. Having internet access to account agreements (both on the Bureau's website and on the issuer's website) would enable suitably motivated consumers to more easily compare the fees, as well as other terms and conditions, of various prepaid account products. By placing this information on the Bureau's website, side-by-side comparisons may be facilitated, and third parties would have more readily available access to this information should they want to develop shopping tools for consumer use. By decreasing consumer search costs and generally making available products and their terms more transparent, consumers seeking a prepaid account should benefit from additional competition in the market for such accounts. Increased competition could result in lower prices, higher quality products, or both.

For those consumers who have already acquired their prepaid account, access to the account's terms and conditions, regardless of whether the account is currently offered to the public, could be helpful should a question arise regarding the terms of the account. Given that some accounts are held for a period of years, it is possible that consumers might misplace the

[489] If the issuer chooses to comply with this requirement by providing a copy of the agreement in response to a consumer request, the issuer would be required to provide the consumer with the ability to request a copy of the agreement by calling a readily available telephone line. The issuer would be required to send to the consumer or otherwise make the copy of the consumer's agreement available no later than five business days after the issuer receives the consumer's request.

initial disclosures provided with their prepaid accounts. Having the terms and conditions available post-acquisition could be helpful if a consumer wishes to assert an error or if other questions arise regarding the account.

Actual and potential consumer holders of prepaid accounts could also benefit from the requirement that issuers provide prepaid account agreements to the Bureau on a quarterly basis. In addition, knowing that agreements must be provided to the Bureau and posted on a website could serve as an impetus for prepaid account issuers to ensure that they are complying with all applicable regulatory requirements.

b. Benefits and Costs to Covered Persons

As a result of the proposed provisions, issuers of prepaid accounts that do not qualify for the de minimis exception would be required to review information for all products, except those qualifying for the product testing exception, on a quarterly basis to determine whether they need to provide any agreements to the Bureau or to notify the Bureau that they are withdrawing an agreement. In addition, issuers would need to ensure that any submission includes the elements described in proposed § 1005.19(b)(1). The Bureau expects that the burden imposed by this reporting requirement would be minimal, as issuers are required to maintain current account agreements for other purposes.

In addition, those issuers of prepaid accounts that are required to submit prepaid account agreements to the Bureau would be required to post prepaid account agreements on their publicly available website. Many issuers of prepaid accounts currently make account agreements available on their websites, but the proposed rule would require that issuers that do not qualify for the de minimis exception post and maintain any agreements currently offered to the public that do not qualify for the product testing exception. Therefore, issuers would need to ensure

that their websites include current agreements. The Bureau anticipates that some issuers would need to restructure their websites so that required agreements are publicly available. In addition, issuers of payroll card accounts, the terms of which are often individually negotiated with employers, would need to post the agreements for each account that does not qualify for the product testing exception, if the issuer does not qualify for the de minimis exception.

The proposed rule would also require that all issuers provide consumers with access to the agreement for their prepaid account, unless such agreements would be required to be submitted to the Bureau pursuant to proposed § 1005.19(b) or posted on the issuer's website pursuant to proposed § 1005.19(c). For those issuers choosing to comply with this requirement by posting the relevant agreements online, the issuer would need to ensure that its website includes all agreements for open accounts and to ensure that the online agreements posted online were complete and up-to-date should product offerings evolve. For those issuers choosing to comply with the requirement by mailing a paper copy of the agreement or otherwise making a copy of the agreement available in response to a consumer request, the cost associated with this provision would depend on the frequency with which consumers make requests for such information. Costs associated with fulfilling such requests could consist of customer service agent time spent receiving and responding to a request made via telephone, as well as postage or other materials should the issuer respond to the inquiry with a paper copy of the agreement. Those issuers choosing to comply in this manner would also potentially incur implementation costs associated with training customer service agents to handle such requests and/or changing existing IVR menu options.

5. Requirements relating to overdraft services and other credit features offered in connection with prepaid accounts

The proposed rule would address overdraft services and other credit features offered in connection with prepaid accounts. Under the proposed revisions to Regulation Z, the Bureau anticipates that, to the extent overdraft services or other credit features are offered in connection with prepaid accounts, those features would meet the definition of "open-end credit."[490] In addition, under the proposal, a prepaid card or account number that accesses such an overdraft service or other credit feature generally would be a "credit card" under Regulation Z, and the overdraft services and other credit features ("credit card plans") described above would therefore be governed by subparts A, B, D, and G of the regulation.[491] In addition, the proposal includes modifications to Regulation E that would be applicable to prepaid accounts that may offer such credit features in connection with the account. As a result of these changes, financial institutions and card issuers would be newly subject to a number of requirements, as summarized below.

Of particular importance to assessing potential impacts, the proposed rule includes provisions that would restrict the type and structure of fees that may be imposed by issuers in connection with credit card plans or by financial institutions in connection with prepaid accounts

[490] This would generally apply if the creditor establishes a program where the creditor reasonably contemplates repeated extensions of credit for which the creditor assesses fees. *See* section-by-section analysis of § 1026.2(a)(20) (the Regulation Z definition of open-end credit) above for more detail.

[491] Transactions that are authorized on a prepaid account when the consumer has insufficient or unavailable funds at the time of authorization as well as transactions that are paid from a prepaid account when the consumer has insufficient or unavailable funds at the time of payment would generally be considered to be credit under Regulation Z. However, under the proposal, Regulation Z would not apply to overdraft services or other credit features accessed by a prepaid card that are not subject to any finance charge or fee and not payable by written agreement in more than four installments.

which are associated with such plans.[492] For example, Regulation Z generally requires card issuers to limit fees (as opposed to periodic interest rates) to 25 percent of the credit limit during the first year after the consumer opens the credit card account. *See* § 1026.52(a). This limit would apply to any per-transaction fees. In addition, the proposed rule would modify Regulation E to specify that on a prepaid account product where a credit card plan may be offered at any point to the consumer in connection with the prepaid account, a financial institution that establishes or holds such a prepaid account may not apply terms and conditions (to transactions solely accessing the prepaid account) – including fee schedules – that differ depending on whether the consumer elects to link such a credit card plan to the prepaid account. *See* proposed § 1005.18(g)(2).

In addition to these restrictions on fee structure, certain provisions of Regulation E and Regulation Z, which would be newly applicable to such accounts and plans, would restrict how a balance incurred on a credit card plan linked to a prepaid account may be repaid. In Regulation E, the proposal would apply the EFTA compulsory use provision to prepaid accounts with credit features. Accordingly, creditors would not be able to require the repayment of credit extended under a credit feature by electronic means on a preauthorized, recurring basis.[493] In particular, creditors would be required to offer prepaid account consumers a means to repay their outstanding credit balances other than by automatic repayment from the prepaid account (such as by means of a transfer of funds from the asset account to the credit account that the consumer

[492] Section 1026.52(a) specifies that, other than periodic interest rates, most fees that are charged during the first year after the credit account is opened would be subject to a cap of 25 percent of the initial credit line; § 1026.52(b) would place limits on penalty fees, including a prohibition on fees for transactions that the card issuer declines to authorize; and § 1026.56 would prohibit over-the-limit fees unless the consumer opts-in (and the consumer cannot be charged more than one fee per month if opted-in).

[493] However, a creditor may offer an incentive to consumers to agree to repayment by recurring, preauthorized EFTs.

initiates on the prepaid account's online banking website). *See* proposed § 1005.10(e)(1). Further, within Regulation Z, the proposal would require that under an authorized repayment plan where issuers may periodically deduct payments from the consumer's deposit account, issuers may not deduct a payment more frequently than once per calendar month and must obtain the consumer's written, signed agreement to automatic repayment. *See* proposed § 1026.12(d). In addition, the proposal would require that periodic statements for the credit card account be mailed or delivered 21 days prior to the payment due date.[494] This ensures a time gap between when a debt is incurred and when it is due to be repaid for all credit card accounts, including those not subject to an authorized repayment plan.

Pursuant to Regulation Z, persons offering such credit card plans would additionally be required to comply with a number of requirements governing solicitation, disclosure, liability, and error resolution. Further, in providing a credit card plan, a card issuer would be required by § 1026.51(a) to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make the required minimum periodic payments under the terms of the plan, based on the consumer's income or assets and the consumer's current obligations. In addition, proposed § 1005.18(g) and proposed § 1026.12(h) would prohibit an issuer from opening a credit card account in connection with a prepaid account, or providing a solicitation or an application for a credit card plan in connection with a prepaid account, any time prior to 30 days after the consumer has registered the prepaid account. Consumers with prepaid accounts who wish to add a credit card plan would be required to make an explicit request or application for the credit line. *See* § 1026.12(a)(1). Were an issuer or other person to offer an overdraft service or other credit

[494] *See* section-by-section analysis of §§ 1026.5(b)(2)(ii) and 1026.7(b)(11) above.

feature in connection with a prepaid account, credit card applications and solicitations would need to comply with the requirements specified in § 1026.60. Credit card issuers would also be required to provide the account-opening disclosures required by § 1026.6(b) before the first transaction is made under the credit plan.

Regulation Z also includes a number of disclosure requirements that would apply to credit card plans offered in connection with prepaid accounts in addition to the solicitation or application disclosures and the account-opening disclosures discussed above. Persons offering a credit card plan in connection with a prepaid account would be required by § 1026.7 to provide a periodic statement for each billing cycle in which the account has a debit or credit balance of more than $1 or a finance charge has been imposed. The Regulation Z periodic statement requirements would be in addition to those of Regulation E for the prepaid account.[495] Issuers generally would also be obligated to provide the disclosures described in § 1026.9 when changing terms on the credit card account.

Transactions performed using a credit line established in connection with an overdraft service or other credit feature may be subject to additional liability and error resolution protections that extend beyond those protections afforded to transactions involving funds drawn from a prepaid account. For those transactions subject to Regulation Z's liability limitations, existing § 1026.12(b) restricts consumer liability to $50. By contrast, Regulation E's liability limitations permit a financial institution to hold a consumer liable for up to $500 if the consumer

[495] In addition, as mentioned above, § 1026.5(b)(2) specifies that periodic statements would need to be mailed or delivered at least 21 days prior to the payment due date on the statement.

does not report the loss in a timely manner.[496] *See* existing § 1005.6(b). Regulation Z's definition of error is more expansive than Regulation E's definition of error and includes an extension of credit for property or services not accepted by the consumer or the consumer's designee or not delivered as agreed. *See* existing § 1026.13(a). Since Regulation Z and Regulation E specify different liability limitations and error resolution procedures, the proposed rule specifies which limitations and procedures would apply to transactions involving a prepaid account that has a credit feature. For those transactions that exclusively draw on a credit feature, the proposed rule specifies that Regulation Z's liability limitations and error resolution procedures would apply.[497] For those transactions that both debit a prepaid account and draw on a credit feature, Regulation E's liability limitations and error resolution rules, as well as part of Regulation Z's error resolution rules, described in existing § 1026.13(d) and (g), would apply to the transaction. For those transactions that solely debit a prepaid account, the Regulation E liability limits and error resolution rules apply.

In the Bureau's consideration of benefits, costs, and impacts arising from these proposed provisions, the baseline for discussion of these provisions is the current market for prepaid accounts.[498] In addition, in order to more fully inform the proposed rulemaking, the Bureau also discusses, further below, the potential future impacts relative to how the market might evolve absent the proposed rule. Consistent with the discussion of other provisions in this proposal, this

[496] Irrespective of whether a transaction is subject to the liability limitations of Regulation Z or those of Regulation E, payment card networks' "zero liability" programs may further limit consumers' liability for unauthorized transactions.

[497] For those transactions that occur using a prepaid account that does not draw at all on the line of credit, Regulation E's liability limitations and error resolution procedures would apply.

[498] The Bureau has discretion in future rulemakings to choose the relevant provisions to discuss and the most appropriate baseline for that particular rulemaking.

baseline incorporates both the existing regulatory structure as well as other economic attributes of the relevant market, most notably the current set of incumbent firms and potential entrants and the underlying preferences of consumers.

The Bureau's understanding is that, at present, a number of providers offer prepaid accounts to consumers. The vast majority of these providers do not offer any credit features in connection with prepaid accounts, and thus would be largely unaffected by the various credit provisions described above.[499] However, one of the largest providers of prepaid accounts offers an overdraft service in connection with its prepaid accounts (which include GPR cards and payroll card accounts). Although the number of consumers who are eligible for overdraft services in connection with such accounts is not negligible, those regularly using overdraft services represent only a small minority of consumers with prepaid accounts, even for that one provider. A reasonable estimate of the current market indicates that less than one percent of prepaid account holders regularly use overdraft or other credit features.[500] For that reason, the benefits, costs, and impacts arising from these prepaid credit provisions would have only a limited effect on prepaid account consumers generally, as described more fully below.

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[499] As noted above, some account agreements reserve the right to impose negative balance fees, which may fall under the proposed credit provisions. However, the Bureau believes that most providers would withdraw such requirements, which would have minimal impact since these charges do not appear to be imposed frequently at any rate.

[500] Although NetSpend is a significant provider of prepaid accounts, a recent news article reported that only six percent of NetSpend's customers regularly use overdraft. *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit*, Wall Street J. (Sept. 5, 2012), http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602. In addition, a larger percentage of accounts would potentially be eligible for their overdraft program. A recent financial filing suggested that NetSpend had 3.4 million active cards as of June 30, 2014 and 47 percent of those active cards had direct deposit. *See* Total Sys. Serv. Inc., Form 10-Q , at 28, *available at* http://www.sec.gov/Archives/edgar/data/721683/000119312514300851/d737574d10q.htm (for the quarterly period ended June 30, 2014). One projection estimates that there are 22.4 million active prepaid debit and payroll cards in the United States as of 2014. *See* Aite Grp. LLC, *The Contenders: Prepaid Debit and Payroll Cards Reach Ubiquity*, at 13 (Nov. 2012).

