

January 31, 2017

# Prepaid Rule

Small entity compliance guide



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**Paperwork Reduction Act Statement**

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and not withstanding any other provision of law a person is not required to respond to a collection of information unless it displays a valid OMB control number. The OMB control numbers for this collection are 3170-0015 and 3170-0014. The time required to complete these information collections is estimated to average twenty eight minutes per response. The obligation to respond to these collections of information is mandatory under The Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq and the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 et seq. Comments regarding these collections of information, including the estimated response time, suggestions for improving the usefulness of the information, or suggestions for reducing the burden to respond to this collection should be submitted to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to CFPB\_PRA@cfpb.gov.

# 1. Introduction

On October 5, 2016, the Consumer Financial Protection Bureau (Bureau) issued a final rule (Prepaid Rule) to create comprehensive protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and Regulation Z, which implements the Truth in Lending Act (TILA).<sup>1</sup>

The Prepaid Rule extends Regulation E's coverage to prepaid accounts, which it defines to include payroll card accounts, government benefit accounts, and certain other types of prepaid products. It modifies Regulation E to create tailored provisions governing disclosures, limited liability and error resolution, and periodic statements for prepaid accounts. It also creates new requirements that apply only to prepaid accounts.

Additionally, the Prepaid Rule regulates overdraft credit features that may be offered in conjunction with prepaid accounts. Subject to certain exceptions, such a credit feature will be covered under Regulation Z if it is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with a prepaid card.

Generally, the Prepaid Rule is effective on October 1, 2017. The requirement to make prepaid account agreement submissions to the Bureau, which is discussed in Section 14, is effective

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<sup>1</sup> The final rule was published in the *Federal Register* on November 22, 2016. 81 FR 83934.

October 1, 2018. The Prepaid Rule contains exceptions and accommodations related to the October 1, 2017 effective date. These exceptions and accommodations are discussed in Section 19 of this guide and in the Prepaid Rule's Effective Dates factsheet, available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>

## 1.1 Purpose of this guide

The purpose of this guide is to provide an easy-to-use summary of the Prepaid Rule and to highlight information that may be helpful when implementing the Prepaid Rule.

**This guide is not a substitute for reviewing the Prepaid Rule, Regulation E, or Regulation Z.** Regulation E, Regulation Z, the Prepaid Rule, and their official interpretations (also known as the commentary) are the definitive sources of information regarding their requirements. The Prepaid Rule is available at <http://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/prepaid-accounts-under-electronic-fund-transfer-act-regulation-e-and-truth-lending-act-regulation-z/>

## 1.2 Scope and focus of this guide

The focus of this guide is the Prepaid Rule. Except when specifically needed to explain a provision of the Prepaid Rule, this guide does not discuss other laws, regulations, or regulatory guidance that may apply to prepaid accounts or the entities involved in offering prepaid accounts.

☞ EFTA does not preempt all state laws. EFTA preempts inconsistent state laws, only to the extent of the inconsistency. A state law is not inconsistent if the protection it affords consumers is greater than the protection under EFTA. 15 U.S.C. 1693q.

The Prepaid Rule generally extends the requirements set forth in Subpart A of Regulation E to prepaid accounts with some modifications. This guide discusses many of Regulation E's provisions that apply to prepaid accounts as well as the provisions of Regulation E that the Prepaid Rule specifically modifies for prepaid accounts. It also discusses the new provisions of Regulation E that the Prepaid Rule adds for prepaid accounts. However, this guide does not discuss all of the provisions of Regulation E that may apply to a prepaid account. Additionally,

EFTA contains provisions that are not directly reflected in Regulation E. The guide does not discuss all of the provisions of EFTA that may apply to prepaid accounts.

Additionally, the Prepaid Rule addresses overdraft credit features that may be offered in conjunction with prepaid accounts and creates new requirements that apply to hybrid prepaid-credit cards. This guide discusses when an overdraft credit feature offered in conjunction with a prepaid account is subject to the Prepaid Rule and Regulation Z and when an access device is a hybrid prepaid-credit card. However, it does not discuss the specific provisions of the Prepaid Rule or Regulation Z that may apply to such overdraft credit features and hybrid prepaid-credit cards.

Users of this guide should review the Prepaid Rule, Regulation E, Regulation Z, EFTA, and TILA as well as this guide.

The content of this guide does not include any rules, bulletins, guidance, or other interpretations issued or released after the date on the guide's cover page.

## 1.3 Use of certain terms in this guide

Generally, the Prepaid Rule's provisions apply to prepaid accounts. However, in certain instances, a particular provision may be applicable only to certain prepaid accounts, such as payroll card accounts or government benefit accounts, or may apply differently to certain prepaid accounts. This guide notes when a particular provision applies to a subset of prepaid accounts, but otherwise uses the term "prepaid account" to include payroll card accounts, government benefit accounts, and other prepaid accounts.

## 1.4 Use of examples in this guide

This guide has examples to illustrate some portions of the Prepaid Rule. The examples do not include all possible factual situations that could illustrate a particular provision, trigger a particular obligation, or satisfy a particular requirement. Even though an example may identify a fictitious financial institution as, for example, "Ficus Bank," the provision or obligation being illustrated in the example may apply more broadly or more narrowly than to banks. For example, it may apply to both depository and nondepository financial institutions or it may apply to only certain banks.



## 1.5 Additional implementation resources

Additional resources to help industry understand and comply with the Prepaid Rule are available on the Bureau's website, <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>. You may also sign up on this website for an email distribution list that the Bureau will use to announce additional resources as they become available.

If you have a specific regulatory interpretation question about the Prepaid Rule after reviewing these resources, you can email the question to [CFPB\\_RegInquiries@cfpb.gov](mailto:CFPB_RegInquiries@cfpb.gov). The subject line of the email should include "Prepaid Rule," and the body of the email should include your name, contact information, details about your question, and regulatory cites to indicate the topic of your question. If you do not have access to email, you may leave your question in a voicemail at 202-435-7700.

Bureau staff provides only informal responses to regulatory inquiries, and the responses do not constitute official interpretations or legal advice. Bureau staff is not able to respond to specific inquiries within a particular requested timeframe. Actual response times will vary based on the number of questions Bureau staff is handling and the amount of research needed to respond to a specific question.

## 2. Prepaid accounts

The Prepaid Rule adds the term “prepaid account” to the definition of “account” in Regulation E. 12 CFR 1005.2(b)(3). Effective October 1, 2017, products that meet the Prepaid Rule’s definition of prepaid account are subject to various requirements under amended Regulation E.

However, certain types of products are not accounts under Regulation E and, therefore, are not prepaid accounts. For example, an account subject to Regulation E must be established primarily for personal, family, or household purposes. 12 CFR 1005.2(b)(1). Therefore, if an account is established primarily for a business or commercial purpose, it is not an account under Regulation E or a prepaid account under the Prepaid Rule. Similarly, an account held by a financial institution under a bona fide trust agreement<sup>2</sup> is not an account under Regulation E and is not a prepaid account under the Prepaid Rule. 12 CFR 1005.2(b)(2). For example, profit-sharing and pension accounts established under a trust agreement are not accounts under Regulation E and cannot be prepaid accounts under the Prepaid Rule. Comment 1005.2(b)-3.

If a product is established primarily for personal, family, or household purposes and is not held by a financial institution under a bona fide trust agreement, it could be a prepaid account as that term is defined in the Prepaid Rule. In order to be a prepaid account under the Prepaid Rule, the

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<sup>2</sup> “Bona fide trust agreement” is not defined by the Electronic Fund Transfer Act, Regulation E, or the Prepaid Rule. Therefore, financial institutions must look to state or other applicable law for an interpretation of this phrase. Comment 1005.2(b)(2)-1. However, an account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of Regulation E. Comment 1005.2(b)(2)-2.

product must satisfy at least one prong of the Prepaid Rule’s definition of “prepaid account.” That definition has four separate prongs as well as several specific exclusions. 12 CFR 1005.2(b)(3)(i). However, the exclusions do not apply to all four prongs. A product that is a payroll card account or a government benefit account (*i.e.*, that satisfies one of the first two prongs of the definition) is a prepaid account, and the exclusions in the definition of prepaid account do not apply. 12 CFR 1005.2(b)(3)(i)(A) and (B). The definition of prepaid account, additional information on each of the prongs of the definition, and the exclusions are discussed below.

The Prepaid Account Coverage Chart, available at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>, is another resource that can be used to help understand if a product is a prepaid account under the Prepaid Rule.

## 2.1 Definition of prepaid account

A “prepaid account” is a product that is one or more of the following:

1. A payroll card account.
2. A government benefit account.
3. An account that:
  - a. Is marketed or labeled as “prepaid;”
  - b. Is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at automated teller machines (ATMs); and
  - c. Does not satisfy a specific exclusion set forth in the Prepaid Rule.
4. An account that:
  - a. Is issued on a prepaid basis in a specified amount or is capable of being loaded with funds after issuance;
  - b. Has a primary function of conducting transactions with multiple, unaffiliated merchants for goods or services, conducting transactions at ATMs, or conducting person-to-person (P2P) transfers;
  - c. Is not a checking account, a share draft account, or a negotiable order of withdrawal (NOW) account; and

d. Does not satisfy a specific exclusion set forth in the Prepaid Rule.

12 CFR 1005.2(b)(3).

## 2.2 Payroll card account

A “payroll card account” is an account:

1. That is established directly or indirectly through an employer; and
2. To which electronic fund transfers (EFTs) of the consumer’s wages, salary, or other employee compensation (such as commissions) are made on a recurring basis.

☞ The Prepaid Rule does not change the definition of “payroll card account” in Regulation E. However, an account that is related to a consumer’s employment but is not a payroll card account may be covered as a prepaid account under another prong of the Prepaid Rule’s definition of prepaid account.

12 CFR 1005.2(b)(3)(i)(A).

Because a payroll card account must be used to transfer wages, salary, or other employee compensation, it does not include some types of employment-related accounts, such as an account used solely to make disbursements unrelated to compensation such as petty cash reimbursements or travel per diem payments. Similarly, it does not include an account used solely to disburse incentive-based payments (other than commissions) that are unlikely to be the consumer’s primary source of employee compensation. For example, an account used solely to disburse bonus payments would not be a payroll card account. However, if an employer establishes an account and makes recurring EFTs of wages, salary, or other compensation to the account as well as incentive-based payments or payments unrelated to compensation, the account is a payroll card account. Comment 1005.2(b)(3)(i)-2.

The EFTs of the consumer’s wages, salary, or other compensation must be recurring. A payroll card account does not include an account that is used solely in isolated instances, such as an account used to distribute a final wage or salary payment or to distribute wages, salary, or other compensation in an emergency when other payment methods are unavailable. Comment 1005.2(b)(3)(i)-2.

An account can be a payroll card account regardless of whether it is operated or managed by an employer, a third-party processor, a depository institution, or any other person. 12 CFR 1005.2(b)(3)(i)(A).

## 2.3 Government benefit account

A “government benefit account” is an account that is established:

1. By a government agency; and
2. For the purpose of electronically distributing government benefits, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency.

12 CFR 1005.15(a)(2).

☞ The Prepaid Rule does not change the definition of government benefit account. Accounts established to distribute needs-tested benefits in a program established under state or local law or administered by a state or local agency are excluded from coverage under Regulation E.

A government benefit account does not include an account established to distribute government benefits that are both: (1) needs-tested; and (2) in a program established under state or local law or administered by a state or local agency. Government benefit accounts include accounts for distributing benefits that are not needs-tested (e.g., state unemployment insurance or child support payments), as well as all federal benefits regardless of whether they are needs-tested.

## 2.4 Prepaid accounts marketed or labeled as “prepaid”

An account is a prepaid account under this prong of the definition if it does not qualify for an exclusion, as discussed in Section 2.6 of this guide, and satisfies both of the following:

1. *Is marketed or labeled as prepaid.* If “prepaid” appears on the card or other access device associated with the account, on packaging materials for the card or other access device, or on a display, advertisement, or other publication used to promote the account, the account satisfies this test. An account may also be marketed or labeled as prepaid if the financial institution, the financial institution’s service provider (including a program manager), or the payment network on which the account’s access device is used promotes or advertises the

account using the term “prepaid” or contracts with a third party to promote or advertise the account using the term “prepaid.” Comment 1005.2(b)(3)(i)-3. Section 3.1 discusses who is a financial institution with regard to a prepaid account.

*2. Is redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs.* An account satisfies this test if, for example, multiple, unaffiliated merchants agree (pursuant to the payment network’s rules) to honor a card, code, or other access device if it bears the mark, logo, or brand of a payment network. However, an account does not satisfy this test if the card, code, or other access device can only be used at an affiliated group of merchants, such as merchants at a specific shopping mall. Comments 1005.2(b)(3)(i)-9; 1005.20(a)(3)-1 and -2.

12 CFR 1005.15(a)(3).

- ☐ Merchants are affiliated if they are related by common ownership or common corporate control. They are also affiliated if they share the same name, mark, or logo. Franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise license are affiliated. Merchants are also affiliated if they agree, by contract or otherwise, to redeem cards, codes, or other devices bearing the same mark, logo or brand (other than the mark, logo, or brand of a payment network) for the purchase of goods or services solely at such merchants. See comment 1005.20(a)(2)-2.
- ☐ Although products such as prepaid phone cards are often marketed or labeled as “prepaid,” they would not usually qualify under this test because they are not redeemable at multiple, unaffiliated merchants for goods or services or usable at ATMs.

An account that satisfies these two tests is not a prepaid account under the Prepaid Rule if it qualifies for one or more of the exclusions discussed in Section 2.6.

## 2.5 Prepaid accounts whose primary function is to perform certain transactions

An account is a prepaid account under this prong of the definition if it does not qualify for an exclusion, as discussed in Section 2.6 of this guide, and if it satisfies all of the following:

1. *Is either: (a) issued on a prepaid basis in a specified amount; or (b) capable of being loaded with funds after issuance.* 12 CFR 1005.2(b)(3)(i)(D)(1). An account is issued on a prepaid basis if it is loaded with funds when it is first provided to the consumer for the consumer's use. Comment 1005.2(b)(3)(i)-4. An account is capable of being loaded with funds after issuance if the consumer or a third party can load funds into the account after it is issued to the consumer. Comment 1005.2(b)(3)(i)-5. However, the account does not need to be reloadable to qualify as a prepaid account. Comment 1005.2(b)(3)(i)-7.

To satisfy this test, the account must be capable of holding funds. A product that allows a consumer to store funds before the consumer designates a final destination for the funds satisfies this test, but a product that only is capable of storing a consumer's payment credentials for other accounts does not. Comments 1005.2(b)(3)(i)-5 and -6.

2. *Has a primary function of: (a) conducting transactions with multiple, unaffiliated merchants for goods or services; (b) conducting transactions at ATMs; or (c) conducting P2P transfers.* 12 CFR 1005.2(b)(3)(i)(D)(2). Generally, to meet this primary function test, the account's primary function must be to provide a consumer with general transaction capability. Accounts that only incidentally provide general transaction capability do not satisfy this test. An account must be more than merely capable of being used to conduct transactions with multiple unaffiliated merchants, to conduct transactions at ATMs or to conduct P2P transfers. Comment 1005.2(b)(3)(i)-8.

☞ P2P transfers include not only EFTs to another consumer but also EFTs to a business. An account may qualify as a prepaid account if its primary function is to make P2P transfers to another consumer or to a business, even if it is not redeemable upon presentation at multiple, unaffiliated merchants for goods or services or usable at ATMs. Comment 1005.2(b)(3)(i)-10.

When determining whether an account satisfies this primary function test, one must look to the account's functionality, not to the consumer's actual use of the account or to the access device associated with the account. For example, the fact that a consumer may choose to withdraw the entire account balance at an ATM or transfer it to another account held by the consumer does not change the fact that the account's primary function is to provide general transaction capability. An account's primary function is not determined by how frequently an individual consumer chooses to use the account for a given function. Comment 1005.2(b)(3)(i)-8.

Even if the account's access device can be used for other purposes (e.g., as a form of identification), the account may still satisfy the primary function test. Such accounts may

include, for example, a prepaid account used to disburse student loan proceeds via a card that can be used at multiple, unaffiliated merchants or to withdraw cash from an ATM, even if that card also acts as a student identification card. Comment 1005.2(b)(3)(i)-8.

Where multiple accounts are associated with the same access device, one must determine the primary function of each account separately. Comment 1005.2(b)(3)(i)-8.

**Example:** Any State University sponsors a program that allows a student to use a card to access two separate accounts: Account A and Account B. A student can use the card to access Account A to conduct transactions with multiple, unaffiliated merchants for goods or services. The student can also use the card to access Account B, which can only be used to conduct closed-loop transactions on the university's campus. The student also uses the card as a student identification card. Account A, which can be used to conduct transactions with multiple, unaffiliated merchants for goods or services, satisfies the primary function test. Account B, which can only be used to conduct closed-loop transactions, does not satisfy the primary function test.

#### Examples of accounts that do not satisfy the primary function test

Saving accounts. The primary function of a savings account is to accrue interest on funds in the account.

Brokerage accounts. The primary function of a brokerage account is to hold funds so that the consumer can conduct transactions through a licensed broker or firm.

Accounts that can only be used to conduct closed-loop transactions, such as on a college campus.

Products with the sole function of making a one-time transfer into a separate prepaid account (*i.e.*, reload packs).



### Examples of accounts that do satisfy the primary function test

Accounts that allow a consumer to purchase goods and services at multiple, unaffiliated merchants, even if the consumer actually withdraws or spends all of the funds in a single transaction.

Accounts that are used by a third party to disburse funds, such as tax refund proceeds, to a consumer and allow the consumer to purchase goods or services at multiple, unaffiliated merchants.

Accounts that are used to disburse student loan proceeds and allow the consumer to obtain cash at ATMs.

Accounts that allow a consumer to purchase goods and services at multiple unaffiliated merchants, even if the accounts' access devices can also be used as a form of identification.

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*3. Is not a checking account, a share draft account, or a NOW account. 12 CFR 1005.2(b)(3)(i)(D)(3).* Checking accounts, share draft accounts, and NOW accounts are not prepaid accounts under this prong of the definition even if they do not offer check-writing capabilities (*e.g.*, a “checkless” checking account). For purposes of this test, the ability to issue preauthorized checks drawn on the account does not by itself qualify the account as a checking, share draft, or NOW account.

An account that satisfies these three tests is not a prepaid account under the Prepaid Rule if it qualifies for one or more of the exclusions discussed in Section 2.6.

## 2.6 Exclusions in the Prepaid Rule

The Prepaid Rule includes several specific exclusions, which apply to the third and fourth prongs of the definition of prepaid account. See Sections 2.4 and 2.5 above. An account that

would otherwise satisfy one or both of these prongs of the definition is not a prepaid account under the Prepaid Rule if it is any of the following:

1. *Loaded only with funds from certain healthcare and employee benefit programs.* An account loaded only with funds from a health savings account, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement is not a prepaid account.<sup>3</sup>

2. *Loaded only with qualified disaster relief payments.* An account that is directly or indirectly established through a third party and loaded only with qualified disaster relief payments is not a prepaid account. 12 CFR 1005.2(b)(3)(ii)(B). “Qualified disaster relief funds” means funds made available through a qualified disaster relief program as defined in 26 U.S.C. 139(b). Comment 1005.2(b)(3)(ii)-2.

3. *A gift certificate.* A gift certificate, as defined in the [Gift Card Rule](#), is not a prepaid account. 12 CFR 1005.2(b)(3)(ii)(D)(1); 1005.20(a)(1) and (b).

4. *A store gift card.* A store gift card, as defined in the [Gift Card Rule](#), is not a prepaid account. 12 CFR 1005.2(b)(3)(ii)(D)(2); 1005.20(a)(2) and (b).

☐ Gift certificates and store gift cards are not prepaid accounts under the Prepaid Rule. 12 CFR 1005.2(b)(3)(ii)(D)(1) and (2). However, they are subject to separate requirements under Regulation E. Those requirements generally are found in 12 CFR 1005.20, which this guide refers to as the [Gift Card Rule](#).

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<sup>3</sup> “Health savings account” means a health savings account as defined in 26 U.S.C. 223(d); “flexible spending arrangement” means a health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; “medical savings account” means an Archer MSA as defined in 26 U.S.C. 220(d); “health reimbursement arrangement” means a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106; “dependent care assistance program” means a dependent care assistance program pursuant to 26 U.S.C. 129; and “transit or parking reimbursement arrangement” means a qualified transportation fringe benefit provided by an employer pursuant to 26 U.S.C. 132. Comment 1005.2(b)(3)(ii)-1.

5. *A loyalty, award, or promotional gift card.* A loyalty, award, or promotional gift card, as defined in the [Gift Card Rule](#), is not a prepaid account. 12 CFR 1005.2(b)(3)(ii)(D)(3); 1005.20(a)(4) and (b). In order to qualify as a “loyalty, award, or promotional gift card” under the Gift Card Rule, the card, code, or access device must include certain disclosures set forth in 12 CFR 1005.20(a)(4)(iii).

☞ Rebate cards and incentive cards that satisfy the definition of “loyalty, award, or promotional gift card” are not prepaid accounts under the Prepaid Rule.

6. *A general-use prepaid card that is both marketed and labeled as a gift card or gift certificate.* A general-use prepaid card, as defined in the [Gift Card Rule](#), is not a prepaid account if it is both marketed and labeled as a gift card or gift certificate. 12 CFR 1005.2(b)(3)(ii)(D)(4). The Gift Card Rule provides that gift cards, gift certificates, and general-use prepaid cards do not include certain codes, cards, and access devices that are not marketed or labeled as a gift card or gift certificate. However, the Prepaid Rule provides that a general-use prepaid card is not a prepaid account if it is both marketed and labeled as a gift card or gift certificate. Therefore, a product may be subject to both the Gift Card Rule and the Prepaid Rule in certain circumstances.

**Example:** Ficus Bank principally advertises a general-use prepaid card as a less-costly alternative to a bank account. During the holiday season, Ficus Bank uses signs that promote the card as “the perfect gift,” but the card itself is not labeled as a gift card or gift certificate. The card is marketed as a gift card or gift certificate, but is not both marketed and labeled as a gift card or gift certificate. Therefore, the product does not fit within the Prepaid Rule’s exclusion for a general-use prepaid card that is both marketed and labeled as a gift card. Additionally, the product does not fit within the Gift Card Rule’s exclusion for a general-use prepaid card that is reloadable and not marketed or labeled as a gift card. Depending on the other terms and conditions that apply to the card, it may be covered under both the Prepaid Rule and the Gift Card Rule.

7. *An account established for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.* To meet this exclusion an account must be established to distribute government benefits that are both: (1) needs-

tested; and (2) in a program established under state or local law or administered by a state or local agency. 12 CFR 1005.2(b)(3)(ii)(E). Accounts that are excluded from the definition of “government benefit account” in 12 CFR 1005.15(a)(2) are also excluded from the general definition of “prepaid account” under 12 CFR 1005.2(b)(3)(i)(C) and (D).

*8. The P2P functionality of an account established by or through the U.S. government if the account’s primary function is to conduct closed-loop transactions on U.S. military installations or vessels or similar government facilities. 12 CFR 1005.2(b)(3)(ii)(C).* This is a narrow exclusion intended to accommodate a specific set of closed-loop products that are used in unique circumstances, such as on military vessels or bases, or similar government facilities (e.g., embassies or consulates) in remote locations. At the time of the Prepaid Rule’s issuance, these products were marketed under the brand names Eagle Cash and Navy Cash/Marine Cash. To the extent that these products offer an open-loop capability that allows the consumer to conduct transactions at multiple, unaffiliated merchants for goods or services, that functionality is not excluded.

# 3. Entities subject to the Prepaid Rule

Generally, the Prepaid Rule applies to “financial institutions,” as that term is defined in Regulation E. However, the Prepaid Rule adds new requirements to Regulation E that apply to “issuers.” The Prepaid Rule also has requirements that apply to “prepaid account issuers,” “card issuers,” and “creditors” as those terms are defined in amended Regulation Z.

This Section 3 discusses who is a financial institution and who is an issuer under amended Regulation E. Section 15.2 discusses who is a prepaid account issuer and who is a card issuer under amended Regulation Z. For more information on who is a creditor subject to Regulation Z, see 12 CFR 1026.2(a)(17) and the related commentary.

Section 11 discusses who must comply with requirements for preauthorized EFTs to or from prepaid accounts, and Section 13 discusses who must comply with the prohibitions on compulsory use as they relate to prepaid accounts.

Information on who must comply with the Prepaid Rule’s changes regarding remittance transfers is provided in the small entity compliance guide on remittance transfers, available at [www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/remittance-transfer-rule](http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/remittance-transfer-rule).

Special rules apply to a person that provides an EFT service to a consumer but does not hold the consumer’s prepaid account if: (a) the person issues a prepaid card or other access device that the consumer can use to access the consumer’s prepaid account held by a financial institution; and (b) the person and the account-holding institution do not have an agreement regarding such access. These special rules are discussed in 12 CFR 1005.14 and the related commentary.

## 3.1 Financial institutions

The Prepaid Rule does not revise Regulation E's definition of financial institution. The same definition that applies to payroll card accounts and government benefit accounts prior to the Prepaid Rule's effective date applies to all prepaid accounts after October 1, 2017.

Under Regulation E, a "financial institution" is any bank, credit union, savings association or any other person that either:

1. Directly or indirectly holds an account (including a prepaid account) belonging to a consumer; or
2. Issues an access device and agrees with a consumer to provide EFT services. Under the Prepaid Rule, a transfer resulting from a prepaid card transaction is an EFT regardless of whether the transfer is initiated through an electronic terminal. 12 CFR 1005.3(b)(1)(v); comment 1005.2(b)(3)(i)-1. Therefore, a person meets this second prong of the definition of "financial institution" if the person issues a prepaid card or other access device and agrees with the consumer that the prepaid card or other access device may be used to conduct transactions authorizing the person to debit or credit the consumer's prepaid account.

12 CFR 1005.2(i).

For purposes of Regulation E, financial institutions are not limited to banks, credit unions, or savings associations. Persons, such as natural persons, corporations, government agencies, estates, trusts, partnerships, proprietorships, cooperatives, associations, and other organizations, can be financial institutions.<sup>4</sup> 12 CFR 1005.2(i) and (j).

☞ If two or more financial institutions jointly provide EFT services to consumers, they may contract among themselves to comply with Regulation E's requirements, as amended by the Prepaid Rule. 12 CFR 1005.4(d).

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<sup>4</sup> However, for purposes of the Prepaid Rule, financial institutions generally do not include motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. See section 1029 of the Dodd-Frank Act. 12 CFR 1005.2(i).

Additionally, under Regulation E, a government agency is a financial institution if the agency directly or indirectly issues an access device to a consumer for use in initiating an EFT of certain government benefits from a government benefit account. 12 CFR 1005.15(a)(1).

Typically, employers and third-party service providers do not meet the definition of a “financial institution” subject to Regulation E because they neither hold prepaid accounts nor issue prepaid cards and agree with consumers to provide EFT services in connection with prepaid accounts. However, to the extent an employer or service provider undertakes either of these functions, it would be deemed a financial institution under Regulation E. Comment 1005.18(a)-2.

As noted in Section 1.2, this guide focuses on the Prepaid Rule. It does not discuss all of the legal or regulatory requirements that may apply to prepaid accounts or the entities involved in offering prepaid accounts. Even if an entity is not a financial institution or issuer under the Prepaid Rule, it may need to meet other requirements with regard to prepaid accounts.

Generally, this guide does not differentiate between government agencies and other financial institutions when discussing provisions that apply to government agencies and other financial institutions. However, when a provision only applies to a government benefit account or if the provision applies differently to government agencies than it does to other financial institutions, this guide uses the term “government agency,” not the broader term “financial institution.”

## 3.2 Issuers subject to Section 1005.19 of Regulation E

The Prepaid Rule adds new requirements that apply to “issuers” of prepaid accounts. These new requirements are found in Section 1005.19 of Regulation E, and are discussed in Section 14 of this guide. For purposes of these new requirements, the Prepaid Rule defines an “issuer” as the entity to which a consumer is legally obligated or would be legally obligated under the terms of a prepaid account agreement. 12 CFR 1005.19(a)(4).

**Example:** Ficus Bank and Birch Bank work together to issue prepaid accounts. A consumer obtains a prepaid account issued pursuant to this arrangement through a link on Birch Bank’s website. The prepaid account agreement states “This is an agreement between you, the consumer, and Ficus Bank. This agreement governs the terms of your Prepaid Account.” Birch Bank’s logo is featured on the front of the prepaid card that the consumer receives. For purposes of the new requirements in Section 1005.19, the issuer is Ficus Bank, because the agreement creates a legally enforceable obligation between the consumer and Ficus Bank.



## 4. Pre-acquisition disclosures

Generally, the Prepaid Rule requires a financial institution to provide a consumer with the following before the consumer acquires the prepaid account:

- A short form disclosure;
- Certain information disclosed outside but in close proximity to the short form disclosure; and
- A long form disclosure.

The short form disclosure must set forth certain key fees and other information about the prepaid account, and must be in a specific format. Outside but in close proximity to the short form disclosure, a financial institution must disclose its name, the name of the prepaid account program, any purchase price for the prepaid account, and any fee for activating the prepaid account. The long form disclosure must set forth all fees that may be imposed in connection with the prepaid account, and the conditions under which they may be imposed, as well as certain other information about the prepaid account. The long form disclosure also has certain formatting requirements. 12 CFR 1005.18(b).

