

**BUREAU OF CONSUMER FINANCIAL PROTECTION****12 CFR Parts 1005 and 1026**

[Docket No. CFPB–2017–0015]

RIN 3170–AA72

**Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)****AGENCY:** Bureau of Consumer Financial Protection.**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act, and Regulation Z, which implements the Truth in Lending Act, and the official interpretations to those regulations. This proposal relates to a final rule, published in the **Federal Register** on November 22, 2016, as amended on April 25, 2017, regarding prepaid accounts under Regulations E and Z. This proposal requests comment on potential modifications to several aspects of that rule, including error resolution and limitations on liability for prepaid accounts where the financial institution has not completed its consumer identification and verification process; application of the rule's credit-related provisions to digital wallets that are capable of storing funds; certain other clarifications and minor adjustments; and two issues relating to the effective date of the rule.

**DATES:** Comments must be received on or before August 14, 2017.**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2017–0015 or RIN 3170–AA72, by any of the following methods:

- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB–2017–0015 or RIN 3170–AA72 in the subject line of the email.

- *Electronic:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Devlin and Yaritza Velez, Counsels; and Kristine M. Andreassen and Krista Ayoub, Senior Counsels, Office of Regulations, at (202) 435–7700.

**SUPPLEMENTARY INFORMATION:****I. Summary of the Proposed Rule**

On October 5, 2016, the Bureau released a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA),<sup>1</sup> and Regulation Z, which implements the Truth in Lending Act (TILA)<sup>2</sup> (2016 Final Rule).<sup>3</sup> Through its efforts to support industry implementation of the 2016 Final Rule, the Bureau learned in recent months that some industry participants believed that they would have difficulty complying with certain provisions of the 2016 Final Rule that would have gone into effect on October 1, 2017. To facilitate compliance, after notice and comment, the Bureau extended the general effective date of the 2016 Final Rule to April 1, 2018 (2017 Effective Date Proposal and 2017 Effective Date Final Rule, respectively).<sup>4</sup> The 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, is referred to herein as the Prepaid Accounts Rule.

Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation of the 2016 Final Rule as well as in comments received on the 2017

Effective Date Proposal, the Bureau is proposing herein to amend several provisions of the Prepaid Accounts Rule. These proposed revisions address, in part, certain issues that were unanticipated by commenters on the notice of proposed rulemaking that led to the 2016 Final Rule (2014 Proposal),<sup>5</sup> and are intended to facilitate compliance and relieve burden on those issues. In particular, the Bureau is proposing to:

- Revise the error resolution and limited liability provisions of the Prepaid Accounts Rule in Regulation E to provide that financial institutions would not be required to resolve errors or limit consumers' liability on unverified prepaid accounts. However, for accounts where the consumer's identity is later verified, financial institutions would be required to limit liability and resolve errors with regard to disputed transactions that occurred prior to verification, consistent with the timing requirements of the Prepaid Accounts Rule.

- Create a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers.

- Make clarifications or minor adjustments to provisions of the Prepaid Accounts Rule related to an exclusion from the definition of prepaid account, unsolicited issuance of access devices, several aspects of the rule's pre-acquisition disclosure requirements, and submission of prepaid account agreements to the Bureau, as described in detail below.

Finally, the Bureau is soliciting comment on whether a further delay of the Prepaid Accounts Rule's effective date would be necessary and appropriate in light of the amendments proposed herein, and whether a specific provision addressing early compliance

<sup>5</sup> The Bureau released its proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014. 79 FR 77102 (Dec. 23, 2014). The Bureau had previously issued an advance notice of proposed rulemaking that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable cards and other prepaid products. 77 FR 30923 (May 24, 2012).

<sup>1</sup> 15 U.S.C. 1693 *et seq.*

<sup>2</sup> 15 U.S.C. 1601 *et seq.*

<sup>3</sup> 81 FR 83934 (Nov. 22, 2016).

<sup>4</sup> 82 FR 13782 (Mar. 15, 2017); 82 FR 18975 (Apr. 25, 2017).

would be necessary and appropriate for compliance with the Prepaid Accounts Rule prior to its effective date.

## II. Background

### A. The Prepaid Accounts Rulemaking and Implementation Initiatives

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts, and generally expanded Regulation Z's coverage to overdraft features that may be offered in conjunction with prepaid accounts. Upon issuing the 2016 Final Rule, the Bureau initiated robust efforts to support industry implementation.<sup>6</sup> Information regarding the Bureau's Prepaid Accounts Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation Web site at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>.

### B. Effective Date Delay

As published, the 2016 Final Rule had a general effective date of October 1, 2017. As discussed in the 2017 Effective Date Proposal and 2017 Effective Date Final Rule, as part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. Through those discussions, the Bureau learned that some industry participants were concerned, for reasons relating to printing of new packaging materials and other considerations, that they would have difficulty in complying with certain aspects of the 2016 Final Rule by October 1, 2017 while also ensuring continued availability of their prepaid products and with minimal disruption to consumers.

In addition, in the course of working to implement the 2016 Final Rule, some industry participants raised concerns about what they described as unanticipated complexities arising from the interaction of certain aspects of the

rule with certain business models and practices, including those newly adopted, that industry participants did not fully address in their comment letters on the 2014 Proposal. They indicated that these issues could complicate implementation and affect consumers.

In light of these concerns, on March 9, 2017, the Bureau released the 2017 Effective Date Proposal with a request for comment.<sup>7</sup> In that proposal, the Bureau proposed to delay the general effective date of the 2016 Final Rule by six months, to April 1, 2018. While the Bureau did not propose in the 2017 Effective Date Proposal to amend any other substantive provisions of the 2016 Final Rule, many commenters nonetheless advocated for retaining, modifying, or eliminating various provisions of the rule. These comments are discussed in more detail in part III below, as well as in the section-by-section analyses in part V, where relevant.