For the small number of prepaid providers that currently offer overdraft services, the Bureau understands that providers of these accounts condition eligibility on receipt of a regularly-occurring direct deposit over a predetermined amount. Additionally, consumers must affirmatively choose (opt-in to) the service. Therefore, given the current market baseline, consumers may find themselves in one of four categories depending on whether they access (or desire to access) the overdraft service or not and whether they meet the eligibility requirements or not.[501]

In order to more fully inform the proposed rulemaking, the Bureau also discusses potential future impacts relative to how the market might evolve absent the proposed rule. As discussed above, the Bureau's understanding is that few providers currently offer overdraft services in connection with prepaid accounts. The Bureau understands that other firms might be considering doing so in the future, and the proposed provisions could affect the projected future profitability of business plans.

a. Benefits and Costs to Consumers

As detailed further below, the Bureau believes that the proposed requirements concerning disclosures, account opening, liability limitations, and error resolution procedures would provide a number of consumer benefits, mirroring the same benefits that Congress conferred on credit card account holders under Federal law. In some cases the proposals would heighten consumer protections relative to current industry practices, and in other cases the proposal would codify requirements that are largely consistent with current practices but not required as a matter of Federal law. In light of the modest credit limits currently offered in the market, the Bureau

[501] That is, consumers may either (1) meet the eligibility requirements and use the service; (2) not meet the eligibility requirements and desire to use the service; (3) meet the eligibility requirements and not desire to use the service; or (4) not meet the eligibility requirements and not desire to use the service.

believes that these provisions would have minimal impacts on which consumers have access to the credit features, the amount of credit offered, or the payment terms.

The proposed rule includes certain other provisions that, in contrast, would likely incentivize those providers offering a credit feature to change how their prepaid accounts are priced and the terms on which these credit features are offered. These changes could potentially affect which consumers have access to these credit features or which consumers desire these features. In addition, the proposed rule would provide consumers who use such credit features with the recognized benefits associated with the disclosure provisions, liability limitations, billing error rights, and other protections that are provided to consumer holders of credit card accounts.

The benefits, costs, and impacts arising from the proposed provisions would likely vary with the intensity of the consumer's use of overdraft services. Consumers who use prepaid accounts may do so to fulfill different needs. Some consumers who rely on prepaid accounts choose such products to help them control spending or as a budgeting aid.[502] Given this use, some of these consumers likely would not choose to use overdraft or other credit features in connection with their prepaid accounts. Other consumers may desire access to overdraft or other credit features but do not meet current eligibility requirements for such services.

As discussed below, the impacts would be most directly felt by those consumers who presently use prepaid accounts offered by the limited number of providers that offer overdraft services. Among those consumers who use the overdraft services from these providers, some

[502] Several studies as well as the Bureau's focus group research indicate that some consumers view spending control or budgeting as a benefit offered by prepaid accounts. *See, e.g.*, 2014 Pew Survey; The Pew Charitable Trusts, *Key Focus Group Findings on Prepaid Debit Cards* (Apr. 2012), *available at* http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/FSP1201420Pew20DebitCardsR10A4512pdf.pdf; *see also* ICF Report, at 5.

may knowingly rely on overdraft services only occasionally. Other consumers may knowingly overdraft frequently, choosing to rely on these services as a source of credit with regularity. Once an overdraft service is activated, consumers may also unintentionally overdraw their prepaid accounts if they are not closely monitoring their account balances.[503] Some providers currently mitigate this possibility by requiring users to sign up for text or email alerts or by other mechanisms, although they are not required to do so by Federal law.

The Bureau expects that the proposed restrictions on certain fees that may be charged to credit card accounts offered in connection with prepaid accounts would incentivize those providers offering credit features to change their pricing structures. Most notably, other than periodic interest rates, most fees charged during the first year after the credit card account is opened would be subject to the cap of 25 percent of the initial credit line, which already applies to credit cards pursuant to the CARD Act. Similar to the fee structure typically used for checking account overdraft products, those consumers currently utilizing an overdraft service in connection with a prepaid account are generally charged a per transaction fee that does not vary with the size of the overdraft.[504] These fees can be high relative to the amount of credit extended. As a consequence, for all but infrequent users of the credit card account, the proposed restriction on fees charged in the first year would be a binding constraint that would translate

[503] Prepaid accounts generally do not require a minimum balance, so balances held in these accounts can be quite low. According to one large program manager, the average account balance is less than $100 for prepaid accounts they offer. *See* Examining Issues in the Prepaid Card Market: Hearing before the Subcomm. On Fin. Inst. And Consumer Prot., S. Comm. On Banking, Housing and Urban Affairs, 112th Cong. 2 (2012) (Remarks of Daniel R. Henry, Chief Executive Officer, NetSpend Holdings, Inc.), *available at* http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=2bf6b634-fbf6-40d8-a859-3af59300f9d0&Witness_ID=b5fbcae3-a234-4d44-b13a-4f990befafe7 (stating that "They typically put a few hundred dollars into their card accounts every couple of weeks, and maintain an average balance of less the $100 *[SIC]*."). As a result, consumers may have insufficient funds for even relatively modest purchases.

[504] Although providers may limit the number of fees incurred within a specified time period or opt not to charge for overdrafts that cause an account to go negative by a de minimis amount, this choice is voluntary.

directly into lower transaction fees to consumers during the first year of their credit card account (conditional on consumers continuing to be eligible for and using a credit feature).[505]

Since this constraint would restrict the level of certain fees, it is possible that providers that offer credit features would respond by raising fees that are not subject to this constraint.[506] These providers could either charge an application fee for access to a credit card account (that would be assessed to the prepaid account prior to the opening of the credit card account), or they could raise other fees charged in connection with the prepaid account that do not relate to the credit feature. Since, under the proposal, a provider offering credit features would be required to offer the same terms and conditions for transactions accessing the prepaid account to all consumers regardless of whether they accept a credit feature, raising fees charged in connection with the prepaid account could result in a decrease in the quantity of prepaid accounts demanded from these providers, while raising an application fee could lead to a decrease in the number of consumers demanding credit.[507] Therefore, fewer consumers may choose to access prepaid accounts from these providers or credit features offered in connection with these providers' accounts if the proposal is finalized and affected providers impose or increase fees not subject to the restriction, as discussed above. It is also possible that providers may choose not to offer

[505] For instance, consumers may pay $15 per overdrawn transaction to access a credit line of $100. *See*, Comment Letter, Nat'l Consumer Law Ctr. et al., *NCLC Prepaid Card Comments Final*, Consumer Financial Protection Bureau docket CFPB-2012-009, at 8 (resubmitted July 23, 2012), *available at* http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0019-0218.

[506] Under the assumption that prepaid account providers are profit-maximizing firms, the fact that providers that offer credit features in connection with their prepaid accounts are not offering such a fee structure at present suggests that these providers' profits would decrease with this alternative fee structure.

[507] This could result from moving from an add-on pricing model to a model where the cost for access to the credit feature is borne upfront (and is therefore more salient for consumers). At present, the Bureau does not believe that consumers are presently charged a fee for opting in to overdraft services or other credit features offered in connection with prepaid accounts.

credit features in connection with prepaid accounts, or to offer them on different terms or to a more select set of consumers, relative to the present.

Those consumers who use overdraft services infrequently may pay higher prices or use less credit as a consequence of these provisions. For instance, if providers respond to the pricing restrictions by adopting a high application fee for the credit feature, those consumers who anticipate occasional use may not be willing to pay a salient and transparent up-front fee (unless they highly value the possibility of having this credit readily available), and therefore would cease to access the credit feature. This would be a benefit to some consumers, as it may prevent these consumers from inadvertently accessing a credit feature (after having opted-in) and incurring the attendant fees or may cause consumers to avoid accessing this particular form of credit. If an unanticipated need for funds were to arise, however, some of these consumers may need to rely on other potentially higher cost or less convenient credit sources since they would be unlikely to have the funds to pay an application fee at that point.[508] A consumer's need to manage a relationship with an additional financial services provider could also result in some efficiency losses and could render understanding the provider's terms and conditions more taxing and tracking account balances and due dates more costly.

[508] The extent to which this is true would depend on the size of the fee charged to establish access to the credit feature and the size of the credit line available.

The fees charged presently for overdraft services in connection with prepaid accounts, which generally range from $15 to $25 per transaction, are generally lower than chose charged for overdrafts from a checking account. According to data obtained from one research firm, the Bureau found that the median overdraft fee among the 33 institutions that the source monitors was $34 in 2012 and the median overdraft fee across nearly 800 smaller banks and credit unions was $30 in 2012. *See* CFPB Overdraft White Paper, at 52.

As noted, some consumers who utilize overdraft services with great frequency may do so due to poor account management skills.[509] Other consumers who frequently utilize these services may accurately anticipate their use of these services but still prefer to use an overdraft service or other credit feature associated with a prepaid account because they perceive it to be their best available option for receiving short-term credit. Regardless of the consumer's motivation for frequent use of the credit line, both types of consumers would likely pay lower fees in connection with these services (to the extent that they are able to access such services). As described above, the current fee structure offered by providers would not be permitted for all but occasional users of credit features in their first year of their account (assuming that the size of the credit lines offered remain unchanged).[510] Although providers may impose an application fee or raise other fees associated with the account, such upfront fees are salient to consumers, and a one-time fee of the magnitude of the total fees incurred by a consumer who overdrafts his account frequently is unlikely to be paid by many consumers. For current frequent users adopting credit card plans under the revised pricing structure, the marginal cost associated with accessing the credit card account would likely be lower, and these consumers would have increased incentive to utilize the credit card account once obtained relative to the present.

These changes to the pricing structure could also affect consumers not currently using overdraft. Along with changes in pricing structure, it is likely that the firms offering overdraft services or considering doing so would also alter their own eligibility criteria and that some

[509] According to one study, 41 percent of prepaid users who have ever had a checking account have either closed a checking account themselves or have had an account closed by an institution because of overdraft or bounced check fees. *See* 2014 Pew Survey, at 8.

[510] As discussed above, once a consumer has opted-in to a credit feature offered in association with a prepaid account, these consumers generally pay a per-transaction fee per overdraft that does not vary with the size of the overdraft. At present, there is generally no fee associated with opting-in to a credit feature offered in association with a prepaid account.

consumers who are currently eligible or would otherwise become eligible may lose or not obtain eligibility. The change in pricing structure could also change the opt-in trade-offs among consumers who currently have not opted-in.

Restricting how a balance incurred on a credit feature offered in connection with a prepaid account may be repaid would provide potential benefits to consumers. Specifically, the prohibition on offsets that would apply to the credit card account would permit consumers additional discretion over how funds deposited into prepaid accounts are used to pay off debts incurred on an associated credit card account. Consumers would have access to the funds in their prepaid account before a creditor, and they could decide whether those funds should be used to pay off any outstanding debts or for another use. Card issuers only would be permitted to sweep funds periodically from the prepaid asset account with the consumer's written authorization (and no more often than once per calendar month), meaning that consumers could benefit from additional control of their funds during the intervening period. In addition, the proposal would require that periodic statements for the credit card account be mailed or delivered 21 days prior to the payment due date. Practically speaking, this requirement would ensure a gap between when debts are incurred and when they are due to be repaid and would enable consumers to have access to funds that may ultimately be used to pay off a balance in the credit card account during the intervening period.

Decreasing the likelihood that debt payments are automatic would increase the onus on the consumer to remember to pay a debt and to budget for the debt's payment. This could result in some consumers unintentionally not paying the credit card debt and incurring more or higher fees (if, for example, providers offering credit features were to begin to assess late fees), or experiencing other adverse effects such as an inability to access additional credit, although

consumers could conversely choose to spend the funds in their prepaid account on something they deem to be a higher priority than the credit card debt.

At the same time, the proposed rule's restrictions on the ability of a card issuer to apply the funds in the prepaid asset account to debts outstanding in the credit card account would increase the risk borne by providers and (at least in the absence of countervailing measures) would generally make offering credit features in connection with prepaid accounts less profitable for providers. Consumers could incur some of these costs since, in order to compensate for that risk, those card issuers offering a credit feature could offer less credit to consumers, charge higher fees for credit extended, or both relative to the present.[511]

The proposed rule would require that persons offering credit card plans in connection with prepaid accounts adhere to certain timing restrictions governing when a credit feature may be opened or offered to a consumer which provides some transparency to the consumer and assurance that the consumer has the opportunity to become informed and consider options when applying for credit.[512] Additionally, credit card issuers would be required to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make required minimum payments when deciding to offer a credit card account to a consumer. These requirements are not expected to impact consumer access to credit generally beyond the impacts of other provisions already mentioned. Creditors can assess consumers' ability to pay at low cost, and as long as credit limits remain low it would be relatively easy for consumers who have

[511] The proposed rule would introduce restrictions on the magnitude of certain fees charged in connection with these credit card accounts.

[512] A consumer would be prevented from completing the application process for a credit card account offered in connection with a prepaid account until after 30 days had elapsed following the completion of the customer verification processes for the associated prepaid account.

or are eligible to have prepaid overdraft to be deemed able to make the minimum periodic payment on the small amount of credit currently extended in connection with these services.

The impact of the requirement to consider the consumer's ability to make required minimum payments when deciding to offer a credit card account to a consumer would also be attenuated should the proposed rule's restrictions on the ability of a card issuer to apply the funds in the prepaid asset account to debts outstanding in the credit card account be adopted. As noted, these latter provisions would increase the risk borne by providers and, as a result, they should have an increased incentive to verify the consumer's ability to pay, even absent this new provision.