Section 4.2 discusses the short form disclosure, Section 4.3 discusses the information that must be disclosed outside but in close proximity to the short form disclosure, and Section 4.4 discusses the long form disclosure. General requirements that apply to these pre-acquisition disclosures are discussed in Section 4.1.

Unless otherwise noted, when this guide refers to “pre-acquisition disclosures” it is referring to the short form disclosure, long form disclosure, and the information that must be disclosed outside but in close proximity to the short form disclosure.

## 4.1 General requirements

### 4.1.1 Written disclosures

Generally, Regulation E requires a financial institution to provide disclosures in writing. The financial institution may provide them in electronic form subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.* (E-Sign Act). 12 CFR 1005.4(a)(1) and related commentary. The Prepaid Rule modifies this general rule and requires that a financial institution provide the pre-acquisition disclosures electronically when the consumer acquires the prepaid account through electronic means, such as via a website or mobile application. It also requires oral disclosures in certain circumstances.

The Prepaid Rule provides that these electronic pre-acquisition disclosures need not meet the consumer consent and other applicable provisions of the E-Sign Act. Thus, the Prepaid Rule addresses certain requirements for written and electronic disclosures separately. It also addresses specific requirements for pre-acquisition disclosures provided orally. 12 CFR 1005.18(b)(6)(i)(B) and (C); comment 1005.18(b)-1. Section 4.1.2 includes more information regarding the Prepaid Rule's requirement to provide electronic or oral pre-acquisition disclosures in certain circumstances.

All text used in the short form disclosure or long form disclosure must be in a single, easy-to-read type that is all black or one color. The text must be printed on a background that provides a clear contrast to the easy-to-read type. 12 CFR 1005.18(b)(7)(ii)(A).

### 4.1.2 Circumstances requiring electronic or oral disclosures

#### Required electronic disclosures

A financial institution must provide the pre-acquisition disclosures electronically when the consumer acquires the prepaid account through electronic means, such as via a website or mobile application. Additionally, if a financial institution relies on the retail location exception, which is discussed in Section 4.1.4, among other requirements, the financial institution is required to make an electronic version of the long form disclosure available on a website (and via telephone), and must include in the short form disclosure a statement that includes an

address for the website where the consumer may access the electronic version of the long form disclosure. 12 CFR 1005.18(b)(6)(i)(B); comment 1005.18(b)-1.

When the Prepaid Rule requires electronic disclosures, the financial institution need not meet the consumer notice and consent provisions of the E-Sign Act. 12 CFR 1005.18(b)(6)(i)(B); comment 1005.18(b)-1.

- The Prepaid Rule does not require that initial disclosures, as opposed to pre-acquisition disclosures, be provided electronically. Therefore, a financial institution must comply with the E-Sign Act when providing initial disclosures in electronic form, even if the prepaid account is acquired through electronic means.

## Required oral disclosures

A financial institution must orally provide the short form disclosure and the information required outside but in close proximity to the short form disclosure at the time that the consumer acquires a prepaid account by telephone. 12 CFR 1005.18(b)(1)(iii) and (b)(6)(i)(C). The financial institution is not required to provide the long form disclosure orally at the time that the consumer acquires the prepaid account in these circumstances. However, it must make the information in the long form disclosure available both by telephone and on a website, and must tell the consumer orally that the information is available through those means. The financial institution is also required to provide the long form disclosure after the consumer acquires the prepaid account.

- Prepaid accounts acquired by a mobile device without speaking to a customer service agent or using an interactive voice response (IVR) system are not acquired orally by telephone for purposes of the Prepaid Rule. Comment 1005.18(b)(1)(iii)-1.

Similarly, if a financial institution relies on the retail location exception, which is discussed in Section 4.1.4, among other things, the financial institution is required to make the long form disclosure available orally by telephone (and via a website), and must include in the short form disclosure a statement that includes the telephone number where the consumer may access an oral version of the long form disclosure. 12 CFR 1005.18(b)(6)(i)(C).

### 4.1.3 Requirements for disclosures provided in electronic form

Under the Prepaid Rule, electronic pre-acquisition disclosures must be viewable regardless of screen size and use machine readable text that is accessible via web browsers or mobile applications (as applicable), and via screen readers. They must be provided in a responsive form and in a manner that is reasonably expected to be accessible to the consumer given the way that the consumer is acquiring the prepaid account. 12 CFR 1005.18(b)(6)(i)(B). For example, when acquiring a prepaid account via a website or mobile application, it would be reasonable to expect the consumer would be able to access the disclosures on the first page or via a direct link from the first page of the website or mobile application. To be provided in a responsive form, electronic disclosures must be provided in a way that responds to different screen sizes, for example, by stacking elements of the disclosures in a manner that accommodates viewing on smaller screens while still meeting other formatting requirements. For example, if a consumer acquires a prepaid account using a mobile device, the screen may be too small to accommodate the requirements that certain disclosures appear in a certain type size and also in a single line of text. In such cases, the financial institution is permitted to display the disclosures by stacking them in a way that responds to the smaller screen size while still meeting other formatting requirements. Comment 1005.18(b)(6)(i)(B)-2. For additional information on stacking disclosures, see the web-based source code available at [github.com/cfpb/prepaid-disclosure-filesTiming](https://github.com/cfpb/prepaid-disclosure-filesTiming)

A financial institution must provide a consumer with the pre-acquisition disclosures before the consumer purchases, opens, or chooses to be paid via a prepaid account (*i.e.*, before the consumer acquires the prepaid account). 12 CFR 1005.18(b)(1); comment 1005.18(b)(1)(i)-1. Generally, a disclosure has not been provided before the consumer acquires the prepaid account if the consumer cannot see or access the disclosures before acquiring the prepaid account (*e.g.*, the short form disclosure cannot be reviewed because it is inside the packaging material accompanying a prepaid account's access device). Comment 1005.18(b)(1)(ii)-2.

If a consumer acquires a prepaid account electronically, the pre-acquisition disclosures can be provided electronically before or after the consumer has started the electronic process for acquiring the prepaid account, but must be provided before the consumer chooses to accept the prepaid account. The consumer must be required to view the web page containing the electronic pre-acquisition disclosures before choosing to accept the prepaid account. Comment 1005.18(b)(1)(i)-2.

If the consumer acquires a prepaid account orally by telephone, the short form disclosure and information required to be disclosed outside but in close proximity to the short form disclosure must be provided before the consumer acquires the prepaid account. The financial institution may provide them after the consumer has initiated the purchase of a prepaid account, but must provide them before the consumer acquires the prepaid account. Comment 1005.18(b)(1)(iii)-2. For information on providing the long form disclosure for prepaid accounts acquired orally by telephone, see the discussion below.

**Examples:** A consumer goes to a bank branch and asks about obtaining a prepaid account. A customer service representative provides the consumer with the pre-acquisition disclosures. The consumer can access and read the disclosures. After receiving the disclosures, the consumer opens the prepaid account. The consumer has received the pre-acquisition disclosures in compliance with the Prepaid Rule's timing requirement.

During orientation for new employees, an employer informs new employees that they can receive wages by check or payroll card account. While discussing these two options for receiving wages at the orientation, the employer distributes pre-acquisition disclosures for the payroll card accounts to all new employees. The next day, a new employee informs the employer that she chooses to be paid wages via a payroll card account. The employee has received the pre-acquisition disclosures in compliance with the Prepaid Rule's timing requirement.

During orientation for new employees, an employer informs new employees that they can receive wages by check or payroll card account. At the orientation, an employee signs a form indicating that he chooses to be paid wages via a payroll card account, but the employer does not provide the employee with any pre-acquisition disclosures for the payroll card account until the end of the employee's first pay period. The employee has not received the pre-acquisition disclosures in compliance with the Prepaid Rule's timing requirement.

**Examples (cont'd):** A government agency provides a consumer with information about eligibility to receive government benefits. Along with this eligibility information, the government agency provides the consumer with information letting the consumer know that the consumer can receive benefits via a government benefit account. The agency also provides a prepaid card that has not been activated and pre-acquisition disclosures to review. The consumer informs the government agency that he would like to receive the benefits via a government benefit account after receiving the disclosures. The consumer has received the pre-acquisition disclosures in compliance with the Prepaid Rule's timing requirement.

A consumer visits a financial institution's website to purchase a prepaid account. The landing page for the website lists various products, including prepaid accounts. A link connects to a web page that contains some information about prepaid accounts, but does not include the pre-acquisition disclosures. However, before the consumer can purchase a prepaid account, the consumer must view one or more web pages that contain the pre-acquisition disclosures. The consumer has received the pre-acquisition disclosures in compliance with the Prepaid Rule's timing requirement.

The Prepaid Rule has two exceptions to the general timing requirement for pre-acquisition disclosures, but the exceptions only apply to the long form disclosure. There is one exception that applies to prepaid accounts obtained in retail locations and another exception that applies to prepaid accounts obtained orally by telephone. 12 CFR 1005.18(b)(1)(ii) and (iii).

### Retail location exception

A financial institution is not required to provide the long form disclosure before a consumer acquires a prepaid account if all of the following conditions are satisfied:

1. The consumer acquires the prepaid account in person at a retail location. For this purpose, a retail location is a store or other physical site where a consumer can purchase a prepaid account in person. The store or other physical location must be operated by an entity other than the financial institution that issues the prepaid account. The retail location

exception does not apply to payroll card accounts offered to consumers working in retail locations. 12 CFR 1005.18(b)(1)(ii); comment 1005.18(b)(1)(ii)-1.

2. The prepaid account access device is contained inside the packaging material. 12 CFR 1005.18(b)(1)(ii)(A).

3. The short form disclosure is provided on or is visible through the outward-facing, external surface of the packaging material for the prepaid account's access device. The consumer must be able to see or access the short form disclosure before acquiring the prepaid account. 12 CFR 1005.18(b)(1)(ii)(B); comment 1005.18(b)(1)(ii)-2.

4. The short form disclosure includes information that allows the consumer to access the long form disclosure by telephone and via a website. It may also include information that allows the consumer to obtain the long form disclosure via SMS. The financial institution may use an IVR or similar system to make the long form disclosure available by telephone, or a customer service agent may provide it orally by telephone. The financial institution is not required to comply with the E-Sign Act's consumer consent and notice provisions when providing the long form disclosure on a website for this purpose. 12 CFR 1005.18(b)(1)(ii)(C) and (b)(2)(xiii); comment 1005.18(b)(1)(ii)-4.

5. The financial institution provides the long form disclosure to the consumer after the consumer acquires the prepaid account. 12 CFR 1005.18(b)(1)(ii)(D).

**Examples:** Ficus Bank offers prepaid accounts in its branches. It issues the prepaid accounts it offers. Ficus Bank cannot rely on the retail location exception for the prepaid accounts it offers in its branches, and must provide all the pre-acquisition disclosures before a consumer acquires a prepaid account.

A large chain retailer offers prepaid accounts at its stores. Ficus Bank issues the prepaid accounts offered at the stores. If the other requirements for the retail location exception are met, Ficus Bank does not need to provide the long form disclosure before the consumer purchases a prepaid account at the store, but must provide the short form disclosure and the information required to be provided outside but in close proximity to the short form disclosure before the consumer purchases a prepaid account.

## Exception for prepaid account acquired orally by telephone

There is a separate exception to the timing requirements for a prepaid account acquired orally by telephone. 12 CFR 1005.18(b)(1)(iii). A financial institution does not need to provide the long form disclosure before the consumer acquires the prepaid account if all of the following are satisfied:

1. The consumer acquires the prepaid account orally by telephone. A consumer acquires a prepaid account orally by telephone when the consumer speaks to a customer service agent or communicates with an IVR or similar system to provide personally identifiable information to acquire the account. A consumer does not acquire a prepaid account orally by telephone when a consumer acquires the account using a mobile device without speaking to a customer service agent or communicating with an automated system. 12 CFR 1005.18(b)(1)(iii); comment 1005.18(b)(1)(iii)-1.
2. Before the consumer acquires the prepaid account, the financial institution tells the consumer orally that the long form disclosure is available by telephone and on a website. 12 CFR 1005.18(b)(1)(iii)(A).
3. The financial institution makes the long form disclosure available by telephone and via a website. The financial institution may use an IVR or similar system to make the long form disclosures available by telephone. The financial institution is not required to comply with the E-Sign Act's consumer consent and notice provisions when providing the long form disclosure on a website for this purpose. 12 CFR 1005.18(b)(1)(iii)(B); comment 1005.18(b)(1)(iii)-2.
4. The financial institution provides the long form disclosure after the consumer acquires the prepaid account. 12 CFR 1005.18(b)(1)(iii)(C).



## 4.1.4 Retainable form

Generally, a financial institution must provide pre-acquisition disclosures in a form that a consumer can keep (*i.e.*, in a retainable form). 12 CFR 1005.18(b)(6)(ii). However, in the following circumstances the specified pre-acquisition disclosures do not need to be provided in a form the consumer can keep:

1. The pre-acquisition disclosure is provided orally when the Prepaid Rule permits or requires disclosures to be provided orally.

2. The long form disclosure is provided via SMS for a prepaid account sold at a retail location pursuant to the retail location exception.

3. The disclosure of the purchase price is not provided on the exterior of the access device's packaging material for a prepaid account sold at a retail location pursuant to the retail location exception.

12 CFR 1005.18(b)(6)(ii).

## 4.1.5 Segregated disclosures

The short form disclosure must be segregated from other information. It can only contain information that is required or specifically permitted by the Prepaid Rule. 12 CFR 1005.18(b)(7)(iii). However, other information may be provided on the same page as the short form disclosure as long as that other information is outside the confines of the short form disclosure. This other information may include the information required to be disclosed outside but in close proximity to the short form disclosure, additional disclosures required by state law, or any other information the financial institution wants to provide about the prepaid account. Comment 1005.18(b)(7)(iii)-1.

Similarly, the long form disclosure must be segregated from other information. It can only contain information that is required or specifically permitted by the Prepaid Rule. 12 CFR 1005.18(b)(7)(iii). However, the long form disclosure may be provided on the same page or in

☐ A short form disclosure that has a tear strip running through it would not be in retainable form because the use of the tear strip would destroy a portion of the disclosure.

Comment 1005.18(b)(6)(ii)-1.

☐ Electronic disclosures are retainable if the consumer can print, save, and email the disclosures from the website or mobile application on which they are displayed.

Comment 1005.18(b)(6)(ii)-1.

the same document as other disclosures or information. For example, the long form disclosure could be provided as part of a larger document, such as the prepaid account agreement.

Comment 1005.18(b)(7)(iii)-1.

#### 4.1.6 Consistent terminology

Fee names and other terms must be used consistently within and across all pre-acquisition disclosures. 12 CFR 1005.18(b)(8). For example, a financial institution should not use one name for a particular fee (*e.g.*, inactivity fee) in the short form disclosure and a different name for the same fee (*e.g.*, dormancy fee) in the long form disclosure. Comment 1005.18(b)(8)-1.

#### 4.1.7 Foreign language pre-acquisition disclosures

A financial institution must provide pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in any of the following circumstances:

*1. The financial institution principally uses a foreign language on the prepaid account packaging material.* 12 CFR 1005.18(b)(9)(i)(A). If the financial institution principally uses a foreign language on the packaging material of a prepaid account sold in a retail location or distributed at a bank or credit union, it must provide the pre-acquisition disclosures for that prepaid account in that same foreign language, even if a few words appear in English on the packaging. Comment 1005.18(b)(9)-1.i. Whether the foreign language is principally used is determined with regard to the specific packaging material. The determination is not made at the prepaid account program level or across the financial institution's activities as a whole. Comment 1005.18(b)(9)-2.

*2. The financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically.* 12 CFR 1005.18(b)(9)(i)(B). Any commercial message, appearing in any medium, that directly or indirectly promotes the availability of prepaid accounts constitutes advertising, soliciting, or marketing. Such commercial messages include electronic messages, telephone and email solicitations, television and radio commercials, and printed advertisements in leaflets, promotional flyers, newspapers, and magazines. Comment 1005.18(b)(9)-3.

**Examples:** Ficus Bank promotes a prepaid account in a leaflet. The leaflet is principally in Spanish, and includes an address for a website that a consumer can visit to acquire the prepaid account. A consumer visits the website included in the leaflet. The website, including the text used in the process to purchase the prepaid account, is in Spanish. The consumer proceeds to purchase the prepaid account promoted in the leaflet. Ficus Bank must provide the pre-acquisition disclosures for the prepaid account to the consumer in Spanish.

Birch Bank advertises a prepaid account in a printed advertisement. The advertisement is principally in Korean. The advertisement does not include a website address or telephone number that the consumer can use to acquire a prepaid account. The Prepaid Rule does not require Birch Bank to provide the pre-acquisition disclosures in Korean for the prepaid account.

Birch Bank also advertises a prepaid account in radio commercials. The radio commercials are principally in Korean, and include a telephone number that a consumer can call to acquire the prepaid account. If a consumer calls the telephone number, he or she has the option to proceed with the acquisition process in English or in Korean. A consumer calls and selects the English option, and completes the process to acquire the prepaid account in English. The Prepaid Rule does not require Birch Bank to provide pre-acquisition disclosures in Korean to this consumer because the consumer chose to proceed with the acquisition process in English.

*3. The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language.* 12 CFR 1005.18(b)(9)(i)(C). The financial institution is required to provide the pre-acquisition disclosures in a foreign language if the process to acquire the prepaid account—whether by telephone or electronically—is conducted principally in that foreign language. However, the Prepaid Rule does not require the financial institution to provide the pre-acquisition disclosures in a foreign language if the consumer calls the financial institution’s customer service line and speaks to a customer service representative in a foreign language, unless the customer service representative proceeds with the prepaid account acquisition process in a foreign language. Comment 1005.18(b)(9)-1.ii.B. The Prepaid Rule does not require the

financial institution to provide the pre-acquisition disclosures in a foreign language if the consumer visits the financial institution's branch and speaks to an employee in person, even if the consumer acquires the prepaid account in a foreign language. Comment 1005.18(b)(9)-1.ii.A.

**Examples:** A consumer visits one of Ficus Bank's branch locations in person and speaks to an employee in Spanish about acquiring a prepaid account. The prepaid account packaging material is in English. The consumer proceeds with the acquisition process in Spanish. The Prepaid Rule does not require Ficus Bank to provide pre-acquisition disclosures in Spanish.

A consumer calls Ficus Bank and speaks to a customer service representative about acquiring a prepaid account. The customer service representative gives the consumer the option to proceed with the prepaid account acquisition process in Spanish or English. The consumer chooses to proceed in Spanish. Ficus Bank must orally provide the short form disclosure and the information required to be disclosed outside but in close proximity to the short form disclosure in Spanish. The financial institution must make available the long form disclosure in Spanish via telephone and on a website, and the customer service representative must tell the consumer that the long form information is available through those means. Ficus Bank must provide the long form disclosure in Spanish to the consumer after the consumer acquires the prepaid account.

If a financial institution is required to provide the pre-acquisition disclosures in a foreign language, the financial institution must also provide the information required to be disclosed in the long form disclosure in English upon a consumer's request and on any part of its website where it discloses this information in a foreign language. 12 CFR 1005.18(b)(9)(ii).

## 4.2 Short form disclosure

The short form disclosure sets forth certain key fees and other information about a prepaid account. Section 4.2.1 discusses the fees that must be disclosed in every short form disclosure. The Prepaid Rule contains specific requirements about how these fees are disclosed in the short form disclosure, including requirements related to variable fees, third-party fees, and finance

charges imposed in connection with an overdraft credit feature offered in connection with a prepaid account. These requirements are discussed in Section 4.2.2.

The short form disclosure must also include certain information about additional fee types. Section 4.2.3 discusses additional fee types and how to disclose the required information about them.

The other required information that must be included in the short form disclosure is discussed in Sections 4.2.4 through 4.2.7. Additional information that must be disclosed for payroll card accounts is discussed in Section 4.2.8, and additional information that must be disclosed for government benefit accounts is discussed in Section 4.2.9. Optional content for other types of prepaid accounts is discussed in Section 4.2.10.

The Prepaid Rule also includes specific form and formatting requirements for the short form disclosure. These requirements are discussed in Section 4.2.11.

The Prepaid Rule includes Model Forms A-10(a) through A-10(e), which illustrate the short form disclosure. The Model Forms are available at [www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/](http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/). Native design files for printed short form disclosures and source code for web-based short form disclosures are available at [github.com/cfpb/prepaid-disclosure-files](https://github.com/cfpb/prepaid-disclosure-files).

## 4.2.1 Static fees

The short form disclosures for all prepaid accounts must include information about certain fees, referred to as “static fees.” 12 CFR 1005.18(b)(2). The short form disclosure must include information about each static fee, even if the particular feature for which the fee is charged is not offered for the prepaid account or if there is no cost to the consumer associated with that feature. If a feature is not offered in connection with the prepaid account, the financial institution must disclose the amount of the fee for that feature as “N/A.” Comment 1005.18(b)(2)-1. The static fees, which are the periodic fee, per purchase fee, ATM withdrawal fees, cash reload fee, ATM balance inquiry fees, customer service fees, and inactivity fee, are each discussed below. 12 CFR 1005.18(b)(2)(i) through (vii).

As discussed in Section 4.2.2, if a static fee disclosed in the short form disclosure could vary, the financial institution must disclose the highest amount that may be imposed for that fee. Generally, for such variable fees, the fee amount must be followed by a symbol, such as an

asterisk, linked to a statement explaining that the amount of the fee could be lower depending on how and where the card is used.

## Periodic fee

The financial institution must disclose a periodic fee, which is the fee for holding the prepaid account for a specific period. The period could be a month, a year, or another timeframe. The financial institution must disclose the appropriate timeframe for which the periodic fee is charged, using “Monthly fee,” “Annual fee,” or a substantially similar term. 12 CFR 1005.18(b)(2)(i); comment 1005.18(b)(2)(i)-1.

**Example:** Ficus Bank does not charge a periodic fee for its prepaid accounts. Because the periodic fee is a static fee, Ficus Bank must include a periodic fee disclosure in its short form disclosure for the prepaid accounts. It could disclose the periodic fee as a “Monthly fee” or an “Annual fee” and must disclose the fee amount as \$0.

As discussed in Section 4.2.2, if the periodic fee may vary, the financial institution must disclose the highest amount that the financial institution could charge for the fee, but it has two options for disclosing the variance. The financial institution may treat the periodic fee like any other fee that could vary (*i.e.*, disclose the highest amount followed by the same symbol that follows the amount of other fees that can vary). Alternatively, the financial institution may disclose the highest amount followed by a different symbol, such as a dagger (†). If the financial institution uses a different symbol, that symbol must link to a separate statement disclosing the waiver or reduced fee amount and the circumstances under which the reduction or waiver could occur. 12 CFR 1005.18(b)(3)(ii).

## Per purchase fee

The financial institution must disclose a per purchase fee, which is the fee for making a purchase with the prepaid account. The financial institution must use “Per purchase” or a substantially similar term. 12 CFR 1005.18(b)(2)(ii).

## ATM withdrawal fees

The financial institution must disclose information about two fees for withdrawing cash from a prepaid account using an ATM located in the United States. Specifically, it must disclose information about a fee charged for such a withdrawal at an ATM within the financial institution's network or a network affiliated with the financial institution, using "ATM withdrawal" and "in-network" or substantially similar terms. It must also disclose a fee charged for such a withdrawal at an ATM outside the financial institution's network or a network affiliated with the financial institution, using "out-of-network" or a substantially similar term. 12 CFR 1005.18(b)(2)(iii).

Alternatively, if the financial institution charges the same amount for all withdrawals at ATMs located in the United States, it can disclose one fee amount (instead of disclosing the same fee amount twice), and does not need to include the two tiers "in-network" and "out-of-network" in the short form disclosure. Comment 1005.18(b)(3)(iii)-1.

**Examples:** Ficus Bank charges \$1 for each withdrawal at an ATM located within the United States, whether at its own ATM or at an ATM outside of its network. In the short form disclosure, Ficus Bank can list \$1 under the fee heading for "ATM withdrawal." It does not need to include both "in-network" and "out-of-network" in the short form disclosure.

Birch Bank offers prepaid accounts that cannot be used to obtain cash from ATMs. The short form disclosure for the prepaid accounts must either list "ATM withdrawal" and disclose the fee amount as "N/A" or separately list "N/A" for the "in-network" ATM withdrawal fee and the "out-of-network" ATM withdrawal fee.

The static fees do not include fees for initiating withdrawals at ATMs located outside of the United States. However, the Prepaid Rule may require the financial institution to disclose the international ATM withdrawal fees as an additional fee type. Comment 1005.18(b)(2)(iii)-1. Section 4.2.3 discusses additional fee types.

## Cash reload fee

The financial institution must disclose a cash reload fee, which is a fee for reloading funds in the form of cash into the prepaid account. 12 CFR 1005.18(b)(2)(iv). The cash reload fee includes the cost of adding cash to a prepaid account at a point of sale (POS) terminal, the cost of purchasing an additional card or other device on which cash is reloaded and then transferred to the prepaid account, or any other method a consumer may use to reload cash into the prepaid account. Comment 1005.18(b)(2)(iv)-1. Because it is only for cash reloads, it does not include fees for reloading the prepaid account electronically or by check. Comment 1005.18(b)(2)(viii)(A)-2.i. Generally, the cash reload fee is disclosed using “Cash reload” or a substantially similar term, but it may be disclosed using “Cash deposit” if the financial institution permits cash deposits, such as at a bank branch, but does not permit cash reloads via a third-party reload network. Comment 1005.18(b)(2)(iv)-2.

The cash reload fee must include the total of all charges that the financial institution and any third party may charge for a cash reload. 12 CFR 1005.18(b)(3)(v). Any third-party fee included in the amount of the cash reload fee must be the highest fee that the financial institution knows a third party charges. The financial institution discloses the amount based on its knowledge at the time that it prints or otherwise prepares the short form disclosure. 12 CFR 1005.18(b)(3)(v); comment 1005.18(b)(3)(v)-1.

**Example:** Ficus Bank contracts with two separate third-party reload networks for reloading cash into its prepaid accounts. One third party charges \$3.99 for each cash reload, and the other charges \$2.95 for each cash reload. Additionally, Ficus Bank charges \$1 for each cash reload. Ficus Bank must disclose \$4.99 for the cash reload fee (*i.e.*, \$3.99 plus \$1), followed by a symbol, such as an asterisk, that links to a statement informing the consumer that this fee can be lower depending on how and where the card is used.

A financial institution is not required to revise its short form disclosure to reflect changes in a third party’s cash reload fee until the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates its short form



disclosure. Likewise, the Prepaid Rule does not require the financial institution to immediately update its electronic and oral short form disclosure to reflect the change to a third-party cash reload fee. It permits the financial institution to update the cash reload fee on its electronic and short form disclosure when it next prints packaging materials for the prepaid account program or otherwise updates its short form disclosure. 12 CFR 1005.18(b)(3)(v); comment 1005.18(b)(3)(v)-1.

## ATM balance inquiry fees

The financial institution must disclose information about two fees for checking prepaid account balances at ATMs located in the United States. 12 CFR 1005.18(b)(2)(v). Specifically, the financial institution must disclose information about the fee it charges for a balance inquiry at an ATM within its network or a network affiliated with it, using “ATM balance inquiry” and “in-network” or substantially similar terms. The financial institution must also disclose a fee charged for an inquiry at an ATM outside its network or a network affiliated with it, using “out-of-network” or a substantially similar term. 12 CFR 1005.18(b)(2)(v).

Alternatively, if the financial institution charges the same amount for all prepaid account balance inquiries at ATMs located in the United States, it can disclose one fee amount (instead of disclosing the same fee amount twice), and does not need to include the two tiers “in-network” and “out-of-network” on the short form disclosure. Comment 1005.18(b)(3)(iii)-1.

**Example:** Ficus Bank charges \$1 for each balance inquiry at an ATM located within the United States, whether at its own ATM or at an ATM outside of its network. In the short form disclosure, Ficus Bank can list \$1 after the fee heading “ATM balance inquiry” without including “in-network” and “out-of-network” in the short form disclosure.

The static fees do not include fees for balance inquiries at ATMs located outside of the United States. However, the Prepaid Rule may require a financial institution to disclose international ATM balance inquiry fees as an additional fee type. Comment 1005.18(b)(2)(v)-1. Section 4.2.3 discusses additional fee types.

## Customer service fees

The financial institution must disclose information about two fees for calling the financial institution about the prepaid account. 12 CFR 1005.18(b)(2)(vi). It must disclose information about a fee charged for calling an IVR system, using “Customer service” and “automated” or substantially similar terms. It must also disclose information about a fee charged for calling a live customer service agent, using “live agent” or a substantially similar term. If applicable, the short form disclosure must inform the consumer that the fee is charged for each call, using “per call” or a similar term. 12 CFR 1005.18(b)(2)(vi).

Alternatively, if the financial institution charges the same amount for all customer service calls, it can disclose one fee amount (instead of disclosing the same fee amount twice), and does not need to include the two tiers “automated” and “live agent” in the short form disclosure.

Comment 1005.18(b)(3)(iii)-1.