On April 20, 2017, the Bureau released the 2017 Effective Date Final Rule, which delayed the general effective date of the 2016 Final Rule until April 1, 2018.<sup>8</sup> The Bureau indicated in that notice that it intended to seek comment on targeted substantive issues raised both through the Bureau's outreach efforts to industry regarding implementation and in comments received on the 2017 Effective Date Proposal.

### III. Outreach and Comments on the 2017 Effective Date Proposal

As described above, the Bureau has engaged in extensive efforts to support industry implementation since the 2016 Final Rule was issued. As a part of those efforts, the Bureau has received input from a number of stakeholders regarding various provisions in the 2016 Final Rule. This input has included both concerns about financial institutions' ability to comply with the rule and about the broader effects of various substantive provisions of the 2016 Final Rule. As described in part V below and in the 2017 Effective Date Proposal and 2017 Effective Date Final Rule, some of the issues on which the Bureau seeks comment in this proposal were initially brought to the Bureau's attention through that outreach.

In addition, while the Bureau did not seek comment in the 2017 Effective Date Proposal on amending the 2016 Final

Rule other than with respect to its effective date, many commenters nonetheless advocated for retaining, modifying, or eliminating various provisions of the rule. Some of the comment letters focused on very specific challenges that have taken on a new significance as industry has been working through the implementation process. Other comments urged the Bureau to revisit specific provisions that underpin substantial elements of the 2016 Final Rule. For example, some commenters asked the Bureau to revisit the definition of prepaid account, such as to clarify the treatment of so-called checkless checking accounts, or exclude certain products (such as digital wallets that can store funds or person-to-person (P2P) payment products). Other commenters suggested modifications to the Bureau's treatment of overdraft and other credit products associated with prepaid accounts, arguing variously that the Bureau should prohibit overdraft and other credit features on prepaid accounts entirely, or that the Bureau should apply the overdraft regulations applied to deposit accounts under Regulation E § 1005.17 instead. Commenters also suggested that the Bureau modify certain disclosure requirements in the rule, by, for example, eliminating the requirement that financial institutions provide both a short form and a long form disclosure prior to account acquisition, revising or reducing the number and types of fees in the short form disclosure, or eliminating the requirement that financial institutions submit prepaid account agreements to the Bureau. A few commenters urged other undertakings, such as requesting that the Bureau reassess the impact of the rule prior to its becoming effective, exclude certain entities from coverage of the rule, or rescind the rule entirely.

In developing this proposal, the Bureau has taken into account both the input it has received from stakeholders through its efforts to support industry implementation of the 2016 Final Rule as well as comments received in response to the 2017 Effective Date Proposal. The issues that the Bureau has determined are appropriate to revisit are discussed in detail below. The Bureau continues to believe that the Prepaid Accounts Rule will provide significant benefits to consumers and is not, in this proposal, seeking comment generally on decisions made in the Prepaid Accounts Rule that industry or other stakeholders might wish the Bureau to reconsider. The purpose of this proposal is to seek comment on the proposed modifications to specific provisions of the Prepaid

<sup>6</sup> These on-going efforts include: (1) The publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Rule, including an executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, a summary of the rule's effective date provisions, and a guide to preparing the short form disclosure; (3) the release of native design files for print and source code for web-based disclosures for all of the model and sample disclosure forms included in the Prepaid Accounts Rule; (4) meetings with industry, including trade associations and individual industry participants, to discuss and support their implementation efforts; and (5) participation in conferences and forums.

<sup>7</sup> 82 FR 13782 (Mar. 15, 2017).

<sup>8</sup> 82 FR 18975 (Apr. 25, 2017). The 2017 Effective Date Final Rule did not delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018.

Accounts Rule and not to revisit the rule wholesale.

Along with this proposal, the Bureau is releasing an updated version of its small entity compliance guide for the Prepaid Accounts Rule. That update reflects the 2017 Effective Date Final Rule's change to the Prepaid Accounts Rule's effective date, and also includes clarifications on several other issues that industry has asked questions about or suggested might be unclear, for which the Bureau does not believe changes to regulatory text or commentary are necessary in order to provide additional clarity. The revised guide, which includes a summary of the updates, can be found on the Bureau's regulatory implementation Web site for the Prepaid Accounts Rule at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>.

#### IV. Legal Authority

The Bureau is proposing to exercise its rulemaking authority pursuant to EFTA section 904(a) and (c), sections 1022(b) and 1032(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>9</sup> and TILA section 105(a) to amend provisions of Regulations E and Z affected by the Prepaid Accounts Rule, as discussed in this part IV and throughout the section-by-section analyses in part V below.

The legal authority for the Prepaid Accounts Rule is described in detail in the 2016 Final Rule's **SUPPLEMENTARY INFORMATION**.<sup>10</sup> As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)<sup>11</sup> authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provides that such regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions, for any class of electronic fund transfers (EFTs) or remittance transfers as in the judgment of the Bureau are necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.<sup>12</sup> As amended by the Dodd-Frank Act, TILA section

105(a)<sup>13</sup> directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.<sup>14</sup>

Section 1032(a) of the Dodd-Frank Act<sup>15</sup> provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Additionally, under section 1022(b)(1) of the Dodd-Frank Act,<sup>16</sup> the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. EFTA, TILA, and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)<sup>17</sup> to prescribe rules under EFTA, TILA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act<sup>18</sup> prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

#### V. Section-by-Section Analysis

##### *Overview of the Proposed Amendments to Regulations E and Z*

As discussed above, the Prepaid Accounts Rule amends Regulation E,

which implements EFTA, and Regulation Z, which implements TILA, along with the official interpretations thereto. Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation as well as in comments received on the 2017 Effective Date Proposal, the Bureau is proposing to amend several provisions of the Prepaid Accounts Rule. This overview provides a summary of the proposed amendments; each, along with its rationale, is discussed in detail in the section-by-section analyses that follow.