Under the proposed rule, overdraft services and other credit features offered in connection with prepaid accounts would be characterized as credit, and fees assessed for accessing that credit would be characterized as finance charges. The proposed rule would impose distinct requirements for disclosure, liability limitations, and error resolution procedures for the prepaid account and the credit feature. These protections would directly benefit consumer holders of prepaid accounts that have a credit feature.

Periodic statements and other disclosures required by the proposed rule would enable consumers to monitor their credit card accounts. Consumers would potentially receive separate periodic statements for their credit card account and their prepaid account (or for the prepaid account, an electronic history of transactions), though providers are permitted to combine the two periodic statements if the requirements of Regulation E and Regulation Z are met in the combined statement. The periodic statement requirement would ensure that consumers receive important information regarding transactions performed and fees incurred using their credit card account. Providers may not disclose all information that would be required regarding the credit

card account absent this requirement. As noted above, transactions solely accessing the credit card account would be subject to different, stronger limited liability and error resolution protections than those transactions that do not access the credit card account.[513]

As an alternative, the Bureau also considered, among other options, extending the Regulation E overdraft opt-in regime (§ 1005.17) to prepaid accounts. To the extent that current providers of overdraft services offered in connection with prepaid accounts appear to be providing overdraft services consistently with these requirements, any impacts on consumers would be limited using the current market as the baseline for analysis, though this approach would forgo all of the benefits to consumers of applying the requirements of Regulation Z to prepaid accounts, as discussed above.

b. Benefits and Costs to Covered Persons

This discussion covers many of the same issues already addressed in the preceding section. As noted above, the proposed rule would introduce additional requirements for the relatively few providers that currently offer overdraft services or other credit features to consumers in connection with prepaid accounts. By restricting the terms on which credit features offered in connection with prepaid accounts may be offered to consumers, this may threaten the economic viability of certain business practices or business plans among the small number of providers currently offering credit features in connection with a prepaid account. In addition, the proposed rule would require that covered persons provide certain disclosures and adhere to certain processes in connection with the solicitation of consumers and the subsequent extension of credit, which would likely require restructuring existing programs to meet the

[513] Those transactions that access both the prepaid asset account and the credit card account generally would be subject to Regulation E's liability limitations and error resolution procedures, as well as part of Regulation Z's error resolution rules, described in existing § 1026.13(d) and (g).

requirements of the proposed rule. In addition, these provisions would affect any plans by other providers to offer credit card accounts in connection with prepaid accounts in the future, by precluding such providers from offering credit features in a manner that is inconsistent with the proposal's requirements but potentially more profitable for the providers. For example, the proposed rule's provision preventing providers from offering terms and conditions that vary according to whether the consumer accepts a credit card account would preclude providers from offering certain pricing structures. These additional restraints are neutral at best and would most likely reduce potential profits relative to options that providers could choose to implement in the absence of such a requirement.

The proposed rule would limit the types of fees that may be charged during the first year after the credit card account is opened. Among other things, most fees (other than periodic interest rates) charged during the first year after the credit card account is opened would be subject to a cap of 25 percent of the initial credit line. As discussed above, this could result in some consumers paying less in fees covered by the cap, but any resulting reduction in revenue could be offset to some extent if providers of overdraft services and other credit features offered in connection with prepaid accounts were to decide to restructure their fee schedules away from the current pricing structure that relies on transaction-based fees. Providers may adopt a pricing structure in which a fee is collected during the application process and prior to the establishment of the credit card account (and thus is not subject to the cap) or one which raises other fees that are unrelated to the credit feature, though the latter approach would potentially put these providers at a competitive disadvantage with respect to those consumers who do not desire overdraft services or other credit features in connection with their prepaid accounts.

With the restructured fee schedules, the small group of providers that currently offer overdraft would likely earn less revenue from offering overdraft services or other credit features in connection with prepaid accounts than they do at present.[514] For current product offerings, a fee cap at 25 percent of credit line would be binding for any consumer who incurs more than one overdraft fee per year.[515] When faced with the option of paying for overdraft services prior to an overdraft being incurred, consumers may be less willing to incur upfront charges for the service. Since these providers would be required to offer the same terms and conditions to all consumers regardless of whether they accept a credit feature in connection with their account, raising fees aside from an application fee could decrease the overall quantity of prepaid accounts demanded by consumers from these providers.

In addition to these costs, the proposed rule would restrict a creditor's ability to access a consumer's prepaid account to pay debts incurred on the associated credit card as well as the requirement that funds may be swept from the prepaid account only periodically to repay a debt, which would increase the risk of default.[516] In addition, the proposed rule's requirement that periodic statements for the credit card account be mailed 21 days before the due date for any payment ensures a delay between when a debt is incurred and when it must be repaid. To manage this additional risk, those card issuers with a credit offering, or those considering doing

[514] At present, providers have the option of offering consumers a fee schedule that would be compliant with the proposed rule's provisions. These additional restrictions could only constrain providers relative to the present.

[515] As described above, current transaction-based charges for overdrafts (in excess of those for de minimis amounts) range from $15 to $25. Assuming a credit line of $100, this means that at most one overdraft fee (or $25) could be collected in the first year with the new restriction. It is possible that providers would be willing to extend larger credit lines, but they would incur more risk in doing so and would likely need to develop more robust underwriting procedures to ensure a sufficient return and compliance with Regulation Z's ability to pay requirement.

[516] Sweeps additionally require the consumer's consent. Firms would lose access to funds for a longer period of time due to delays in repayment time and would incur a small opportunity cost associated with losing access to these funds. Some of these costs may be passed on to consumers in the form of higher prices.

so, may choose to offer less credit to consumers, to charge higher fees for credit extended, or both.

To comply with the proposed rule, the relatively few providers that currently offer overdraft services and other credit features in connection with prepaid accounts would incur implementation costs in transitioning and educating consumers about any product changes, in developing new disclosures, and in designing and implementing new procedures. Card issuers wishing to offer credit card accounts in connection with prepaid accounts would need to ensure that solicitations and application materials conform to the requirements specified in Regulation Z. This may require the production of a new disclosure or the modification of an existing disclosure. Card issuers additionally would be required to ensure that any opening of a credit card account in connection with a prepaid account, or any solicitation or application to open such a credit card account provided to a consumer holder of a prepaid account, does not violate the timing requirements specified in the proposed rule.

Card issuers would be required to establish and maintain reasonable written policies and procedures to consider the consumer's ability to make required minimum payments when deciding to offer a credit card account to a consumer in connection with a prepaid account. As noted above, these provisions should involve minimal additional burden beyond the impacts of other provisions already mentioned as creditors can assess consumers' ability to pay at low cost and virtually all consumers who have or are eligible to have prepaid overdraft today likely could be deemed to have the ability to make the minimum periodic payment on the small amount of credit currently extended on prepaid overdraft.

Once a credit card account is established in connection with a prepaid account, card issuers would incur some ongoing costs as a result of the proposed provisions. These include

costs associated with the proposed rule's periodic statement requirement as well as the requirement that additional disclosures be provided in certain circumstances, such as when certain account terms are changed. Specifically, card issuers would incur costs associated with designing these disclosures and ensuring that such disclosures comply with Regulation Z. In certain instances, card issuers would incur costs associated with printing and distributing these disclosures, though they could mitigate some of these costs by obtaining E-Sign consent from the consumer. Finally, to the extent that Regulation Z's liability limitations and error resolution provisions apply, card issuers may incur additional costs due to more restrictive limitations on consumer liability and an expanded definition of error as compared to Regulation E.

The new requirements, described above, could impact consumer choice. As a consequence, the small number of providers that currently offer credit in connection with prepaid accounts may experience changes in the size or composition of the customer base seeking to associate a credit feature with a prepaid account and could experience revenue impacts arising from these changes. An individual provider may experience such revenue impacts due to adjustments in aggregate market demand or due to substitution by consumers to or from other providers within the market. For instance, if the proposed provisions result in providers that offer overdraft charging higher fees for their prepaid accounts more generally or ceasing to offer overdraft services (and therefore offering a product that may be regarded as less desirable by consumers who value the overdraft feature), prepaid account providers that do not offer overdraft services presently could benefit as consumers substitute away from those providers that offer overdraft services.

In terms of alternatives, the Bureau also considered extending the Regulation E opt-in regime to prepaid accounts. To the extent that current providers of overdraft services offered in

connection with prepaid accounts appear to be providing overdraft services consistently with these requirements, the benefits, costs, and impacts arising from such an approach would be limited, though again it would not bring these products into compliance with the requirements of Regulation Z, as discussed above.

F. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions with $10 Billion or Less in Total Assets, as Described in Section 1026

With respect to most provisions, the Bureau does not expect that the proposed rule would have a unique impact on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026. One exception pertains to the provisions addressing overdraft services or other credit features offered in connection with prepaid accounts. Issuers with consolidated assets of less than $10 billion are exempt from Regulation II's restrictions on debit interchange fees. *See* § 235.5(a). Additionally, interchange restrictions do not apply to electronic debit transactions made using debit cards provided pursuant to certain government-administered payment programs and certain reloadable, general-use prepaid cards not marketed or labeled as a gift card or gift certificate. *See* § 235.5(b) and § 235.5(c). However, these exemptions do not apply if a fee or charge for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance, may be charged to a cardholder (unless the fee or charge is imposed for transferring funds from another asset account to cover a shortfall in the account accessed by the card). *See* § 235.5(d)(1).[517] Since institutions with greater than $10 billion in assets that offer overdraft services in connection with a prepaid

[517] *See* 76 FR 43394 (July 20, 2011).

account would be subject to Regulation II's restrictions on debit interchange fees, they presently have less incentive to offer such credit features than similarly-situated depository institutions with less than $10 billion in assets. Therefore, the new consumer protections applicable to credit card accounts articulated in this proposal are more likely to impact those institutions with less than $10 billion in assets.

The proposed requirements would be applied uniformly across covered financial institutions without regard for their asset size.[518] Among those depository institutions and credit unions that the Bureau believes would be potentially affected by the proposed rule, roughly 72 percent have $10 billion or less in total assets.[519] The impact of the proposed rule on depository institutions and credit unions would depend on a number of factors, including whether the institution offers prepaid accounts, the relative contribution of prepaid accounts to firm revenues, and the cost of complying with the rule – which would depend on the present prepaid account offerings as well as regulations to which those accounts are currently subject.

The Bureau solicits comment regarding the proposed rule's impact on those depository institutions and credit unions with $10 billion or less in total assets and how those impacts may be distinct from those experienced by institutions of larger size.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the proposed rule that are different in certain respects from the benefits experienced by consumers in general. Consumers

[518] The de minimis exception for providing prepaid account agreements to the Bureau and posting them to a website is a function of the number of open accounts, not the asset size of the issuer.

[519] Figures were obtained using asset sizes reported as of December 2013. Depository institutions and credit unions offering white label programs and programs through certain agent relationships were not included in arriving at this statistic.

in rural areas may differ from other consumers in terms of their reliance on prepaid accounts as well as their ability to use online disclosures for shopping by accessing the internet.[520] The Bureau is not aware of evidence which states whether consumers in rural areas are more likely to acquire prepaid accounts, to use prepaid accounts that do not presently follow Regulation E's limited liability and error resolution regime, or to use prepaid accounts that offer overdraft services or other credit features.[521] The Bureau requests comment regarding these issues.

G. Request for Information

The Bureau will further consider the benefits, costs, and impacts of the proposed provisions before finalizing the proposal. As noted above, there are a number of areas where additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. The Bureau asks interested parties to provide comment on various aspects of the proposed rule, as detailed in the section-by-section analysis discussion above. The Bureau specifically requests precise cost or operational data that would permit it to better evaluate the potential implementation costs and ongoing operational costs imposed by the proposed provisions as well as any alternatives under consideration. The most significant of these include information or data addressing:

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[520] Broadband availability may be more limited in rural areas. *See* Nat'l Telecomm. and Info. Admin., *U.S. Broadband Availability: June 2010 – June 2012* at 10, (May 2013), *available at* http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf.

[521] One study finds that consumers living in rural areas were more likely to deposit tax refunds onto a prepaid card than consumers in urban areas. *See* Caroline Ratcliff, et al., Urban Inst., *Prepaid Cards at Tax Time and Beyond*, at 26, (Mar. 2014), *available at* http://www.urban.org/UploadedPDF/413082-prepaid-cards-at-tax-time-report.pdf. Another study reports prepaid debit card use by metropolitan status. There was not a robust relationship between whether a household was in a metropolitan area and prepaid debit card use. *See* Fed. Deposit Ins. Corp., *2013 FDIC National Survey of Unbanked and Underbanked Households: Appendices*, at 41 (Oct. 2014) *available at* https://fdic.gov/householdsurvey/2013appendix.pdf.

- The benefits and costs associated with the proposed provisions addressing overdraft services and other credit features offered in connection with prepaid accounts;
- The impact of the proposed provisions addressing overdraft services and other credit features on consumer access to credit;
- The benefits and costs associated with extending provisional credit to all covered accounts;
- The impact of extending provisional credit to all covered accounts on consumer access to prepaid accounts generally;
- The benefits and costs associated with implementing the disclosure requirements articulated in the proposal;
- The Study of Prepaid Account Agreements and the extent to which its findings are or are not representative of the market for prepaid accounts as a whole; and
- The impact of the proposed rule on consumers in rural areas and specifically how these impacts may differ from those experienced by other consumers.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[522] The Bureau also is subject to certain additional procedures under the RFA involving the

[522] 5 U.S.C. 601 *et seq*.

convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[523]

An IRFA is not required for this proposed rule because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.[524]

A. Overview of Analysis

The analysis below evaluates the potential economic impact of the proposed rule on small entities as defined by the RFA.[525] It establishes that the only small entities that are likely to potentially experience a significant economic impact from the proposed rule are those that currently (1) do not provide limited liability protections to consumers, (2) do not provide error resolution protections to consumers, or (3) offer overdraft services or other credit features in connection with prepaid accounts.