When providing a short form disclosure for a prepaid account program offering multiple service plans, the financial institution discloses only the fee for calling the live agent customer service, using the term “Live customer service” or a substantially similar term and, if applicable, “per call” or a substantially similar term. The financial institution does not disclose a fee for automated customer service in the short form disclosure for multiple service plans. 12 CFR 1005.18(b)(2)(vi) and (b)(6)(iii)(B)(2). More information on multiple service plans is provided in Section 4.2.12.

## Inactivity fee

The financial institution must disclose an inactivity fee, which is the fee it charges for non-use, dormancy, or inactivity of the prepaid account. The financial institution must disclose the inactivity fee using “Inactivity” or a substantially similar term. The financial institution must also disclose the conditions under which it will impose the inactivity fee. 12 CFR 1005.18(b)(2)(vii).

**Example:** Ficus Bank imposes an inactivity fee of \$1 per month after 12 months without any transactions on a prepaid account. In the short form disclosure, Ficus Bank may disclose “Inactivity (after 12 months with no transactions)” and “\$1.00 per month.”

## 4.2.2 Requirements for disclosing variable fees, third party fees, and finance charges in the short form disclosure

As noted above, the Prepaid Rule includes specific requirements for disclosing variable fees, third-party fees, and finance charges. Each of these requirements is discussed below.

### Variable fees

If the amount of any static fee disclosed in the short form disclosure may vary, the financial institution must disclose the highest amount that may be imposed for that fee.<sup>5</sup> 12 CFR 1005.18(b)(3)(i). Generally, the fee amount must be followed by a symbol, such as an asterisk, linked to a statement explaining that the amount of the fee could be lower depending on how and where the card is used. The linked statement must use the following or substantially similar language: “This fee can be lower depending on how and where this card is used.” The financial institution must use the same symbol and this single linked statement for all fees that could

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<sup>5</sup> There is an exception to the requirement to disclose the highest amount that a financial institution may impose for a fee. If the financial institution imposes a higher fee or charge in connection with a prepaid account with a covered separate credit feature than the amount of a comparable fee or charge for any other prepaid account in the same program, the financial institution discloses the amount of the comparable fee, not the higher fee. Comment 1005.18(b)(3)(vi)-1. This Section 4.2.2 and Sections 4.4.2 and 4.4.7 provide additional information on disclosing finance charges in the short form and long form disclosures.

vary. 12 CFR 1005.18(b)(3)(i). However, as discussed below, the financial institution is permitted, but not required, to use a different symbol and statement for a variable periodic fee. 12 CFR 1005.18(b)(3)(i) and (ii). The short form disclosure cannot include information about when a fee, other than the periodic fee, may be reduced or waived, but a financial institution may provide such information elsewhere on prepaid account's packaging or in other materials. Detailed information about how the fee can be reduced or waived must be included in the long form disclosure. Comment 1005.18(b)(3)(i)-1.

**Example:** Ficus Bank has an IVR system that a consumer can call for information about the consumer's prepaid account. Ficus Bank does not charge a fee for using the IVR system. A consumer can also call a live customer service agent for information about the consumer's prepaid account. Ficus Bank does not charge a fee for the first three live customer service agent calls per month, but imposes a fee of \$0.50 for each additional live customer service agent call during the month. In the short form disclosure, Ficus Bank discloses the automated customer service fee as \$0, and the live agent customer service fee as \$0.50 followed by an asterisk. The asterisk links to a statement that says "This fee can be lower depending on how and where this card is used." In the short form disclosure, Ficus Bank does not disclose that the fee is waived for the first three calls to a live customer service agent during a given month, but this detail is included in the long form disclosure. Ficus Bank has disclosed its customer service fees in compliance with the Prepaid Rule. The [Model Form A-10\(d\)](#) illustrates this for the short form disclosure.

## Variable periodic fee

If the periodic fee may vary, the financial institution must disclose the highest amount that the financial institution could charge for the periodic fee, but it has two options for disclosing the variance. 12 CFR 1005.18(b)(3)(ii). The financial institution could treat the periodic fee like any other fee that could vary (*i.e.*, disclose the highest amount followed by the same symbol that follows the amount of other fees that can vary, linked to the single statement that the fee could be lower depending on how and where the card is used). Alternatively, the financial institution

could disclose the highest amount followed by a different symbol, such as a dagger (†), linked to a separate statement disclosing the waiver or reduced fee amount and the circumstances under which the reduction or waiver could occur. This linked separate statement must appear above or in place of the linked statement for other variable fees, and may not take up more than one line of text. 12 CFR 1005.18(b)(3)(ii); comment 1005.18(b)(3)(ii)-1.

**Example:** Ficus Bank charges a monthly fee of \$5.99 for holding a prepaid account. It waives this periodic fee if the consumer receives a direct deposit into the prepaid account or conducts 30 or more transactions during a month. Ficus Bank discloses a periodic fee of \$5.99 followed by a dagger, which links to a statement that says “No monthly fee with direct deposit or 30 transactions per month.” This statement appears directly above the linked statement related to other variable fees. Ficus Bank has disclosed the periodic fee in compliance with the Prepaid Rule. The [Model Form A-10\(c\)](#) illustrates this disclosure. Alternatively, Ficus Bank could have disclosed the periodic fee of \$5.99 followed by an asterisk that linked to the statement that “This fee can be lower depending on how and where this card is used.”

## Third-party fees

In general, when disclosing fees in the short form disclosure, the financial institution may not include any third-party fees. 12 CFR 1005.18(b)(3)(iv). However, for the cash reload fee, the financial institution must disclose the total of all charges from the financial institution and any third parties for the cash reload. 12 CFR 1005.18(b)(2)(iv) and (b)(3)(v). Section 4.2.1 provides more information on disclosing cash reload fees.

Fees imposed by a third party for services performed on behalf of the financial institution are not third-party fees and must be included in the fees disclosed in the short form disclosure. For example, a program manager might perform the customer service function for a prepaid account program and charge a fee for calls to a live agent. The customer service fee that the program manager charges must be included in the customer service fees disclosed in the short form disclosure because the program manager is performing the customer service function on behalf of the financial institution. Comment 1005.18(b)(3)(iv)-1.

## Finance charges

The short form disclosure must not include any finance charges imposed in connection with a covered separate credit feature. 12 CFR 1005.18(b)(3)(vi); comment 1005.18(b)(2)-2. Section 15.3.2 provides information about covered separate credit features. For more information on finance charges generally, see 12 CFR 1026.4 and the related commentary.

### 4.2.3 Additional fee types

The short form disclosure must include certain information about “additional fee types.” This information generally includes two separate disclosures and a transitional statement directing a consumer to the second of these two disclosures. The first disclosure regarding additional fee types informs the consumer of the number of additional fee types that the financial institution may charge with respect to the prepaid account program. The second disclosure generally lists the two additional fee types that generated the highest revenue from consumers during the previous 24 months. The transitional statement directs the consumer to this second disclosure listing the additional fee types.

#### Determining the additional fee types for a prepaid account program

In order to make the disclosures discussed in this Section 4.2.3, a financial institution must determine the “additional fee types” it may charge with respect to a prepaid account. A “fee type” is a general category under which the financial institution might charge a fee or fees to consumers. The financial institution may charge one or more fee variations under a fee type. Fee types are not the same thing as fees or fee variations. Comment 1005.18(b)(2)(viii)(A)-2.

**Example:** Ficus Bank charges consumers to replace a lost, stolen, or damaged prepaid card. Ficus Bank charges \$5 to replace the card and send it via regular delivery. It charges \$10 to replace the card and send it via expedited delivery. The fee type is card replacement, because it is the category under which Ficus Bank charges regular and expedited delivery replacement fees. Regular delivery and expedited delivery are fee variations within the fee type of card replacement.

Not all fee types that the financial institution may charge the consumer are considered additional fee types. Fees otherwise required to be disclosed in or outside but in close proximity to the short form disclosure are not additional fee types. Comments 1005.18(b)(2)(viii)(A)-1.i and 18(b)(2)(ix)(A)-1. The following types of fees are not included in the disclosure of the number of additional fee types or the disclosure listing additional fee types:

1. *Static fees.* Additional fee types do not include static fees. Comments 1005.18(b)(2)(viii)(A)-1 and 18(b)(2)(ix)(A)-1.

1. The static fees are discussed in Section 4.2.1. Fees that bear a relationship to, but are separate from, the static fees are considered additional fee types. For example, the ATM withdrawal fees and ATM balance inquiry fees that are disclosed as static fees on the short form disclosure do not include fees for withdrawals or balance inquiries at ATMs located outside the United States. Therefore, fees for withdrawals and fees for balance inquiries at ATMs located in foreign countries are additional fee types. Although a fee for reloading funds in the form of cash is a static fee, fees for reloading funds electronically or by check are additional fee types. Similarly, certain fees for accessing the funds in a prepaid account, such as per purchase fees and fees for ATM withdrawal in the United States are static fees, but fees for electronic withdrawals, teller withdrawals, cash back at POS, or refunds at account closure are additional fee types. Comments 1005.18(b)(2)(viii)(A)-1 through -2 and (b)(2)(ix)(A)-1.

□ A financial institution using the multiple service plan short form disclosure must disclose only the fee for calling customer service via a live agent as a static fee. Thus, any charge for calling customer service via an IVR system must be counted in the total number of additional fee types. Comment 1026.18(b)(2)(viii)(A)-3.

2. *Finance charges.* Additional fee types do not include finance charges that may be imposed in connection with a covered separate credit feature. 12 CFR 1005.18(b)(2)(viii)(A)(2) and (b)(2)(ix)(A)(3). Section 15.3.2 discusses separate credit features. For general information about finance charges, see 12 CFR 1026.4 and the related commentary.

3. *Purchase price and activation fee required to be disclosed outside but in close proximity to the short form disclosure.* Additional fee types do not include any fee paid to purchase the prepaid account or any fee paid to activate the prepaid account. 12 CFR 1005.18(b)(2)(viii)(A)(1) and (b)(2)(ix)(A)(1).

4. *Other revenue sources.* Additional fee types include only fee types under which the financial institution may charge fees to consumers with respect to the prepaid account. Therefore, additional fee types do not include other revenue sources such as interchange fees

or fees paid by employers for payroll card programs, government agencies for government benefit programs, or other entities sponsoring prepaid account programs for financial disbursements. Similarly, third-party fees are not included in the additional fee types (but fees imposed for services performed on behalf of the financial institution are not third-party fees). Comments 1005.18(b)(2)(viii)(A)-1.i, (b)(2)(ix)(A)-3, and (b)(3)(iv)-1.

The commentary provides examples of additional fee types and the fee variations that may occur within those additional fee types. See comment 1005.18(b)(2)(viii)(A)-2. A financial institution may choose to use these examples when determining the additional fee types it charges. A financial institution may also create an appropriate name for other additional fee types. Comment 1005.18(b)(2)(viii)(A)-2.

## Disclosure of the number of additional fee types

The financial institution must disclose how many additional fee types it may charge with respect to the prepaid account. The financial institution must use the following or substantially similar language: “We charge [x] other types of fees.” 12 CFR 1005.18(b)(2)(viii)(A). This disclosure is to inform a consumer of how many types of fees the financial institution may charge in addition to the fees disclosed elsewhere in the short form disclosure or outside but in close proximity to the short form disclosure.

**Example:** Ficus Bank charges the following fees for its prepaid account program: ACH bill payment fees, expedited bill payment fees, electronic reload fees, cash reload fees, regular card replacement fees, expedited card replacement fees, periodic fees, per purchase fees, inactivity fees, legal fees, and withdrawal fees for ATMs located in the United States. Although the financial institution charges 11 different fees, some of the fees are static fees (cash reload fees, per purchase fees, inactivity fees, and domestic ATM withdrawal fees) and others are variations of the same fee type (two bill payment fees and two card replacement fees). Ficus Bank complies with the Prepaid Rule if it discloses that it charges four additional fee types (*i.e.*, bill payment, electronic reload, card replacement, and legal) by stating that “We charge 4 other types of fees.”



## Statement directing consumers to the disclosure listing additional fee types

When disclosing its list of additional fees types, as discussed immediately below, the financial institution must use a specific transitional statement directing the consumer to that disclosure. This statement must use the following or substantially similar language: “Here are some of them.” 12 CFR 1005.18(b)(2)(viii)(B). The statement directing the consumer to the disclosure listing additional fee types must be located after but on the same line as the disclosure of the number of additional fee types, which is discussed above. 12 CFR 1005.18(b)(2)(viii)(B). If a financial institution is not required to list any additional fee types and does not voluntarily choose to do so (as discussed in detail below), the financial institution may not include this transitional statement in the short form disclosure. Comment 1005.18(b)(2)(viii)(B)-1.

**Examples:** Ficus Bank charges one additional fee type, and is required to list that additional fee type on the short forms disclosure. The short form disclosure could state: “We charge 1 other type of fee. It is:” Similarly, if Ficus Bank charges two additional fee types and is required to disclose both of them, the short form disclosure could say, “We charge 2 other types of fees. They are:”

Birch Bank charges 5 additional fee types, and is required to disclose the two that generated the highest revenue from consumers. The short form disclosure could state: “We charge 5 other types of fees. Here are some of them:”

Dogwood Credit Union charges 5 additional fee types, but only one of them exceeds the de minimis threshold (discussed below). The credit union decides to only disclose that additional fee type. The short form disclosure could state: “We charge 5 other types of fees. Here is 1 of them:”

## Disclosure listing additional fee types

Generally, the financial institution must list the two additional fee types that generate the highest revenue during the appropriate 24-month period. 12 CFR 1005.18(b)(2)(ix)(A). The Prepaid Rule does not require the financial institution to list additional fee types that generate less than 5 percent of total revenue (*i.e.*, that do not exceed this de minimis threshold), so it is possible the financial institution will be required to list fewer than two additional fee types. 12

CFR 1005.18(b)(2)(ix)(A) and (B). In that case, the financial institution is permitted to list one or two, as appropriate, additional fee types of its choice. 12 CFR 1005.18(b)(2)(ix)(B).

The disclosure listing additional fee types may be based on revenue for the particular prepaid account program or on revenue across programs that share the same fee schedule. 12 CFR 1005.18(b)(2)(ix)(A); comment 1005.18(b)(2)(ix)(A)-4.

In general, the financial institution must reassess which additional fee types generated the highest revenue every 24 months and update the disclosure listing the additional fee types if the prior disclosure no longer complies with the Prepaid Rule's requirements. 12 CFR 1005.18(b)(2)(ix)(D) and (E).

#### **CALCULATING REVENUE FOR A PREPAID ACCOUNT PROGRAM OR ACROSS PREPAID ACCOUNT PROGRAMS THAT SHARE THE SAME FEE SCHEDULE**

In order to determine the additional fee types that must be listed in the short form disclosure, the financial institution determines its "total revenue" as well as the revenue generated by each additional fee type for the prepaid account program (or across prepaid account programs that share the same fee schedule) during the appropriate 24-month period.

"Total revenue" for this purpose means the total revenue generated from consumers. It includes revenue from additional fee types as well as the revenue from static fees, fees required to be listed outside but in close proximity to the short form disclosure (*i.e.*, activation fee and purchase price), and finance charges imposed on the prepaid account (but not those imposed on a covered separate credit feature). Total revenue excludes revenue from other sources such as revenue generated from interchange fees and fees paid by employers for payroll card programs, government agencies for government benefit programs, and other entities sponsoring prepaid account programs for financial disbursements. It also excludes third-party fees (but fees imposed for services performed on behalf of the financial institution are not third-party fees). Comment 1005.18(b)(2)(ix)(A)-3.

When determining the revenue generated for a particular additional fee type, the financial institution must include the revenue for all of the fee variations that are charged under the additional fee type. The financial institution must use the same categorization of fee types when determining the number of additional fee types to disclose and which additional fee types it is required to list. It cannot use one categorization when counting the number of additional fee

types and a different categorization when determining the two additional fee types with the highest revenue. Comment 1005.18(b)(2)(viii)(A)-4.

For purposes of the disclosure listing additional fee types, the financial institution may calculate revenue for a specific prepaid account program, or it may calculate revenue across prepaid account programs with the same fee schedule. 12 CFR 1005.18(b)(2)(ix)(A). However, if a financial institution offers more than one prepaid account program and the programs do not share the same fee schedule, the financial institution must calculate revenue separately for each prepaid account program. Prepaid account programs have the same fee schedule if they charge the same fee amounts, including offering the same fee waivers and fee reductions for the same features. 12 CFR 1005.18(b)(2)(ix)(A); comment 1005.18(b)(2)(ix)(A)-4. For additional information, see comment 1005.18(b)(2)(ix)(A)-4, which provides examples illustrating when programs have the same fee schedules.

If the financial institution discloses multiple service plans on a short form disclosure, it must calculate revenue across all plans disclosed in the short form disclosure. If, however, the financial institution instead is disclosing only the default service plan, the financial institution must calculate revenue for the default service plan only. Comment 1005.18(b)(2)(ix)(A)-4.iv. For guidance on multiple service plans, see 1005.18(b)(6)(iii)(B)(2) and comment 18(b)(6)(iii)(B)(2)-1. Section 4.2.12 includes additional discussion of short form disclosures for multiple service plans.

#### **TIME PERIOD USED WHEN CALCULATING FEE REVENUE**

Generally, the disclosure listing additional fee types must be based on revenue generated during the previous 24 months. There is an exception for prepaid account programs that do not have 24 months of revenue data and an accommodation related to the effective date. 12 CFR 1005.18(b)(2)(ix)(D) and (E).

For prepaid accounts programs that exist as of October 1, 2017, the Prepaid Rule permits the financial institution to use the revenue generated during any consecutive 24-month period that begins on or after October 1, 2014 for making its first disclosure of additional fee types. See comment 1005.18(b)(2)(ix)(D)(I)-1.

A financial institution that does not have 24 consecutive months of revenue data for a prepaid account program in advance of October 1, 2017 must calculate its first listing of additional fee types based on the revenue it reasonably anticipates the prepaid account program will generate

from consumers during the 24-month period beginning October 1, 2017. 12 CFR 1005.18(b)(2)(ix)(D)(2). The financial institution must take into consideration any revenue data it has accumulated for the program when it determines the revenue it reasonably anticipates will be generated from consumers between October 1, 2017 and September 30, 2019. Comment 1005.18(b)(2)(ix)(D)(2)-1.

A financial institution that creates a new prepaid account program on or after October 1, 2017 must determine which additional fee types to include in the disclosure listing additional fee types based on the revenue it reasonably anticipates the new prepaid account program will generate from consumers during the first 24 months the program is in existence. 12 CFR 1005.18(b)(2)(ix)(D)(3).

#### **APPLYING THE DE MINIMIS EXCEPTION**

The financial institution is not required to include in its disclosure listing additional fee types any additional fee type that generated less than 5 percent of the total revenue for the prepaid program or, as applicable, across prepaid programs with the same fee schedule during the relevant time period. 12 CFR 1005.18(b)(2)(ix)(A)(2); comment 1005.18(b)(2)(ix)(A)-5.ii.

To determine the percentage of total revenue that a particular additional fee type generated, the financial institution divides the amount of revenue generated from the additional fee type by the amount of total revenue for the same 24 month period. The additional fee types that must be listed on the short form disclosure are the two that generated the highest percentage of total revenue (subject to the de minimis exclusion).

Any additional fee type that generated less than 5 percent of total revenue is not required to be listed in the short form disclosure. 12 CFR 1005.18(b)(2)(ix)(A)(2).

**Example:** Ficus Bank determined that, during the appropriate 24-month period, total revenue for a prepaid account program was \$100,000. In this program, Ficus Bank charges different fee amounts for standard delivery and expedited delivery of replacement cards. Ficus Bank determines that, during that 24-month period, the prepaid account program generated \$5,000 for standard delivery of replacement cards and \$10,000 for expedited delivery. In order to determine the revenue generated for the fee type “card replacement,” Ficus Bank adds \$5,000 and \$10,000. In order to determine the percentage of total revenue generated by card replacement, Ficus Bank divides the sum of \$5,000 plus \$10,000 (*i.e.*, a combined \$15,000 for the fee type) by \$100,000. In other words, it calculates  $(\$5,000 + \$10,000) / \$100,000$ . In this example, the card replacement fee type generated 15 percent of total revenue.

#### **LISTING ADDITIONAL FEES TYPES AFTER APPLYING THE DE MINIMIS THRESHOLD**

If the financial institution only charges one additional fee type that generated at least 5 percent of the total revenue, the financial institution must list that one additional fee type in the short form disclosure for the prepaid account. It may also list another additional fee type of its choice. 12 CFR 1005.18(b)(2)(ix)(B); comment 1005.18(b)(2)(ix)(B)-1.

If the financial institution does not charge any additional fee types that generated at least 5 percent of the total revenue, the financial institution is not required to list any additional fee types in the short form disclosure for the prepaid account. It may list one or two additional fee types of its choice. 12 CFR 1005.18(b)(2)(ix)(B); comment 1005.18(b)(2)(ix)(B)-1.

However, if the financial institution opts to voluntarily list an additional fee type, it cannot list static fees, fees required to be disclosed outside but in close proximity to the short form disclosure (*i.e.*, purchase price and activation fee), or finance charges that may be imposed in connection with a covered separate credit feature. 12 CFR 1005.18(b)(3)(vi)(A) and (B); comments 1005.18(b)(2)(ix)(B)-1 and -2.

If the financial institution is not required to and does not voluntarily list any additional fee types in the short form disclosure, it may not include the statement “Here are some of them:” after the disclosure of the number of additional fee types. Comment 1005.18(b)(2)(viii)(B)-1.

**Example:** Ficus Bank charges the following fees for a prepaid program and over the appropriate 24-month period the fees generated the following percentages of total revenue: purchase price (45%), electronic reload fees (15%), cash reload fees (5%), card replacement fees (3%), per purchase fees (15%), inactivity fees (5%), and ATM withdrawal fees (12%). Two of these are additional fee types (electronic reload and card replacement), but Ficus Bank is only required to disclose the electronic reload fee type because the card replacement fee type generated less than 5 percent of total revenue.

#### LISTING ADDITIONAL FEES TYPES DEPENDING ON NUMBER OF FEE VARIATIONS

The Prepaid Rule has specific requirements for how a financial institution lists additional fee types in the short form disclosure. These

requirements vary depending on how many fee variations are within the additional fee type and whether the financial institution is providing the short form disclosure for multiple service plans. 12 CFR 1005.18(b)(2)(ix)(C); comments 1005.18(b)(2)(ix)(C)-1 and -2.

If the financial institution is not providing the short form disclosure for multiple service plans, additional fee types required to be listed in the short form disclosure must be disclosed as follows:

When listing additional fee types, the financial institution can use commonly accepted or readily understandable abbreviations. For example, to disclose the additional fee types “international ATM balance inquiry” and “person-to-person transfer of funds,” the financial institution could abbreviate the additional fee types as “Int’l ATM inquiry” and “P2P transfer.” Comment 1005.18(b)(2)(ix)(A)-2.

1. *One fee charged under an additional fee type.* If the financial institution only charges one fee variation under an additional fee type, it must disclose the name of the additional fee type and the fee amount. The financial institution may choose to also disclose the name of the one fee. Comment 1005.18(b)(2)(ix)(C)-2.

**Example:** Ficus Bank offers a prepaid account that has electronic reload fees. However, consumers may only conduct electronic reloads using a debit card. Ficus Bank charges \$1.00 for each electronic reload. Ficus Bank determines it must list electronic reload as an additional fee type in its short form disclosure. Ficus Bank discloses the fee type as “Electronic reload” and the fee amount as “\$1.00.” Alternatively, it could disclose the fee type and the fee name as “Electronic reload (debit card)” and the fee amount as “\$1.00.”

*2. Two fee variations charged under an additional fee type.* If an additional fee type has exactly two fee variations, the financial institution must disclose the name of the additional fee type as well as the names and amounts of both fee variations. 12 CFR 1005.18(b)(2)(ix)(C). If the amounts of the two fee variations are the same, the financial institution may disclose the name of the additional fee type, the names of both fees, and a single fee amount or it may disclose the name of the additional fee type (without the names of the fee variations) and the single fee amount. Comments 1005.18(b)(2)(ix)(C)-1.i and -1.iii. The format for disclosing this situation is similar to requirements for the disclosure of the two-tier static fees for ATM withdrawal, ATM balance inquiry, and customer service, which are discussed in Section 4.2.1.

**Examples:** Ficus Bank offers a prepaid account that has card replacement fees. Ficus Bank charges \$5.00 for standard mail delivery of a replacement card and \$15.00 for expedited delivery of a replacement card. The additional fee type card replacement has two fee variations: replacement card sent by standard mail service (\$5.00) and replacement card sent by expedited delivery (\$15.00). Ficus Bank determines it must list card replacement as an additional fee type in its short form disclosure. Ficus Bank discloses the fee type and two fee variations as “Card replacement (regular or expedited delivery)” and the fee amounts as “\$5.00 or \$15.00.”

Ficus Bank offers another prepaid account that has check reload fees. Ficus Bank charges a fee for reloads conducted by depositing a check at an ATM and by depositing a check with a teller at a branch. In each case, Ficus Bank charges \$0.50. Ficus Bank determines it must list check reloads as an additional fee type in its short form disclosure. Because Ficus Bank charges \$0.50 for each check reload regardless of whether it is made at an ATM or at a branch, Ficus Bank discloses the fee type as “Check reload (ATM or teller check deposit)” and the fee amount as “\$0.50.” Alternatively, Ficus Bank may disclose “Check reload” and the fee amount as “\$0.50.”

*3. More than two fee variations charged under an additional fee type.* If an additional fee type has more than two fee variations, the financial institution must disclose the name of the additional fee type and the highest fee amount among the fee variations. The fee amount must be followed by a symbol linked to a statement explaining that the fee could be lower depending on how and where the card is used. Comment 1005.18(b)(2)(ix)(C)-1.ii. The format for disclosing fee variations in the additional fee types in this scenario is the same as is required for the disclosure of variable static fees. The disclosure of variable static fees is discussed in Section 4.2.2.



**Example:** Ficus Bank offers bill payment via ACH and via paper check. For bill payments made by paper check, it offers regular standard mail service and expedited delivery. It charges \$0.25 for ACH bill pay, \$0.50 for paper check bill pay sent by regular standard mail service, and \$3 for paper check bill pay sent by expedited delivery. Ficus Bank determines it must list bill payment as an additional fee type in its short form disclosure. Ficus Bank discloses the fee type as “Bill payment” and the fee amount as “\$3.00\*.” The asterisk links to a statement explaining that the fee could be lower depending on how and where the card is used. Ficus Bank has properly disclosed this additional fee type.

#### LISTING ADDITIONAL FEES TYPES FOR MULTIPLE SERVICE PLANS

If the financial institution provides the short form disclosure for multiple service plans, the financial institution must disclose the name of the additional fee type and the highest fee amount among the variations. The format for disclosing this situation is similar to the requirements for the disclosure of variable static fees. Comment 1005.18(b)(2)(ix)(C)-1.iv.

#### PERIODIC REASSESSMENTS OF REVENUE AND UPDATING OF THE LIST OF ADDITIONAL FEE TYPES

In general, every 24 months, the financial institution must reassess whether its disclosure listing additional fee types continues to comply with the Prepaid Rule’s requirements using the revenue for the previous 24-month period. 12 CFR 1005.18(b)(2)(ix)(E). Generally, the financial institution must complete this reassessment and, if applicable, update its disclosure listing additional fee types within three months of the end of the 24-month period. 12 CFR

Beginning October 1, 2017, financial institutions will need to be able to capture data about the revenue generated from additional fee types as well as the total revenue. By October 1, 2019 (at the latest), they must have processes in place to be able to review the revenue data for the previous 24 month period and properly update the short form disclosure, if required, within a 3 month period. Both the reassessment and update must take place within the 3 month period.

1005.18(b)(2)(ix)(E). The examples that follow illustrate this general rule. However, as discussed below, the financial institution may be required to reassess and update the disclosure more frequently in certain circumstances. If the printing update exception discussed below applies, the financial institution may not be required to update its disclosure within the otherwise applicable three-month period.

**Examples:** Ficus Bank listed two additional fee types (bill payment and card replacement) in its short form disclosures for a particular prepaid account program on October 1, 2017. Ficus Bank reassesses fee revenue data for the 24-month period ending on September 30, 2019. The two additional fee types previously disclosed continue to qualify as the two additional fee types that must be listed in the short form disclosure. Ficus Bank is not required to take any action with regard to the disclosure listing additional fee types for the prepaid account program.

Birch Bank listed two additional fee types (bill payment and card replacement) in its short form disclosures for a particular prepaid account program on October 1, 2017. Birch Bank reassesses revenue data on for the 24-month period ending September 30, 2019. Bill payment continues to be the additional fee type that generated the highest revenue from consumers, and the percentage of total revenue it generated during the applicable 24-month period exceeds the de minimis threshold. However, check reload (not card replacement) is the additional fee type that generated the next highest amount of fee revenue from consumers. The percentage of total revenue that check reload generated during the applicable 24-month period also exceeds the de minimis threshold. Birch Bank must update the disclosure listing additional fee types in its short form disclosures provided electronically or orally no later than January 1, 2020. It must also update the disclosure listing additional fee types in its written short form disclosure, unless it qualifies for the update printing exception. The update printing exception is discussed below.