##### *Error resolution and limited liability.*

The Bureau is proposing to amend Regulation E §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii), 1005.18(e)(3), comments 18(e)-4 through 6, and Appendix A-7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.*, accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). However, for accounts where the consumer's identity is later verified, financial institutions would be required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification, consistent with the general timing limitations in the Prepaid Accounts Rule. The Bureau is also proposing related changes to model language and to require that, for programs where there is no verification process, financial institutions explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there is none, and comply with the process (if any) that they disclose.

*Credit card accounts linked to prepaid accounts.* The Bureau is proposing to create a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers.

<sup>9</sup>Public Law 111-203, section 1084, 124 Stat. 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*).

<sup>10</sup>See, e.g., 81 FR 83934, 83958-60 (Nov. 22, 2016).

<sup>11</sup>15 U.S.C. 1693b(a) and (c).

<sup>12</sup>EFTA section 902 establishes that the purpose of the statute is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems but that its primary objective is the provision of individual consumer rights. 15 U.S.C. 1693.

<sup>13</sup>15 U.S.C. 1604(a).

<sup>14</sup>Pursuant to TILA section 102(a), a purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit. 15 U.S.C. 1601(a). Moreover, this stated purpose is tied to Congress' finding that economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. *Id.*

<sup>15</sup>12 U.S.C. 5532(a).

<sup>16</sup>12 U.S.C. 5512(b)(1).

<sup>17</sup>12 U.S.C. 5512(b).

<sup>18</sup>12 U.S.C. 5512(b)(2).

Specifically, the Bureau is proposing to amend the definition of “business partner” in § 1026.61(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule’s tailored provisions applicable to hybrid prepaid-credit cards if certain conditions are satisfied. The exclusion would apply only to traditional credit card accounts that are linked to a prepaid account. The conditions include that the parties could not allow the prepaid card to access credit from the credit card account in the course of a transaction with the prepaid card unless the consumer has submitted a written request to authorize linking the two accounts that is separately signed or initialized, and could not condition the acquisition or retention of either account on whether the consumer authorizes such a linkage. In addition, the exception would only apply where the parties do not vary certain terms and conditions based on whether the two accounts are linked. Under this proposed exception, the linked credit card account would still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, but the tailored provisions in the Prepaid Accounts Rule for hybrid prepaid-credit cards would not apply.

*Exclusion from coverage for certain loyalty, award, or promotional gift cards.* The proposed revisions to Regulation E § 1005.2(b)(3)(ii)(D)(3) and proposed new comment 2(b)(3)(ii)–4 would clarify that the exclusion from the Prepaid Accounts Rule for loyalty, award, or promotional gift cards applies both to such products as defined in § 1005.20(a)(4) as well as those that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public.

*Unsolicited issuance of access devices and pre-acquisition disclosures for prepaid accounts without consumer choice.* The proposed revisions to comment 18(a)–1 and to § 1005.18(b)(1)(i) and comment 18(b)(1)(i)–1 would clarify how the provisions regarding unsolicited issuance of access devices and the timing of pre-acquisition disclosures would apply to prepaid products where a financial institution or third party making a disbursement via a prepaid account does not offer any alternative means to receive the funds.

*Pre-acquisition disclosures.* Several provisions in the proposal would

provide additional clarity and flexibility with respect to the Prepaid Accounts Rule’s pre-acquisition disclosure requirements. The proposed revisions to § 1005.18(b)(1)(ii)(D) and comment 18(b)(1)(ii)–4 would allow financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide the long form disclosure after acquisition by allowing the long form disclosure to be delivered electronically without receiving consumer consent under the Electronic Signatures in Global and National Commerce Act (E-Sign Act),<sup>19</sup> if it is not provided inside the prepaid account packaging material and the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer’s contact information. Proposed revisions to § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)–1 and proposed new comment 18(b)(6)(i)–1 would clarify that if a financial institution provides pre-acquisition disclosures in writing, and a consumer subsequently completes the acquisition process online or by telephone, the financial institution need not provide the disclosures again electronically or orally. The proposed revisions to § 1005.18(b)(2)(ix)(C) and comment 18(b)(2)(ix)(C)–1.ii would provide prepaid account issuers additional flexibility in disclosing additional fee types on the short form. Specifically, it would permit financial institutions disclosing additional fee types with three or more fee variations to consolidate those variations into two categories and allow those two categories to be disclosed on the short form.

Section 1005.18(b)(9)(i)(C) requires a financial institution to provide pre-acquisition disclosures in a foreign language if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in that foreign language. The Bureau is proposing to amend this provision to state that foreign language disclosures are not required for payroll card accounts and government benefit accounts, where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

*Submission of prepaid account agreements.* The Bureau is proposing several changes to the rules governing submission of prepaid account

agreements to the Bureau in § 1005.19. The proposed revisions to § 1005.19(b)(2) and comment 19(a)(2)–1.vii would allow prepaid account issuers to delay submitting a change in the names of other relevant parties to a prepaid account agreement (such as employers for a payroll card agreement) until such time as the issuer is submitting other agreement changes to the Bureau. The proposed revisions to § 1005.19(b)(6)(ii) and (iii) and comment 19(b)(6)–3 would permit short form and long form disclosures to be provided to the Bureau as separate addenda to the agreement, rather than integrated into the agreement or as a single addendum. The proposed revisions in § 1005.19(f)(2) and comment 19(f)–1 would change the term “effective date” to “compliance date” when referring to October 1, 2018, in order to avoid potential confusion with the Bureau’s recent delay of the Prepaid Accounts Rule’s general effective date, but would not alter the October 1, 2018 date by which prepaid account issuers must comply with the requirement to submit agreements to the Bureau.