Based on the Bureau's understanding of the market, which was arrived at through the Study of Prepaid Account Agreements, outreach to interested stakeholders and other regulatory agencies, and review of existing industry studies, the Bureau has determined that very few small banks or credit unions are likely to be directly affected by the proposed rule.[526] As discussed in

[523] 5 U.S.C. 609.

[524] 5 U.S.C. 605(b).

[525] For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of the Small Business Administration regulations and reference to the North American Industry Classification System ("NAICS") classifications and size standards. 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5). Aside from credit unions, the Bureau does not believe that any small not-for-profit organizations would be regulated by the proposed rule for RFA purposes. In its Study of Prepaid Account Agreements, the Bureau did not locate any small governmental jurisdictions that would be regulated by the proposed rule for RFA purposes.

[526] Excluding those banks and credit unions relying on white-label solutions and agent-based relationships, the Bureau identified 19 directly affected small (or potentially small) banks and six directly affected small credit unions.

detail below, these small banks and credit unions each represent a fraction of one percent of all small banks and credit unions. In addition, the Bureau identified 96 small or potentially small non-bank entities that would be likely to be directly affected by the proposed rule. The Bureau has also determined that almost all such entities presently provide limited liability and error resolution protections to consumers, and very few presently offer overdraft services or other credit features in connection with prepaid accounts.[527] As discussed in detail below, the number of small or potentially small non-bank entities that would experience a significant economic impact is a very small percentage of all relevant small non-bank entities. Therefore, the Bureau concludes that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

B. Number and Classes of Directly Affected Entities

The provisions of the proposed rule would apply to any account that meets the criteria described in proposed § 1005.2(b)(3). Providers of these products include issuers and program managers. Prepaid account issuers are typically banks and credit unions, and program managers are typically non-banks. Some issuers act as program manager for some or all of their programs as well. While the proposed rule does not directly regulate prepaid program managers for RFA purposes, the Bureau exercises its discretion to take a comprehensive approach and to consider

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For the purpose of this discussion, the Bureau considers an entity to be directly affected if it presently offers prepaid accounts to consumers.

[527] As discussed below, some of these non-bank entities provide limited liability protections that are less comprehensive than those required by Regulation E. In addition, some of these non-bank entities that otherwise provide error resolution protections consistently with Regulation E offer provisional credit with limitations or do not mention provisional credit in their account terms and conditions.

both prepaid account issuers and program managers in determining whether the proposed rule would have a significant economic impact on a substantial number of small entities.[528]

Since the Bureau is not aware of a comprehensive list of entities that actively issue or manage prepaid accounts or a comprehensive list of prepaid account programs, the Bureau compiled its own list of known prepaid account issuers and program managers based on its review of publicly available information and outreach to industry.[529] The number of banks, credit unions, and non-bank entities identified by the Bureau as likely to be directly affected by the proposed rule are reflected in Table 1. Table 1 also gives context to those counts by also reporting the total number of entities, as well as the total number of small entities, within each relevant NAICS code.[530] For the purpose of this analysis, the Bureau considers directly affected non-bank entities to fall within NAICS code 522320 (Financial transactions processing, reserve, and clearinghouse activities).[531] The Small Business Administration (SBA) considers those

[528] As discussed below, in determining whether the economic impact is significant, the Bureau compares the total revenues earned by both the program manager and the issuer to the total costs incurred by these entities. In some cases, the same entity performs both the issuing and program management functions, and in other cases, different entities perform these functions.

[529] This compilation includes all issuers and program managers whose prepaid account agreements were included in the Study of Prepaid Account Agreements. The Bureau also included other issuers and program managers identified even though account agreements for their prepaid programs were not located by the Bureau in its review of publicly available information and outreach to industry.

[530] The North American Industry Classification System ("NAICS") is the standard used by the SBA to match small business size standards to industries.

[531] According to the Census Bureau, NAICS code 522320 corresponds to "establishments primarily engaged in providing one or more of the following: (1) financial transaction processing (except central bank); (2) reserve and liquidity services (except central bank); and/or (3) check or other financial instrument clearinghouse services (except central bank)." One illustrative example given by the Census Bureau is "electronic funds [*sic*] transfer services." *See* U.S. Census Bureau, *2007 NAICS Definition, available at* http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522320&search=2007.

NAICS code 522320 was relied upon in FinCEN's Prepaid Access Rule. *See* 76 FR 45403, 45414 (July 29, 2011).

banks and credit unions with less than $550 million in assets and those non-bank entities within NAICS code 522320 with average annual receipts less than $38.5 million to be small.[532]

Table 1 also reports the number of directly affected entities the Bureau believes to be small or "potentially small."[533] In order to determine which directly affected entities are small or potentially small, the Bureau compiled asset size information for directly affected banks and credit unions and receipt estimates for directly affected non-bank entities.[534] For banks and credit unions, assets were determined by averaging the assets reported in the institution's four quarterly Call Report entries for 2012, and institutions reporting an average of under $550 million in assets across the four quarters were considered to be small. Receipt estimates for non-bank entities were obtained by reviewing publicly available information regarding firm revenues, and those entities estimated to have under $38.5 million in average annual receipts were considered to be small.[535]

As shown in Table 1, the Bureau identified 19 directly affected small or potentially small banks and six directly affected small credit unions. These entities constitute less than one

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[532] *See* U.S. Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (July 2014), *available at* http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

[533] Since many of the directly affected non-bank entities are privately-held firms, information regarding their size was difficult to obtain, so a reliable size classification could not be made in many instances. In addition, there were multiple banks with the same name in one instance, and a size classification could not be obtained. Therefore, out of an abundance of caution, the Bureau's analysis considers any entity for which a size classification could not be made to be "potentially small."

[534] The Bureau uses revenue estimates to proxy for receipts.

[535] When available, the Bureau used publicly available revenue estimates for 2012. If revenue estimates from 2012 were not available, available information from recent years was used.

percent of small banks and credit unions.[536] This fraction does not comprise a substantial number of small entities under the RFA.

Directly affected non-bank entities are primarily prepaid program managers, although there are issuers of P2P payment products and other non-Visa or MasterCard branded prepaid products as well. The Bureau has identified a total of 127 non-bank entities likely to be directly affected by the proposed rule. Among those, a size classification could be made for 44 entities, with approximately 30 percent of those entities for which a classification could be made (13 entities) classified as small. It is likely, however, that many of the 83 non-bank entities for which a classification could not be made are small as well and are thus referred to herein as "potentially small." Applying the conservative assumption that all of the non-bank entities that could not be classified are small, the number of directly affected small or potentially small non-bank entities is a modest percentage of all small entities within the relevant NAICS code (four percent).[537] This does not comprise a substantial number of small entities under the Regulatory Flexibility Act.

[536] Although the Bureau includes the common issuer of record and program manager for prepaid accounts offered through white-label programs, agent-mediated relationships, or other similar arrangements in the entity counts reported in Table 1, the Bureau does not include individual agent or member banks and credit unions in these counts (to the extent that they could be identified as such by the Bureau). In the traditional white label model, banks and credit unions rely upon another institution to issue prepaid accounts, which may be branded with the bank or credit union's name. There are a handful of such programs through which banks and credit unions, including some that are small, offer prepaid accounts (typically as a convenience to their customers or members). In addition, the Bureau is aware of a program in which the participant bank is the prepaid account issuer, but the bank relies on an external party for BIN sponsorship. While inclusion of these entities would result in a larger number of directly affected small banks and credit unions than is reported in Table 1, the Bureau believes that few of these entities, if any, would experience a significant economic impact from the proposed rule, as the Bureau's understanding is that prepaid accounts offered through these arrangements generally provide limited liability and error resolution protections, and overdraft services or other credit features are not offered in connection with these prepaid accounts.

[537] In its Regulatory Flexibility Act analysis, FinCEN narrowed its count to those entities that are within NAICS code 522320 and perform either electronic fund transfers or electronic financial payment services, relying on commercial database information (Dun and Bradstreet, D&B Duns Market Identifiers Plus (US)). FinCEN estimated that there were 700 entities that shared this classification. Using the SBA threshold of $7 million in

Table 1: Covered Providers and Directly Affected Small Entities

Category	NAICS Code	Total Entities[a]	Total Small Entities[b]	Directly Affected Entities Identified	Directly Affected Small Entities and Potentially Small Entities Identified	Directly Affected Small Entities Identified
Commercial Banking[c]	522110	7,150	5,939	71	19	18
Credit Unions	522130	6,960	6,582	16	6	6
Non-Bank Entities	522320	2,489	2,359	127	96	13

[a] For banks and credit unions, the total entity count includes those entities operating in the fourth quarter of 2012 as indicated by their respective call reports. For non-bank entities, total entity counts are derived from the U. S. Census Bureau's Statistics of U.S. Businesses ("SUSB").

[b] The SBA's small entity threshold for commercial banks and credit unions is $550 million in assets, and the SBA small entity threshold for NAICS code 522320 is $38.5 million in average annual receipts.

In order to determine which banks and credit unions are small, the quarterly asset sizes (for 2012) for those entities operating as of the fourth quarter of 2012 were averaged, and those banks and credit unions averaging less than $550 million in assets were classified as small. For those entities only operating for part of the year, the quarters from which assets were available were used to obtain the average.

The total number of small non-bank entities was derived from the firm count reported in the latest available SUSB (2011) using the percentage of entities within the reported NAICS code that were small during the last year in which receipts size is available (2007). Roughly 95 percent of firms were small (2,110/2,226) in the 2007 receipts data, and that percentage is applied to the latest available SUSB counts (2011) to obtain the estimated number of small entities.

[c] All banks are included here regardless of charter type. The vast majority of directly affected bank entities are commercial banks (and correspond to NAICS Code 522110), although there are five savings banks, one savings and loan association, and one industrial bank included in these counts.

Note: Counts exclude white-label and agent bank program participants to the extent that they were identified by the Bureau.

C. Impacts of Proposed Provisions on Directly Affected Entities

To determine whether the economic impact of the proposed rule is likely to be significant for directly affected small entities, the Bureau compares the costs potentially incurred by these

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average annual receipts that was in effect at the time, FinCEN estimated that 93 percent, or 651, of these entities were small.

Using the denominator relied upon by FinCEN in its rulemaking, referenced above, directly affected small or potentially small non-bank entities comprise, at most, 15 percent of all small entities within that narrower set of entities. At present, the SBA considers entities within NAICS code 522320 with under $38.5 million in average annual receipts to be small. Therefore, assuming the total number of entities meeting the criterion for this narrower classification is unchanged, at least 651 entities would be considered to be small since the threshold has increased.

entities as a result of the proposed provisions to an estimate of revenues earned.[538] Less than one percent of small banks and credit unions and roughly four percent of small or potentially small non-bank entities – a non-substantial number under the RFA – could be directly affected by the proposed rule. Nonetheless, to better inform the proposed rulemaking, the Bureau analyzes the impact of the proposed rule on directly affected small or potentially small non-bank entities. The Bureau uses the current market as the baseline.

The major provisions of the proposed rule are summarized below. Although several proposed provisions potentially impose burden, the Bureau believes that most burdens imposed by the proposed rule are minimal given current business practices. One relevant exception pertains to potential burdens related to the proposed extension of Regulation E's limited liability and error resolution regime, including provisional credit requirements, to all prepaid accounts (except those that have not completed the customer identification and verification process).[539] A second exception is the potential burdens associated with the proposed provisions relating to overdraft services and other credit features offered in connection with prepaid accounts.

The proposed rule includes additional provisions that are not discussed further since their impact on small entities is expected to be limited. Although the provisions related to overdraft services and other credit features potentially impose a significant economic impact on those entities offer such services in connection with prepaid accounts, the Bureau's understanding is

[538] When the functions required to offer prepaid accounts are not performed by one, vertically-integrated firm, the exact division of revenue streams between the issuer and the program manager for a given prepaid program varies. In this analysis, the Bureau does not take a position as to whether the prepaid account issuer or the program manager assumes the burdens imposed by the proposed provisions. However, it is worth noting that a program manager that assumes fraud risk likely has the ability to control fees charged to consumers, to control screening procedures, or to take other actions to mitigate fraud losses.

[539] These protections are currently required for payroll card accounts and government benefit accounts. The proposed exception for unverified accounts would not extend to any payroll card accounts or government benefit accounts.

that, at most, one small or potentially small non-bank entity would be directly affected.[540] In addition, as described below, the proposed rule includes several pre-acquisition disclosure requirements. Industry participants have told the Bureau that the costs associated with the implementation of these requirements for accounts distributed via the retail channel are meaningful. However, the Bureau's outreach to industry has indicated that small non-bank entities are not likely to distribute prepaid accounts via retail channels (or would distribute a limited part of their portfolios via this channel). Therefore, the Bureau does not further discuss such costs.