Dogwood Credit Union listed one additional fee type (bill payment) and voluntarily disclosed one other additional fee type (card replacement, both for regular and expedited delivery) in its short form disclosures for a particular prepaid account program on October 1, 2017. Dogwood Credit Union reassesses fee revenue for the 24-month period ending September 30, 2019. Bill payment continues to be the additional fee type that generated the highest revenue from consumers, and the percentage of total revenue it generated for the applicable 24-month period exceeds the de minimis threshold. However, the fee revenue generated for card replacement during the applicable 24-month period now exceeds the de minimis threshold, so card replacement qualifies as the second additional fee type required to be listed in the short form disclosure. Dogwood Credit Union is not required to take any action with regard to the disclosure listing additional fee types for the prepaid account program because card replacement is already disclosed.

## **PERIODIC REASSESSMENTS IN CONNECTION WITH CHANGES TO THE FEE SCHEDULE**

If a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the list of additional fee types previously disclosed will continue to comply with the Prepaid Rule's requirements for the 24 months following implementation of the fee schedule change. 12 CFR 1005.18(b)(2)(ix)(E)(3). If the financial institution reasonably anticipates that the previously disclosed additional fee types will not continue to comply with the Prepaid Rule's requirements, it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect. 12 CFR 1005.18(b)(2)(ix)(E)(3).

A fee schedule change resets the 24-month period for reassessment. The financial institution must conduct a reassessment prior to implementing a fee schedule change. It must conduct its next reassessment at the end of the 24-month period following the date that it implements the new fee schedule. Comment 1005.18(b)(2)(ix)(E)(3)-1.

Generally, the financial institution must complete its reassessment and, if applicable, update the disclosure listing additional fee types prior to implementing the change, unless the update printing exception applies. 12 CFR 1005.18(b)(2)(ix)(E)(3). However, if an immediate change in terms and conditions is necessary to maintain or restore the security of an account or EFT system and that change affects the prepaid account program's fee schedule, the financial institution must complete its reassessment within 3 months of the date that the fee schedule change becomes permanent. The financial institution must also, if applicable, update its disclosure listing additional fee types, within this same time frame, unless the update printing exception applies. 12 CFR 1005.18(b)(2)(ix)(E)(3).

**Example:** Ficus Bank plans to lower its card replacement fee from \$4 to \$3 on December 1, 2018 after having first prepared its additional fee types disclosure in advance of the Prepaid Rule's effective date. Ficus Bank must determine whether it reasonably anticipates that the additional fee types listed in its short form disclosure will continue to reflect the additional fee types that generate the highest revenue from consumers for that prepaid account program for the 24 months following the change (*i.e.*, until December 1, 2020). Ficus Bank reasonably anticipates that the additional fee types it is required to list in the short form disclosure will remain unchanged over the next 24 months. Ficus Bank is not required to take any action with regard to the additional fee types disclosure for that prepaid account program. However, if Ficus Bank reasonably anticipates that the additional fee types currently listed on its short form disclosure will not comply with the Prepaid Rule's requirements for the 24 months following implementation of the fee schedule change, it must update the listing of additional fee types in its short form disclosure at the time the fee schedule change goes into effect, except as provided in the update printing exception.

#### **VOLUNTARY PERIODIC REASSESSMENTS MORE FREQUENTLY THAN EVERY 24 MONTHS**

The Prepaid Rule permits a financial institution to carry out reassessments and, if applicable, it updates more frequently than every 24 months. A financial institution may choose to do this, for example, to sync the timing of its reassessment with its financial reporting schedule or another financial analysis it performs regarding the particular prepaid account program. If a financial institution chooses to reassess its additional fee types disclosure more frequently than every 24 months, it is still required to use 24 consecutive months of revenue data to conduct the reassessment and must complete its reassessment and, if applicable, update its short form disclosures within three months of the end of the 24-month period, unless the update printing exception applies. 12 CFR 1005.18(b)(2)(ix)(E)(2); comment 1005.18(b)(2)(ix)(E)(2)-2.

**Example:** Ficus Bank begins offering a prepaid account program on January 1, 2012. (Program 1). On October 1, 2017, it begins providing the short form disclosure for prepaid accounts offered through Program 1. The short form disclosure for Program 1 lists two additional fee types based on revenue generated between January 1, 2015 and December 31, 2016. Ficus Bank determines that it will begin offering an additional prepaid account program (Program 2) on April 1, 2018. Ficus Bank decides to reassess the additional fee types for Program 1 earlier than required under the Prepaid Rule so that it will be conducting future reassessments for both Program 1 and Program 2 at the same time. Ficus Bank decides to reassess its revenue for Program 1 as of April 1, 2018 using the revenue generated between April 1, 2016 and March 31, 2018. Ficus Bank must complete its reassessment and, if applicable, update the short form disclosure for Program 1 by July 1, 2018. For Program 2, Ficus Bank must base the disclosure listing additional fee types on the revenue it anticipates Program 2 will generate between April 1, 2018 and March 31, 2020. For both programs, Ficus Bank must conduct its next reassessment beginning April 1, 2020, and, if applicable, update its short form disclosures by July 1, 2020.

#### **UPDATE PRINTING EXCEPTION**

Notwithstanding the requirements to update the disclosure listing additional fee types within three months of the end of the 24-month period used as the basis for the periodic reassessment, a financial institution is not required to update any disclosure listing additional fee types that is provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update or prior to a fee schedule change pursuant to 12 CFR 1005.18(b)(2)(ix)(E)(3). 12 CFR 1005.18(b)(2)(ix)(E)(4); comment 1005.18(b)(2)(ix)(E)(4)-1. For prepaid accounts sold in retail locations, for example, the Prepaid Rule permits a financial institution to implement any necessary updates to disclosures listing additional fee types that appear on its physical prepaid account packaging materials at the time the financial institution prints new materials. The Prepaid Rule does not require financial institutions to destroy existing inventory in retail locations or elsewhere in the distribution channel, to the extent the disclosures on such packaging materials are otherwise accurate, in order to update the disclosure listing additional fee types. Comment 1005.18(b)(2)(ix)(E)(4)-1.

**Example:** Beginning on October 1, 2019, Ficus Bank conducts a periodic reassessment of revenue for a prepaid account program. The reassessment is based on revenue generated between October 1, 2017 and September 30, 2019. Ficus Bank determines that a different additional fee type must be listed on the short form disclosure for the prepaid account program in place of one that is currently listed. Ficus Bank must update any electronic and oral short form disclosures before January 1, 2020 (within three months of October 1, 2019). However, Ficus Bank may continue selling any previously printed prepaid account packages that contain the prior listing of additional fee types. Prepaid account packages printed after January 1, 2020 must contain the updated listing of additional fee types.

#### 4.2.4 Overdraft credit features

If a covered separate credit feature may be offered to a consumer at any point in connection with the prepaid account, the short form disclosure must inform the consumer that overdraft/credit may be offered, the time period after which it may be offered, and that fees apply. The information must be disclosed using the following or substantially similar language: “You may be offered overdraft/credit after [x] days. Fees would apply.” 12 CFR 1005.18(b)(2)(x). A financial institution must provide this information in the short form disclosure for all prepaid accounts that offer such a feature, even if a specific consumer will not be solicited for the feature or will not qualify for it. Comment 1005.18(b)(2)(x)-1.

On the other hand, if a consumer will not be offered such a credit feature in connection with the prepaid account at any time, the short form disclosure must inform the consumer of this fact, using the following or substantially similar language: “No overdraft/credit feature.” 12 CFR 1005.18(b)(2)(x).

Overdraft credit features are discussed in Section 15.

## 4.2.5 Registration and FDIC/NCUA insurance

The short form disclosure must include a statement that:

1. Informs a consumer about whether the prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance; and
2. Directs a consumer to register the prepaid account for insurance and other protections (if applicable).

☞ If a consumer's prepaid account funds are held at a credit union, the short form disclosure must include the information about NCUA share insurance eligibility. If a consumer's funds are held at a financial institution other than a credit union, the disclosure must include information about FDIC deposit insurance eligibility. Comment 1005.18(b)(2)(xi)-1.

12 CFR 1005.18(b)(2)(xi).

There are five different scenarios that may occur, and a financial institution will need to disclose the appropriate one in this statement. The financial institution will need to determine which of the scenarios described in the table below applies to the prepaid account program and make the corresponding disclosure. 12 CFR 1005.18(b)(2)(xi)(A) through (E).

Scenario	Corresponding disclosure uses the following or substantially similar language
The prepaid account program is set up so that prepaid accounts could be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the prepaid account is opened, but could occur at a later time	"Register your card for [FDIC insurance eligibility][NCUA insurance, if eligible] and other protections."
The prepaid account program is not set up so that prepaid accounts could be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the prepaid account is opened, but could occur at a later time	"Not [FDIC][NCUA] insured. Register your card for other protections."

<p>The prepaid account program is set up so that prepaid accounts could be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs before the prepaid account is opened</p>	<p>“Your funds are [eligible for FDIC insurance][NCUA insured, if eligible.]”</p>
<p>The prepaid account program is not set up so that prepaid accounts could be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs before the prepaid account is opened</p>	<p>“Your funds are not [FDIC][NCUA] insured.”</p>
<p>There is not a customer identification or verification process for the prepaid account program (<i>i.e.</i>, customer identification or verification do not occur before or after the account is opened)</p>	<p>“Treat this card like cash. Not [FDIC][NCUA] insured.”</p>

## 4.2.6 Bureau’s website

The short form disclosure must include a statement directing the consumer to the Bureau’s website for general information about prepaid accounts. It must use the following or substantially similar language: “For general information about prepaid accounts, visit *cfpb.gov/prepaid*.” 12 CFR 1005.18(b)(2)(xii).

## 4.2.7 Reference to long form disclosure for information on all fees and services

The short form disclosure must include a statement directing the consumer to the long form disclosure for information on all fees and services. 12 CFR 1005.18(b)(2)(xiii). The content of the statement differs depending on whether a financial institution is relying on the retail location exception.

If a financial institution is not relying on the retail location exception for providing the long form disclosure, the short form disclosure must include a statement directing consumers to the long form disclosure for details and conditions for all fees and services, using the following or substantially similar language: “Find details and conditions for all fees and services in [location].” 12 CFR 1005.18(b)(2)(xiii). The financial institution must fill in the brackets with the appropriate location, such as “the cardholder agreement.”



If a financial institution is relying on the retail location exception for providing the long form disclosure, the short form disclosure must include a statement directing consumers to the long form disclosure for details and conditions for all fees and services, including a telephone number and website that consumers can use to directly access the long form disclosure. The statement must be made using the following or substantially similar language: “Find details and conditions for all fees and services inside the package, or call [telephone number], or visit [website].” If an SMS code will fit on the same line of text as this required statement, a financial institution may also disclose an SMS code at the end of the statement. 12 CFR 1005.18(b)(2)(xiii).

The telephone number must provide direct access to an oral version of the long form disclosure for the prepaid account program. The telephone number may be specifically dedicated to providing the long form disclosure or it could connect to a general customer service line (either live service agent or an IVR system). Comment 1005.18(b)(2)(xiii)-1. In either case, direct access is achieved if the consumer navigates one or two prompts to reach the oral long form disclosure. Comment 1005.18(b)(2)(xiii)-1. Similarly, the website must provide direct access to an electronic version of the long form disclosure for the prepaid account. With regard to the website, direct access is not achieved if the consumer must navigate other web pages before viewing the long form disclosure. The URL for the website must not exceed 22 characters and must be meaningfully named. Trademark and product names and their commonly accepted or readily understandable abbreviations comply with the requirement that the URL be meaningfully named. Comment 1005.18(b)(2)(xiii)-2.

## 4.2.8 Additional content for payroll card accounts

### Disclosure of a consumer’s options for receiving wages or salary

The short form disclosure for payroll card accounts must inform a consumer that he or she has options for receiving wages or salary. The Prepaid Rule permits a financial institution to use one of two different statements. 12 CFR 1005.18(b)(2)(xiv)(A).

A financial institution can use a statement informing a consumer that he or she does not have to accept the payroll card account and directing the consumer to ask about other ways to receive wages or salary from the employer. This statement must use the following or substantially similar language: “You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.” 12 CFR 1005.18(b)(2)(xiv)(A).

Alternatively, a financial institution can use a statement informing a consumer that he or she has several options to receive wages or salary, listing the options available to the consumer, and directing the consumer to tell the employer the option the consumer has chosen. This statement must use the following or substantially similar language: “You have several options to receive your wages: [list of options available to consumer]; or this payroll card. Tell your employer which option you choose.” The list of options available to the consumer might include, for example, direct deposit to the consumer’s bank account, direct deposit to the consumer’s own prepaid account, paper check, or cash. 12 CFR 1005.18(b)(2)(xiv)(A); comment 1005.18(b)(2)(xiv)(A)-1.

Regardless of which statement a financial institution uses, the statement must appear above the static fees in the short form disclosure. 12 CFR 1005.18(b)(xiv)(A). In either version of the statement, the financial institution is permitted to provide more specificity as to whom a consumer must ask or inform of his or her choice of wage payment method, such as by specifying the employer’s Human Resources Department. Comment 1005.18(b)(2)(xiv)(A)-1.

### Optional statement directing consumer to information regarding state-required or other waivers and reduced charges

Additionally, for payroll card accounts, a financial institution can choose to include a statement in its short form disclosure directing a consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced charge. 12 CFR 1005.18(b)(xiv)(B). This statement can only take up one line of text and must appear directly below the linked statements for fees that can vary in amount. If the short form disclosure does not include any such linked statements, it must appear directly above the statement regarding overdraft/credit features. 12 CFR 1005.18(b)(2)(xiv)(B). For example, the statement may say “See below for free ways to access your funds and balance information” or may say “See the cardholder agreement for free ways to access your funds and balance information.” Comment 1005.18(b)(2)(xiv)(B)-1.

This optional statement is permitted only for payroll card accounts and government benefit accounts (discussed below). Financial institutions are not permitted to include this optional statement in the short form disclosures for any other type of prepaid account.

[Model Form A-10\(b\)](#) illustrates both of these disclosures.

## 4.2.9 Additional content for government benefit accounts

### Disclosure of consumer's options for receiving government benefit payments

The short form disclosure for government benefit accounts must inform a consumer that he or she has options for receiving government benefit payments. The Prepaid Rule permits a government agency to use one of two different statements. 12 CFR 1005.15(c)(2)(i).

A government agency can use a statement informing a consumer that he or she does not have to accept the government benefit account and directing the consumer to ask about other ways to receive government benefit payments. This statement must use the following or substantially similar language: "You do not have to accept this benefits card. Ask about other ways to receive your benefits." 12 CFR 1005.15(c)(2)(i).

Alternatively, a government agency can use a statement informing a consumer that he or she has several options to receive benefit payments, listing the options available to the consumer, and directing the consumer to indicate which option the consumer has chosen. This statement must use the following or substantially similar language: "You have several options to receive your payments: [list of options available to consumer]; or this benefits card. Tell the benefits office which option you choose." 12 CFR 1005.15(c)(2)(i).

Regardless of the option the government agency uses, the statement must appear above the static fees in the short form disclosure. 12 CFR 1005.15(c)(2)(i).

### Optional statement directing consumer to information regarding state-required or other waivers and reduced charges

Additionally, for government benefit accounts, a government agency can choose to include a statement in its short form disclosure directing a consumer to a particular location outside the short form disclosures for information on ways the consumer may access government benefit funds and balance information for free or for a reduced charge. This statement can only take up one line of text and must appear directly below the linked statements for fees that can vary in amount. If the short form disclosures do not include any such linked statements related to fees, it must appear directly above the statement regarding overdraft/credit features. 12 CFR 1005.15(c)(2)(ii).

This optional statement is permitted only for government benefit accounts and payroll card accounts (discussed above). Financial institutions are not permitted to include this optional statement in the short form disclosures for any other type of prepaid account.

[Model Form A-10\(a\)](#) illustrates both of these disclosures.

#### 4.2.10 Optional content for prepaid cards other than payroll card accounts or government benefit accounts

For prepaid accounts other than payroll card accounts or government benefit accounts, a financial institution may choose to include a statement about a consumer's options for receiving disbursements or payments. This statement must be similar to either of the disclosure of a consumer's options for receiving wages or salary, which is discussed in Section 4.2.8, or the disclosure of a consumer's options for receiving government benefit payments, which is discussed in Section 4.2.9. For example, a financial institution issuing a prepaid account to disburse student financial aid could choose to disclose a statement such as the following, if accurate and applicable: "You have several options to receive your financial aid payments: direct deposit to your bank account, direct deposit to your own prepaid card, paper check, or this prepaid card. Tell your school which option you choose." Comment 1005.18(b)(2)(xiv)(A)-3.

#### 4.2.11 Format

When provided electronically or in writing, the short form disclosure must disclose the static fees and all disclosures regarding additional fee types in the form of a table. Unless a financial institution is disclosing multiple service plans in a single form, the short form disclosure must be provided in a form substantially similar to Model Forms A-10(a) through (d), as applicable. 12 CFR 1005.15(c)(3); 1005.18(b)(6)(iii).

The Prepaid Rule also contains specific type size, grouping, and other formatting requirements for the short form disclosure. Generally, the short form disclosure is designed to create a visual hierarchy drawing the consumer's attention to the most important information, using location within the short form disclosure, minimum and relative type sizes, and emphasis (such as bold-faced type) to create this effect. For example, the static fees in the top line must be grouped together and provided in the order presented in the Prepaid Rule. The fee amounts for these static fees in the top line must be in bold-faced type and in the largest type size used in the short

form disclosure. Single fee amounts must be in a minimum type size of 15 points and two-tier fee amounts for ATM withdrawal must be in a minimum type size of 11 points. 12 CFR 1005.18(b)(7)(i)(A) and (ii)(B). For more information on the form and formatting requirements for the short form disclosure, see the Prepaid Rule at 12 CFR 1005.18(b)(6) and (7), and the Model Forms, available at [www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/](http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/).

Native design files for printed short form disclosures and source code for web-based short form disclosures are available at [github.com/cfpb/prepaid-disclosure-files](https://github.com/cfpb/prepaid-disclosure-files).

#### 4.2.12 Short form disclosures for prepaid account programs with multiple service plans

If a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the financial institution has two options for disclosing the static fees and additional fee types in the short form disclosure. 12 CFR 1005.18(b)(6)(iii)(B).

The financial institution can disclose the static fees and additional fee types for the service plan in which a consumer is initially enrolled by default upon acquiring a prepaid account. As noted above, this fee information must be disclosed in the form of a table.

Alternatively, the financial institution can make the required fee disclosures in the form of a table with separate columns for each service plan. This table must be substantially similar to the table in [Model Form A-10\(e\)](#), the short form disclosure for multiple service plans. 12 CFR 1005.18(b)(6)(iii)(B).

A loyalty plan, such as where a consumer receives preferred rates or fees for using a non-prepaid service such as a mobile phone service, qualifies as a multiple service plan. Pricing variations based on whether a consumer chooses to use a particular feature of a prepaid account, such as choosing direct deposit to waive the periodic fee, does not qualify as a multiple service plan. For example, a financial institution does not offer multiple service plans if it waives or reduces a monthly fee when the consumer has a direct deposit to the prepaid account. Comment 1005.18(b)(6)(iii)(B)(2)-1.

## 4.3 Information required to be disclosed outside but in close proximity to the short form disclosure

At the time that a financial institution provides the short form disclosure to the consumer, it must also provide certain additional information outside of the short form disclosure.

Specifically, it must disclose the:

1. Financial institution's name. For government benefit accounts, the name of the financial institution that directly holds the account or issues the account's access device must be disclosed. Comment 1005.15(c)-4.
2. Name of the prepaid account program.
3. Purchase price for the prepaid account (if any).
4. Activation fee (if any).

12 CFR 1005.18(b)(5).

A financial institution may choose to also disclose the name of the program manager or other service provider involved in the prepaid account program. Comment 1005.18(b)(5)-1.

In a setting other than a retail location, this information must be disclosed in close proximity to the short form disclosure. For example, if a financial institution provides the short form disclosure online, this information is deemed to be disclosed in close proximity to the short form disclosure if it appears on the same web page as the short form disclosure. If a financial institution offers the prepaid account in its own branch locations and provides the information and the short form disclosure on the exterior of a prepaid card's preprinted packaging materials, the information is deemed disclosed in close proximity to the short form disclosure. Similarly, if a financial institution provides written short form disclosures in a manner other than on preprinted packaging materials, such as on paper, and the information and the short form disclosure are on the same piece of paper, the information is deemed disclosed in close proximity to the short form disclosure. If a financial institution provides the short form disclosure orally, the information is deemed disclosed in close proximity to the short form disclosure if the financial institution provides it immediately before or after disclosing the fees

and information required to be included in the short form disclosure. Comment 1005.18(b)(5)-2.

For prepaid accounts sold pursuant to the retail location exception, the purchase price must be disclosed either on the exterior of or in close proximity to the access device's packaging material. The other information must be disclosed on the exterior of the access device's packaging material. 12 CFR 1005.18(b)(5). Disclosure of the purchase price on or near the sales rack or display for the packaging material is deemed in close proximity to the short form disclosure. Comment 1005.18(b)(5)-2. Section 4.1.4 discusses the Prepaid Rule's definition of retail location.

## 4.4 Long form disclosure

The long form disclosure is the companion to the short form disclosure and provides more comprehensive fee information, including a list of all of the fees that may be imposed in connection with the prepaid account and detailed information on the conditions under which each fee may be imposed, waived, or reduced, as well as certain other key information about the prepaid account. As discussed in Section 4.4.8, there are certain formatting requirements for the long form disclosure. The Prepaid Rule includes a sample long form disclosure, Sample Form A-10(f), which is available at [consumerfinance.gov/f/documents/102016\\_cfpb\\_PrepaidDisclosures.pdf](https://consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf). Native design files for printed long form disclosures and source code for web-based long form disclosures are available at [github.com/cfpb/prepaid-disclosure-files](https://github.com/cfpb/prepaid-disclosure-files).

### 4.4.1 Title

The first line of the long form disclosure must be a title or heading that states the name of the prepaid account program and tells a consumer that the long form disclosures contain a list of all fees for the prepaid account program. 12 CFR 1005.18(b)(4)(i) and (b)(7)(i)(B).

### 4.4.2 Fees

The long form disclosure must include all fees that may be imposed in connection with a prepaid account, not just fees for EFTs or the right to make EFTs. 12 CFR 1005.18(b)(4)(ii). A financial institution must disclose the amount of each fee that may be imposed in connection with the prepaid account and the conditions, if any, under which the fee may be imposed, waived, or

reduced. 12 CFR 1005.18(b)(4)(ii); comment 105.18(b)(4)(ii)-2. However, a financial institution does not have to disclose individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis. Comment 1005.18(b)(4)(ii)-2. A financial institution may not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed. 12 CFR 1005.18(b)(4)(ii).

A financial institution may choose whether to disclose any service or feature it provides or offers at no charge to the consumer. 12 CFR 1005.18(b)(4)(ii).

**Examples:** Ficus Bank waives the monthly fee for a prepaid account for the first two months after a consumer opens a prepaid account. After the first two months, Ficus Bank charges a monthly fee of \$5, unless the consumer has a direct deposit to the prepaid account during the month. In the long form disclosure, Ficus Bank must disclose the monthly fee amount of \$5 and include an explanation that the monthly fee is waived during the first two months as well as in any month the consumer receives a direct deposit to the prepaid account.

Ficus Bank offers a bill payment service for a prepaid account, but does not charge for this service. Ficus Bank could list “online bill pay” and “\$0” in the long form disclosure. However, if the service is only provided at no charge for an introductory period or a fee is waived or reduced under certain circumstances, Ficus Bank may not list the fee amount as “\$0.” Instead, it must list the highest fee, accompanied by an explanation of the waived or reduced fee amount and any conditions for the waiver or discount.

## Finance charges

The long form disclosure must include finance charges imposed on the prepaid account in connection with a covered separate credit feature. 12 CFR 1005.18(b)(4)(vii). However, finance charges imposed on the covered separate credit feature itself are not included in the long form disclosure’s fee table. Comment 1005.18(b)(4)(ii)-1. They may, however, be required to be disclosed as part of the Regulation Z disclosures for overdraft credit features. Section 4.4.7 includes more information on the Regulation Z disclosures for overdraft credit features. For



additional guidance on how to disclose finance charges, see comment 1005.18(b)(7)(i)(B)-2. For general information on finance charges, see 12 CFR 1026.4 and the related commentary.

### Third-party fees

Generally, the fees in the long form disclosures must include third-party fee amounts known to the financial institution. A financial institution may choose to include a statement that the third-party fee is accurate as of or through a specific date. It may also choose to include a statement that the third-party fee is subject to change. If a financial institution knows that a third-party fee may apply but it does not know the amount of that fee, the financial institution must include a statement indicating that the third-party fee may apply without specifying the fee amount. 12 CFR 1005.18(b)(4)(ii). For example, if a financial institution permits out-of-network ATM withdrawals, an ATM operator may charge the consumer a fee. However, if the financial institution does not know the amount that an ATM operator may charge, the financial institution must disclose that a third-party fee may apply for out-of-network ATM withdrawals without specifying the amount. Comment 1005.18(b)(4)(ii)-4.

A financial institution is not required to revise the long form disclosure to reflect a change to a third-party fee until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. 12 CFR 1005.18(b)(4)(ii). Fees charged by a third party for a service performed on behalf of the financial institution are not third-party fees. Comment 1005.18(b)(4)(ii)-4.

### 4.4.3 Registration and FDIC/NCUA insurance

The long form disclosure must include the same information about FDIC or NCUA insurance and registration that is included in the short form disclosure for the prepaid account program. Section 4.2.5 discusses the FDIC/NCUA insurance and registration information that is included in the short form disclosure. Additionally, the long form disclosure must include an explanation of FDIC or NCUA insurance coverage and the benefits of such coverage or the consequence of the lack of such coverage, as applicable. 12 CFR 1005.18(b)(4)(iii).

**Examples:** Ficus Bank offers a prepaid account program that is set up to be eligible for FDIC deposit insurance, but it does not conduct customer identification and verification before a consumer purchases a prepaid account. The prepaid accounts are sold at a retail location. Ficus Bank may disclose the required statements on the long form disclosure as follows: “Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to Ficus Bank, an FDIC insured institution. Once there, your funds are insured up to \$250,000 by the FDIC in the event Ficus Bank fails, if specific deposit insurance requirements are met and your card is registered. See [fdic.gov/deposit/deposits/prepaid.html](https://www.fdic.gov/deposit/deposits/prepaid.html) for details.”

Birch Bank offers a prepaid account program that is not set up to be eligible for FDIC insurance. The prepaid accounts are sold in retail locations, and Birch Bank conducts customer identification and verification after purchase of a prepaid account. Birch Bank may disclose the required statements in the long form disclosure as follows: “Not FDIC insured. Your funds will be held at or transferred to Birch Bank. If Birch Bank fails, you are not protected by FDIC deposit insurance and could lose some or all of your money. Register your card for other protections.”

Dogwood Credit Union offers a prepaid account program that is set up to be eligible for NCUA share insurance, but it does not conduct customer identification and verification before a consumer purchases a prepaid account. The credit union sells the prepaid accounts in its branches. Dogwood Credit Union may disclose the required statement in the long form disclosure as follows: “Register your card for NCUA insurance, if eligible, and other protections. Your funds will be held at or transferred to Dogwood Credit Union, an NCUA-insured institution. Once there, if specific share insurance requirements are met and your card is registered, your funds are insured up to \$250,000 by the NCUA in the event Dogwood Credit Union fails.”

#### 4.4.4 Overdraft credit features

The long form disclosure must include the same statement about overdraft credit features that is included in the short form disclosure for the prepaid account program. 12 CFR 1005.18(b)(4)(iv). Section 4.2.4 discusses the statement about overdraft credit features that is included in the short form disclosure.

#### 4.4.5 Contact information

The long form disclosure must include a statement directing consumers to a telephone number, mailing address, and website for the person or office that a consumer may contact to learn about the prepaid account's terms and conditions, to obtain prepaid account balance information, to request an account transaction history, or to notify the financial institution when the consumer believes that an unauthorized EFT has occurred. 12 CFR 1005.18(b)(4)(v).

#### 4.4.6 Bureau website and telephone number

The long form disclosure must include a statement directing consumers to the Bureau's website ([cfpb.gov/prepaid](http://cfpb.gov/prepaid)) for general information about prepaid accounts, and a statement directing consumers to the Bureau's telephone number (1-855-411-2372) and website ([cfpb.gov/complaint](http://cfpb.gov/complaint)) to submit a complaint about a prepaid account. These statements must use the following or substantially similar language: "For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid). If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit [cfpb.gov/complaint](http://cfpb.gov/complaint)." 12 CFR 1005.18(b)(4)(vi).

#### 4.4.7 Regulation Z disclosures for overdraft credit features

The long form disclosure must include the Regulation Z application and solicitation disclosures required by 12 CFR 1026.60(e)(1) if, at any point, a covered separate credit feature may be offered in connection with the prepaid account. Section 15.3.2 discusses covered separate credit features. For more information on Regulation Z application and solicitation disclosures, see 12 CFR 1026.60.

If these Regulation Z disclosures are required to be included in the long form disclosure, they must appear below the statements directing the consumer to the Bureau's website and telephone number. Comment 1005.18(b)(5)-2. A financial institution may choose to include a heading or other explanatory information regarding the covered separate credit feature immediately above the Regulation Z disclosures. The Regulation Z disclosures must be provided in accordance with the requirements for such disclosures set forth in 12 CFR 1026.60 and, to the extent possible, on the same page as the other fees and statements in the long form disclosure. 12 CFR 1005.18(b)(4)(vii); comment 1005.18(b)(4)(vii)-1.