*Effective date.* In response to the 2017 Effective Date Proposal, some commenters requested that the Bureau delay the effective date of the Prepaid Accounts Rule by longer than the six months proposed (and ultimately finalized) by the Bureau. While the Bureau is not proposing a further extension of the effective date of the Prepaid Accounts Rule, the Bureau is soliciting comment (see section VI below) on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments to the Prepaid Accounts Rule proposed herein.

*Safe harbor for early compliance.* Some commenters to the 2017 Effective Date Proposal stated that while early compliance with the Prepaid Accounts Rule would benefit consumers, they were also concerned that financial institutions may be exposed to potential liability if they comply with the rule prior to the effective date. As stated in the 2017 Effective Date Final Rule, the Bureau is not aware of any conflicts between the Prepaid Accounts Rule and current Federal regulations governing prepaid accounts, and thus is not proposing to add a safe harbor. However, the Bureau is soliciting comment (see section VI below) regarding whether there are in fact any such conflicts, and, to the extent such conflicts exist, whether a specific provision addressing early compliance with the Prepaid Accounts Rule would be necessary and appropriate.

<sup>19</sup> 15 U.S.C. 7001 *et seq.*

*Regulation E*

## Subpart A—General

## Section 1005.2 Definitions

## 2(b) Account

## 2(b)(3) Prepaid Account

## 2(b)(3)(ii)

## 2(b)(3)(ii)(D)

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts by creating a new defined term for “prepaid account” in § 1005.2(b)(3) as a subcategory of the definition of “account” in § 1005.2(b)(1). The definition of “prepaid account” in § 1005.2(b)(3) covers a range of products including general purpose reloadable (GPR) cards, as well as other products such as certain non-reloadable accounts and digital wallets. It also contains several exclusions from the definition of prepaid account, including for gift certificates; store gift cards; loyalty, award, or promotional gift cards; and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates.<sup>20</sup> The exclusion for loyalty, award, or promotional gift cards refers to such products as defined in § 1005.20(a)(4) and (b).<sup>21</sup> Section 1005.20(a)(4) defines the term “loyalty, award, or promotional gift card” as a card, code, or other device that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and sets forth certain disclosures, as applicable, indicating that it is issued for loyalty, award, or promotional purposes and setting forth its expiration date as well as the amount of any fees and the conditions under which they may be imposed. Section 1005.20(b) lists the exclusions from coverage under

<sup>20</sup> § 1005.2(b)(3)(ii)(D). The exclusions in § 1005.2(b)(3)(ii)(D) each reference specific provisions in § 1005.20, which houses the Board’s 2010 rule implementing certain sections of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Pub. L. 111–24, 123 Stat. 1734 (2009)) applicable to gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards (the Gift Card Rule).

For products marketed and sold as gift cards (and that meet certain other qualifications), the Gift Card Rule requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. The Gift Card Rule is distinct from the rest of subpart A of Regulation E, however, and does not provide consumers who use gift cards with the other substantive protections of Regulation E, such as error resolution and limited liability protections, or periodic statements.

<sup>21</sup> § 1005.2(b)(3)(ii)(D)(3).

the Gift Card Rule, one of which is for loyalty, award, or promotional gift cards.<sup>22</sup>

The Bureau explained in the 2016 Final Rule its reasoning for excluding gift certificates, store gift cards, and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates. Specifically, the Bureau stated that, after considering the comments on the 2014 Proposal, it remained convinced that subjecting this general category of products to both the Gift Card Rule and the requirements of the 2016 Final Rule would place a significant burden on industry without a corresponding consumer benefit. In discussing its rationale for having proposed these exclusions in 2014 Proposal, the Bureau also stated that, among other things, it was concerned about the possibility of consumer confusion regarding products covered by both regimes, though it did not believe the exclusion should extend to products that consumers may use as or confuse with transaction accounts even if such products were also covered by the Gift Card Rule.<sup>23</sup> The Bureau also expressed concern that, were it to impose provisions for access to account information and error resolution and create limits on consumers’ liability for unauthorized EFTs, the cost structure of gift cards could change dramatically because, unlike other types of prepaid products, many gift cards do not typically offer these protections.<sup>24</sup>

Through its outreach efforts to industry regarding implementation, the Bureau has become aware that there may be some confusion as to whether the exception in § 1005.2(b)(3)(ii)(D)(3) extends to loyalty, award, or promotional gift cards that do not contain disclosures pursuant to § 1005.20(a)(4)(iii) but that are nonetheless excluded from coverage under the Gift Card Rule pursuant to § 1005.20(b)(4) because they are not marketed to the general public. If loyalty, award, or promotional gift cards that do not provide the § 1005.20(a)(4)(iii) disclosures are in fact covered by the Prepaid Accounts Rule, industry stakeholders requested clarification about the timing to add

<sup>22</sup> § 1005.20(b)(4).

<sup>23</sup> With respect to general-use prepaid products, the Bureau excluded only such products that were both marketed and labeled as gift cards or gift certificates. The Bureau was concerned that, absent this approach, some products it intended to cover may be inadvertently excluded due to occasional or incidental marketing activities, and that consumers would unwittingly think they carry the same protections as other prepaid accounts under the Prepaid Accounts Rule. 81 FR 83934, 83977 (Nov. 22, 2016).