1. Limited Liability and Error Resolution Requirements

The proposed rule would require financial institutions offering prepaid accounts to comply with Regulation E's limited liability and error resolution regime, including the requirement that provisional credit be extended to consumers in certain circumstances. For accounts subject to Regulation E's limited liability and error resolution provisions, EFTA places the burden of proof on the financial institution to show that an alleged unauthorized transfer was, in fact, authorized.[541] Specifically, after receiving notice that a consumer believes that an

[540] As discussed above, the Study of Prepaid Account Agreements suggested that some prepaid programs, according to their terms and conditions, reserve the right to impose a fee for a negative balance on a prepaid account. (These programs' agreements typically state that the cardholder is not permitted to spend beyond the balance in the prepaid account, but if circumstances were to occur that cause the balance to go negative, a fee will or may be imposed. Some agreements state that repeated attempts to spend beyond the card balance will or may result in the prepaid account being closed). Roughly 10 percent of reviewed agreements noted such a charge. Based on its outreach, the Bureau has doubts as to whether, in practice, these charges are assessed and requests comment regarding current industry practice.

In addition, one source suggests that overdraft fees may be collected by a handful of government benefit card programs, but the Bureau is not certain whether such fees are currently being assessed as it understands several such programs have ceased charging overdraft fees, and the aggregate value of these fees is relatively modest. *See* Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on Government-Administered, General Use Prepaid Cards*, at 9, (July 2014), *available at* http://www.federalreserve.gov/publications/files/2014_Prepaid_Cards_Final.pdf (showing $2 million in overdraft fees in 2013).

[541] EFTA section 909(b).

electronic fund transfer was unauthorized, the financial institution must promptly perform an investigation to determine whether an error occurred. Regulation E further states that, if the financial institution is unable to complete the investigation within 10 business days, the institution may take up to 45 days to complete the investigation if it provisionally re-credits the consumer's account for the amount of the alleged error. [542] When the financial institution ultimately can establish that the transfer in question was not an error, it can reverse the provisional credit.

Under Regulation E, a consumer may be held liable for an unauthorized electronic fund transfer resulting from the loss or theft of an access device only if the financial institution has provided certain required disclosures and other conditions are met. If the consumer provides timely notice to the financial institution within two business days of learning of the loss or theft of the access device, the consumer's liability is the lesser of $50 or the amount of any unauthorized transfers made before giving notice. If timely notice is not given, the consumer's liability is the lesser of $500 or the sum of (1) the lesser of $50 or the amount of unauthorized transfers occurring within two business days of learning of the loss or theft and (2) the amount of unauthorized transfers that occur after two business days but before notice is given to the financial institution.[543]

Regulation E currently applies to certain types of prepaid accounts – namely payroll card accounts and certain accounts used for distribution of government benefits.[544] Further, some

[542] The timeline is somewhat different for certain types of transactions and for new accounts.

[543] Section 1005.6(b)(3) provides, in part, that a consumer must report an unauthorized transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement in order to avoid liability for subsequent transfers.

[544] Covered government benefit programs currently do not need to provide periodic statements or online access to account information as long as balance information is made available to benefits recipients via telephone and

prepaid accounts currently provide limited liability and error resolution protections even if not directly required to do so by Regulation E. First, the FMS Rule extends Regulation E's payroll card account protections to prepaid accounts that receive Federal payments. Second, many providers choose to provide these protections to consumers by contract as part of their customer service offerings. Finally, payment card network association rules require that issuers limit consumers' liability and remedy certain errors related to transactions that occur over their networks and may require that provisional credit be extended within a shorter timeframe for losses from unauthorized card use.[545]

Limited Liability Protections. The Bureau's market research, including the Study of Prepaid Account Agreements, strongly suggested that the vast majority of directly affected small or potentially small non-bank entities presently extend some form of limited liability protections to consumers. Table 2 summarizes the Bureau's findings from the Study of Prepaid Account Agreements regarding current industry practice with respect to limited liability for the 96 directly affected small or potentially small non-bank entities identified by the Bureau. Of these 96 entities, the Bureau believes that 15 entities only offer payroll card accounts and therefore are required to provide Regulation E's limited liability protections to consumers at present. Of the remaining 81 entities, the Bureau was able to locate an agreement for at least one prepaid account program for all but 14 entities.

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electronic terminals and a written account history of at least 60 days is given upon request (the proposed rule would change this). Needs-tested EBT programs established or administered under State or local law are exempt from Regulation E via § 1005.15(a). The proposed rule would not impact such programs.

[545] *See, e.g., Visa Inc., Zero Liability*, http://usa.visa.com/personal/security/zero-liability.jsp#anchor_2 (last visited Nov. 3, 2014). *See, e.g., MasterCard Inc., Zero Liability Protection* http://www.mastercard.us/zero-liability.html (last visited Nov. 3, 2014).

In the Study of Prepaid Account Agreements, the Bureau examined prepaid account agreements' language addressing limitations on consumers' liability for unauthorized transfers to assess whether each program provides by contract the limited liability protections that Regulation E provides with respect to the accounts to which it applies. For each entity for which at least one prepaid account agreement was available and that offers at least one program that is not a payroll card account program,[546] the Bureau classified the entity's limited liability protections as belonging to one of three categories: (1) liability limitations consistent with Regulation E or better for all reviewed agreements; (2) some liability limitations but less than what is provided for under Regulation E; and (3) no limited liability protections.[547]

The Bureau determined that approximately 75 percent (16 percent + 59 percent) of all small or potentially small non-bank entities likely to be directly affected by the proposed rule currently provide protections consistent with Regulation E or better, as reflected in Table 2. The Bureau found that four percent of small or potentially small non-bank entities provide some liability limitations but less than what is required for accounts under Regulation E for at least one of their programs, and six percent of small or potentially small entities had at least one agreement that does not appear to provide any limited liability protections.[548] The Bureau was unable to locate any account agreements for the remaining 15 percent of small or potentially small non-bank entities.

[546] The Bureau did not identify any directly affected small or potentially small non-bank entities that exclusively offer government benefit programs.

[547] The Bureau reviewed available prepaid account agreements, as described in the Study of Prepaid Account Agreements. In some instances, a small or potentially small non-bank entity is involved with multiple programs that appear to provide different levels of limited liability protection. When a non-bank entity offered multiple programs which fall into different categories of coverage, the entity was classified according to the program providing the lowest level of protection for consumers. This approach was also taken with respect to the error resolution policy classifications discussed below.

[548] One of these six entities also does not provide error resolution protections (see below).

The final column of Table 2 reports the relative frequency of limited liability protections for the set of directly affected small or potentially small non-bank entities for which the Bureau was able to locate an agreement for at least one program (or which only offer payroll card accounts). Within this narrower group of entities, 88 percent (18 percent + 70 percent) presently provide liability limitations consistent with Regulation E or better for all reviewed programs, and thus, would not need to change their practices if the proposed rule were adopted. An additional five percent provide some liability limitations for at least one of their programs and thus would incur only a portion of the total burden arising from the extension of limited liability protections.[549]

[549] The Bureau repeated this analysis restricting attention to just those 13 non-bank entities that could be classified as small. Of these entities, 12 provide liability limitations consistent with Regulation E (or only offer payroll card accounts). The one remaining entity did not have an available account agreement.

Table 2: Current Industry Practice with Respect to Limited Liability Among Directly Affected Non-Bank Entities of Small or Potentially Small Size

Current Business Practice	Number of Directly Affected Small or Potentially Small Non-Bank Entities	Percent of All Directly Affected Small or Potentially Small Non-Bank Entities	Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Liability Limitations Consistent with Regulation E or Better (for all reviewed agreements, excluding payroll only providers)	57	59%	70%
Some Liability Limitations, Less than What is Provided for Under Regulation E (for at least some reviewed agreements)	4	4%	5%
No Limited Liability Protections (for at least some reviewed agreements)	6	6%	7%
Could not Locate any Account Agreements (excluding payroll only providers)	14	15%	NA
Total Number of Directly Affected Small or Potentially Small Non-Bank Entities	96	100%	100%

Error Resolution Protections. The Bureau's market research, including the Study of Prepaid Account Agreements, strongly suggested that the majority of directly affected small or potentially small non-bank entities presently extend some form of error resolution protections to consumers. Table 3 summarizes the Study's findings regarding current industry practice with respect to error resolution and provisional credit for the 96 directly affected small or potentially small non-bank entities identified by the Bureau.

In the Study of Prepaid Account Agreements, the Bureau examined relevant language in prepaid account agreements addressing error resolution in order to assess whether each program

provides by contract the same error resolution protections that Regulation E provides with respect to accounts to which it applies. For each entity for which at least one prepaid account agreement was available and that offers at least one prepaid account program that was not a payroll card account program, the Bureau classified the entity's error resolution protections as belonging to one of four categories: (1) full error resolution with provisional credit for all consumers when the error is not resolved within a defined period of time, for all reviewed agreements; (2) error resolution with limitations on provisional credit; (3) error resolution with no mention of provisional credit; and (4) no error resolution.

The Bureau determined that approximately 58 percent (16 percent + 42 percent) of all small or potentially small non-bank entities likely to be directly affected by the proposed rule currently provide full error resolution with provisional credit for all of their reviewed programs, as reflected in Table 3.[550] Therefore, over half of non-bank entities that are small or potentially small would not need to change their error resolution or provisional credit practices if the proposed rule were adopted. Further, an additional 18 percent of entities provide error resolution protections but with provisional credit available only in limited circumstances. These non-bank entities would experience only a portion of the total increase in burden associated with the requirement that they extend provisional credit to all consumers in instances when an error is not resolved within a defined period of time. An additional eight percent of entities offer error resolution but would potentially incur the entire portion of the burden associated with extending provisional credit. Only two percent of small or potentially small non-bank entities (two entities) currently provide no error resolution protections for at least one of their prepaid programs, and

[550] Note that the percentages cited in this paragraph may not add up to 100 percent due to rounding.

thus would incur the entire burden associated with providing error resolution and provisional credit.

The final column of Table 3 reports the relative frequency of the error resolution policies for the set of directly affected small or potentially small non-bank entities for which the Bureau could locate an agreement for at least one program (or which only offer payroll card accounts). Within this group of directly affected entities, 67 percent (18 percent + 49 percent) presently provide full error resolution with provisional credit for all reviewed programs, and thus, would not need to change their policies if the proposed rule were adopted. An additional 21 percent would incur only a portion of the total burden arising from the extension of provisional credit requirements.[551]

[551] The Bureau repeated this analysis restricting attention to just those 13 non-bank entities that could be classified as small. The distribution of policies was as follows: 31 percent of entities presently comply with Regulation E because they only offer payroll card accounts, 46 percent provide full error resolution with provisional credit for all reviewed agreements (excluding payroll only providers), eight percent provide error resolution with limitations on provisional credit for at least some reviewed agreements, eight percent provide error resolution with no mention of provisional credit for at least some reviewed agreements, zero percent do not provide error resolution protections, and prepaid account agreements could not be located for eight percent of the small non-bank entities.

Table 3: Current Industry Practice with Respect to Error Resolution and Provisional Credit Among Directly Affected Non-Bank Entities of Small or Potentially Small Size

Current Business Practice	Number of Directly Affected Small or Potentially Small Non-Bank Entities	Percent of All Directly Affected Small or Potentially Small Non-Bank Entities	Percent of Directly Affected Small or Potentially Small Non-Bank Entities (among the 82 that either only offer payroll card programs or have at least one available agreement)
Compliant Because Only Offers Payroll Card Accounts	15	16%	18%
Full Error Resolution with Provisional Credit (for all reviewed agreements, excluding payroll only providers)	40	42%	49%
Error Resolution with Limitations on Provisional Credit (for at least some reviewed agreements)	17	18%	21%
Error Resolution but No Provisional Credit (for at least some reviewed agreements)	8	8%	10%
No Error Resolution Coverage (for at least some reviewed agreements)	2	2%	2%
Could not Locate a Prepaid Account Agreement (excluding payroll only providers)	14	15%	NA
Total Number of Directly Affected Small or Potentially Small Non-Bank Entities	96	100%	100%

Costs Associated with Limited Liability and Error Resolution Protections. As a result of the proposed rule, those few directly affected small or potentially small non-bank entities that do not currently provide limited liability or error resolution protections to consumers would incur costs associated with offering these protections. As described in the Section 1022(b)(2) discussion above, these entities would need to establish procedures for complying with the proposed requirements, including developing the capacity to give the required disclosures to

consumers, receive oral or written error claims, investigate error claims, provide consumers with investigation results in writing, respond to any consumer request for copies of the documents that the institution relied upon in making its determination, and correct any errors discovered within the required timeframes. The establishment of these policies and procedures would constitute a one-time cost for those few small or potentially small non-bank entities that do not currently offer limited liability or error resolution, and implementing these procedures and paying out claims, as well as provisional credit, would constitute an ongoing cost.[552]

Those directly affected small or potentially small non-bank entities that offer limited liability and error resolution protections to consumers but do not currently provide provisional credit, as well as those entities that provide liability protections or provisional credit in a more limited form than what would be required by the proposed rule, would also incur additional costs. Directly affected entities offering liability protections of a more limited form than is required by Regulation E would incur additional costs associated with paying out claims. In addition, directly affected entities that do not offer provisional credit (or offer it in a more limited form) would incur a small opportunity cost associated with the funds being extended as provisional credit. Additionally, in instances where the entity has extended provisional credit and subsequently determines that an alleged error was, in fact, an authorized transfer, the entity may be unable to reclaim all or part of the provisional credit previously extended, thus incurring additional costs.

[552] It is worth noting that program managers may rely on industry partners, including processors or issuing banks, to perform some or all of the functions associated with performing error resolution. The Bureau's understanding from discussion with industry participants is that processor fees can include a fixed fee per dispute as well as a variable component.