A financial institution is not required to revise the long form disclosure to reflect a change in the fees or other terms included in the Regulation Z disclosures until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. 12 CFR 1005.18(b)(4)(vii). This exception applies only to these Regulation Z disclosures for the overdraft credit feature. It does not extend to the separate disclosure of any finance charges imposed on the prepaid account in connection with a covered separate credit feature (*i.e.*, in the long form disclosure's fee table required by 12 CFR 1005.18(b)(4)(ii)). Section 4.4.2 discusses the separate requirement to disclose finance charges in the long form disclosure's fee table.

#### 4.4.8 Format

When the long form disclosure is provided in writing or electronically, the fees and the conditions under which they may be imposed must be disclosed in the form of a table. 12 CFR 1005.18(b)(6)(iii)(A). When providing a long form disclosure for multiple service plans, a financial institution must present the fees and conditions under which each fee may be imposed in the form of a table for all service plans. 12 CFR 1005.18(b)(6)(iii)(B)(3).

The fees and the conditions under which they may be imposed must be generally grouped together in the long form disclosure. The fees must be organized under subheadings by the "categories of functions" for which they may be imposed.

The conditions must be disclosed in close proximity to the fee amount. 12 CFR 1005.18(b)(7)(i)(B). For example, a financial institution complies with this requirement if the text describing the conditions is located directly to the right of the fee amount.

□ The following "categories of function" appear in the sample form and are examples of categories that a financial institution might use in the long form disclosures: Get started (disclosing the card purchase price), Monthly usage (disclosing the monthly fee), Add money (disclosing fees for direct deposit and cash reload), Spend money (disclosing bill payment fees), Get cash (disclosing ATM withdrawal fees), Information (disclosing customer service and ATM balance inquiry fees), Using your card outside the U.S. (disclosing fees for international transactions, international ATM withdrawals, and international ATM balance inquiries), and Other (disclosing the inactivity fee). A financial institution may use some or all of the categories or may create its own categories.

The minimum type size for the long form disclosure is 8 points. 12 CFR 1005.18(b)(7)(ii)(C).

For an example of how a financial institution may set up its long form disclosures, see Sample Form A-10(f), which is available at [www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/](http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/). Native design files for print disclosures and source code for web-based disclosures are available at [github.com/cfpb/prepaid-disclosure-files](https://github.com/cfpb/prepaid-disclosure-files).

# 5. Disclosures on the access device

A financial institution is required to provide certain disclosures on the prepaid card or other access device for a prepaid account. 12 CFR 1005.18(f)(3). This means that the disclosures must be on the card or device itself. Placing these disclosures on the packaging or other material (such as a terms and conditions document) that accompanies the card or device or on a sticker or label affixed to the card or device is not sufficient. Comment 1005.18(f)-3.

The two disclosures that must be on the prepaid card or other access device are:

1. The financial institution's name. For a government benefit account, the name of the financial institution that directly holds the account or issues the account's access device is disclosed. Comment 1005.15(f)-1.
2. A telephone number and a website URL that the consumer can use to contact the financial institution about the prepaid card (*e.g.*, to learn about the terms and conditions, obtain account balance information, request an account transaction history, or notify the financial institution of an unauthorized transaction). Comment 1005.18(f)-3.

12 CFR 1005.18(f)(3).

If a financial institution does not provide a physical access device for a prepaid account, these disclosures must appear on the website, mobile application, or other entry point that a consumer must visit to access the prepaid account electronically. 12 CFR 1005.18(f)(3).

# 6. Initial Disclosures

Regulation E requires a financial institution to provide initial disclosures of an account's terms and conditions. The Prepaid Rule extends Regulation E's initial disclosure requirements to prepaid accounts. As discussed in Section 6.2, it also modifies the content required to be included in the initial disclosures for prepaid accounts. If a financial institution relies on the periodic statement alternative discussed in Section 8, the Prepaid Rule requires certain additional modifications to the initial disclosures. Those modifications are discussed in Section 6.3.

## 6.1 Timing and general requirements for initial disclosures

Regulation E generally requires a financial institution to provide initial disclosures at the time a consumer contracts for an EFT service or before the first EFT is made involving the consumer's account. 12 CFR 1005.7(a). A financial institution must provide the initial disclosures in writing. If the financial institution complies with the E-Sign Act, it may provide the initial disclosures electronically. The initial disclosures must also be clear, readily understandable, and provided in a form the consumer may keep. 12 CFR 1005.4(a)(1).

## 6.2 Content of initial disclosures

Generally, the initial disclosures for a prepaid account must include all of the information required in the long form disclosure for the prepaid account as well as the information required to be included in the initial disclosures for other accounts subject to Regulation E. If a financial institution intends to rely on the exception to provisional crediting for certain unverified prepaid accounts, as discussed in Section 9.2.4, the financial institution must include additional information in the error resolution notice provided in the initial disclosures. 12 CFR

1005.18(e)(3)(ii)(A). If a financial institution relies on the periodic statement alternative, the financial institution must make certain modifications to the content of the initial disclosures. 12 CFR 1005.18(c)(1) and (d)(1). These modifications are discussed in Section 6.3.

For model clauses that a financial institution can generally use for the initial disclosures, see Model Clauses A-2 and Model Form A-3. For model clauses specific to prepaid accounts, see also Model Clauses A-5 and A-7. For information on using model forms and clauses generally, see the commentary related to Appendix A.

Generally, the initial disclosures for a prepaid account must include the following information:

1. *Liability of consumers for unauthorized EFTs.* A financial institution must include a summary of the consumer's liability for unauthorized EFTs. 12 CFR 1005.7(b)(1). A financial institution does not need to provide the liability disclosures if it imposes no liability. If it later decides to impose liability, it must first disclose a summary of the consumer's liability. Comment 1005.7(b)(1)-1. Section 9 provides more information on consumer liability for unauthorized EFTs.

2. *Telephone number and address.* A financial institution must provide the telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made on the prepaid account. 12 CFR 1005.7(b)(2).

3. *Business days.* A financial institution must provide its business days (*i.e.*, "For purposes of these disclosures, our business days are Monday through Friday. Holidays are not included.") 12 CFR 1005.7(b)(3). See also paragraph (c) of Model Clauses A-2.

4. *Types of EFTs; limitations on frequency and dollar amount of EFTs.* A financial institution must provide information about the types of EFTs that may be made, and the limitations on the frequency and dollar amount of EFTs. 12 CFR 1005.7(b)(4). If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed). Comment 1005.7(b)(4)-1. Financial institutions are not required to list preauthorized EFTs among the types of EFTs that a consumer can make. Comment 1005.7(b)(4)-3.

5. *Fees and other information required to be in the long form disclosure.* For accounts other than prepaid accounts, Regulation E requires a financial institution to disclose any fees imposed by the financial institution for EFTs or for the right to make EFTs. 12 CFR 1005.7(b)(5). For prepaid accounts, initial disclosures must include all of the information



required to be included in the long form disclosure, including all of the fee information. Therefore, the initial disclosures for a prepaid account must include information about all fees that the financial institution may charge, not just fees for EFTs or the right to make EFTs. 12 CFR 1005.18(f)(1); comment 1005.18(f)-1. Section 4.4 discusses the information that must be included in the long form disclosure and, therefore, must be included in the initial disclosures for a prepaid account.

**6. Documentation.** A financial institution must include a summary of the consumer's right to receipts and periodic statements and notices regarding preauthorized EFTs under Regulation E. 12 CFR 1005.7(b)(6). Section 8 provides information on periodic statements, Section 10 provides information on receipts, and Section 11 provides information on notices for preauthorized EFTs.

**7. Stop payment.** A financial institution must include a summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for placing a stop-payment order, as provided in Regulation E. 12 CFR 1005.7(b)(7). Section 11 provides information on stopping payment on preauthorized EFTs.

**8. Liability of institution.** A financial institution must include a summary of the financial institution's liability to the consumer under Section 910 of EFTA for failure to make or to stop certain EFTs. 12 CFR 1005.7(b)(8).

**9. Confidentiality.** A financial institution must disclose the circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties. 12 CFR 1005.7(b)(9). For this purpose, third parties include the financial institution's affiliates. Comment 1005.7(b)(9)-1.

**10. Error Resolution.** Generally, the initial disclosures must include an error resolution notice that is substantially similar to Model Form A-3. A financial institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E. Comment 1005.7(b)(10)-1. To take advantage of the longer time periods for resolving errors in certain circumstances, a financial institution must have disclosed these longer time periods. Comment 1005.7(b)(10)-2. A financial institution relying on the exception from provisional crediting for certain unverified prepaid accounts must disclose the risks of not registering the prepaid account, using a notice that is substantially similar to paragraph (c) of Model Clauses A-7. 12 CFR 1005.18(e)(3)(ii)(A). As discussed below in Section 6.3, the error resolution notice must also be revised if the financial institution relies on the periodic statement alternative.

11. *ATM fees.* A financial institution must disclose that a fee may be imposed by an ATM operator for an EFT or for a balance inquiry, and by any network used to complete the transaction. 12 CFR 1005.7(b)(11).

## 6.3 Required modifications to initial disclosures when financial institution relies on the periodic statement alternative

If a financial institution relies on the alternative to providing periodic statements for prepaid accounts, it must modify the initial disclosures. Specifically, the financial institution must include information on how to access prepaid account information and must replace the error resolution notice otherwise required by Regulation E with an error resolution notice that reflects the modified error resolution procedures that apply when the financial institution relies on the periodic statement alternative. 12 CFR 1005.18(d)(1).

### 6.3.1 How a consumer accesses account information

The modified initial disclosures must inform the consumer how to access prepaid account information and must include:

1. A telephone number that a consumer may call to obtain the account balance;
2. The means by which a consumer can obtain an electronic account transaction history, such as the address of a website; and
3. A summary of a consumer's right to receive a written account transaction history upon request, including a telephone number to call to request a history.

12 CFR 1005.18(d)(1)(i).

For prepaid accounts other than government benefit accounts, a financial institution may make these modified disclosures by providing a notice substantially similar to paragraph (a) of Model Clauses A-7. 12 CFR 1005.18(d)(1)(i). For government benefit accounts, the government agency may make these disclosures by providing a notice substantially similar to paragraph (a) of Model Clauses A-5. 12 CFR 1005.15(e)(1)(i).

### 6.3.2 Error resolution procedures based on when a consumer accesses account transaction histories.

In place of the error resolution notice otherwise required to be included in the initial disclosures, a financial institution relying on the periodic statement alternative must use a modified error resolution notice. For prepaid accounts other than government benefit accounts, a financial institution must provide a modified error resolution notice substantially similar to the notice contained in paragraph (b) of Model Clauses A-7. 12 CFR 1005.18(d)(1)(ii). For government benefit accounts, the government agency must provide a notice that is substantially similar to the notice in paragraph (b) of Model Clauses A-5. 12 CFR 1005.15(e)(1)(ii).

## 7. Change-in-terms notices

Generally, Regulation E requires a financial institution to mail or deliver a change-in-terms notice if certain information required to be included in the initial disclosures changes. 12 CFR 1005.8(a). The Prepaid Rule extends Regulation E's general change-in-terms requirements to prepaid accounts. Additionally, as discussed below, because a financial institution must include additional information in the initial disclosures for a prepaid account, the Prepaid Rule expands the circumstances under which a change-in-terms notice may be required for a prepaid account. 12 CFR 1005.18(f)(2). However, the Prepaid Rule does not require a financial institution to provide a change-in-terms notice under Regulation E solely to reflect a change to the terms and conditions that apply to a covered separate credit feature<sup>6</sup> or to reflect a change in the amount of a third-party fee. 12 CFR 1005.18(f)(2) and comment 1005.18(f)-2.

The Prepaid Rule requires a financial institution to mail or deliver a change-in-terms notice to the consumer if:

1. A term or condition required to be disclosed in the initial disclosures (including any of the information required in the long form disclosure) changes; and
2. The change results in any of the following:

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<sup>6</sup> Although the Prepaid Rule does not require a financial institution to provide a change-in-terms under Regulation E solely to reflect a change to the terms and conditions that apply to a covered separate credit feature, a change-in-terms notice may be required under Regulation Z if the terms and conditions applicable to a covered separate credit feature change.

a. *Increased fees for the consumer.* The Prepaid Rule requires that the initial disclosures for a prepaid account include all of the information required to be disclosed in the long form disclosure. As a result, a change-in-terms notice for a prepaid account is required under Regulation E if a financial institution adds or increases a fee. See 12 CFR 1005.18(f)(1) and (2). However, the Prepaid Rule does not require a financial institution to provide a change-in-terms notice under Regulation E solely to reflect a change to a third-party fee.<sup>7</sup> Similarly, if the financial institution is required to include Regulation Z disclosures for a separate covered credit feature in the long form disclosure and initial disclosures, as discussed in Sections 4.4.7 and 6.2, the financial institution is not required to provide a change-in-terms notice under Regulation E solely to reflect a change in the fees or terms imposed on the separate credit feature (*i.e.*, the fees and terms that are required to be included in the long form disclosure pursuant to 12 CFR 1005.18(b)(4)(vii)).<sup>8</sup> 12 CFR 1005.18(f)(2). However, the Prepaid Rule does require a financial institution to provide a change-in-terms notice under Regulation E if a finance charge imposed on the prepaid account is added or increases (*i.e.*, a change to the fees required to be disclosed in the main fee portion of the long form disclosure pursuant to 12 CFR 1005.18(b)(4)(ii)). Comments 1005.18(b)(4)(ii)-1 and (f)-2.

b. *Increased liability for the consumer.*

c. *Fewer types of available EFTs.*

d. *Stricter limitations on the frequency or dollar amounts of EFTs.*

12 CFR 1005.8(a)(1) and 18(f)(2).

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<sup>7</sup> Fees charged by a service provider for a service performed on behalf of the financial institution are not third-party fees. Comment 1005.18(b)(4)(ii)-4.

<sup>8</sup> Although the Prepaid Rule does not require a financial institution to provide a change-in-terms under Regulation E for changes to finance charges imposed on a covered separate credit feature, a change-in-terms notice may be required under Regulation Z.

Generally, a financial institution must mail or deliver a change-in-terms notice required under Regulation E at least 21 days before the effective date of the change. 12 CFR 1005.8(a)(1). However, if an immediate change in the terms or conditions is necessary to maintain or restore the security of a prepaid account or an EFT system, a financial institution does not need to give prior notice of the change. If the financial institution makes the change permanent and disclosure would not jeopardize the security of the account or system, the financial institution must notify the consumer in writing of the change on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent. 12 CFR 1005.8(a)(2).

The cancellation of an access device, such as a prepaid card, or the closing of some of a financial institution's ATMs does not require a change-in terms notice under Regulation E. Comment 1005.8(a)-2.

A financial institution must provide a change-in-terms notice required under Regulation E in writing. If the financial institution complies with the E-Sign Act, it may provide the change-in-terms notice electronically. 12 CFR 1005.4(a)(1). The notice must also be clear and readily understandable and in a form the consumer can keep. 12 CFR 1005.4(a)(1). Otherwise, Regulation E does not impose any specific form or wording requirements on change-in-terms notices. The notice may appear on a periodic statement, or can be given by sending a copy of a revised disclosure statement if the financial institution directs the consumer's attention to the change or changes (*e.g.*, in a cover letter referencing the changed term). Comment 1005.8(a)-1.

# 8. Periodic statements and the periodic statement alternative

The Prepaid Rule amends Regulation E to require financial institutions to either provide consumers with periodic statements for prepaid accounts or to make certain account information available to consumers under the periodic statement alternative. 12 CFR 1005.9(b); 1005.18(c)(1). It also requires financial institutions to include certain additional information, such as summary totals of fees, on both periodic statements and account transaction histories for prepaid accounts.

The Prepaid Rule also clarifies how financial institutions that rely on the periodic statement alternative must comply with the Regulation E requirements relating to initial disclosures, the annual error resolution notice, liability limits, and error resolution procedures. Section 9 discusses modified liability limits, error resolution procedures, and the annual error resolution notice, and Section 6.3 discusses modifications to the initial disclosures.

## 8.1 Periodic Statements

If a financial institution decides to provide periodic statements for a prepaid account, it must send the consumer a periodic statement for each monthly cycle in which an EFT has occurred and at least quarterly if no EFT has occurred. 12 CFR 1005.9(b). Generally, the financial institution must comply with the requirements that apply to periodic statements for other accounts subject to Regulation E. For example, the financial institution must provide periodic statements in writing. If the financial institution complies with the E-Sign Act, it may provide the periodic statements electronically. 12 CFR 1005.4(a)(1). However, the periodic statements for prepaid accounts must include certain additional information. Periodic statements for prepaid accounts must include the amount of any fee assessed against the prepaid account (not just fees for EFTs, the right to make transfers, or account maintenance) and must also display

summary totals of fees for the prior calendar month and calendar year to date. 12 CFR 1005.18(c)(4) and (5).

Each periodic statement for a prepaid account must set forth the following information, as applicable:

1. For each EFT occurring during the statement cycle: (a) the amount of the EFT; (b) the date the EFT was credited or debited to the prepaid account; (c) the type of EFT and type of account to or from which the funds were transferred; (d) if the EFT (other than a deposit of cash or a check, a draft, or similar paper instrument) was initiated by the consumer at an electronic terminal, the terminal location (or an identification such as a code or terminal number) where the EFT was initiated; and (e) the name of any third party to or from whom funds were transferred. 12 CFR 1005.9(b)(1).

2. The prepaid account number. 12 CFR 1005.9(b)(2).

3. The amount of any fee assessed against the prepaid account during the statement cycle. 12 CFR 1005.9(b)(3); 1005.18(c)(4). Unlike the Regulation E requirement for other accounts, the requirement to include the amount of any fee assessed against a prepaid account during the statement cycle is not limited to fees for EFTs, fees for the right to make EFTs, or account maintenance fees.

☞ Regulation E also requires a financial institution to provide an annual error resolution notice. The financial institution can satisfy this requirement by providing an abbreviated error resolution notice on or with each periodic statement. The abbreviated notice must be substantially similar to the abbreviated notice in Model Form A-3. If the financial institution does not provide an abbreviated notice on each periodic statement, it must provide an annual error resolution notice. 12 CFR 1005.8(b).

4. The balance in the account at the beginning of the statement period and the balance at the end of the statement period. 12 CFR 1005.9(b)(4).

5. The address and telephone number that a consumer can use for inquiries or notices of error. The address and phone number must be preceded by “Direct inquiries to” or similar language. 12 CFR 1005.9(b)(5).

6. If a financial institution uses the telephone notice option for preauthorized EFTs pursuant to 12 CFR 1005.10(a)(1)(iii), a telephone number that the consumer can call to determine if preauthorized EFTs to the prepaid account have occurred. 12 CFR 1005.9(b)(6). Section 11 provides more information on notice requirements for preauthorized EFTs.



7. A summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date. 12 CFR 1005.18(c)(5). Section 8.4 discusses the summary totals of fees requirement.

## 8.2 Alternative to Periodic Statements

A financial institution does not need to furnish periodic statements for a prepaid account if the financial institution makes available or provides (as applicable) all of the following:

1. *Account balance information.* The financial institution must make a consumer's prepaid account balance available through a readily available telephone line. 12 CFR 1005.18(c)(1)(i). For government benefit accounts, the account balance must also be made available 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. 12 CFR 1005.15(d)(1)(i).

2. *Electronic account transaction histories.*

A financial institution must make available an electronic account transaction history that covers at least 12 months preceding the date on which the consumer electronically accesses the prepaid account. 12 CFR 1005.18(c)(1)(ii). If a prepaid account has been open for fewer than 12 months, the financial institution need only provide the electronic history for the period since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution does not need to make an electronic account transaction history available for that prepaid account.

However, if an inactive prepaid account becomes active, the financial institution must again make available 12 months of

electronic account transaction history. Comment 1005.18(c)-4.

☞ Regulation E requires that a financial institution provide an annual error notice, but allows an abbreviated error resolution notice on each electronic and written account transaction history as an alternative. The abbreviated notice must be substantially similar to the abbreviated notice for periodic statements, paragraph (b) of Model Form A-3, but modified to reflect the error resolution procedures that apply when a financial institution relies on the periodic statement alternative. 12 CFR 1005.8(b); 1005.15(e)(2); 1005.18(d)(2). Section 9.2 provides more information on these error resolution procedures.

Electronic account transaction histories must display all of the information required to be included in periodic statements for prepaid accounts, including the amount of any fees assessed against the prepaid account and the summary totals of all fees assessed by the financial institution against the prepaid account for the prior calendar month and calendar year to date. 12 CFR 1005.18(c)(3) through (5). Section 8.4 includes more information on the summary totals of fees requirement. Financial institutions must make electronic account transaction histories available in a form consumers may keep, such as on a website in a format that is capable of being printed or stored electronically using a web browser. Comment 1005.18(c)-2.

### 3. *Written account transaction histories.*

A financial institution must provide a written account transaction history for a prepaid account promptly in response to the consumer's oral or written request. A written account transaction history must cover at least 24 months preceding the date on which the financial institution receives the consumer's request for the written account transaction history. 12 CFR 1005.18(c)(1)(iii). A financial

☞ Electronic and written account transaction histories must reflect EFTs once they have posted to the prepaid account. A financial institution does not need to include transactions that have been authorized but that have not yet posted. Comment 1005.18(c)-1.

institution may provide fewer than 24 months of written account transaction history if a consumer requests a written history covering the shorter period of time. If a prepaid account has been open for fewer than 24 months, a financial institution need only provide the written history for the period since the time of account opening. Even if a prepaid account is closed or becomes inactive, a financial institution must continue to provide a written account transaction history covering at least 24 months prior to the date the financial institution receives the consumer's request for the history. When a prepaid account has been closed or inactive for 24 months or longer, a financial institution is no longer required to provide written account transaction histories under the Prepaid Rule. Comment 1005.18(c)-5.

Generally, a financial institution may not charge the consumer for providing written account transaction histories. However, a financial institution may charge a fee if the consumer's request exceeds the requirements of the Prepaid Rule. For example, a financial institution may charge a fee if a consumer requests (and the financial institution provides) a written account transaction history for transactions occurring more than 24 months preceding the date the financial institution receives the consumer's request. Similarly, a financial institution may choose to offer automatic mailings of written account transaction histories

on a periodic basis. If a consumer elects to receive such automatic mailings, the financial institution may charge the consumer a fee for the automatic mailings but not for any written account transaction histories that the financial institution sends in response to the consumer's written or oral request under the Prepaid Rule. A financial institution may assess a fee or charge to the consumer for responding to multiple requests for written account transaction histories if the requests are made in a single month. The financial institution may not assess a fee or charge to the consumer for responding to the first request made during the month, but may assess a fee or charge for responding to the subsequent requests made during the same month. Comment 1005.18(c)-3.

Written account transaction histories must display all of the information required to be included in periodic statements for prepaid accounts, including the amount of any fees assessed against the account and the summary totals of all fees assessed by the financial institution against the account for the prior calendar month and calendar year to date. 12 CFR 1005.18(c)(3) through (5). For prepaid accounts other than payroll card accounts and government benefit accounts, a financial institution is not required to provide a written account transaction history for a prepaid account if the financial institution has not completed its consumer identification and verification process for that prepaid account. 12 CFR 1005.18(c)(2).

## 8.3 Accommodation to effective date for account transaction histories

If, on October 1, 2017, a financial institution does not have readily accessible the data necessary to make available or provide account transaction histories for 12 or 24 months (as applicable), the financial institution can make available or provide such histories using the data for the time period it has until it has accumulated the data necessary to comply in full with the Prepaid Rule's account transaction history requirements. 12 CFR 1005.18(h)(3)(i). All financial institutions must fully comply with the electronic account transaction history requirement no later than October 1, 2018, and the written account transaction history requirement no later than October 1, 2019. Comment 1005.18(h)-6.i.

## 8.4 Summary totals of fees

A financial institution must provide a summary total of the amount of all fees the financial institution assessed against the consumer's prepaid account for the prior calendar month and

for the calendar year to date. The summary totals are not limited to fees for EFTs or the right to make EFTs. These summary totals must be displayed on any periodic statements as well as on any account transaction histories a financial institution provides or makes available. 12 CFR 1005.18(c)(5).

A financial institution may, but is not required to, include third-party fees in the summary totals. Likewise, a financial institution may choose to inform consumers of third-party fees such as by providing a disclaimer to indicate that the summary totals do not include certain third-party fees, or to explain when third-party fees may occur, or through some other method. Comment 1005.18(c)-8.ii.

A financial institution also may choose to include sub-totals of the types of fees that make up the summary totals, as long as the financial institution also presents the combined totals of all fees. Comment 1005.18(c)-9.

## 8.5 Accommodation to effective date for summary totals of all fees

A financial institution must display the summary totals beginning on October 1, 2017. If, on October 1, 2017, the financial institution does not have readily accessible the data necessary to calculate the summary totals, a financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by the Prepaid Rule. 12 CFR 1005.18(h)(3)(ii). In this situation, a financial institution would first display the monthly fee total beginning on November 1, 2017 (showing the fees assessed in October 2017). It would also display the year-to-date fee total beginning on October 1, 2017, and provided that it discloses it is displaying the year-to-date fee total beginning on October 1, 2017 (rather than for the entire calendar year 2017). On January 1, 2018, all financial institutions must begin displaying the year-to-date fee totals for calendar year 2018. Comment 1005.18(h)-6.ii.

# 9. Error resolution and limitations on liability

## 9.1 Limitations on Liability

Regulation E limits a consumer's liability for unauthorized EFTs from an account. It prohibits a financial institution from imposing greater liability than is permissible under Regulation E. 12 CFR 1005.6; comments 1005.6(b)-2 and -3. If state law or an agreement between the consumer and the financial institution imposes less liability than is provided Regulation E, the consumer's liability must not exceed the amount imposed under the state law or agreement. 12 CFR 1005.6(b)(6). Regulation E also requires a financial institution to meet certain conditions before it can impose any liability on a consumer for an unauthorized EFT. 12 CFR 1005.6(a). If a financial institution satisfies these conditions, the consumer's liability may vary depending on whether the consumer reports the unauthorized EFT to the financial institution within certain timeframes. 12 CFR 1005.6

The Prepaid Rule extends Regulation E's limitations on liability to prepaid accounts, modifies the time period for reporting unauthorized EFTs if the financial institution relies on the periodic statement alternative, and provides an alternative that allows a financial institution to comply with the Prepaid Rule by limiting the consumer's liability for an unauthorized EFT reported by

the consumer within 120 days after the EFT was credited or debited to the consumer's prepaid account.

### 9.1.1 Conditions for imposing liability for unauthorized EFTs

A consumer may only be held liable for an unauthorized EFT (within the dollar limits discussed below) if the financial institution has provided all of the following written<sup>9</sup> disclosures to the consumer:

1. A summary of the consumer's liability for unauthorized EFTs;
2. A telephone number and address for reporting that an unauthorized EFT has been or may be made; and
3. The financial institution's business days.

☞ These three disclosures must be included in the initial disclosures for the prepaid account. 12 CFR 1005.7(b). If a financial institution has not provided them, the consumer is not liable for an unauthorized EFT involving the consumer's prepaid account. 12 CFR 1005.6(a).

12 CFR 1005.6(a).

If an unauthorized EFT involved an access device, such as a prepaid card, both of the following additional conditions must be met before the financial institution can impose liability (within the limits otherwise permitted under Regulation E) on a consumer for the unauthorized EFT:

1. *The access device must be an accepted access device.* An access device becomes an accepted access device when the consumer requests and receives the access device, signs it, or uses (or authorizes someone else to use) it to transfer money or obtain money, property, or services. An access device also becomes an accepted access device when the consumer

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<sup>9</sup> The financial institution may provide these disclosures electronically if it provides them in compliance with the E-Sign Act.

requests validation of an access device issued on an unsolicited basis or receives an access device in renewal of or substitution for an accepted access device from either the financial institution that initially issued the device or a successor. 12 CFR 1005.2(a)(2).

*2. The financial institution must provide a means to identify the consumer to whom the access device was issued.* A financial institution may use various means for identifying the consumer, such as electronic or mechanical confirmation (e.g., a PIN) or comparison of the consumer's signature, fingerprint or photograph. Comment 1005.6(a)-1.

12 CFR 1005.6(a).

## 9.1.2 Reporting an unauthorized EFT

The generally applicable time limits within which a consumer must report a potential unauthorized EFT or the loss or theft of an access device, and the related liability are illustrated in the tables attached to this guide. The table in Attachment A illustrates the general limits that apply if the financial institution provides periodic statements, and the table in Attachment B illustrates the general limits if the financial institution relies on the periodic statement alternative. If a consumer's delay in notifying a financial institution was due to extenuating circumstances, such as the consumer's extended travel or hospitalization, the time periods for notification specified in the tables must be extended to a reasonable time. 12 CFR 1005.6(b)(4); comment 1005.6(b)(4)-1.