<sup>24</sup> *Id.* at 83976–77.

such disclosures in order to qualify for the exclusion under current § 1005.2(b)(3)(ii)(D), particularly for cards that have already been distributed to consumers for whom the financial institution does not have contact information.

The Bureau believes that, given the limited nature and use of such products, it would be appropriate to exclude loyalty, award, or promotional gift cards regardless of whether they provide disclosures pursuant to § 1005.20(a)(4)(iii). Some such cards do not meet the definition of prepaid account, as they cannot be used with multiple, unaffiliated merchants, and are thus outside the scope of the Prepaid Accounts Rule’s coverage regardless. With regard to any such cards that do, the Bureau believes it is necessary and proper to propose to exclude those cards pursuant to its authority under EFTA section 904(c) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers. Therefore, the Bureau is proposing to clarify the scope of this exclusion by revising § 1005.2(b)(3)(ii)(D) to exclude loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4), or that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from § 1005.20 pursuant to § 1005.20(b)(4). The Bureau is also proposing to add comment 2(b)(3)(ii)–4, which would explain that proposed § 1005.2(b)(3)(ii)(D)(3) excludes loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). It further explains that proposed § 1005.2(b)(3)(ii)(D)(3) would also exclude cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public; such products would not be required to set forth the disclosures enumerated in § 1005.20(a)(4)(iii) to be excluded pursuant to proposed § 1005.2(b)(3)(ii)(D)(3).

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on whether, alternatively, loyalty, award, or promotional gift cards that do not provide the disclosures enumerated by § 1005.20(a)(4)(iii) should be covered by the Prepaid Accounts Rule but provided with an exclusion for cards manufactured, printed, or otherwise produced in the normal course of business prior to the Prepaid Accounts Rule’s effective date, or provided other accommodations to come into

compliance with § 1005.20(a)(4)(iii). Finally, the Bureau seeks comment on whether other exclusions under § 1005.20(b) should be made part of the exclusion for loyalty, award, or promotional gift cards in § 1005.2(b)(3)(ii)(D)(3).

#### Section 1005.11 Procedures for Resolving Errors

##### 11(c) Time Limits and Extent of Investigation

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is proposing to make certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. Relatedly, the Bureau is proposing to delete § 1005.11(c)(2)(i)(C), which was added to § 1005.11 in the 2016 Final Rule to conform to that rule's requirements concerning error resolution.

Specifically, § 1005.11(c)(2)(i)(C) currently provides that a financial institution is not required to provisionally credit a consumer's account if the alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not successfully completed its consumer identification and verification process, as set forth in current § 1005.18(e)(3)(ii). As discussed in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is proposing that a financial institution not be required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account, other than a payroll card account or government benefit account, for which it has not successfully completed its consumer identification and verification process. Because the Bureau's proposal would provide that such accounts are not subject to § 1005.11, § 1005.11(c)(2)(i)(C) would no longer be necessary. The Bureau's proposal would revert the text of § 1005.11(c)(2)(i) to its state prior to its amendment by the 2016 Final Rule. The Bureau seeks comment on this portion of the proposal.

#### Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

##### 18(a) Coverage

Section 1005.18(a) states that a financial institution shall comply with all applicable requirements of EFTA and Regulation E with respect to prepaid accounts except as modified by § 1005.18. One of those generally

applicable requirements concerns the issuance of access devices in § 1005.5, which implements EFTA section 911.<sup>25</sup> Prior to the 2016 Final Rule, comment 18(a)–1 explained when a consumer was deemed to request an access device for a payroll card account;<sup>26</sup> a corresponding provision for government benefit accounts appeared in § 1005.15(b).<sup>27</sup> In the 2016 Final Rule, the Bureau did not modify either of those provisions except to add to comment 18(a)–1 two examples of when a consumer is deemed to request an access device for a prepaid account.<sup>28</sup>

As discussed in detail below, the Bureau has received questions about application of § 1005.5 to prepaid accounts since release of the 2016 Final Rule and believes that additional clarification may be warranted. In particular, industry stakeholders have asked about how § 1005.5—which (along with EFTA section 911) appears to have been drafted with a focus on providing access devices for existing accounts where the consumer has means of accessing funds in the account other than through the access device—applies to certain prepaid accounts where there is no means of access to the underlying funds other than via the prepaid card.

Regulation E provides that a financial institution may issue an access device for an account to a consumer only when solicited to do so by the consumer pursuant to § 1005.5(a) (that is, in response to an oral or written request for the device, or as a renewal of, or in substitution for, an accepted access device) or on an unsolicited basis in accordance with the requirements set forth in § 1005.5(b). Section 1005.5(b) provides that a financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is: (1) Not validated, meaning that the financial institution

has not yet performed all the procedures that would enable a consumer to initiate an EFT using the access device; (2) accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired; (3) accompanied by the disclosures required by § 1005.7, of the consumer's rights and liabilities that will apply if the access device is validated; and (4) validated only in response to the consumer's oral or written request for validation, after the financial institution has verified the consumer's identity by a reasonable means.