The costs associated with providing these protections may vary across entities for several reasons. For instance, an entity's customer base may influence the type of errors that are likely to be reported (and therefore the costs associated with investigations) as well as the ease with which the entity is able to reclaim provisional credit that has been previously extended. The initial screening procedures employed by a prepaid account provider to determine eligibility for an account, as well as ongoing monitoring of accounts, likely affect realized loss levels. Although small entities may be at a disadvantage with respect to fraud screening relative to larger entities that may have access to more extensive information or more sophisticated screening technology, small entities are sometimes able to rely on industry partners to screen for and to investigate potential fraud.[553] Financial institutions may choose to limit fraud liability by closing accounts that have repeated error claims or by not offering accounts to individuals previously found to engage in potentially fraudulent activity.

The Bureau conducted industry outreach to attempt to determine the costs to prepaid account providers associated with implementing Regulation E compliant error resolution, including provisional credit. Estimates of the ongoing costs associated with providing error resolution with provisional credit varied. One program manager that provides limited liability and error resolution protections with provisional credit to all consumers suggested that it reserved $0.35 per active cardholder per month in fraud losses (including both losses related to Regulation E error claims as well as other types of fraud). Another program manager that also provides limited liability and error resolution with provisional credit suggested total fraud losses related to Regulation E that translate to roughly $0.22 per cardholder per month. As described in

[553] One potentially small program manager told the Bureau that it receives information from its processor regarding whether a consumer had filed unsubstantiated disputes with other prepaid programs serviced by the processor.

the Section 1022(b)(2) discussion, those few entities that do not presently provide limited liability or error resolution protections to consumers would additionally incur one-time implementation costs associated with the establishment or modification of practices and procedures extending these protections (in addition to increased ongoing operational costs).

Those small or potentially small non-bank entities that provide limited liability and error resolution protections to consumers but give provisional credit only in limited circumstances, or not at all, would sustain increased ongoing operational costs. The Bureau does not have information that explicitly captures the incremental cost associated with extending provisional credit for those entities that otherwise provide error resolution protections. However, estimates derived using available information suggest that the magnitude of the ongoing cost of providing these protections is roughly one-third of the total ongoing cost associated with fraud losses (including those specifically related to provisional credit).[554] To the extent that many financial institutions currently provide provisional credit (albeit in limited circumstances), the cost impact arising from this provision would be further mitigated.

[554] One program manager told the Bureau that when they extended provisional credit to all accounts, having previously only provided provisional credit to those accounts receiving Federal payments, their losses arising from providing provisional credit increased four to six times the previous level, and overall fraud losses increased 40 percent (including the increased losses arising from extending provisional credit). Assuming that there was no change in fraud losses not relating to provisional credit, this implies that provisional credit accounted for between seven and ten percent of the initial level of fraud losses and just over a third of the final fraud losses. This can be shown as follows. Let E=fraud losses not relating to provisional credit, P=fraud losses relating to provisional credit, and L=total fraud losses prior to the expansion of provisional credit coverage to all consumers. Therefore, it follows that L=P+E prior to the expansion of provisional credit coverage to all consumers. After the expansion of provisional credit to all consumers (and assuming no change in E), it follows that (i.) 1.4L = 5P+ E or (ii.) 1.4L = 7P+E. The percentage of initial fraud losses accounted for by provisional credit is represented by P/L. Rearranging (i.) gives P/L = 0.4/4 = 10 percent, and rearranging (ii.) gives P/L = 0.4/6 = 6.7 percent. In scenario described by (i.), a four time increase, fraud losses not relating to provisional credit (E) account for 90 percent of the total fraud losses before the increase; in the scenario described by (ii.), a six time increase, (E) accounts for 93.3 percent of the total fraud losses before the increase. Assuming that E does not change, the percentage of final fraud losses accounted for by provisional credit once extended to all accounts in scenario (i.) is 5(.10)/[5(.10)+.90] = 36 percent and 7(.067)/[7(.067)+.933] = 34 percent in scenario (ii.). If overall fraud losses, including losses associated with providing provisional credit, are assumed to be $0.35 per active cardholder per month, it follows that the cost to extend provisional credit to all consumers is roughly $0.12 per cardholder per month.

2. Other Major Provisions Potentially Affecting Small Entities

The proposed rule includes new pre-acquisition disclosure requirements for prepaid accounts which are fully applicable to small entities. As described more extensively in the Section 1022(b)(2) discussion above, the proposed rule would require that financial institutions include a specified subset of fees as well as a product-specific set of other commonly incurred fees in a specifically described disclosure box (the "short form").[555] In addition to the short form disclosure, financial institutions would be required to provide a disclosure that includes a full listing of fees as well as any conditions under which the fees may change (the "long form"). Finally, the fee disclosure provided as part of the prepaid account agreement would be required to follow most of the content and format requirements of the long form disclosure.

All financial institutions would incur one-time implementation costs associated with reviewing and revising existing disclosures to ensure that they conform to the new requirements. Certain requirements regarding how the disclosures would be made available to consumers depend on the distribution channel. For those prepaid accounts distributed in a retail environment, the short form disclosure would be required to be included on the product's packaging material, and the long form disclosure would be required to be made available both by telephone and online. Financial institutions distributing prepaid accounts online would be required to provide online access to both the long form and short form disclosures to consumers, and those institutions distributing prepaid accounts in person would be required to provide both forms in print. For transactions conducted by telephone, financial institutions would be required to provide the short form disclosure information orally, to inform consumers of the existence of

[555] Additionally, providers of payroll card accounts and government benefit accounts would be required to include a notice at the top of the short form disclosure stating that consumers are not required to accept such a card and that alternative methods are available by which they may receive their wages or benefits.

the long form disclosure and its availability by telephone and on a website, and to provide the information in the long form disclosure to the consumer upon request.

Accordingly, the implementation costs to entities arising from the proposed disclosure requirements would vary based on which distribution channels are used by an entity and the relative intensity of the entity's reliance on each distribution channel. These channels include retail distribution, online distribution, and in-person distribution, among others. The impacts on financial institutions distributing via each of these channels are described in the Section 1022(b)(2) discussion above.

Based on industry outreach, the Bureau believes that small entities typically do not rely on the retail channel to distribute prepaid accounts or, to the extent that they do, rely on this channel in a limited way.[556] For products that are not distributed via the retail channel, providers would incur a one-time cost, believed to be minimal, to review and edit existing disclosures to ensure that they include all applicable fees and follow the specified formatting requirements and, in some cases, to print revised disclosures. Those entities distributing prepaid accounts online would incur costs, believed to be minimal, to update websites to include the revised disclosures.

As described in the Section 1022(b)(2) discussion, the pre-acquisition disclosure requirements also impose ongoing operational costs on covered entities separate and apart from the aforementioned implementation costs. In order to determine the composition of the short form disclosure, covered entities would need to review data on an annual basis to ascertain which fees should be included in the incidence-based part of the short form disclosure. Absent a need to revise the short form disclosure, review of the information necessary to make these

[556] This is, in part, due to the potentially high fixed costs associated with distributing prepaid accounts through this channel.

determinations, which is likely maintained in the ordinary course of business, should comprise minimal ongoing cost. If disclosures need to be revised due to a change in the required elements, covered entities would incur costs associated with these revisions. For those entities distributing prepaid accounts online, this would require a website update, or updated link, to a revised form. Updates to written and electronic disclosures would need to occur within 90 days. The Bureau believes that the costs associated with updates to written and electronic disclosures are minimal.

Other key provisions of the proposed rule potentially triggering burden include expansions to access to account information requirements (largely extending the current periodic statement alternative for payroll card accounts to all prepaid accounts with certain modifications) and the establishment of certain additional disclosures related to access to account information. Financial institutions offering prepaid accounts would be required to comply with Regulation E's periodic statement requirement; the proposed rule also includes an alternative means of compliance with this requirement. Specifically, the proposed rule states that financial institutions are not required to furnish periodic statements to consumers if they make available to the consumer his or her account balance through a readily available telephone line, provide the consumer with access to at least 18 months of transaction history online, and if requested by the consumer, provide 18 months of written account history at no charge. Regardless of whether the financial institution chooses to provide periodic statements or implement the alternative, the proposed rule would impose the additional requirement that the financial institution disclose to the consumer a summary total of the amount of all fees assessed against the consumer's prepaid account, the total amount of deposits to the account, and the total amount of all debits made to the prepaid account for both the prior calendar month as well as the calendar year to date.

Although not all covered financial institutions are currently required to make transaction history available to consumers, current industry practice is to provide consumers with electronic access to at least 60 days of transaction history information.[557] The Bureau understands from outreach to industry that some providers currently make available more than 60 days of transaction history online, ranging from six months or one year to the entire life of the prepaid account. The proposed rule would extend this requirement to 18 months of electronic history for those financial institutions relying on the alternative means of complying with Regulation E's periodic statement requirement. Additionally, financial institutions may have to modify existing transaction history reporting or periodic statements if they do not presently include the proposed summary totals.

The nature of the costs associated with these proposed provisions would depend on the extent to which the entity relies on outside vendors to perform information technology functions. For those covered entities maintaining in-house information technology platforms, the cost associated with updating systems to maintain this information and providing additional electronic storage should be negligible and would consist primarily of an expansion of existing electronic storage media. Those financial institutions that format their own periodic statements or transaction histories and do not currently display the required totals on their periodic statements or transaction histories would incur a one-time implementation cost to modify these disclosures.[558]

[557] Providers of payroll card accounts complying with Regulation E by using the alternative to providing periodic statements are currently required to provide consumers with electronic access to at least 60 days of account history, and the FMS Rule requires such access to be provided for accounts that receive Federal payments.

[558] One program manager estimated that modifying its website to provide such functionality would cost approximately $15,000.

Many small entities rely on a processor to provide online hosting of consumer account history information, among other functions. The Bureau's understanding is that providers outsourcing this function pay processors a fee per prepaid account that may be a function of both the extent of the account history provided and the number of accounts that are being serviced by the processor.[559] These entities would generally rely on their processor to modify periodic statements or electronic transaction histories to display the required summary totals.[560] However, one program manager indicated to the Bureau that if such summary totals were a regulatory requirement, it predicted that the processor would offer it as part of its standard package of services at no additional cost.

As discussed in the Section 1022(b)(2) consideration of benefits and costs, the Bureau's understanding from industry outreach is that most covered financial institutions provide telephone access to balance information to consumers presently. Therefore, the Bureau regards the potential burdens associated with these provisions to be de minimis and not likely, considered separately or cumulatively, to constitute a significant economic impact.

The proposed rule also includes the requirement that prepaid account issuers submit copies of their agreements to the Bureau on a quarterly basis and post such agreements online. In addition, the proposed rule would require all prepaid account issuers to respond to consumer

[559] One program manager that relies on a processor for this function told the Bureau that fees for data storage are charged on a per account basis one time at activation. The program manager did not have an estimate of the cost associated with providing 18 months of history, but costs were generally increasing from $0.08 per account for three months of transaction history to $0.19 per account for one year of transaction history. This program manager also suggested that processor prices decrease with scale and that it was operating at low scale and was consequently paying among the highest prices charged by the processor.

[560] One program manager stated that its processor quoted a one-time cost of $65,000 associated with providing this functionality on its processor-hosted website (in response to an ad-hoc request). This likely represents an upper bound for the true development cost since this number likely includes a mark-up over the true cost of providing the service. Actual costs would be borne jointly by the processor and the prepaid providers relying on the processor for hosting services.

requests for written agreements or to post such agreements online. The Bureau believes that the costs associated with such activities should be minimal.

D. Conclusion

To determine whether the economic impact of the proposed rule could be significant, the Bureau compared estimates of the cumulative costs imposed by the proposed provisions on directly affected small or potentially small non-bank entities to an estimate of revenues earned by these entities.[561]

As discussed above, roughly two percent of the directly affected small or potentially small non-bank entities identified by the Bureau, which do not offer any form of limited liability or error resolution protections to consumers, would sustain an increase in ongoing costs, which the Bureau estimates to be $0.22 to $0.35 per active cardholder per month, as well as fixed costs associated with implementing Regulation E compliant limited liability or error resolution procedures were the proposed rule adopted. For those entities that provide limited liability and error resolution protections without provisional credit, the Bureau estimates that they would experience ongoing costs of up to one-third of the ongoing costs incurred by those entities that do not presently provide any form of limited liability or error resolution protections (or roughly $0.12 per active cardholder per month). The Bureau does not have information that would

[561] The Bureau did not separately consider the costs borne by small banks and credit unions since a substantial number of such entities are not directly affected by the proposed rule, as shown above. With respect to the determination of whether the economic impact experienced by non-bank entities is significant, the current policies of such entities are considered. Revenues would be earned and costs would be borne jointly by both issuers (typically banks and credit unions) and program managers (often non-banks). In order to determine whether the economic impact is significant, revenues and costs are considered cumulatively.

enable it to separately determine the cost associated with extending Regulation E's limited liability protections and the cost associated with providing error resolution in general.[562]

Excluding those entities without at least one prepaid account agreement, two percent of small or potentially small non-bank entities did not appear to provide any error resolution protections, and seven percent of small or potentially small non-bank entities did not appear to provide any limited liability protections in at least one reviewed prepaid account agreement.[563] The Bureau uses the observed distribution of error resolution and limited liability protections to impute likely levels of protection for those entities for which no account agreement is available.[564]

The Bureau assumes that the one directly affected small or potentially small non-bank entity offers overdraft services or other credit features in connection with prepaid accounts would experience a significant economic impact from the proposed provisions.