A consumer reports a potentially unauthorized EFT or the loss or theft of an access device when the consumer takes reasonable steps to provide the financial institution with the pertinent information, whether or not a particular employee actually receives the information. 12 CFR 1005.6(b)(5)(i). Even if the consumer is unable to provide the account number or the card number, the consumer effectively limits his or her liability if the consumer sufficiently identifies the account in question, for example, by giving the name on the account and the type of account. Comment 1005.6(b)(5)-3. The consumer may choose to report the potential unauthorized use in person, by telephone, or in writing. 12 CFR 1005.6(b)(5)(ii). Written notice

□ In any action involving a consumer's liability for an unauthorized EFT, the burden of proof is on the financial institution to show that the EFT was authorized. If the EFT was unauthorized, the burden of proof is on the financial institution to show that conditions permitting it to hold the consumer liable have been met, including the condition that the financial institution provided required disclosures. 15 U.S.C. 1693g(b).

of a potentially unauthorized EFT or lost or stolen access device is considered given at the time the consumer mails a notice or delivers a notice for transmission by any other usual means to the financial institution. Notice may also be considered given when the financial institution becomes aware of circumstances leading to the reasonable belief that an unauthorized EFT has been or may be made. 12 CFR 1005.6(b)(5)(iii).

In lieu of applying the limits on liability illustrated in the tables, a financial institution may comply with the Prepaid Rule by limiting the consumer's liability for any unauthorized EFT reported by the consumer within 120 days after the EFT was credited or debited to the consumer's prepaid account. 12 CFR 1005.18(e)(1)(ii). Financial institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period otherwise required by the Prepaid Rule (as set forth in paragraph (b) of Model Clauses A-7). Similarly, the summary of the consumer's liability in the initial disclosures may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the financial institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error. Comment 1005.18(e)-1.

## 9.2 Error resolution

Generally, Regulation E requires a financial institution to investigate and respond to a "notice of error" about a consumer's account within certain timeframes. 12 CFR 1005.11. The Prepaid Rule extends these requirements to prepaid accounts and modifies the error resolution requirements for certain unverified accounts. 12 CFR 1005.18(e)(2) and (3).

### 9.2.1 Error

For purposes of Regulation E's error resolution procedures, an error includes any of the following:

1. An unauthorized EFT. A financial institution is required to comply with the error resolution procedures when a consumer reports a lost or stolen access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft. Comment 1005.11(a)-3.



2. An incorrect EFT to or from a consumer's account (*e.g.*, transfer for an incorrect amount).
3. Omission of an EFT from a periodic statement.
4. A financial institution's computational or bookkeeping error relating to an EFT.
5. A consumer's receipt of an incorrect amount of money from an electronic terminal (*e.g.*, an ATM).
6. An EFT not identified in accordance with Regulation E.
7. A consumer's request for certain documentation required under Regulation E (*e.g.*, a periodic statement, receipt, written account transaction history), or for additional information or clarification concerning an EFT.

12 CFR 1005.11(a)(1).

The term error does not include a:

1. Routine inquiry about the balance in the consumer's account;
2. Request for duplicate copies of documentation; or
3. Request for information for tax or other record-keeping purposes. A financial institution must treat a request for documentation or other information as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other record-keeping purposes. Comment 1005.11(a)-5.

12 CFR 1005.11(a)(2).

## 9.2.2 Notice of error

### Providing notices of error

A financial institution must comply with Regulation E's error resolution procedures with respect to oral or written notices of error from a consumer. 12 CFR 1005.11(b). A financial institution may require the consumer to give notice only at a telephone number or address that the financial institution has disclosed, provided the financial institution maintains reasonable procedures to refer consumers to the specified telephone number or address if the consumer attempts to give notice in a different manner. Comment 1005.11(b)(1)-6.

The financial institution may require the consumer to give written confirmation of an oral notice of error within 10 business days of the oral notice, but must tell the consumer of the requirement and the address where confirmation must be sent. 12 CFR 1005.11(b)(2). If the consumer sends the confirmation to the wrong address, the financial institution must process the confirmation, but need not provisionally credit the consumer's account if the confirmation is delayed more than 10 business days in getting to the right place because it was sent to the wrong address. Comment 1005.11(b)(2)-1. Moreover, a financial institution may not delay initiating or completing an investigation pending receipt of written confirmation. Comment 1005.11(b)(1)-2.

## Content and timing criteria for notices of error

A financial institution must comply with Regulation E's error resolution procedures with respect to a notice that satisfies all of the following:

☞ A financial institution must comply with Regulation E's error resolution procedures when a consumer properly asserts an error, even if the account has been closed. Comment 1005.11(a)-4.

- 1. Enables the financial institution to identify the consumer's name and account number.* The notice does not need to include the account number itself, so long as the financial institution is able to identify the account in question. 12 CFR 1005.11(b)(1)(ii); comment 1005.11(b)(1)-1.
- 2. Indicates why the consumer believes an error exists and includes, to the extent possible, the type, date, and amount of the error.* A request for documentation or for additional information or clarification concerning an EFT does not need to include this information. 12 CFR 1005.11(b)(1)(iii).
- 3. Is received within the time period specified in Regulation E.* The Prepaid Rule modifies Regulation E to specify timeframes that apply if a financial institution relies on the periodic statement alternative and to provide an alternative "safe harbor" timeframe for a financial institution that provides periodic statements as well as for a financial institution that relies on the periodic statement alternative. 12 CFR 1005.18(e)(2)(i). If a financial institution provides periodic statements for a prepaid account, the financial institution must comply with Regulation E's error resolution procedures if it receives notice not later than 60 days after sending the periodic statement first reflecting the alleged error. 12 CFR 1005.11(b)(1)(i).

If a financial institution relies on the periodic statement alternative for a prepaid account, it must comply with Regulation E's error resolution procedures for a notice of error that is received by the earlier of:

- a. 60 days after the date a consumer electronically accesses the consumer's account, provided that the electronic account transaction history made available to the consumer reflects the alleged error. A consumer is deemed to have accessed a prepaid account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by a financial institution to verify the consumer's identity and to provide access to a website or mobile application through which prepaid account information can be viewed. A financial 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 period. 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. Comment 1005.18(e)-2.
  - b. 60 days after the date the financial institution sends, in response to a consumer's request, the first written account transaction history reflecting the alleged error.
- ☐ A financial institution that provides account transaction histories is not required to comply with Regulation E's error resolution procedures for any notice of error received more than 60 days after the earlier of the date the consumer electronically accesses the account transaction history or the date the financial institution sends a written account transaction history upon the consumer's request. Alternatively, a financial institution need not comply with the error resolution procedures with respect to any notice of error received more than 120 days after the date of posting of the transfer allegedly in error. However, where the consumer's assertion of error involves an unauthorized EFT, the institution must comply with Regulation E's limitation on liability provisions (including the extension of time limits for reporting unauthorized EFTs) before it may impose any liability on the consumer. Comment 1005.18(e)-3.

12 CFR 1005.11(e)(2)(i).

The Prepaid Rule provides an alternative to the 60-day period for responding to notices of error. A financial institution may choose to comply with amended Regulation E by

responding to notices of error received within 120 days after the EFT allegedly in error was credited or debited to the consumer's prepaid account. 12 CFR 1005.18(e)(2)(ii). Financial institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period generally required by Regulation E. See, for example, Model Clauses A-5 and A-7. Specifically, a financial institution may disclose to prepaid account holders that it will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability in the initial disclosures (as required under 12 CFR 1005.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error. Comment 1005.18(e)-1.

When a notice of error is based on documentation or clarification that the consumer previously requested under Regulation E's error resolution procedures, the consumer's notice of error is timely if the financial institution receives it no later than 60 days after the financial institution sent the documentation or clarification the consumer requested. 12 CFR 1005.11(b)(3).

### 9.2.3 Error resolution procedures

After receiving a notice of error from a consumer, a financial institution must do all of the following:

1. *Promptly investigate the oral or written notice of error.* A financial institution must investigate promptly to determine whether an error occurred. 12 CFR 1005.11(c). It may not delay initiating or completing an investigation pending receipt of written confirmation of an oral notice of error. Comment 1005.11(b)(1)-2.
2. *Within the required timeframe, complete its investigation and determine whether an error occurred.* Generally, the financial institution must complete its investigation and determine whether an error occurred within 10 business days. 12 CFR 1005.11(c)(1). The financial institution may take up to 45 days to complete its investigation if it:

- a. Provisionally credits the amount of the alleged error to the consumer's account within 10 business days of receiving the notice or error. The provisional credit must include interest where applicable. A financial institution can withhold a maximum of \$50 if the financial institution has a reasonable basis for believing an unauthorized EFT has occurred and the financial institution has provided required disclosures;<sup>10</sup>
- b. Informs the consumer, within two business days after the provisional crediting, of the amount and date of the credit; and
- c. Gives the consumer full use of the funds during the investigation.

12 CFR 1005.11(c)(2).

The financial institution need not provisionally credit the prepaid account to take up to 45 days to complete its investigation if the financial institution requires but does not receive written confirmation of an oral notice of error within 10 business days, or if the alleged error involves an account subject to Regulation T, 12 CFR part 220. 12 CFR 1005.11(c)(2)(i). Additionally, for prepaid accounts that are not payroll card accounts or government benefit accounts, the financial institution need not provisionally credit the prepaid account if the financial institution has not completed its identification and verification process with respect to the prepaid account. 12 CFR 1005.11(c)(2)(i). Section 9.2.4 discusses when a financial institution does not have to provide provisional credit to extend an investigation related to an unverified prepaid account.

If a notice involves an error that occurred within 30 days after the first deposit to the account was made, the time periods are extended from 10 business days to 20 business days for completing an investigation before provisionally crediting the account, and from

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<sup>10</sup> If the unauthorized EFT involved an access device, the access device must be an accepted device, and the financial institution must have provided a means to identify the consumer in order for the financial institution to withhold \$50. 12 CFR 1005.11(c)(2) and 6(a).

45 days to 90 days for completing the investigation overall. If the notice of error involves a transaction that was not initiated in a state or resulted from a POS debit card transaction, including a prepaid card transaction, the 45 days is extended to 90 days. 12 CFR 1005.11(c)(3).

*3. Correct the error, if any, within one business day after determining that an error has occurred.* If the financial institution determines that an error has occurred, it must (within one business day after such determination) correct the error, including the crediting of interest and refunding of fees, if applicable. 12 CFR 1005.11(c)(1); comment 1005.11(c)-6.

*4. Report the results of its investigation to the consumer within three business days after completing its investigation.* If the financial institution determines that the alleged error occurred, it must report the results of its investigation to the consumer and, if applicable, notify the consumer that the provisional credit has been made final. 12 CFR 1005.11(c)(2)(iii) and (iv). If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the financial institution must report the results to the consumer, including a written explanation of its findings. The explanation must include a notice of the consumer's rights to request the documents upon which the financial institution relied in making its determination. Upon request from the consumer, the financial institution must promptly provide to the consumer copies of documents upon which it relied in making its determination. 12 CFR 1005.11(d).

If a financial institution debits a provisionally credited amount, it must notify the consumer of the date and amount of the debit and of the fact that the financial institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized EFTs from the consumer's account for five business days after the notification. The financial institution need honor only items that it would have paid if the provisionally credited funds had not been debited. 12 CFR 1005.11(d)(2). Alternatively, a financial institution may notify the consumer that the consumer's account will be debited five business days from the transmittal of the notice, provided that the notice tells the consumer the calendar date that the financial institution will debit the account. Comment 1005.11(d)(2)-1.

A financial institution that has fully complied with Regulation E's error resolution requirements generally does not need to reinvestigate if a consumer later reasserts the same error. 12 CFR 1005.11(e). However, if the consumer requested documentation or information under the error resolution procedures and, following receipt of that documentation or information, asserts an error, the financial institution is required to investigate if the consumer provides a notice of error within 60 days of receiving the documentation or information. 12 CFR 1005.11(e).

## 9.2.4 Modified error resolution procedures for certain unverified accounts

For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution may take up to 45 days (or 90 days if applicable) to investigate and determine whether an error occurred without provisionally crediting a consumer's prepaid account if the financial institution has not completed its consumer identification and verification process with respect to that prepaid account. 12 CFR 1005.18(e)(3).

A financial institution has not completed its consumer identification and verification process where:

1. It has not concluded its consumer identification and verification process, provided the financial institution has disclosed to the consumer the risks of not registering the prepaid account using a notice that is substantially similar to the model notice contained in paragraph (c) of Model Clauses A-7. 12 CFR 1005.18(e)(3)(ii)(A). 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 1005.18(e)-

4. 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. Comment 1005.18(e)-5.

2. It has concluded its consumer identification and verification process, but could not verify the identity of the consumer, provided the financial institution has disclosed to the consumer the risks of not registering the account using a notice that is substantially similar to the model notice contained in paragraph (c) of Model Clauses A-7. 12 CFR 1005.18(e)(3)(ii)(B).

3. It does not have a consumer identification and verification process by which the consumer can register the prepaid account. 12 CFR 1005.18(e)(3)(ii)(C).

A financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have completed its consumer identification and verification process with respect to that account. Comment 1005.18(e)-6.

**Example:** Any State University contracts with Ficus Bank to disburse financial aid to students via Ficus Bank's prepaid accounts. To facilitate the accurate disbursement of aid awards, the university provides Ficus Bank with identifying information about the university's students, whose identities the university has previously verified. Ficus Bank is deemed to have completed its consumer identification and verification process with respect to those prepaid accounts.

Once a consumer's account has been verified, a financial institution must comply with Regulation E's error resolution procedures with respect to any notices of error that satisfy the timing requirements in Regulation E. This requirement applies to both errors that occurred after verification and to errors that occurred prior to verification. 12 CFR 1005.18(e)(3)(iii).

Notwithstanding this requirement, if, at the time a financial institution is required to provisionally credit a prepaid account, the financial institution has not yet completed its identification and verification process with respect to that prepaid account, the financial institution may take up to the maximum length of time permitted under Regulation E to investigate and determine whether an error occurred without provisionally crediting the account. 12 CFR 1005.18(e)(3)(iii)(A).

## 9.2.5 Annual error resolution notice

A financial institution must mail or deliver to a consumer, at least once each calendar year, an error notice substantially similar to the applicable Model Form for accounts to or from which EFTs can be made. 12 CFR 1005.8(b). If the financial institution provides periodic statements, the notice must be substantially similar to paragraph (a) of Model Form A-3. If the financial institution relies on the periodic statement alternative and the account is a government benefit account, the notice must be substantially similar to paragraph (b) of Model Clauses A-5. 12 CFR 1005.15(e)(2). If the financial institution relies on the periodic statement alternative and the account is any other type of prepaid account (*i.e.*, not a government benefit account), the notice must be substantially similar to paragraph (b) of Model Clauses A-7. 12 CFR 1005.18(d)(2).



Alternatively, a financial institution may provide an abbreviated notice on each periodic statement or on each electronic account transaction history and written account transaction history. The abbreviated notice must be substantially similar to the abbreviated notice in paragraph (b) of Model Form A-3. If the financial institution relies on the periodic statement alternative, the abbreviated notice must be modified as necessary to reflect the applicable error resolution procedures. 12 CFR 1005.15(e)(2); 1005.18(d)(2).

# 10. Receipts at electronic terminals

Under Regulation E, a financial institution must make a receipt available to a consumer who initiates an EFT at an electronic terminal in an amount of more than \$15. 12 CFR 1005.9. The financial institution must make the receipt available at the time the consumer initiates the EFT, and the receipt must include the following information, as applicable:

1. The amount of the EFT.
2. The date the consumer initiates the EFT.
3. The type of EFT and the type of account to or from which the funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.
4. A number or code that identifies the consumer's account(s), or the access device used to initiate the EFT (the number or code need not exceed four digits or letters).
5. The terminal's location, or an identification such as a code or terminal number.
6. The name of any third party to or from who funds are transferred.

12 CFR 1005.9(a).

The Prepaid Rule extends these requirements to prepaid accounts. Under the Prepaid Rule, financial institutions must make a receipt available to a consumer who initiates an EFT to or from a prepaid account at an electronic terminal if the EFT exceeds \$15. 12 CFR 1005.9(a) and (e).

# 11. Preauthorized EFTs

Generally, Regulation E requires financial institutions or payors to provide consumers with notices of certain recurring preauthorized EFTs to an account and prohibits initiating an EFT from a consumer's account without a signed (or similarly authenticated) written authorization from the consumer. 12 CFR 1005.10. Regulation E requires the person that obtains the authorization, often a third-party payee, to provide a copy of the authorization to the consumer. The Prepaid Rule extends Regulation E's provisions on preauthorized EFTs to prepaid accounts.

If a person initiates a preauthorized EFT to a prepaid account at least once every 60 days, the financial institution that holds the prepaid account must provide notice to the consumer unless the payor initiating the EFT notifies the consumer that the EFT has been initiated. 12 CFR 1005.10(a)(1) and (2). The financial institution can provide oral or written notice within two business days after the EFT occurs or the date on which the EFT was scheduled to occur if it does not occur. 12 CFR 1005.10(a)(1)(i) and (ii). Alternatively, the financial institution can provide a readily available telephone line that the consumer can call to determine if the EFT occurred. In this case, the financial institution must disclose the readily available telephone number in the initial disclosures and on each periodic statement or, if the financial institution relies on the periodic statement alternative, in each account transaction history. 12 CFR 1005.10(a)(1)(iii). A financial institution that receives such preauthorized EFTs must credit the amount of the EFT to the consumer's prepaid account as of the date the funds are received. 12 CFR 1005.10(a)(3).

The consumer must sign or similarly authenticate an authorization for any preauthorized EFT from his or her prepaid account. 12 CFR 1005.10(b). The authorization must be in writing. It can be obtained electronically if the E-Sign Act's consumer consent and other applicable requirements are met. Comment 1005.10(b)-5. The person that obtains an authorization from a consumer must provide the consumer with a copy of the authorization. 12 CFR 1005.10(b).

Additionally, either the payee or the financial institution must provide additional notice to the consumer when preauthorized EFTs under the same authorization vary in amount. There are two options for providing this additional notice. First, the payee or financial institution can send the consumer written notice of the amount and date of an EFT that varies in amount from the preauthorized amount or the previous EFT. The payee or financial institution must provide this notice at least 10 days before the scheduled date of the EFT. 12 CFR 1005.10(d)(1). Alternatively, a financial institution or payee can provide the consumer with the option of receiving notice only when an EFT is outside of a specified range or varies from the most recent EFT by more than an agreed-upon amount. 12 CFR 1005.10(d)(2). However, the payee or financial institution must inform the consumer that he or she has the right to receive a notice for all varying EFTs. 12 CFR 1005.10(d).

A consumer has the right to stop payment on a preauthorized EFT from a prepaid account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the EFT. 12 CFR 1005.10(c)(1). If the consumer notifies the financial institution orally, the financial institution may require the consumer to provide written confirmation within 14 days of the oral notice. The oral stop payment order ceases to be binding after the 14-day period if the consumer fails to provide the written confirmation. 12 CFR 1005.10(c)(2).

# 12. Issuance of an access device

Regulation E limits when a financial institution may issue an access device to a consumer. The Prepaid Rule extends these limits to access devices for prepaid accounts.

For purposes of Regulation E, “access device” means a card, code, or other means of access to a consumer’s account (or any combination of them) that may be used to initiate EFTs. 12 CFR 1005.2(a)(1).

Generally, a financial institution may issue an access device, such as a prepaid card, to a consumer only if one or both of the following apply:

*1. The financial institution is issuing the access device in response to an oral or written request for the device. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account in a retail location or applies for a prepaid account by telephone or online. Comment 1005.18(a)-1. For government benefit accounts, a consumer is deemed to request an access device when the consumer applies for government benefits that the government agency disburses or will disburse by means of an EFT. 12 CFR 1005.15(b). For payroll card accounts, a consumer is deemed to request an access device when the consumer chooses to receive salary or other compensation through a payroll card account. Comment 1005.18(a)-1.*

*2. The financial institution is issuing the access device as a renewal of, or in substitution for, an accepted device issued by the financial institution or a successor. An access device becomes an accepted access device when the consumer requests and receives the access device, or signs it, or uses (or authorized someone else to use) it to transfer money between accounts or obtain money, property, or services. An access device also becomes an accepted access device when the consumer requests validation of an unsolicited access device or receives an access device in renewal of or substitution for an accepted access device. 12 CFR*

1005.2(a)(2). Only one renewal or substitute card or device may replace a previously issued device. A financial institution may provide additional devices at the time it issues the renewal or substitute access device provided the institution complies with the requirements for issuing unsolicited access devices for the additional devices. Comments 1005.5(a)(2)-1 and (b)-5.

12 CFR 1005.5(a).

However, Regulation E does permit a financial institution to issue an unsolicited access device in certain circumstances. A financial institution may distribute an access device on an unsolicited basis if the access device is:

1. Not validated, meaning that the financial institution has not yet performed all the procedures that would enable a consumer to initiate an EFT using the access device;
2. Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the device if validation is not desired;
3. Accompanied by initial disclosure of the consumer's rights and liabilities under Regulation E that will apply if the device is validated; and
4. Validated only in response to the consumer's oral or written request for validation, after the financial institution has verified the consumer's identity by a reasonable means. For purposes of this requirement, the financial institution may use any reasonable means to verify the consumer's identity. However, even if reasonable means were used, if the institution fails to verify correctly the consumer's identity and an imposter succeeds in having the access device validated, the consumer is not liable for any unauthorized transfers from the account. Comment 1005.5(b)-4.

12 CFR 1005.5(b).

If credit is offered in connection with a prepaid account, an access device for the prepaid account may also be subject to Regulation Z. For the issuance rules that apply under Regulation Z if an access device is a hybrid prepaid-credit card, see 12 CFR 1026.12(a) and the related commentary. Sections 15.2 and 15.3.2 discussed when an access device is a hybrid prepaid-credit card.

# 13. Compulsory use

Regulation E prohibits financial institutions and other persons from requiring a consumer to establish an account for receipt of EFTs with a particular institution as a condition of employment or receipt of a government benefit. The Prepaid Rule adds clarification regarding the compulsory use prohibition with regard to the receipt of government benefits.

Regulation E also prohibits conditioning an extension of credit to a consumer on a consumer's repayment by preauthorized EFT, except in certain circumstances. The Prepaid Rule extends this prohibition to prepaid accounts, but modifies an exception that would otherwise apply for credit extended under an overdraft credit plan or to maintain a specified account balance.

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. Comment 1005.10(e)(2)-2. This clarification corresponds to a similar comment regarding payroll card accounts, which provides that an employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary

□ Because these prohibitions on compulsory use are part of Regulation E, the definition of “financial institution” in Regulation E (discussed above) applies. However, financial institutions are not the only ones subject to the prohibitions. These prohibitions apply to any person. For this purpose, “person” means a natural person or an organization including a corporation, government agency, estate, trust, partnerships, proprietorship, cooperative, or association. 12 CFR 1005.2(j); 1005.10(e).

deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by check or cash. Comment 1005.10(e)(2)-1.

Regulation E also prohibits conditioning an extension of credit to a consumer on a consumer's repayment by preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in a consumer's account. 12 CFR 1005.10(e). However, a creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Comment 1005.10(e)(1)-4.

The Prepaid Rule extends the compulsory use prohibition related to credit to prepaid accounts. It also provides that the exception for credit extended under an overdraft credit plan or to maintain a specified account balance does not apply to a covered separate credit feature. 12 CFR 1005.10(e)(1). Therefore, creditors may not require that credit extended under a covered separate credit feature be repaid by electronic means on a preauthorized, recurring basis. The prohibition on requiring repayment by preauthorized EFT applies to any credit extended under such a credit feature, including preauthorized checks. Comment 1005.10(e)(1)-3.i. Section 15.3 discusses covered separate credit features.

The exception for credit extended under an overdraft credit plan or to maintain a specific account balance applies to repayment of an overdraft credit plan if the overdraft credit plan is not a covered separate credit feature. A financial institution may require the automatic repayment of an overdraft credit plan, other than a covered separate credit feature, even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts. Credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z is considered credit extended pursuant to an overdraft credit plan for these purposes. Thus, the exception for credit extended under an overdraft credit plan or to maintain a specific account balance applies to this credit. Comment 1005.10(e)(1)-2. Sections 15.4 and 15.5 discuss when a negative balance on a prepaid account's asset feature is permitted.



# 14. Requirements related to prepaid account agreements

The Prepaid Rule imposes requirements on issuers regarding prepaid account agreements. First, an issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis. Generally, these submissions must include new and amended prepaid account agreements, notifications of withdrawn prepaid account agreements, and information about the issuer and prepaid account agreements. 12 CFR 1005.19(b)(1). Second, an issuer must post on its publicly available website certain prepaid account agreements that the issuer offers to the general public. 12 CFR 1005.19(c). Finally, for all open prepaid accounts, the issuer must provide a consumer with access to the prepaid account agreement governing the consumer's prepaid account. The issuer can either post the consumer's prepaid account agreement on its website or provide a copy upon the consumer's request. 12 CFR 1005.19(d)(1). This section discusses each of these requirements as well as some general terms related specifically to them.

## 14.1 Issuers subject to the requirements

For purposes of the requirements discussed in this Section 14, an issuer is the entity to which the consumer is legally obligated, or would be legally obligated, under the terms of the prepaid account agreement. 12 CFR 1005.19(a)(4). Subject to applicable laws and regulations, the issuer may contract with a third party to satisfy its obligations, such as making submissions to the Bureau. However, the issuer remains responsible for compliance with the Prepaid Rule. Comment 1005.19(a)(4)-2.

## 14.2 Prepaid account agreements

### 14.2.1 Definition

For purposes of the requirements discussed in this Section 14, “prepaid account agreement” means:

1. The written document or documents evidencing the terms of the legal obligation (or prospective obligation) between an issuer and a consumer of a prepaid account. An agreement may consist of several documents that, taken together, define the legal obligations between the parties. Each document is part of the prepaid account agreement. Comment 1005.19(a)(1)-1.
2. The short form disclosure for the prepaid account.
3. The fee information and statements required to be disclosed in the long form disclosure for the prepaid account.

12 CFR 1005.19(a)(1) and (a)(3).

The following are not deemed to be part of the prepaid account agreement:

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 a consumer along with a prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security.

When making submissions to the Bureau, posting prepaid account agreements, or providing them to consumers upon request, a prepaid account issuer is not required by the Prepaid Rule to provide these documents that are not deemed to be part of the prepaid account agreement.

12 CFR 1005.19(b)(6)(i)(C).

## 14.2.2 Form of prepaid account agreement

The prepaid account agreements that an issuer includes in submissions to the Bureau, posts on its website, and provides to consumers must comply with certain form and content requirements. 12 CFR 1005.19(b)(1), (b)(6), (c)(2), and (d)(2). They must be in a clear and legible font. 12 CFR 1005.19(b)(6)(i)(D). The short form disclosure and the fee information and statements required to be included in the long form disclosures (which the Prepaid Rule collectively refers to as the “fee information” in 12 CFR 1005.19) must be set forth in the prepaid account agreement or in a single addendum to the prepaid account agreement. 12 CFR 1005.19(b)(6)(ii).

For purposes of the requirements discussed in this Section 14, an issuer may not submit, post, or provide provisions of the prepaid account agreement in the form of change-in-terms notices or riders (except that it can provide the fee information in a single addendum). Changes must be integrated into the text of the prepaid account agreement (or an optional fee information addendum) as appropriate. 12 CFR 1005.19(b)(6)(iii).

Financial institutions are permitted to post and provide prepaid account agreements, as required by 12 CFR 1005.19(c) and (d), in electronic form without regard to the consumer notice and consent requirements of the E-Sign Act, except where the Prepaid Rule requires otherwise.

## 14.2.3 Open prepaid accounts

Certain requirements discussed in this Section 14 apply to all “open prepaid accounts,” and certain exceptions discussed in this Section 14.3.2 apply depending on how many open prepaid accounts an issuer has at a designated point in time. For these purposes, a prepaid account is an “open prepaid account” if it meets any of the following three criteria, regardless of whether the issuer considers the account inactive or if the prepaid account has been suspended temporarily:

1. There is an outstanding balance on the prepaid account;
2. A consumer can load funds to the prepaid account even if the prepaid account does not currently have a balance; or
3. A consumer can access credit from a covered separate credit feature in connection with the prepaid account.

12 CFR 1005.19(a)(7); comment 1005.19(a)(7)-1.

## 14.3 Making submissions to the Bureau

### 14.3.1 General requirement

Issuers are required to make submissions to the Bureau on a rolling basis. Issuers must submit prepaid account agreements that the issuer offers, prepaid account agreements that the issuer has amended, and notifications that the issuer is withdrawing a prepaid account agreement.

The Prepaid Rule also specifies information about the issuer and the prepaid account agreements that must be included in each submission. 12 CFR 1005.19(b). The content for submissions is discussed in Section 14.3.4.

☞ If a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement(s) to the Bureau. Alternatively, each issuer may rely on the program manager to submit the issuer's prepaid account agreements on its behalf. Comment 1005.19(b)(1)-2.

The requirement to make submissions on a rolling basis means that the issuer must make

submissions within 30 days after a triggering event. The triggering events are when an issuer offers a new prepaid account agreement, amends a prepaid account agreement, or ceases to offer (or withdraws) a prepaid account agreement. 12 CFR 1005.19(b)(1). For more information on the timing for submissions, see Section 14.3.3.