In response to the 2014 Proposal, some commenters noted that certain prepaid products distributed to consumers do not offer an alternate means of accessing the funds, but did not focus in detail on how the technical requirements of § 1005.5 would apply in such cases. Rather, the commenters focused in particular on whether a separate provision of Regulation E that prohibits compulsory use of payroll card accounts and government benefit accounts should be expanded to cover other types of prepaid products.<sup>29</sup> To the extent that commenters did focus on the unsolicited issuance provisions in § 1005.5, they requested clarifications on other issues.<sup>30</sup>

The Bureau has received through its outreach efforts to industry regarding implementation questions about how the unsolicited issuance rules set forth in § 1005.5(b) specifically apply to prepaid accounts used for making disbursements where the consumer is given no other option but to receive the disbursement via a prepaid account,

<sup>29</sup> In the 2016 Final Rule, the Bureau declined to expand application of the compulsory use prohibition in § 1005.10(e)(2) to other types of prepaid accounts, concluding that it would not be appropriate to take such a step at that time without additional public participation and information gathering about the specific product types at issue. 81 FR 83934, 83985 (Nov. 22, 2016).

<sup>30</sup> Some commenters on the 2014 Proposal requested, with respect to § 1005.18(a), that the Bureau clarify that distribution of cards for certain types of prepaid accounts (including payroll cards, student ID cards that also function as prepaid accounts, and disaster relief cards) would not constitute unsolicited issuance. Some other commenters requested that the Bureau clarify that distribution of an unactivated access device, where the consumer has a choice whether or not to activate it for use as a prepaid account (such as a student ID card that also functions as a prepaid account), would not be considered issuance of an unsolicited access device unless and until it is activated. As discussed in detail in the 2016 Final Rule, the Bureau declined to add an exception to the unsolicited issuance provisions in § 1005.5(b) or adopt related guidance in commentary to § 1005.18(a) for specific types of products as requested by commenters, believing that such exceptions and additional guidance were unwarranted at the time. 81 FR 83934, 84007 (Nov. 22, 2016).

<sup>25</sup> 15 U.S.C. 1693i.

<sup>26</sup> Comment 18(a)–1 stated that a consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. This portion of the comment was not changed by the 2016 Final Rule.

<sup>27</sup> Section 1005.15(b) stated that a consumer is deemed to request an access device for a government benefit account when the consumer applies for government benefits that the agency disburses or will disburse by means of an EFT. In addition, it provided that the agency shall also verify the identity of the consumer by reasonable means before the device is activated. This provision was not changed by the 2016 Final Rule.

<sup>28</sup> Specifically, the 2016 Final Rule added to comment 18(a)–1 an explanation that a consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online.

such as prison release cards, jury duty cards, and certain types of refund cards. Specifically, the concern stems from § 1005.5(b)(2), which requires the financial institution to provide a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired. Industry stakeholders have expressed concern that this requirement could be interpreted to mean, in the prepaid context, that they must provide another option by which consumers can receive their funds, despite the Bureau's decision not to extend the compulsory use prohibition in § 1005.10(e)(2) to other types of prepaid accounts beyond payroll card accounts and government benefit accounts at the time of the 2016 Final Rule.<sup>31</sup> Industry stakeholders have explained that costs related to providing an additional payment option, such as a paper check, would threaten the financial viability of these generally temporary, limited-use products and potentially cause unbanked consumers to incur check cashing fees to access their funds if these products were eliminated in favor of paper checks. One issuing bank stated that it issues prepaid accounts for use by prisons in work release programs, where the account holds funds for use by an incarcerated individual to pay for transportation, food, or incidentals related to participation in the work release program. The bank explained that, if these funds were disbursed in any other manner (such as in cash), the prison would not be able to ensure that they were used only for approved purposes.

The Bureau did not intend application of the unsolicited issuance requirements to mandate that consumers be offered other options to receive payments in circumstances beyond those already addressed by the compulsory use prohibition.

Therefore, the Bureau is proposing to clarify application of the unsolicited issuance rules to prepaid accounts where the consumer is not offered any other options by which to receive a disbursement of funds. Specifically, in order to make clear that § 1005.5(b)(2) does not require a financial institution or other party to offer consumers other options to receive such disbursements, the Bureau is proposing to add to comment 18(a)–1 a statement that, if an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer

to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that he or she has no other means by which to receive any funds in the prepaid account if the consumer disposes of the access device. For prepaid accounts where an alternative means for a consumer to receive those funds is not offered, the Bureau believes that it is reasonable for the disclosure required by § 1005.5(b)(2) to include a statement explaining that there is no other way for the consumer to receive his or her funds. The Bureau believes that this proposed clarification should resolve any potential industry confusion and also avoid consumer confusion that might be caused by receiving an incomplete or inapplicable disclosure pursuant to § 1005.5(b)(2).

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on whether financial institutions face similar challenges regarding the validation prongs in § 1005.5(b)(1) and (4) for prepaid accounts where there is no consumer choice, and whether the Bureau should make any related clarifications with respect to those requirements.

As indicated in the 2016 Final Rule, the Bureau is continuing to monitor financial institutions' and other persons' practices relating to consumers' lack of choice (including with respect to prepaid accounts that are not subject to the compulsory use prohibition). Depending on the facts and circumstances, the Bureau may consider whether exercise of the Bureau's authority under title X of the Dodd-Frank Act, including its authority over unfair, deceptive, or abusive acts or practices, would be appropriate.<sup>32</sup>

#### 18(b) Pre-Acquisition Disclosure Requirements

The Prepaid Accounts Rule generally requires a financial institution to provide a consumer with both a "short form" and a "long form" disclosure before the consumer acquires a prepaid account. The Bureau adopted those pre-acquisition disclosure requirements pursuant to EFTA sections 904(a), (b), and (c), 905(a), and 913(2),<sup>33</sup> and section 1032 of the Dodd-Frank Act,<sup>34</sup> and adjusted the timing and fee disclosure requirements as well as required disclosure language pursuant to EFTA section 904(c). As discussed in the section-by-section analyses that follow,

<sup>32</sup> *Id.*

<sup>33</sup> 15 U.S.C. 1693b(a), (b), and (c), 1693c(a), and 1693k(2).