Since small non-bank entities typically do not distribute prepaid accounts via the retail channel (or tend to rely on that channel for a modest portion of their portfolio), the costs associated with the other provisions of the proposed rule are minimal. Further, the Bureau believes that non-compliance related economic costs, such as potential future changes in market share arising from the new disclosure requirements, are minimal for all proposed provisions

[562] To the extent that the ongoing fraud loss estimates include the costs associated with providing liability limitations, the ongoing costs associated with these protections may be bounded. For instance, if the ongoing cost of providing limited liability, error resolution, and provisional credit protections is $0.35 per active cardholder per month, and provisional credit represents $0.12 of that total, then the ongoing cost associated with providing limited liability protections could be, at most, $0.23 per active cardholder per month. The Bureau conservatively assumes that absence of either limited liability protections or error resolution protections could imply a significant economic impact.

[563] One entity that does not provide limited liability protections also does not provide error resolution protections.

[564] Payroll only providers are excluded from the observed distribution when imputing the likely protections for those entities missing account agreements.

aside from those concerning overdraft or other credit features offered in connection with prepaid accounts.[565]

Since both revenue information and metrics describing the number of active prepaid accounts were not generally available (at the entity level) for directly affected small or potentially small non-bank entities, the Bureau relied on findings from industry studies (which may cover programs offered by entities that are not small or potentially small) to derive an estimate of the likely fee and interchange revenue earned per cardholder per month for certain types of prepaid accounts.[566] Although entities offering prepaid accounts may derive revenue from many sources, including other lines of business, the Bureau conservatively assumed that small entities only derive revenues from fees paid by cardholders and interchange fees. The Bureau obtained revenue estimates $9.98 per active cardholder per month for GPR cards distributed online and $6.77 per active cardholder per month for payroll cards.[567]

Comparing these revenue estimates to the range of estimates available to the Bureau of the ongoing costs of providing limited liability and error resolution protections with provisional credit and considering additional implementation costs, the Bureau concludes that those few

[565] In addition, such non-compliance related economic costs, including potential costs relating to disclosure, would be difficult to predict, and the Bureau does not have reason to believe that they would cause small entities to experience a significant economic impact.

[566] *See* 2012 FRB Philadelphia Study*; see also* Kansas City Fed Study.

[567] Using this approach, the Bureau obtained a revenue estimate of $9.14 per active cardholder per month for GPR cards distributed in a retail setting, but the Bureau notes that its understanding based on industry outreach is that small non-bank entities typically do not distribute prepaid accounts via this distribution channel. Estimates are obtained by combining information from Tables 5.7 and 5.8 from the 2012 FRB Philadelphia Study. For example, the revenue estimate is calculated in the following manner for those general purpose reloadable cards distributed in an online setting. First, using information in Table 5.7, the net interchange is determined by taking the difference between the interchange received and the interchange paid ($23.35-$6.41 = $16.94). Next, the ratio of total revenues (assuming that these are composed of only cardholder fees and net interchange earned) to cardholder fees is obtained (($76.00+$16.94)/$76.00 = 1.223). This inflator is then applied to cardholder fees line in Table 5.8 (1.223*$8.16 = $9.98).

small or potentially small non-bank entities that provide prepaid accounts that do not provide limited liability protections or do not provide error resolution protections may likely experience a significant economic impact from the proposed rule.[568] In addition, the one small or potentially small entity that offers overdraft services in connection with its prepaid accounts may experience a significant economic impact as a result of the proposed rule. Combined, the Bureau believes that there are approximately nine directly affected small or potentially small non-bank entities likely to experience a significant economic impact as a result of the proposed rule. Thus, the Bureau believes that less than one percent of all small non-bank entities in the relevant NAICS code would experience a significant economic impact as a result of the proposed rule.[569] The Bureau also believes that less than two percent of all small non-bank entities in the relevant NAICS code that perform either electronic fund transfers or electronic payment services would experience a significant economic impact from the proposed rule.[570]

[568] It is worth noting that this approach does not take into account the likely cost and revenue structure of person-to-person payment programs that may offer prepaid accounts to consumers. However, only four non-bank entities offering person-to-person payment programs were identified by the Bureau as small or potentially small. One of these entities is being considered by the Bureau's analysis to sustain a significant economic impact because it does not provide error resolution protections for consumers. Therefore, this information omission, at most, could result in failing to attribute a significant economic impact to three small or potentially small non-bank entities.

[569] The numerator in this calculation assumes that one small non-bank entity experiences a significant economic impact from the requirements relating to overdraft services and eight small non-bank entities experience a significant economic impact from the requirements relating to the imposition of Regulation E's limited liability and error resolution requirements, including provisional credit. These eight entities include one entity that does not provide error resolution protections, one entity that does not provide error resolution or limited liability protections, five entities that do not provide limited liability protections, and one additional entity that does not provide limited liability (imputed among those entities that are missing account agreements based on the distribution of protections among those entities with observed agreements).

[570] To derive this estimate, the Bureau assumes that 700 entities are within the NAICS code 522320 and perform either electronic fund transfers or electronic payment services. This is consistent with the number relied upon in FinCEN's Prepaid Access Rule. *See* 76 FR 45403 (July 29, 2011). Using a threshold of $7 million in annual receipts (the SBA threshold at the time), FinCEN estimated that 93 percent, or 651, of these entities were small. At present, the SBA considers entities within NAICS code 522320 with under $38.5 million in annual receipts to be small. Therefore, the Bureau further assumes that *at least* 651 of these entities are small. The Bureau conservatively uses a denominator of 651 to obtain this estimate.

The Bureau seeks comment on the methodology for estimating burden described in this analysis and requests any relevant data, including information regarding the implementation costs and ongoing costs associated with the proposed rule, especially as they pertain to small entities. Additionally, the Bureau seeks comment regarding the revenue and cost estimates used in this analysis.

Certification

Accordingly, the undersigned certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Bureau's collection of information requirements contained in this proposal, and identified as such, will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.) (Paperwork Reduction Act or PRA) on or before publication of this proposal in the Federal Register. Notwithstanding any other provision of law, under the Paperwork Reduction Act, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number.

The proposed rule would amend 12 CFR part 1005, Electronic Fund Transfers (Regulation E) and 12 CFR part 1026, Truth in Lending (Regulation Z). Regulation E and Regulation Z currently contain collections of information approved by OMB. The Bureau's OMB control number for Regulation E is 3170-0014 (Electronic Fund Transfer Act (Regulation E) 12 CFR 1005). The Bureau's OMB control number for Regulation Z is 3170-0015 (Truth in Lending Act (Regulation Z) 12 CFR 1026). As described below, the proposed rule would amend the collections of information currently in Regulation E and Regulation Z subparts B and G. The

frequency of response is on occasion, except for periodic statements and quarterly submissions of prepaid account agreements. These information collections are required to provide benefits for consumers and are mandatory. The only information the Bureau would collect under the proposal are the account agreements for prepaid programs, so no issue of confidentiality arises. The affected public of the proposed rule includes businesses, government agencies and other for-profit and not-for-profit organizations. The Bureau is not aware of any small not-for-profit organizations, aside from credit unions, that would be directly affected by the proposed rule.

Under the proposed rule, the Bureau generally would account for the paperwork burden associated with Regulation E and Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository financial institutions with more than $10 billion in total assets, their depository institution affiliates (together, the Bureau depository respondents), and certain non-depository financial institutions (the Bureau non-depository respondents), such as prepaid account program managers. The Bureau and the FTC generally both have enforcement authority over non-depository financial institutions under Regulation E and Regulation Z. Accordingly, the Bureau has allocated to itself half of the estimated burden on Bureau non-depository respondents. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the total paperwork burden for the financial institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

For Regulation E, using the Bureau's burden estimation methodology discussed below, the estimated burden for the approximately 181 prepaid providers likely subject to the proposal, including Bureau respondents, would be one-time burden of 35,398 hours and ongoing burden of 10,376 hours. The Bureau allocates to itself 16,538 hours of one-time burden: Bureau

depository respondents account for 4,450 hours while Bureau non-depository respondents account for 24,177 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining one-time burden (35,398 – 4,450 – 24,177 = 6,771 hours) is allocated to the other federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority. Similarly, the Bureau allocates to itself 4,494 hours of ongoing burden: Bureau depository respondents account for 1,761 hours while Bureau non-depository respondents account for 5,466 hours, half of which the Bureau allocates to itself and half to the FTC. The remaining ongoing burden (10,376 – 1,761 – 5,466 = 3,149 hours) is allocated to the other federal agencies that have administrative enforcement authority over banks and credit unions not subject to the Bureau's administrative enforcement authority.

For Regulation Z, using the Bureau's burden estimation methodology discussed below, the estimated burden for two non-depository institutions subject to the proposal would be one-time burden of 384 hours and ongoing burden of 5,511 hours. The Bureau allocates to itself half of both these burden estimates (192 hours and 2,756 hours, respectively) and half to the FTC.

The aggregate estimates of total burdens presented in this part are based on estimated burden hours that are averages across respondents. The Bureau expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size, complexity, and practices of the respondent. The Bureau used existing burden estimates as well as information obtained through industry research and outreach to develop the figures presented below.

The Bureau's PRA estimation methodology assumes that one-time burden increases with the number of programs operated by a program manager.[571] Ongoing burden may increase with the number of programs, the number of customers, or both. However, both one-time and ongoing PRA burden from the proposed rule is minimal. Most prepaid account programs already comply with the current requirements of Regulation E, as they apply to payroll card accounts. The additional proposed requirements would generally require small extensions or revisions to existing practices. Finally, there may be several participants in the prepaid account supply chain and the activities of the participants may vary across prepaid programs. The Bureau understands that, in general, the respondents for purposes of PRA are program managers, except for the collection required by § 1005.19 (internet posting of prepaid account agreements and submission to the Bureau), where the respondents will likely be prepaid account issuers.

Regulation E

As discussed further below, the Bureau proposes to require providers to make available to consumers disclosures before a consumer agrees to acquire a prepaid account. These disclosures would take two forms: a short form highlighting key fees that the Bureau believes are most important for consumers to know about prior to acquisition and a long form that would set forth all of the prepaid account's fees and the conditions under which those fees could be imposed. Second, the Bureau is proposing to extend, with certain modifications, existing error resolution and limited liability provisions for payroll card accounts and certain government benefit accounts

[571] The Bureau recognizes some uncertainty regarding the rate at which the one-time burden on a program manager increases with the number of programs as well as uncertainty regarding the average number of programs per program manager. The Bureau welcomes comments on its PRA burden methodology as well as data and other factual information that could improve the Bureau's estimates of PRA burden.

to all prepaid accounts.[572] Third, the proposed rule would adopt provisions requiring prepaid account issuers to post agreements for prepaid accounts on the issuers' websites and to submit those agreements to the Bureau for posting on a publicly-available website established and maintained by the Bureau. Finally, the Bureau is proposing to revise Regulation E (both subparts A and B) in various places to reflect the new provisions adopted for prepaid accounts including proposed revisions to provisions currently applicable to payroll card accounts and certain government benefit accounts.

The Bureau is proposing to extend, with certain modifications, existing provisions for payroll card accounts and certain government benefit accounts to all prepaid accounts. The Bureau's Study of Prepaid Account Agreements and review of industry research found that most programs of GPR prepaid accounts currently comply with the major provisions of the payroll card requirements of Regulation E. These accounts would be affected mostly by proposed modifications to the current provisions for payroll card accounts.

The Bureau believes that providers of prepaid accounts generally provide account opening disclosures, change in terms notices, and annual error resolution notices that meet the current requirements of Regulation E. However, the Bureau is proposing to expand the account opening requirements of § 1005.7(b)(5) as applied to prepaid accounts to require the disclosure of all fees, not just fees for electronic fund transfers. The one-time and ongoing burden from this

[572] All prepaid cards used to distribute Federally administered benefits (such as Social Security and SSI) and State and local non-needs tested benefits (such as unemployment, child support, and pension payments) are currently covered by Regulation E. However, government agencies are currently not required to provide periodic statements or online access to account information for cards distributing State and local non-needs tested benefits, as long as balance information is made available to benefits recipients via telephone and electronic terminals and a written account history of at least 60 days is given upon request. Needs-tested EBT programs established or administered under State or local law are not currently subject to Regulation E pursuant to existing § 1005.15(a). The Bureau's proposed rule would not change this.

requirement should be minimal. Regulation DD already requires banks to disclose all fees for accounts covered by that regulation (Credit Unions are subject to a similar requirement). Program managers for prepaid accounts that may not constitute accounts under Regulation DD may need to adjust their account opening disclosures. The Bureau believes the one-time and ongoing cost of implementing this change would be minimal.[573]

Providers offering certain electronic fund transfer services for prepaid accounts would also need to provide transaction disclosures. For example, a disclosure would be required for transactions conducted at an automated teller machine. These disclosures impose minimal burden as they are machine-generated and do not involve an employee of the institution. For preauthorized transfers to the consumer's account occurring at least once every 60 days, such as direct deposit, the institution would be required to provide notice as to whether the transfer occurred unless positive notice was provided by the payor. In lieu of sending a notice of deposit, the institution may provide a readily available telephone number that the consumer can call to verify receipt of the deposit. Thus, the burden of this requirement is also minimal. For preauthorized transfers from the account, either the institution or the payee would need to notify the consumer of payment variations. Because in the vast majority of instances the payee, rather than the account provider, would satisfy this obligation, the burden on providers is minimal.

[573] The Bureau notes that Regulation DD requires that a periodic statement disclose all fees debited to accounts covered by that regulation. § 1030.6(a)(3). Regulation DD defines "account" to mean "a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts." § 1030.2(a). Because some prepaid accounts, as proposed herein to be defined under Regulation E, may not also constitute accounts as defined under Regulation DD, the Bureau is proposing new § 1005.18(c)(3) to ensure that periodic statements and histories of account transactions for prepaid accounts include all fees, not just those related to electronic fund transfers and account maintenance. As noted above, this proposed revision is authorized under EFTA section 904(c) and section 1032(a) of the Dodd-Frank Act. The Bureau solicits comment on this portion of the proposal.