Generally, an issuer must make submissions for prepaid account agreements it offers to consumers. The issuer “offers” a prepaid account agreement if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to the prepaid account agreement. For purposes of the submission requirement, it is not relevant whether the issuer offers the prepaid account agreement to the general public. 12 CFR 1005.19(a)(5). If the issuer offers the prepaid account agreement, it must submit the prepaid account agreement to the Bureau, unless one of the exceptions, below, applies. An issuer no longer offers a prepaid account agreement when it no longer allows a consumer to activate or register a new prepaid account in connection with the prepaid account agreement. Comment 1005.19(b)(3)-1. If the issuer previously made submissions for the prepaid account agreement, the issuer must submit a notification that it is withdrawing the prepaid account agreement no later than 30 days after it ceases offering it. 12 CFR 1005.19(b)(3).

## 14.3.2 Exceptions

There are two exceptions to the submission requirement: the de minimis exception and the product testing exception. The de minimis exception's applicability depends upon the issuer's total number of open prepaid accounts, whereas the product testing exception applies to a specific prepaid account agreement. The exceptions, which are discussed below, are independent of one another. Comment 1005.19(b)(4)-1.

### De Minimis Exception

An issuer is not required to make submissions to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. An issuer determines if it qualifies for the de minimis exception based on the number of open prepaid accounts it has on the last day of each calendar quarter. 12 CFR 1005.19(b)(4)(i). If an issuer who previously qualified for the de minimis exception has 3,000 or more open prepaid accounts as of the last day of a calendar quarter, the issuer must begin making submissions to the Bureau no later than 30 days after the last day of the calendar quarter. It does not matter if the issuer had fewer than 3,000 open prepaid accounts during the calendar quarter.

If an issuer that previously made submissions to the Bureau qualifies for the de minimis exception, the issuer can either notify the Bureau that it is withdrawing the prepaid account agreements it previously submitted and then stop making submissions, or it can continue making rolling submissions to the Bureau as otherwise required under the Prepaid Rule. 12 CFR 1005.19(b)(4); comment 1005.19(b)(4)-5. For example, an issuer may continue to make submissions, rather than notify the Bureau, if its number of open prepaid accounts fluctuates above and below the de minimis exception threshold from one calendar quarter to the next. However, an issuer that anticipates that its open prepaid accounts will remain below the threshold for a long period may decide to notify the Bureau that it is withdrawing the prepaid account agreements it previously submitted. An issuer may choose either option regardless of whether it anticipates that its open prepaid accounts will remain below the threshold.

### Product Testing Exception

An issuer is not required to make submissions to the Bureau about a particular prepaid account agreement if the agreement:

1. Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;
2. Is used for fewer than 3,000 open prepaid accounts; and
3. Is not offered other than in connection with such product test.

12 CFR 1005.19(b)(5).

If a prepaid account agreement fails to meet any of these criteria as of the last day of a calendar quarter, the issuer must submit the prepaid account agreement to the Bureau no later than 30 days after the last day of that calendar quarter. 12 CFR 1005.19(b)(5)(i).

If a prepaid account agreement that the issuer previously submitted to the Bureau qualifies for the product testing exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement. 12 CFR 1005.19(b)(5)(ii).

### 14.3.3 Timing for submissions to the Bureau

An issuer must make a submission to the Bureau no later than 30 days after each of the following events:

1. *Offering a prepaid account agreement.* As discussed in Section 14.3.1, an issuer “offers” a prepaid account agreement if it markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to the agreement. 12 CFR 1005.19(a)(5).
2. *Amending a previously submitted prepaid account agreement.* An issuer “amends” a prepaid account agreement if it makes a substantive change to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. 12 CFR 1005.19(a)(2). The following are examples of substantive changes:
  - a. Adding or deleting a provision that gives an issuer or consumer a right under the prepaid account agreement.
  - b. Adding or deleting a provision that creates an obligation under the prepaid account agreement for an issuer or consumer.
  - c. Changing a choice of law provision or making other changes that may affect how the terms are construed or applied.

- d. Making changes that may affect the prepaid account's cost to the consumer.
- e. Making any change to the short form disclosure or the fee information and statements required to be disclosed in the long form disclosure.
- f. Making changes to the parties to whom the prepaid account agreement may apply (including changes to provisions regarding authorized users or assignment of the agreement).
- g. Making changes to the name of the prepaid account program, the prepaid account issuer, the program manager or another relevant party, or making changes to the issuer's address or identifying number.

Comment 1005.19(a)(2)-1.

The following are examples of changes that are not substantive changes:

- a. Correcting typographical errors that do not affect the meaning of the terms of the prepaid account agreement;
- b. Changing the issuer's corporate logo or tag line;
- c. Making formatting changes that do not change the meaning of the prepaid account agreement's terms (including changes to fonts or margins or conversion of an agreement from a booklet to a full-sheet format).
- d. Reordering sections of the prepaid account agreement as long as reordering does not change the meaning of any of its terms.
- e. Adding, removing, or changing a table of contents or index.
- f. Changing titles, headings, section numbers or captions.

Comment 1005.19(a)(2)-2.

**3. *Ceasing to offer (or withdrawing) a prepaid account agreement.*** An issuer is required to submit a notification of a withdrawn prepaid account agreement no later than 30 days after ceasing to offer or withdrawing a prepaid account agreement that the issuer previously submitted to the Bureau. An issuer ceases to offer or withdraws a prepaid account

agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement. 12 CFR 1005.19(b)(3); comment 1005.19(b)(3)-1.

The submission requirement is effective October 1, 2018. Issuers must submit to the Bureau any prepaid account agreements that they are offering on October 1, 2018 by October 31, 2018.<sup>11</sup> After October 1, 2018, issuers must submit new and amended prepaid account agreements and notifications of withdrawn prepaid account agreements to the Bureau no later than 30 days after offering, amending, or ceasing to offer the agreements. 12 CFR 1005.19(f)(2); comment 1005.19(f)-1.

### 14.3.4 Content of submissions to the Bureau

An issuer must make submissions to the Bureau in the form and manner specified by the Bureau. The Bureau expects to provide technical specifications regarding the form and manner for making submissions in advance of October 1, 2018. Each submission must contain:

1. Identifying information about the issuer. This information must include the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number).
2. Any prepaid account agreement offered by the issuer that has not been previously submitted to the Bureau.
3. Any prepaid account agreement previously submitted to the Bureau that has been amended.
4. Identifying information about the prepaid account agreement(s) that the issuer is submitting, including:

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<sup>11</sup> No issuer will be obligated to make submissions to the Bureau until the Bureau issues technical specifications on the form and manner for making submissions. The Bureau expects to provide these specifications prior to October 1, 2018.



- a. The effective date of each prepaid account agreement;
- b. The name of the program manager, if any, for each agreement; and
- c. The names of other relevant parties, if applicable, for each for each agreement (*e.g.*, employer for a payroll card program or the agency for a government benefit program).

5. Notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing.

12 CFR 1005.19(b)(1).

The fee information for prepaid accounts under the same prepaid account program may vary from one consumer to another based on the consumer's state of residence or other factors. In these cases, the variations do not constitute separate prepaid account agreements. The issuer must submit one prepaid account agreement to the Bureau with fee information that lists the possible fee variations and includes relevant information about the variations. Comment 1005.19(b)(6)-2.

The prepaid account agreements submitted to the Bureau must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number. 12 CFR 1005.19(b)(6)(i)(B).

The issuer must submit the version of the prepaid account agreement that is in effect at the time of the submission. 12 CFR 1005.19(b)(6)(i)(A). If the issuer makes a substantive change to a prepaid account agreement that it previously submitted, it must submit the amended prepaid account agreement no later than 30 days after the change takes effect. 12 CFR 1005.19(b)(2).

Section 14.2.2 provides additional information on the requirements related to the form and content of prepaid account agreements submitted to the Bureau.

## 14.4 Posting prepaid agreements offered to the general public on the prepaid account issuer's publicly available website

### 14.4.1 General requirement to post prepaid agreements offered to the general public

An issuer must post and maintain a prepaid account agreement on its publicly available website if both of the following apply:

1. *The prepaid account agreement is an agreement that the issuer is required to submit to the Bureau.* If an issuer is not required to submit any prepaid account agreements to the Bureau because the issuer qualifies for the de minimis exception, the issuer is not required to post and maintain any prepaid account agreements on its publicly available

website. Likewise, if a prepaid account agreement qualifies for the product testing exception, the issuer is not required to post and maintain that particular prepaid account agreement on its publicly available website. Comment 1005.19(c)-1.

2. *The prepaid account agreement is offered to the general public.* An issuer offers a prepaid account agreement to the general public if the issuer markets, solicits applications for, or otherwise makes the prepaid account available to the general public. 12 CFR 1005.19(a)(6). A prepaid account agreement is offered to the general public even if the issuer markets, solicits applications for, or otherwise makes the prepaid account available only to a limited group of people. Comment 1005.19(a)(6)-1. However, a prepaid account agreement is not offered to the general public when it is only offered by virtue of a consumer's relationship with a third party. For example, agreements for payroll card accounts, government benefit accounts, and prepaid accounts used to disburse student

☞ The requirement to make submissions to the Bureau is not effective until October 1, 2018, but the requirement to post prepaid account agreements offered to the general public becomes effective October 1, 2017. During the interim period, an issuer must post a prepaid account agreement on its publicly available website if the prepaid account agreement is offered to the general public, and is an agreement that the issuer would have been required to submit to the Bureau if the submission requirement was in effect. Comment 1005.19(f)-2.

financial aid or insurance proceeds are not offered to the general public. Comment 1005.19(a)(6)-2.

12 CFR 1005.19(c)(1).

## 14.4.2 Location and format for posting prepaid account agreements offered to the general public

If a prepaid account agreement meets the criteria in Section 14.4.1, the issuer must post and maintain the agreement on its publicly available website. In certain circumstances, a third party's website is deemed to be maintained by the issuer for this purpose. If the issuer provides consumers with access to specific information about their prepaid accounts, such as balance information or copies of statements, through the third party's website, the issuer is considered to maintain that website for purposes of the posting requirement. Comment 1005.19(c)-2. This is the case even if, for example, an unaffiliated entity designs the website, an unaffiliated entity 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, or the website is not labeled, branded, or held out as belonging to the issuer. Comment 1005.19(a)(4)-3.

Prepaid account agreements may be posted in any electronic format that is readily usable by the general public. They must be placed in a prominent location that is readily accessible to the public without the submission of personally identifiable information. 12 CFR 1005.19(c)(4).

Prepaid account agreements posted on the issuer's publicly available website must not contain any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number, and must contain the provisions of the prepaid account agreement and the fee information that are currently in effect. 12 CFR 1005.19(b)(6)(i)(A) and (B).

Section 14.2.2 provides additional information on the requirements related to the form and content of prepaid account agreements posted on issuers' publicly available websites.

### 14.4.3 Updating the prepaid account agreement posted on the issuer’s publicly available website

An issuer must post and update prepaid account agreements on its publicly available website as frequently as the issuer is required to submit new or amended agreements to the Bureau. 12 CFR 1005.19(c)(3).

## 14.5 Posting or providing prepaid account agreements for all open prepaid account

### 14.5.1 General requirement to post or provide prepaid account agreements for all open prepaid accounts

For all open prepaid accounts, an issuer must do one (but could choose to do both) of the following:

*1. Post and maintain a consumer’s prepaid account agreement on the issuer’s website.*

If the issuer posts and maintains the consumer’s specific prepaid account agreement on its publicly available website, the issuer has satisfied this requirement. If the issuer is not required to post an agreement on its publicly available website, the issuer can nonetheless post and maintain it on the publicly available portion of the issuer’s website or the portion that the consumer can access after logging into his or her prepaid account. 12 CFR 1005.19(d)(1)(i).

☞ An issuer is required to post or provide prepaid account agreements for all open prepaid accounts. The requirement is not limited to prepaid account agreements the issuer offers to the general public. Additionally, the de minimis and product testing exceptions do not apply to this requirement.

*2. Promptly provide a copy of the consumer’s prepaid account agreement to the consumer upon the consumer’s request.* If an issuer makes the prepaid account agreement available upon request, it must allow the consumer to request a copy by telephone. 12 CFR 1005.19(d)(1)(ii). The issuer must send a copy of the consumer’s prepaid account agreement to the consumer no later than five business days after the issuer receives the consumer’s request. Comment 1005.19(d)-2. The issuer must provide the prepaid account agreement to the consumer in paper form, unless the consumer agrees to receive it electronically. 12 CFR 1005.19(d)(2)(vi).

## 14.5.2 Form of the prepaid account agreement provided to the consumer or posted on the issuer's website

Prepaid account agreements posted on the publicly available portion of the issuer's website cannot contain any personally identifiable information. 12 CFR 1005.19(b)(6)(i)(B). Other prepaid account agreements, such as those provided to consumers or posted on a portion of the issuer's website that is not publicly available, may contain personally identifiable information, such as the consumer's name, address, telephone number or account number, provided the issuer takes appropriate measures to make that agreement accessible only to the consumer or other authorized persons. 12 CFR 1005.19(d)(2)(iii).

Prepaid account agreements posted or otherwise provided to the consumer must set forth the specific provisions and fee information applicable to the particular consumer and must conform to the form and content requirements for agreements submitted to the Bureau discussed in Section 14.3.4. 12 CFR 1005.19(d)(2)(i) and (iv).

## 14.5.3 Updating the prepaid account agreement posted on the website

The issuer must update the prepaid account agreements posted on its website as frequently as the issuer is required to submit amended agreements to the Bureau. Agreements provided to a consumer upon the consumer's request must be accurate as of the date the agreement is sent to the consumer. 12 CFR 1005.19(d)(2)(v).

# 15. Overdraft credit features

The Prepaid Rule amends Regulations E and Z to regulate overdraft credit features that are offered in connection with prepaid accounts. Generally, the Prepaid Rule requires such credit features to be structured as a separate credit subaccount or account (*i.e.*, as a separate credit feature) distinct from the prepaid account's asset feature. However, it permits credit to be accessed through a negative balance on a prepaid account's asset feature if certain conditions are met. Information on separate credit features is provided in Sections 15.3 and 15.7, and information on offering credit accessed through a negative balance on a prepaid account's asset feature is provided in Sections 15.4, 15.5, and 15.6.

The Prepaid Rule adds the term "hybrid prepaid-credit card" to Regulation Z and applies specific requirements to hybrid prepaid-credit cards and separate credit features that are accessed by them. If a prepaid card can access credit through a separate credit feature, it might be a hybrid prepaid-credit card depending on who offers the credit, the circumstances under which the credit can be accessed and other conditions set forth in the Prepaid Rule. A separate credit feature accessed by a hybrid prepaid-credit card is called a "covered separate credit feature." Information about when a prepaid card that can access credit through a separate credit feature is a hybrid prepaid-credit card is provided in Section 15.3.

The Prepaid Rule also extends certain existing provisions of Regulation Z to hybrid prepaid-credit cards and covered separate credit features. It modifies and clarifies some of the general Regulation Z requirements specifically with respect to hybrid prepaid-credit cards and covered separate credit features. Section 15.7 discusses Regulation Z's general applicability to hybrid prepaid-credit cards and covered separate credit features, but this guide does not discuss all of the possible provisions of Regulation Z that could apply to a hybrid prepaid-credit card or a covered separate credit feature.

## 15.1 Prepaid accounts, asset features, and credit features

The Prepaid Rule applies the definition of “prepaid account,” which is discussed in Section 2, to Regulation Z. 12 CFR 1026.61(a)(5)(v). Because “prepaid account” has the same meaning under both amended Regulation E and amended Regulation Z, the meaning of the term is the same throughout this guide.

As discussed in the Prepaid Rule, a prepaid account has an asset feature and may have a credit feature in certain circumstances. The Prepaid Rule defines “asset feature,” for purposes of the Prepaid Rule, as an asset account that is a prepaid account or an asset subaccount of a prepaid account. 12 CFR 1026.61(a)(5)(ii).

The Prepaid Rule defines “credit feature” as a separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or a negative balance on the asset feature of a prepaid account through which credit can be extended in connection with a prepaid card. 12 CFR 1026.61(a)(5)(iv).

☞ This definition of credit feature only applies for purposes of Regulation Z with respect to credit in connection with a prepaid account or prepaid card. It does not affect when an account, subaccount or negative balance is a credit feature under Regulation Z with respect to credit in relation to a debit card or a checking account or other transaction account that is not a prepaid account. Comment 1026.61(a)(5)(iv)-1. The Prepaid Rule does not change the rules in Regulation Z that apply to credit extended in connection with debit cards, checking accounts, or other asset accounts that are not prepaid accounts.

Regulation Z defines “credit” as the right to defer payment of debt or to incur debt and defer its payment. 12 CFR 1026.2(a)(14). Credit includes authorization of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is

authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. Comment 1026.2(a)(14)-3.

A credit feature does not include an asset account other than a prepaid account that has an attached overdraft feature. Comment 1026.61(a)(5)(iv)-2.

**Example:** A consumer transfers funds to a prepaid account from a checking account. An overdraft feature is attached to the checking account. The transfer exceeds the amount of available funds in the checking account and triggers the checking account's overdraft feature. The checking account is not a credit feature for purposes of the Prepaid Rule even though the transfer of funds to the prepaid account triggers the overdraft feature that is attached to the checking account.

## 15.2 Prepaid cards, prepaid account issuers, and card issuers

The Prepaid Rule defines “prepaid card” for purposes of Regulation Z. For these purposes, “prepaid card” means any card, code, or other device that can be used to access a prepaid account. 12 CFR 1026.61(a)(5)(vii). The term “prepaid card” is not limited to an actual card. For example, a prepaid account number is a prepaid card if it can be used to access a prepaid account. Comment 1026.61(a)(5)(vii)-1. If it satisfies the criteria discussed in Section 15.3.2, the account number is also a hybrid prepaid-credit card. Comment 1026.61(a)(1)-2. Thus, if a consumer can use a prepaid account number to access a prepaid account that can be used for online bill payment services offered by the prepaid account issuer, the prepaid account number is a prepaid card and is a hybrid prepaid-credit card if it meets the conditions discussed in Section 15.3.2. Comments 1026.61(a)(1)-5 and (a)(5)(vii)-1.

☞ To assist with compliance, the Prepaid Rule defines “debit card” for purposes of Regulation Z to mean “any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account.” The definition of “debit card” specifies that it does not include a prepaid card. 12 CFR 1026.2(a)(15)(iv). Under amended Regulation Z, different rules apply depending on whether an overdraft credit feature is accessed by prepaid card or by a debit card. The Prepaid Rule does not change the rules that apply to debit cards under Regulation Z.



A digital wallet that is capable of being loaded with funds is a prepaid account under amended Regulation E and amended Regulation Z. See 12 CFR 1005.2(b)(3) and 1026.61(a)(5)(v); comments 1005.2(b)(3)(i)-6 and 1026.61(a)(1)-4. Therefore, a prepaid account number that can access such a digital wallet is a prepaid card and is a hybrid prepaid-credit card if it meets the conditions discussed in Section 15.3.2. Comments 1026.61(a)(1)-4 and (a)(5)(vii)-1.

Under amended Regulation Z, “prepaid account issuer” means a financial institution, as defined in Regulation E, with respect to a prepaid account. 12 CFR 1026.61(a)(5)(vi). An “issuer” as defined in amended Regulation E (12 CFR 1005.19) for purposes of the prepaid account agreement submission and posting requirements and a “prepaid account issuer” under Regulation Z are not necessarily the same entity.

A “card issuer” under Regulation Z is a person that issues a credit card or that person’s agent with respect to the card. 12 CFR 1026.2(a)(7). Agency relationships are traditionally defined by contract and by state or other applicable law. However, merely providing services relating to the production of credit cards or data processing for others does not make one the card issuer’s agent for purposes of Regulation Z. Comment 1026.2(a)(7)-1.i. If an affiliate or business partner of the prepaid account issuer offers a covered separate credit feature, the affiliate or business partner is an agent of the prepaid account issuer and thus is itself a card issuer with respect to the hybrid prepaid-credit card that accesses the covered separate credit feature. Comment 1026.2(a)(7)-1.ii.

A hybrid prepaid-credit card is a credit card, and the prepaid account issuer is a card issuer with respect to the hybrid prepaid-credit card. 12 CFR 1026.2(a)(7) and (a)(15)(i). If the covered separate credit feature is offered by an affiliate or business partner of the prepaid account, the affiliate or business partner also is a card issuer with respect to the hybrid prepaid-credit card. Section 15.3.2 discusses the terms “affiliate” and “business partner.”

## 15.3 Separate credit features and hybrid prepaid-credit cards

### 15.3.1 Separate credit features

A separate credit feature is a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card. It is separate from the asset

feature of the prepaid account, and does not include a negative balance on the asset feature of the prepaid account. 12 CFR 1026.61(a)(5)(viii).

### 15.3.2 Hybrid prepaid-credit cards; covered separate credit features; non-covered separate credit features

A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature if the consumer can use the prepaid card to access credit through the separate credit feature and the criteria discussed below are met. 12 CFR 1026.61(a)(1). Additionally, if these criteria are met with respect to a separate credit feature, that separate credit feature is a “covered separate credit feature” under the Prepaid Rule. 12 CFR 1026.61(a)(2)(i); comments 1026.61(a)(2)-1.i. and (a)(2)-4. If one or more of the criteria is not met with respect to a separate credit feature, that separate credit feature is a “non-covered separate credit feature.” 12 CFR 1026.61(a)(2)(ii); comment 1026.61(a)(2)-5. Additional information on covered and non-covered separate credit features is provided in Sections 15.7.

A prepaid card may be a hybrid prepaid-credit card when accessing certain credit features and not when accessing others. Comment 1026.61(a)(2)-6. It is important to review access to each credit feature separately.

**Example:** A consumer may use a prepaid card to access two different separate credit features, Separate Credit Feature A and Separate Credit Feature B. The consumer can use the prepaid card from time to time to draw or transfer credit from Separate Credit Feature A or Separate Credit Feature B in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. The prepaid account issuer offers Separate Credit Feature A, but Separate Credit Feature B is offered by a third party that is not the prepaid account issuer, or the prepaid account issuer’s affiliate or business partner. The prepaid card is a hybrid prepaid-credit card with respect to Separate Credit Feature A, but is not a hybrid prepaid-credit card with respect to Separate Credit Feature B. Additionally, Separate Credit Feature A is a covered separate credit feature, and Separate Credit Feature B is a non-covered separate credit feature.

A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature if all of the following criteria are met:

1. *The prepaid card is a single device that can be used from time to time to access credit from the separate credit feature.* 12 CFR 1026.61(a)(2)(i)(A). To satisfy this criterion, the prepaid card must be capable of accessing credit from the separate credit feature from time to time. This means that a prepaid card that can only be used to access credit on a single occasion is not a hybrid prepaid-credit card. 12 CFR

1026.61(a)(2)(i)(A); comment 1026.61(a)(1)-3. Generally, checks and similar instruments that can be used only once to access credit are not hybrid prepaid-credit cards.

However, with respect to a preauthorized check that is issued on a prepaid account and used to access credit, the credit is obtained using the prepaid account number and not the check at the time of the preauthorization. The prepaid account number may be useable from time to time, and may be a hybrid prepaid-credit card. Comment 1026.61(a)(1)-3.

- ☐ A prepaid card that meets the criteria discussed in this Section 15.3.2 is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the credit is pushed from the separate credit feature to the asset feature of the prepaid account or is pulled from the separate credit feature to the asset feature of the prepaid account. Comment 1026.61(a)(2)-1.ii.
- ☐ Also, a prepaid card that meets the criteria discussed in this Section 15.3.2 is a hybrid prepaid card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways. Comment 1026.61(a)(2)-1.iii.

A prepaid card meets this criterion when it is a single device that is capable of accessing credit from time to time from a separate credit feature even if the person that can extend credit through that credit feature does not agree in writing to extend the credit, the person retains discretion not to extend credit, or the person does not extend credit once the consumer has exceeded a certain amount of credit. Comment 1026.61(a)(1)-1.

2. *The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.* 12 CFR 1026.61(a)(2)(i)(A)(2). The “prepaid account issuer” is the financial institution (as defined in Regulation E) with respect to the prepaid account. 12 CFR 1026.61(a)(5)(vi). An “affiliate” is any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.* 12 CFR 1026.61(a)(5)(i).

A person (other than the prepaid account issuer and its affiliates) that can extend credit through a separate credit feature is a “business partner” if that person or its affiliate has an arrangement with the prepaid account issuer or the prepaid account issuer’s affiliate. 12 CFR 1026.61(a)(5)(iii). A person that can extend credit or its affiliate has an arrangement with a prepaid account issuer or its affiliate if they have an agreement that allows a prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit from a credit feature offered by that person in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers. However, the parties are not considered to have such an agreement merely because the parties participate in a card network or payment network. Comment 1026.61(a)(5)(iii)-1.i.

A person that can extend credit or its affiliate also has an arrangement with a prepaid account issuer or its affiliate if the prepaid account issuer or its affiliate:

- a. Has a business, marketing, or promotional agreement or other arrangement with the person that can extend credit or its affiliate where the agreement or arrangement provides that:
  - i. Prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit;  
or
  - ii. The credit feature will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to link the separate credit feature to the prepaid account so that it can be used as an overdraft credit feature).
  
- b. At the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. This requirement is satisfied even if there is no specific agreement between the parties that the card can access the credit feature. For example, this requirement is satisfied even if the draw, transfer, or authorization of the draw or transfer from the credit feature is effectuated through a card network or payment network. Comment 1026.61(a)(5)(iii)-1.ii.

A person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider (such as a program manager), or the issuer's affiliate. In that case, the person that can extend credit will be the prepaid account issuer's business partner. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the prepaid account issuer's business partner. Comment 1026.61(a)(5)(iii)-2.

*3. The prepaid card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, to obtain cash, or to conduct P2P transfers.* 12 CFR 1026.61(a)(2)(i)(A)(1). For these purposes, a draw, transfer, or authorization to draw or transfer from a separate credit feature is deemed to be in the "course of authorizing, settling, or otherwise completing" a transaction if it occurs during the authorization phase of the transaction or in later periods up to the settlement of the transaction as discussed in the examples below. Comment 1026.61(a)(2)-2.

**Examples:** A transaction is initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account. Credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction. The credit is accessed in the course of authorizing the transaction.

A transaction is initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account. Credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account. The credit is accessed in the course of authorizing the transaction.

A transaction is initiated using a prepaid card when there are sufficient or available funds in the asset feature of the prepaid account to cover the amount of the transaction at authorization but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction. The credit is accessed in the course of settling the transaction.

A transaction is not authorized in advance. The consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction. The credit is accessed in the course of settling the transaction.

A prepaid card satisfies the criteria for being a hybrid prepaid-credit card with respect to a separate credit feature if the prepaid card can be used from time to time to draw funds from a separate credit feature that is offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers, even if there are sufficient or available funds in the asset feature of the prepaid account to complete the transaction. In this case, the separate credit feature is a covered separate credit feature.  
Comment 1026.61(a)(2)-3.

If a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature, that credit feature is a covered separate credit feature even with respect to transactions from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's website to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. This credit transaction is considered a credit transaction on a covered separate credit feature even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. 12 CFR 1026.61(a)(2)(i)(B); comment 1026.61(a)(2)-4.ii.

## 15.4 Restrictions on offering credit through a negative balance on a prepaid account's asset feature

The Prepaid Rule prohibits a card issuer from structuring a credit feature that is accessible by a hybrid prepaid-credit card as a negative balance on the asset feature of a prepaid account. A credit feature that is accessible by a hybrid-prepaid card must be structured as a separate credit feature, either as a separate credit account or as a separate credit subaccount. If the separate credit feature is structured as a credit subaccount, the credit subaccount must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance. 12 CFR 1026.2(a)(7); 1026.61(b); comment 1026.61(b)-1. The separate credit feature is a covered separate credit feature as discussed in Section 15.3.2. Regardless of whether the covered separate credit feature is structured as a separate subaccount of the prepaid account or as a separate credit account, the following apply:

1. If at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred, or authorized to be drawn or transferred from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the

asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply with the applicable provisions of Regulation Z with respect to the credit extension from the time the prepaid card transaction is authorized.

2. For transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover that transaction at the time it settles and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of Regulation Z from the time the transaction is settled.

3. If a negative balance would result on the asset feature in circumstances other than those described in (1) and (2) above, credit must be drawn from the covered separate credit feature to avoid a negative balance. The card issuer may not allow the asset feature of the prepaid account to become negative. The card issuer must comply with the application provisions of Regulation Z from the time credit is drawn from the covered separate credit feature.

Comment 1026.61(b)-2.

Generally, a prepaid card that is a single device that can be used from time to time to access credit extended through a negative balance on the prepaid account's asset feature is a hybrid prepaid-credit card unless the conditions discussed in Section 15.5 are met. 12 CFR 1026.61(a)(3) and (4). If these conditions are met, the prepaid card is not a hybrid prepaid-credit card, and credit may be extended through a negative balance on a prepaid account's asset feature. 12 CFR 1026.61(a)(3)(ii), (a)(4), and (a)(5)(ii).

## 15.5 Permissible circumstances for offering credit through a negative balance on a prepaid account's asset feature

Because the Prepaid Rule prohibits a negative balance on a prepaid account's asset feature from being accessible by a hybrid prepaid-credit card (as discussed in Section 15.4), the three conditions discussed below must be met to offer credit through a negative balance on the prepaid account's asset feature. 12 CFR 1026.61(a)(3)(ii), (a)(4), and (b). If these conditions are



met, the prepaid card is not a hybrid prepaid-credit card and is not a credit card under Regulation Z.