<sup>34</sup> 12 U.S.C. 5532.

the Bureau is proposing to narrow the scope of several discrete provisions to facilitate compliance and reduce burden.

#### 18(b)(1) Timing of Disclosures

##### 18(b)(1)(i) General

Section 1005.18(b)(1)(i) requires a financial institution to provide the short form and long form disclosures required by § 1005.18(b) before a consumer acquires a prepaid account; an alternative timing regime exists for prepaid accounts acquired in retail locations or acquired orally by telephone, as described in § 1005.18(b)(1)(ii) and (iii), respectively.

As discussed in the 2016 Final Rule, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. The Bureau believed that the pre-acquisition disclosures would limit the ability of financial institutions to obscure key fees as well as allow consumers to better comparison shop among products. Even in situations where the consumer might not easily be able to comparison shop, such as when students are offered a card by their university, the Bureau believed that receiving the short form and long form disclosures pre-acquisition would allow consumers to better understand the product's terms before deciding whether to accept it and could inform the way in which consumers decide to use the product once acquired. Relatedly, the Bureau believed that consumers often use their prepaid accounts for an extended period, and whatever disclosure information a consumer used when selecting the prepaid account could have a significant and potentially long-term impact.<sup>35</sup>

Through its outreach efforts to industry regarding implementation, the Bureau has received some questions regarding what it means to provide disclosures "pre" acquisition for products where the party making the disbursement to the consumer (or the financial institution) does not offer any alternative means for the consumer to receive those funds. (For further discussion of such products, see the section-by-section analysis of § 1005.18(a) above.) For example, if a refund card is sent by mail, industry stakeholders have asked whether the financial institution would have to first mail the pre-acquisition disclosures to the consumer and then later send the card. The concern also exists for in-

<sup>35</sup> 81 FR 83934, 84017, 84022 (Nov. 22, 2016).

<sup>31</sup> *Id.* at 83985.

person acquisition scenarios, such as with prison release or jury duty cards, although pre-acquisition disclosures could be provided more easily in advance of the consumer receiving the prepaid account in such cases.

The Bureau continues to believe that the disclosures required by § 1005.18(b) are important for consumers to receive for all prepaid products, and does not believe exclusions for certain types of products would be appropriate. However, the Bureau did not intend to require that an additional separate formal step for disclosure delivery be added to the acquisition process for products where consumers are not making a choice as to whether to acquire the prepaid account. The Bureau does not believe that sending or otherwise providing the disclosures separately for prepaid accounts in this situation would be beneficial for consumers and acknowledges that, particularly if separate mailings were made, financial institutions could incur additional costs in delivering the pre-acquisition disclosures separately from the prepaid account itself.

The Bureau is therefore proposing revisions to § 1005.18(b)(1)(i) and its related commentary to clarify the timing requirements for delivery of pre-acquisition disclosures in this situation. Specifically, the Bureau is proposing to add to the regulatory text of § 1005.18(b)(1)(i) a statement that, when a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, the disclosures required by § 1005.18(b) may be provided at the time the consumer receives the prepaid account. The Bureau is also proposing to add an example, as comment 18(b)(1)(i)-1.ii, to illustrate such a scenario involving a utility company that refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. The Bureau is also proposing to renumber the paragraphs within comment 18(b)(1)(i)-1 for clarity.

The Bureau notes that the accommodation in proposed § 1005.18(b)(1)(i) would not apply to payroll card accounts and government benefit accounts because they are subject to the compulsory use prohibition in § 1005.10(e)(2). Comments 15(c)-1 and 2 and current comment 18(b)(1)(i)-1.i (proposed as comment 18(b)(1)(i)-1.i.B) address the timing of pre-acquisition disclosures for such accounts.

The Bureau seeks comment on this portion of the proposal.

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

Section 18(b)(1)(ii) states that a financial institution is not required to provide the long form disclosure required by § 1005.18(b)(4) before a consumer acquires a prepaid account in person at a retail location provided certain conditions are met. Specifically, these conditions are: (A) The prepaid account access device must be contained inside the packaging material; (B) the short form disclosure required by § 1005.18(b)(2) must be provided on or visible through an outward-facing, external surface of the access device's packaging material; (C) the short form disclosure must include the information set forth in § 1005.18(b)(2)(xiii) that allows a consumer to access the information required to be disclosed in the long form by telephone and via a Web site; and (D) the long form disclosure must be provided after the consumer acquires the prepaid account.

As discussed in the 2016 Final Rule and as noted above, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. However, the Bureau was cognizant of the potentially significant cost to industry related to providing the long form disclosure prior to acquisition at retail and making packaging adjustments necessary to accommodate such a disclosure given the space constraints for products sold at retail. The Bureau thus finalized the retail location exception in current § 1005.18(b)(1)(ii), which it believed struck the appropriate balance between providing consumers with—or access to—important disclosures before acquiring a prepaid account while recognizing the packaging, space, and other constraints faced by financial institutions when selling prepaid accounts at retail.<sup>36</sup>

Specifically, in the 2016 Final Rule, the Bureau explained that it was adopting § 1005.18(b)(1)(ii)(D) to make clear that, to qualify for the retail location exception, a financial institution must provide the long form disclosure after the consumer acquires the prepaid account. The Bureau noted that this provision does not set forth a specific time by which the long form disclosure must be provided after acquisition, but explained that, in practice, it expected that compliance

with this requirement would typically be accomplished in conjunction with § 1005.18(f)(1), which requires a financial institution to provide, as part of its initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed pursuant to § 1005.18(b)(4).<sup>37</sup> The financial institution must make the initial disclosures required by § 1005.7 at the time a consumer contracts for an EFT service or before the first EFT is made involving the account. That is, standing alone, § 1005.18(f)(1) does not require inclusion in the initial disclosures of the long form in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7); rather, it only requires that the § 1005.18(b)(4) information be included in the initial disclosures.