The Bureau is proposing that, subject to certain exceptions provided in proposed § 1005.18(b)(1)(ii), a provider would be required to make available a short form and a long form disclosure required by § 1005.18(b)(2)(i) and (ii) before the consumer acquires the prepaid account. The Bureau estimates that providers, including Bureau respondents, would take 40 hours per prepaid account program, on average, to develop the short form disclosure and to update systems. The Bureau also recognizes a one-time cost of replacing and disposing of cards in stores of approximately $17 million.[574] Providers would take 8 hours annually per prepaid account program to evaluate and if necessary update incidence-based fees on the short form disclosure. Providers would incur no other ongoing costs for the short form disclosure since they already offer consumers a pre-acquisition disclosure. The Bureau estimates that providers, including Bureau respondents, would take on average 8 hours per prepaid account program to develop the long form disclosure and update systems. The long form disclosure is substantially the same as disclosures already provided in prepaid account agreements.[575]

Proposed § 1005.18(b)(7) would require that certain disclosures be made on the actual prepaid account access device. These include the name of the financial institution and the URL of a website and a telephone number that the consumer can use to contact the financial institution

[574] For a period of 12 months after the final rule is published in the Federal Register, financial institutions would be permitted to continue selling prepaid accounts that do not comply with the final rule's pre-acquisition disclosure requirements, if the account and its packaging material were printed prior to the proposed effective date. Based on discussions with industry, the Bureau understands that after 12 months approximately 40 percent of stock would remain in stores and would have to be located, shipped, and destroyed.

[575] Proposed § 1005.18(b)(2)(ii)(B) would require that the long form disclosure include the disclosures described in § 1026.60, regarding credit card applications and solicitations, if at any point a credit plan may be offered in connection with the prepaid account. This burden would be minimal give the Bureau's burden estimation methodology for Regulation Z, as explained below. Under proposed § 1005.18(b)(6), if a person principally uses a foreign language on a package in a retail store, on the telephone or on the website the consumer utilizes to acquire a prepaid account, then both the short form and long form disclosures would need to be provided in that foreign language. Discussions with industry indicate that providers generally adopt this practice. The long form disclosure would also need to be provided in English, but this would be a minimal one-time and ongoing expense.

about the prepaid account. The Bureau believes that currently all prepaid account access devices provide these disclosures.

The Bureau's proposal would require providers offering prepaid accounts to provide periodic statements unless they use the alternative method of compliance in proposed § 1005.18(c)(1). The Bureau expects that most providers would use the alternative method of compliance. The Bureau's Study of Prepaid Account Agreements and its industry research found that most programs provide electronic access to account information. However, few provide at least 18 months of prepaid account transaction history. Further, the Bureau currently understands that prepaid programs generally do not provide a summary total of all fees posted to the consumer's prepaid account, the total amount of all deposits to the account, and the total amount of all debits to the account for the prior calendar month and for the calendar year to date. The Bureau estimates that providers would take on average 24 hours per prepaid account program to implement these changes.

The Bureau is proposing to extend to all prepaid accounts the limited liability and error resolution provisions of Regulation E, as they apply to payroll card accounts.[576] As discussed above, the Bureau's Study of Prepaid Account Agreements and its industry research found that most providers of prepaid accounts provide limited liability and error resolution protections (including provisional credit) generally consistent with the Regulation E requirements for payroll card accounts. The Bureau estimates that providers (including Bureau respondents) that do not fully comply with the payroll card rule's limited liability and error resolution provisions would

[576] The Bureau is proposing an exception from these requirements for prepaid accounts (other than payroll card accounts and government benefit accounts) for which the financial institution has not completed its collection of consumer identifying information and identity verification, provided the financial institution has disclosed to the consumer the risks of not registering the prepaid account.

require 8 hours per non-compliant program to develop fully compliant limited liability and error resolution procedures. Regarding ongoing costs, Bureau outreach indicates that providers receive perhaps one call per month per customer who actively uses a card and that 95 percent of those calls are resolved without requiring time from a customer service agent. Of the remaining five percent, very few calls involve assertions of error, but escalated calls are time consuming and respondents incur an ongoing burden.

Finally, the Bureau is proposing in § 1005.19(b) to require certain issuers to send the Bureau copies of the account agreements for their prepaid account programs. The Bureau estimates each issuer would take on average 40 hours one-time to upload agreements and then 8 hours each quarter on an ongoing basis.

The estimated burden on Bureau respondents from the proposed changes to Regulation E are summarized below.

Table 1

		One-time burden (Bureau respondents)					One-time burden (Bureau amount)	
		Number of Respondents	Average burden per program (hours)	Average programs per respondent	Average Burden per Respondent (hours)	Total One-time Burden (hours)	Half the burden on Bureau non-DIs (hours)	One-Time Bureau burden (hours)
1005.18(b)(2)(i)	Short form disclosure	160	40	2.30	91.98	14,716.46	6,530.43	8,186.03
1005.18(b)(2)(ii)	Long form disclosure	160	8	2.30	18.40	2,943.29	1,306.09	1,637.21
1005.18(c)	Access to prepaid account information	160	24	2.30	55.19	8,829.88	3,918.26	4,911.62
1005.18(e)(2), 1005.11	Error resolution	20	8	1.86	14.86	297.14	133.71	163.43
1005.19(b)	Quarterly submission of agreements	46	12	3.26	40.00	1,840.00	200.00	1,640.00
Total	**Total**					**28,627**		**16,538**

Table 2

		Ongoing burden (all Bureau respondents)				Ongoing burden (Bureau amount)	
		Number of Respondents	Annual Responses per Respondent	Average Burden per Response (minutes)	Total Ongoing Burden (hours)	Half the burden on Bureau non-Dis (hours)	Ongoing Bureau burden (hours)
1005.18(b)(2)(i)	Short form disclosure	160	2	480	2,946	1,309	1,637
1005.18(e)(2), 1005.11	Error resolution	20	281	30	2,810	1,264	1,545
1005.19(b)	Quarterly submission of agreements	46	4	480	1,472	160	1,312
Total					**7,227**	**2,733**	**4,494**

Regulation Z

For the proposed requirements under Regulation Z, the Bureau understands that approximately 205,000 consumers currently have a form of overdraft protection on their GPR and payroll cards.[577] The Bureau's PRA estimation methodology assumes that the same number would use a credit feature if the proposed rule were finalized.[578] Further, the methodology generally assumes that the per-respondent and per-transaction burdens would be consistent with those currently reported for credit card accounts in Regulation Z.

As described in greater detail above, under the proposed rule, if adopted, the Bureau anticipates that most overdraft services and credit features offered in connection with a prepaid account, including where extensions of credit are only permitted to be deposited into particular prepaid accounts specified by the creditor, would meet the definition of "open-end credit."[579] In addition, under the proposal, a prepaid account that accesses such an overdraft service or credit plan generally would be a "credit card" under Regulation Z. Under the proposal, the overdraft services or other credit card plans described above would be governed by subparts A, B, D and G

[577] The Bureau is aware of two providers of overdraft services or credit features on prepaid accounts and believes that NetSpend is the only significant provider. NetSpend is an operating segment of TSYS, Inc., for which the10-Q report for the quarter ending June 20, 2014 states that NetSpend has approximately 3.4 million active cards; *See* Total Sys. Serv. Inc., Form 10-Q, *available at* http://www.sec.gov/Archives/edgar/data/721683/000119312514300851/d737574d10q.htm. In a recent news article, NetSpend reported that only about six percent of its customers regularly use overdraft. *See* Suzanne Kapner, *Prepaid Plastic is Creeping Into Credit*, Wall Street J. (Sept. 5, 2012), http://online.wsj.com/news/articles/SB10000872396390443686004577633472358255602. Assuming each NetSpend customer has overdraft protection on only one account, there are 204,000 prepaid accounts with overdraft protection. No data is available for the second provider, Insight Card Services. The Bureau believes, based on industry data, that the median provider of prepaid accounts likely has about 10,000 customers. Assuming 10% have an overdraft service or credit feature on one prepaid account gives an additional 1,000 accounts with overdraft protection.

[578] Current data on the size of the market for credit features on prepaid accounts has limited usefulness in predicting the size of the market if the proposal is finalized, since both eligibility criteria and credit features may change as a result. *See* the previous discussions in this preamble.

[579] This would apply if the creditor establishes a program where the creditor routinely extends credit and may impose finance charges from time to time on an outstanding unpaid balance for credit.

of Regulation Z.[580] Pursuant to Regulation Z, persons offering such plans would be required to comply with the requirements governing information collections. These requirements are as follows.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required to inform consumers of costs and terms before they use the plan and in general to inform them of certain subsequent changes in the terms of the plan. Initial information would need to include the finance charge and other charges, the annual percentage rate (APR), a description of how balances on which a finance charge is based would be calculated, and any collateral that would secure repayment. If the card issuer changed any term initially disclosed, or increased the minimum periodic payment, a written change-in-term notice generally would need to be provided to the consumer at least fifteen days prior to the effective date of the change. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau also assumes that for these accounts, the number of account opening disclosures equals the number of accounts in any year.[581]

[580] Transactions that are authorized on a prepaid account when the consumer has insufficient or unavailable funds at the time of authorization as well as transactions that are paid from a prepaid account when the consumer has insufficient or unavailable funds at the time of payment would generally be considered to be credit under Regulation Z. However, under the proposal, Regulation Z would not apply to overdraft services or other credit plans that are accessed by a prepaid card if the prepaid card only accesses credit that is not subject to any fee and is not payable by written agreement in more than four installments.

[581] In one recent analysis, the median life span for GPR cards with occasional reloads was 330 days and 570 days for GPR cards with periodic non-government direct deposit. *See* Fumiko Hayashi and Emily Cuddy, *General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks*, Federal Reserve Bank of Kansas City, February 2014, at 47.

Card issuers would be required to provide a written statement of activity for each billing cycle. The statement would have to be provided for each account that has a balance of more than $1 or on which a finance charge is imposed, and it would have to include a description of activity on the account, opening and closing balances, finance charges imposed, and payment information. Consistent with estimates currently reported for credit card accounts in Regulation Z, the Bureau estimates 80 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account.

Card issuers would be required to notify consumers about their rights and responsibilities regarding billing problems. Card issuers would have to provide either a complete statement of billing rights each year or a summary on each periodic statement. If a consumer alleged a billing error, the card issuer would need to provide an acknowledgment, within thirty days of receipt, that the card issuer received the consumer's error notice and would need to report on the results of its investigation within ninety days. If a billing error did not occur, the card issuer would need to provide an explanation as to why the card issuer believed an error did not occur and provide documentary evidence to the consumer upon request. The card issuer would also have to give notice of the portion of the disputed amount and related finance or other charges that the consumer still owed and notice of when payment was due. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and a small ongoing burden per account. The Bureau further assumes, based on discussions with industry, that in any year 1.5 percent of customers will assert errors that require significant time from customer service representatives.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required, when advertising their product, to include certain basic credit information if the advertisement refers to specified credit terms or costs. The Bureau estimates 8

hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.

Persons offering an overdraft service or other credit feature in connection with a prepaid account would be required to send the Bureau copies of the overdraft service or program agreement. The Bureau estimates each issuer would take on average 40 hours one-time to upload agreements and then 8 hours each quarter on an ongoing basis.

Finally, persons offering a credit feature in connection with a prepaid account would also need to provide additional disclosures with solicitations and applications. Such persons would need to disclose key terms of the account, such as the APR, information about variable rates, and fees such as annual fees, minimum finance charges, and transaction fees for purchases. The Bureau estimates 8 hours of one-time burden per respondent to develop these disclosures and small ongoing burden to maintain or revise these disclosures.[582]

The estimated burden on Bureau respondents from the proposed changes to Regulation Z are summarized below.

Table 3

		One-time burden			
		Number of Respondents	Average Burden per Respondent (hours)	Total One-time Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	2	8	16.00	8.00
1026.7(b)	Periodic statements	2	80	160.00	80.00
1026.9	Change in terms	2	8	16.00	8.00
1026.13	Error resolution	2	8	16.00	8.00
1026.16	Advertising	2	40	80.00	40.00
1026.58	Internet posting of credit card agreements	2	40	80.00	40.00
1026.60(a)(2)	Application and solicitation disclosures	2	8	16.00	8.00
Total				**384**	**192.00**

[582] The recordkeeping requirement in § 1026.25 does not specify the kind of records that must be retained, so for purposes of PRA the paperwork burden is minimal.

Table 4						
		Ongoing burden				
		Number of Respondents	Annual Responses per Respondent	Average Burden per Response (minutes)	Total Ongoing Burden (hours)	Bureau Amount
1026.6(b)	Account opening disclosures	2	205,000	0.25	854.17	427.08
1026.7(b)	Periodic statements	2	2,460,000	0.0625	2,562.50	1281.25
1026.9	Change in terms	2	205,000	0.125	427.08	213.54
1026.13	Error resolution	2	3,075	30	1,537.50	768.75
1026.16	Advertising	2	5	25	2.08	1.04
1026.58	Internet posting of credit card agreements	2	4	480	32.00	16.00
1026.60(a)(2)	Application and solicitation disclosures	2	12	480	96.00	48.00
Total					**5,511**	**2,756**

Comments regarding the burden estimate, or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent to: The Office of Management and Budget (OMB), Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC, 20503, or by the Internet to submissions@omb.eop.gov. If you wish to share your comments with the Bureau, please send a copy of these comments to the docket for this proposed rule at www.regulations.gov. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available both at www.regulations.gov as well as OMB's public-facing docket at www.reginfo.gov.