### 15.5.1 Policy and practice of declining to authorize certain transactions

The first condition that must be met is that the prepaid account issuer must have an established policy and practice of either:

- a. Declining to authorize transactions where it reasonably believes the consumer has insufficient or unavailable funds in the prepaid account's asset feature to cover the transaction at the time it is authorized; or
- b. Declining to authorize such transactions except when: (i) the amount of the transaction will not cause the asset feature balance to be negative by more than \$10 at the time of the authorization (also referred to as a "purchase cushion"); or (ii) the transaction is conducted when incoming deposits are pending and the transaction will not cause the prepaid account to be negative at the time of the authorization by more than the amount of the pending deposit (also referred to as a "delayed load cushion"). These two circumstances are not mutually exclusive. For example, a prepaid account issuer could adopt the \$10 purchase cushion and the delayed load cushion. Comment 1026.61(a)(4)(ii)(A)-4.

12 CFR 1026.61(a)(4)(ii)(A).

This condition covers three types of transactions: (1) transactions where the issuer has a general established policy and practice of declining to authorize transactions when the consumer has insufficient or unavailable funds to cover the transaction but credit is nonetheless extended as a result of so-called "force pay" transactions; (2) transactions that will not take the account negative by more than the \$10 purchase cushion; or (3) certain transactions that are conducted while incoming deposits to the prepaid account are pending pursuant to the delayed load cushion.

With respect to the delayed load cushion, the prepaid account issuer must have received either an instruction or confirmation for an incoming EFT from a separate asset account to load funds to the prepaid account or a request from the consumer to load funds to the prepaid account from a separate asset account. In either case, the funds must not have settled yet. 12 CFR

1026.61(a)(4)(ii)(A)(2). An incoming EFT from a separate asset account includes a direct deposit of wages or government benefits. A request from a consumer to load funds from a separate asset account includes situations where a consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the prepaid account asset feature to pay for the transaction. Comment 1026.61(a)(4)(ii)(A)-3.

The Prepaid Rule does not require that the prepaid account issuer receive an authorization request for every prepaid card transaction. Nonetheless, the prepaid account issuer generally must establish an authorization policy that meets the criteria described above and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. If a prepaid account issuer establishes such an authorization policy and has such reasonable practices in place, it is deemed to satisfy the condition described in (a) or (b) above even if a negative balance results on the prepaid account when a transaction is settled. Comment 1026.61(a)(4)(ii)(A)-1.

A prepaid account issuer may still satisfy the condition described in (a) or (b) above even if the prepaid account's asset feature has a negative balance because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account as specified in amended Regulation E's error resolution provision (assuming the prepaid account issuer otherwise complies with the requirements for the exception to the definition of "hybrid prepaid-credit card," such as not imposing a fee or charge enumerated with respect to this negative balance as described below). Comment 1026.61(a)(4)(ii)(A)-2.

## 15.5.2 No credit-related fees charged on prepaid account's asset feature

The second condition is that the prepaid account issuer cannot charge credit-related fees on the prepaid account's asset feature. 12 CFR 1026.61(a)(4)(B). This condition does not prohibit a prepaid account issuer from imposing different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts. Comment 1026.61(a)(4)(ii)(B)-1.

Credit-related fees are:

1. Fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit. 12 CFR 1026.61(a)(4)(ii)(B)(1). Credit-related fees do not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available. 12 CFR 1026.61(a)(4)(ii)(B)(1); comment 1026.61(a)(4)(ii)(B)(1)-1.
2. Fees or charges that are imposed on the prepaid account's asset feature only when credit is extended on the asset feature or when there is a negative balance on the asset feature. Credit-related fees do not include fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law. 12 CFR 1026.61(a)(4)(ii)(B)(2); comment 1026.61(a)(4)(ii)(B)(2)-1.
3. Fees or charges on the prepaid account's asset feature that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. 12 CFR 1026.61(a)(4)(ii)(B)(3); comment 1026.61(a)(4)(ii)(B)(3)-1.

#### Examples of credit-related fees

Daily, weekly, monthly, or other periodic fees assessed each period a prepaid account has a negative balance or is in "overdraft" status

Daily, weekly, monthly, or other periodic fees assessed to hold the prepaid account where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion or a delayed load cushion during that period

A fee imposed because the balance on the prepaid account becomes negative

Interest charges attributable to a periodic rate that applies to the negative balance

Any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in "overdraft" status, except that the actual costs to collect

### Examples of credit-related fees

the credit, such as attorney fees, may be imposed if otherwise permitted by law

Late payment fees

Transactions fees where the amount of the fee is higher based on whether the transaction accesses only funds in the asset feature or accesses credit.

A fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance.

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A prepaid account issuer may still satisfy this condition even if it debits fees or charges from the prepaid account when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated above. A fee or charge does not become a credit-related fee simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. 12 CFR 1026.61(a)(4)(ii)(C); comment 1026.61(a)(4)(ii)(C)-1.

**Example:** A prepaid account issuer imposes a fee of \$0.50 for an ATM balance inquiry. The amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. A consumer makes an ATM balance inquiry, and the issuer imposes the \$0.50 fee on the prepaid account's asset feature. There are insufficient funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee is not a credit-related fee.

### 15.5.3 The prepaid card cannot access credit from a covered separate credit feature

The third condition is that the prepaid card cannot access credit from a covered separate credit feature (described in Section 15.3.2). 12 CFR 1026.61(a)(4)(i); comment 1026.61(a)(4)-1. A prepaid card cannot be used to access credit from both a negative balance on the prepaid account's asset feature and a covered separate credit feature. However, it could access credit from both a negative balance on the prepaid account's asset feature and a non-covered separate credit feature.

## 15.6 General applicability of Regulation E, not Regulation Z, to permissible credit offered through a negative balance on the prepaid account's asset feature

Where a prepaid card is not a hybrid prepaid-credit card because the only credit it can access meets the conditions discussed in Section 15.5, the prepaid account issuer generally is not covered by Regulation Z as a result of offering credit through a negative balance on the prepaid account's asset feature. In this case, the prepaid card is not a credit card and the prepaid account issuer is not a card issuer under Regulation Z with respect to the prepaid card. The prepaid account issuer is not a creditor under Regulation Z as a result of extending credit on the prepaid account and imposing fees on the prepaid account because those fees are not finance charges. See comments 1026.2(a)(15)-2.ii.F; 1026.61(a)(4)-1.iv. See also comment 1026.4(b)(11)-1.iii. For the definition of "creditor," see 12 CFR 1026.2(a)(17). For the definition of "finance charge," see 12 CFR 1026.4

Credit extended through a negative balance on a prepaid account's asset feature that meets the conditions discussed in Section 15.5 generally is covered under Regulation E. For example, amended Regulation E's provisions regarding error resolution and limits on liability for unauthorized EFTs would apply to extensions of this credit. See 12 CFR 1026.12(a)(1)(iv)(C); comments 1005.12(a)(1)(iv)-5.i and 1026.13(i)-5. In addition, such credit extensions would be disclosed on Regulation E periodic statements or, if the financial institution follows the periodic statement alternative, on the electronic and written histories of the consumer's prepaid account transactions. Section 8 provides more information on these requirements. This credit,

however, is exempt from the compulsory use provision in amended Regulation E, discussed in Section 13, because this credit is covered by the overdraft credit exception. See 12 CFR 1005.10(e)(1); comment 1005.10(e)(1)-2.ii. Nonetheless, this credit is not an “overdraft service” subject to Regulation E’s requirement for overdraft services. 12 CFR 1005.17(a)(4).

## 15.7 General applicability of Regulation Z to hybrid prepaid-credit cards, covered separate credit features, and non-covered separate credit features

### 15.7.1 Covered separate credit features and hybrid prepaid-credit cards

Under the Prepaid Rule, a prepaid card that is a hybrid prepaid-credit card is a credit card under Regulation Z with respect to the covered separate credit feature. 12 CFR 1026.2(a)(15)(i); 1026.61(a)(1).

The Bureau believes that most covered separate credit features will meet the definition of “open-end credit” and will not be home-secured. 12 CFR 1026.2(a)(20).

The Bureau also anticipates that most covered separate credit features will meet the definition of “credit card account under an open-end (not home-secured) consumer credit plan.” 12 CFR 1026.2(a)(15)(ii); comment 1026.2(a)(15)-4.

At times, for emphasis or clarity, this guide and the Prepaid Rule refer to a “covered separate credit feature accessible by a hybrid prepaid-credit card” instead of a “covered separate credit feature.” The two terms have the same meaning and are interchangeable. A separate credit feature is a covered separate credit feature only if it is accessible by a hybrid prepaid-credit card. Comment 1026.61(a)(2)-4.i.

Thus, the provisions of Regulation Z, as amended by the Prepaid Rule, that apply to open-end credit plans or credit card accounts under an open-end (not home secured) consumer credit plan generally will apply to covered separate credit features and the provisions that apply to credit cards will apply to hybrid prepaid-credit cards.<sup>12</sup> The Prepaid Rule amends some of those provisions to

provide specific guidance with respect to covered separate credit features and hybrid prepaid-credit cards. The Prepaid Rule also adds several provisions that apply only to covered separate credit features and hybrid prepaid-credit cards. *See* 12 CFR 1026.61; comment 1026.61(a)-1.

Users of the guide need to consult the Prepaid Rule, Regulation Z, and its commentary for a full understanding of all the provisions in Regulation Z that apply to hybrid prepaid-credit cards and covered separate credit features.

## 15.7.2 Non-covered separate credit features

As discussed in Section 15.3.2, a prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature. This is true even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature. 12 CFR 1026.61(a)(2)(ii).

□ A covered separate credit feature is not an “overdraft service” for purposes of Regulation E. 12 CFR 1005.17(a)(4). Therefore, financial institutions will not provide opt-in notices under Regulation E for covered separate credit features, but will need to comply with Regulation Z.

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<sup>12</sup> A person that is offering a covered separate credit feature still will be covered by some provisions in Regulation Z even if the covered separate credit feature is not an open-end credit plan. Such a person would still be a “card issuer” with respect to the hybrid prepaid-credit card and would be a “creditor” for certain Regulation Z provisions. *See* 12 CFR 1026.2(a)(7) and (a)(17)(iii) through (iv); *see also* comment 1026.2(a)(7)-1.ii. Consult Regulation Z and its commentary to determine which specific provisions in Regulation Z apply to persons that are offering covered separate credit features that are not open-end (not home-secured) credit plans.

The person offering the non-covered separate credit feature does not become a card issuer or creditor under Regulation Z simply because the prepaid card can be used to access credit from the non-covered separate credit feature. However, the person offering the credit might be subject to Regulation Z depending on the terms and conditions of the credit. The person offering the non-covered separate credit feature may have obligations under Regulation Z with respect to that separate credit feature, but the person's obligations under Regulation Z are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer and a creditor. Nonetheless, in that case, the person does not need to comply with the provisions applicable to hybrid prepaid-credit cards. Comment 1026.61(a)(2)-5.iii.



# 16. Requirement to provide same terms for prepaid accounts with and without a covered separate credit feature

Generally, a financial institution that provides a prepaid account with a covered separate credit feature must provide the same account terms, conditions, and features to prepaid accounts without a covered separate credit feature in the same prepaid account program. However, the financial institution may impose higher fees or charges on a prepaid account with a covered separate credit feature. If a prepaid program includes both prepaid accounts with a covered separate credit feature and prepaid accounts without a covered separate credit feature, a financial institution must not impose a lower fee or charge on prepaid accounts with a covered separate credit feature than the amount of a comparable fee or charge it charges on prepaid accounts in the same prepaid account program that do not have such a credit feature. 12 CFR 1005.18(g); comment 1005.18(g)-5.

A financial institution may offer different terms for prepaid accounts offered under different prepaid account programs. The requirement to provide the same terms, conditions, and features as discussed above only applies to prepaid accounts in the same prepaid account program. The terms, conditions, and features could differ between a prepaid account program that includes prepaid accounts with a covered separate feature and a prepaid account program that does not. Comment 1005.18(g)-3.

The requirement only applies to the account terms, conditions, and features that apply to the asset feature of the prepaid account. It does not apply to the account terms, conditions, and features of the covered separate credit feature, regardless of whether it is structured as a separate credit account or a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account. Comment 1005.18(g)-2. The account terms, conditions, and features subject to this requirement include, but are not limited to:

1. Interest (if any) paid on funds deposited into the asset feature of the prepaid account;
2. Fees or charges imposed on the asset feature of the prepaid account;
3. The type of access device provided to the consumer (*i.e.*, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit feature while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature);
4. Minimum balance requirements on the asset feature of the prepaid account; and
5. Account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

Comment 1005.18(g)-4.

# 17. Remittance transfers

The Prepaid Rule makes several revisions to the rules governing remittance transfers in subpart B of Regulation E (Remittance Rule). These revisions are intended to continue the current application of the Remittance Rule to prepaid accounts.

For prepaid accounts other than payroll card accounts and government benefit accounts, the location of the sender and recipient, rather than the location of the prepaid account, determines where funds are being sent to or from for purposes of application of the Remittance Rule. Comment 1005.30(c)-2.ii. The temporary exception allowing insured institutions to use estimates when providing certain disclosures does not apply to prepaid accounts, unless the prepaid account is a payroll card account or government benefit account. 12 CFR 1005.32(a)(1)(iii).

The Bureau has separately updated its small entity compliance guide for remittance transfers, available at [www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/remittance-transfer-rule](http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/remittance-transfer-rule), to address the revisions made regarding prepaid accounts.

# 18. Record retention

Financial institutions, issuers, and other persons subject to Regulation E must maintain evidence that they have complied with the requirements that apply to them. Evidence of compliance must be retained for at least two years from the date a disclosure is required to be made or action is required to be taken. 12 CFR 1005.13(b)(1). However, a financial institution need not retain records that it has given disclosures and documentation to each consumer. It need only retain evidence demonstrating that its procedures reasonably ensure the consumers' receipt of required disclosures and documentation. Comment 1005.13(b)-1. Evidence of compliance can be retained electronically if the electronic system accurately reproduces the information.

A financial institution, issuer, or other person subject to Regulation E that has actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under certain sections of EFTA, must retain the records that pertain to the investigation, action, or proceeding until final disposition of the proceeding unless an earlier time is allowed by court or agency order. 12 CFR 1005.13(b)(2).

If credit is offered in connection with the prepaid account, additional record retention requirements under Regulation Z may apply. See 12 CFR 1026.25 and the related commentary.

# 19. Effective dates

The Prepaid Rule is effective October 1, 2017, except the requirement to submit prepaid account agreements to the Bureau is effective October 1, 2018.

Generally, the Prepaid Rule applies to prepaid accounts that exist on the effective date as well as those acquired by a consumer on or after the effective date. However, the Prepaid Rule includes several exceptions and accommodations to the October 1, 2017 effective date. 12 CFR 1005.18(h) and related commentary; 12 CFR 1005.18(b)(2)(ix)(D) and related commentary.

Specifically, the Prepaid Rule has accommodations related to the disclosure of additional fee types (see Section 4.2.3), account transaction histories (see Section 8.4), and summary totals of fees (see Section 8.5). These accommodations are also discussed in the Prepaid Rule's Effective Date factsheet, available at [www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/](http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/).

The Prepaid Rule also has exceptions to certain disclosure requirements. Generally, the disclosure requirements in subpart A of Regulation E, as modified by the Prepaid Rule, do not apply to any disclosures that are provided or that would otherwise be required to be provided:

- The Prepaid Rule's requirement to make prepaid account agreement submissions to the Bureau is effective on October 1, 2018. Issuers are required to make submissions of prepaid account agreements that they offer as of October 1, 2018 by October 31, 2018. 12 CFR 1005.19(f)(2). Issuers are required to make submissions on a rolling basis thereafter as discussed in Section 14. However, no issuer is obligated to make any submission until the Bureau issues technical specifications on the form and manner for making electronic submissions. The Bureau expects to issue these technical specifications in advance of October 1, 2018. See Section 14 for additional discussion of the requirement to make submissions to the Bureau.

1. On a prepaid account access device that was manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017; or
2. On, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. 12 CFR 1005.18(h)(2)(i).

The remainder of this section discusses how these exceptions apply to prepaid accounts opened before October 1, 2017 as well as how they apply to prepaid accounts opened on or after October 1, 2017.

## 19.1 Disclosure exception for prepaid accounts acquired before October 1, 2017

Beginning on October 1, 2017, the Prepaid Rule's requirements generally apply to existing prepaid accounts (as well as those acquired on or after October 1, 2017, discussed in more detail below). For example, beginning on October 1, 2017, the Prepaid Rule's limits on consumer liability and its error resolution requirements apply to prepaid accounts acquired prior to October 1, 2017.

For prepaid accounts opened before October 1, 2017, financial institutions are not required to provide pre-acquisition disclosures or the disclosures the Prepaid Rule requires on the access device. *See* 12 CFR 1005.18(h)(2); *see also* comments 1005.18(h)-1 and -2.

If a financial institution has changed a prepaid account's terms and conditions as a result of the Prepaid Rule taking effect and the change would result in increased fees for the consumer, increased liability for the consumer, fewer types of available EFTs, or stricter limits on the frequency or dollar amount of EFTs, the financial institution must provide consumers with a notice of change. *See* 12 CFR 1005.18(h)(2)(iii); *see also* 12 CFR 1005.8(a); 1005.18(f)(2). Financial institutions may also voluntarily, provide updated initial disclosures for prepaid accounts acquired before October 1, 2017.

If the Prepaid Rule requires the financial institution to provide a notice of change, the financial institution must provide it at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. Contact information includes

the consumer's mailing address or email address. If the financial institution obtains the consumer's contact information less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution complies with the Prepaid Rule if it notifies the consumer of the

- If a financial institution is required to provide a notice of changes for a prepaid account, it must provide the notice at least 21 days before the changes are effective, unless it does not have the consumer's contact information. This means that the financial institution generally must provide notice by September 10, 2017 for changes taking effect on October 1, 2017.

change within 30 days of obtaining the consumer's contact information. The financial institution is not required to provide a notice of change if it does not have the consumer's contact information. 12 CFR 1005.18(h)(2)(iii); comment 1005.18(h)-4.

If the financial institution has obtained the consumer's E-Sign consent, it may provide this notice of change electronically. 12 CFR 1005.4(a). However, if the financial institution has not obtained the consumer's consent to provide disclosures electronically and is not otherwise mailing or delivering written account-related communications to the consumer within the required timeframes, the financial institution may provide the notice of change electronically without regard to the E-Sign Act's consumer notice and consent requirements. 12 CFR 1005.18(h)(2)(iv). An account-related mailing includes, for example, an embossed card sent to the consumer following registration. To the extent permitted by other applicable laws and regulations, a financial institution may provide the notice of change as a separate document or include it in another notice or mailing that the consumer receives regarding the prepaid account. Comment 1005.18(h)-3.

The Prepaid Rule does not require financial institutions to provide notices of change for prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive prepaid account becomes active, the financial institution must provide the notice within 30 days of the account becoming active again. Comment 1005.18(h)-5.

## 19.2 Disclosure exception for prepaid accounts acquired on or after October 1, 2017

The Prepaid Rule also applies to prepaid accounts acquired on or after October 1, 2017, and financial institutions must provide pre-acquisition disclosures, as well as other disclosures

required under Prepaid Rule, for such prepaid accounts. However, as noted above and discussed below, the Prepaid Rule has an exception to certain disclosure requirements for prepaid accounts acquired via prepaid account packaging materials or access devices manufactured, printed, or otherwise produced in the normal course of business before October 1, 2017.

### 19.2.1 Prepaid accounts acquired on or after October 1, 2017 with access devices or via packaging materials produced before October 1, 2017

For prepaid accounts acquired on or after October 1, 2017, the new and modified Regulation E disclosure requirements in the Prepaid Rule do not apply to any disclosures that are provided or that would otherwise be required to be provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to October 1, 2017. 12 CFR 1005.18(h)(2)(i). This means that, for example, financial institutions are not required to provide pre-acquisition disclosures for prepaid accounts acquired via packaging materials produced before October 1, 2017. Similarly, for access devices manufactured, printed, or otherwise produced in the normal course of business before October 1, 2017, financial institutions are not required to provide the disclosures that the Prepaid Rule otherwise requires be provided on an access device.

The Prepaid Rule does not require financial institutions to pull and replace these otherwise non-compliant prepaid account packaging materials or access devices in order to comply with the Prepaid Rule. See 12 CFR 1005.18(h)(2). This exception extends, for example, to disclosures contained on or in packages for prepaid accounts sold at retail, or disclosures for payroll card accounts or government benefit accounts that are distributed in packages or envelopes. However, as discussed below, materials that are not pre-printed, such as electronic disclosures, as well as materials produced on or after October 1, 2017 are not eligible for this exception. Comments 1005.18(h)-1 and -2.

If the access device or packaging materials for the prepaid account were manufactured, printed, or otherwise produced in the normal course of business before October 1, 2017, and a consumer acquires the prepaid account after October 1, 2017, the financial institution:

1. Must provide consumers with a notice of change if the financial institution changes a prepaid account's terms and conditions as result of the Prepaid Rule taking effect, and the



change would result in increased fees for the consumer, increased liability for the consumer, fewer types of available EFTs, or stricter limits on the frequency or dollar amount of EFTs. See 12 CFR 1005.8(a); 1005.18(f)(2).

2. Must mail or deliver to the consumer initial disclosures that have been updated as a result of the Prepaid Rule taking effect.

12 CFR 1005.18(h)(2)(ii).

The financial institution must provide the notice of change (if required) and the updated initial disclosures within 30 days of obtaining the consumer's contact information. Contact information includes the consumer's mailing address or email address. A financial institution that has not obtained the consumer's contact information is not required to provide a notice of change or updated initial disclosures. 12 CFR 1005.18(h)(2)(ii); comment 1005.18(h)-4.

If the financial institution obtained the consumer's E-Sign consent, it may provide the notice of change and updated initial disclosures electronically. 12 CFR 1005.4(a). However, if the financial institution has not obtained the consumer's consent to provide disclosures electronically and is not otherwise mailing or delivering written account-related communications (*e.g.*, an embossed card sent to the consumer following registration) to the consumer within 30 days of obtaining the consumer's contact information, the financial institution may provide the notice of change under the Prepaid Rule and the updated initial disclosures electronically without regard to the E-Sign Act's consumer notice and consent requirements. 12 CFR 1005.18(h)(2)(iv). To the extent permitted by other applicable laws and regulations, a financial institution may provide the notice or updated initial disclosures as a separate document or include it in another notice or mailing that the consumer receives regarding the prepaid account. Comment 1005.18(h)-3.

## 19.2.2 Prepaid accounts acquired on or after October 1, 2017 via preprinted packaging materials or access devices produced on or after October 1, 2017

Disclosures on access devices and on, in, or with prepaid account packaging materials that are manufactured, printed, or otherwise produced on or after October 1, 2017 must comply with the Prepaid Rule's disclosure requirements. For such prepaid accounts, the financial institution must provide pre-acquisition and initial disclosures in accordance with the Prepaid Rule.

Similarly, an access device produced on or after October 1, 2017 must include the disclosures required by the Prepaid Rule. 12 CFR 1005.18(h)(2); comment 1005.18(h)-2.

### 19.2.3 Prepaid accounts acquired on or after October 1, 2017 via materials that are not preprinted

Access devices and prepaid account packaging materials that are not preprinted must comply with the Prepaid Rule, including all disclosure requirements, beginning on October 1, 2017. For example, disclosures provided electronically, orally by telephone, or in any form other than preprinted materials must comply with the Prepaid Rule beginning October 1, 2017. Comment 1005.18(h)-1.

- ☞ If a financial institution does not provide a physical access device, it must include the required access device disclosures on the website, mobile application, or other entry point the consumer uses to electronically access the prepaid account beginning October 1, 2017. 12 CFR 1005.18(f)(3) and (h)(1); comment 1005.18(h)-1.

Disclosures are not preprinted if they are printed on paper by a financial institution upon a consumer's request. Comment 1005.18(h)-1.

## ATTACHMENT A: Table Illustrating Consumer Liability for Unauthorized EFTs When Financial Institution Provides Periodic Statements

The table below illustrates a consumer's liability for unauthorized EFTs when a financial institution provides periodic statements for a prepaid account. Additional information related to the consumer's liability is in Section 9.1 of the guide. As noted in the table, a consumer's liability may vary depending on when the consumer provides notice to the financial institution.

Event	Timing of Consumer Notice to Financial Institution	Maximum Liability
Loss or theft of access device, including a PIN if used without a prepaid card (e.g., in a telephone transaction)	Within two business days after learning of loss or theft	Lesser of \$50, OR total amount of unauthorized EFTs that occur before notice to the financial institution.
Loss or theft of access device, including a PIN if used without a prepaid card (e.g., in a telephone transaction)	More than two business days after learning of loss or theft up to 60 days after transmittal of statement showing first unauthorized EFT made with access device.	Lesser of \$500, OR the sum of: (a) \$50 or the total amount of unauthorized EFTs occurring in the first two business days, whichever is less; AND (b) The amount of unauthorized EFTs occurring after two business days and before notice to the financial institution (provided the financial institution demonstrates that these EFTs would not have occurred had notice been given within the two-business-day period).
Loss or theft of access device, including a PIN if used without a prepaid card (e.g., in a telephone transaction)	More than 60 days after transmittal of statement showing first unauthorized transfer made with access device.	For EFTs occurring within the 60-day period, the lesser of \$500, OR the sum of (a) Lesser of \$50 or the amount of unauthorized EFTs in first two business days; AND (b) The amount of unauthorized EFTs occurring after two business days. For EFTs occurring after the 60-day period, unlimited liability until the financial institution is notified (provided the financial institution demonstrates that these EFTs would not have occurred had notice been given within the 60-day period.)

Unauthorized EFT(s) not involving loss or theft of an access device	Within 60 days after transmittal of the periodic statement on which the unauthorized EFT first appears.	No liability.
Unauthorized EFT(s) not involving loss or theft of an access device	More than 60 days after transmittal of the periodic statement on which the unauthorized EFT first appears.	Unlimited liability for unauthorized EFTs occurring 60 days after the periodic statement and before notice to the financial institution.

## ATTACHMENT B: Table Illustrating Consumer Liability for Unauthorized EFTs When Financial Institution Relies on the Periodic Statement Alternative

The table below illustrates a consumer’s liability for unauthorized EFTs when a financial institution relies on the periodic statement alternative. Additional information related to the consumer’s liability is in Section 9.2 of the guide. As noted in the table, a consumer’s liability may vary depending on when the consumer provides notice to the financial institution.

Event	Timing of Consumer Notice to Financial Institution	Maximum Liability
Loss or theft of access device, including a PIN if used without a prepaid card (e.g., in a telephone transaction)	Within two business days after learning of loss or theft	Lesser of \$50, OR total amount of unauthorized EFTs that occur before notice to the financial institution.
Loss or theft of access device, including a PIN if used without a prepaid card (e.g., in a telephone transaction)	More than two business days after learning of loss or theft up to 60 days after the earlier of: (1) the date the consumer electronically accesses his or her prepaid account, provided that the electronic account transaction history made available to the consumer reflects the unauthorized EFT made with the access device; or (2) the date the financial institution first sends a written account transaction history reflecting the unauthorized EFT made with the access device	Lesser of \$500, OR the sum of: (a) \$50 or the total amount of unauthorized EFTs occurring in the first two business days, whichever is less; AND (b) The amount of unauthorized transfers occurring after two business days and before notice to the financial institution (provided the financial institution demonstrates that these EFTs would not have occurred had notice been given within the two-business-day period).
Loss or theft of access device, including a PIN if used without a prepaid card (e.g., in a telephone transaction)	More than 60 days after the earlier of: (1) the date the consumer electronically accesses his or her prepaid account provided that the electronic account transaction history made available to the consumer reflects the unauthorized EFT made with the access device; or (2) the date the financial institution first sends a written account transaction history reflecting the unauthorized EFT made with the access device	For EFTs occurring within the 60-day period, the lesser of \$500, OR the sum of: (a) Lesser of \$50 or the amount of unauthorized EFTs in first two business days; AND (b) The amount of unauthorized EFTs occurring after two business days. For EFTs occurring after the 60-day period, unlimited liability until the financial institution is notified (provided the financial institution demonstrates that these EFTs would not have occurred had notice been given within the 60-day period.)

<p>Unauthorized EFT(s) not involving loss or theft of an access device</p>	<p>Within 60 days after the earlier of: (1) the date the consumer electronically accesses his or her prepaid account, provided that the electronic account transaction history made available to the consumer reflects the unauthorized EFT; or (2) the date the financial institution first sends a written account transaction history reflecting the unauthorized EFT</p>	<p>No liability.</p>
<p>Unauthorized EFT(s) not involving loss or theft of an access device</p>	<p>More than 60 days after the earlier of: (1) the date the consumer electronically accesses his or her prepaid account, provided that the electronic account transaction history made available to the consumer reflects the unauthorized EFT; or (2) the date the financial institution first sends a written account transaction history reflecting the unauthorized EFT</p>	<p>Unlimited liability for unauthorized EFTs occurring 60 days after the periodic statement and before notice to the financial institution.</p>