During the Bureau's outreach efforts to industry regarding implementation, a trade association told the Bureau that providing the long form disclosure—in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7)—as part of the initial disclosures for the prepaid account contained inside the packaging material may pose problems for financial institutions. The trade association explained that, for at least some institutions, this requirement might necessitate a substantial increase in the size of the packages in order to accommodate the long form disclosure, thus requiring retooling of their J-hook packaging used at retail. Because the 2016 Final Rule did not specify the method by which the long form disclosure must be provided pursuant to current § 1005.18(b)(1)(ii)(D), the trade association said that financial institutions might resort to sending the long form disclosure to the consumer by mail to avoid increasing the size of retail packaging to accommodate the disclosure. The trade association also asked whether the long form disclosure could be provided electronically without E-Sign consent, similar to the transitional accommodation in § 1005.18(h)(2)(iv) for providing certain notices to consumers.

In light of this information, the Bureau is concerned about the potential increased costs financial institutions could face as a result of this requirement. The Bureau also believes that permitting the long form to be provided electronically post-acquisition would not diminish the consumer

<sup>37</sup> *Id.* In the 2014 Proposal, proposed § 1005.18(f) would have required, in part, that a financial institution include all of the information required to be disclosed in the long form and be provided in a form substantially similar to the sample form in proposed Appendix A-10(e). *See id.* at 84114.

<sup>36</sup> *Id.* at 84022.



protections afforded by providing the long form inside the packaging material or by mail. Therefore, the Bureau is proposing to revise § 1005.18(b)(1)(ii)(D) to state that, if a financial institution does not provide the long form disclosure inside the prepaid account packaging material and is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. That is, this accommodation would only be available to financial institutions that are not otherwise mailing or delivering written account-related communications to the consumer post-acquisition.<sup>38</sup> The Bureau is also proposing to add language to comment 18(b)(1)(ii)-4 that would explain that a financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in proposed § 1005.18(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

The Bureau believes these proposed revisions would address the concerns raised regarding providing the long form disclosure after acquisition under the retail location exception without detriment to consumers. Financial institutions will be able to provide consumers with the long form disclosure after acquisition, in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7), either inside the packaging material, or by mail or electronically after the financial institution obtains the consumer's contact information. Moreover, where the long form disclosure itself is not contained inside the packaging material, the consumer will nonetheless receive the information required to be disclosed in the long form via the initial disclosures required by §§ 1005.7 and 1005.18(f)(1), which are typically provided inside the packaging of prepaid accounts sold at retail.

<sup>38</sup> If the financial institution includes the long form disclosure inside the prepaid account packaging material, it would not need this E-Sign waiver. Likewise, if a consumer gives E-Sign consent, the financial institution may provide the disclosure electronically even if it is mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

The Bureau seeks comment on this aspect of the proposal. Specifically, the Bureau seeks comment on the feasibility of providing the long form disclosure through the various methods described herein—that is, inside the retail packaging, by mail, or electronically. The Bureau also seeks comment on whether financial institutions were, in fact, planning to include in their retail packaging the long form disclosure (in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7)) and whether a redesign of their packaging would be necessary to do so. The Bureau seeks comment on how often financial institutions mail or deliver written account-related communications to consumers within 30 days of obtaining the consumers' contact information, as well as the likelihood that financial institutions would choose, if the proposal were adopted, to provide the long form disclosure only by mail or electronically rather than including it inside the retail packaging. In addition, the Bureau seeks comment on whether there are other accommodations the Bureau might make to the retail location exception to facilitate financial institutions' inclusion of the long form disclosure inside the packaging. The Bureau also seeks comment on whether the proposed modification should be available only in limited situations, such as for prepaid accounts where the financial institution requires the consumer to provide identifying information before the prepaid account can be used. Finally, the Bureau seeks comment on whether it should expressly state a timing requirement for delivery of the long form disclosure pursuant to proposed § 1005.18(b)(1)(ii)(D) in general or specifically with respect to electronic disclosures provided without E-Sign consent.

Relatedly, current § 1005.18(b)(1)(iii)(C) includes a similar requirement for prepaid accounts acquired orally by telephone. The Bureau does not believe the same modification is necessary for this provision because, in this situation, financial institutions would already be mailing an access device and initial disclosures to consumers and, unlike J-hook packaging, that mailing would not face the same space constraints. Nonetheless, because of the similarities between § 1005.18(b)(1)(ii) and (iii), the Bureau seeks comment on whether the revision the Bureau is proposing in § 1005.18(b)(1)(ii)(D) should also be made in § 1005.18(b)(1)(iii)(C).

18(b)(2) Short Form Disclosure Content  
18(b)(2)(ix) Disclosure of Additional Fee Types

The Prepaid Accounts Rule's provisions governing the short form require disclosure of certain "static" fees that are relatively common across the industry as well as disclosure of certain additional types of fees that the financial institution may charge with respect to a particular prepaid account program. Specifically, § 1005.18(b)(2)(ix) requires a financial institution to disclose the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in § 1005.18(b)(2)(ix)(D) and (E), subject to certain exclusions, including a de minimis threshold. If an additional fee type required to be disclosed has two fee variations, current § 1005.18(b)(2)(ix)(C) requires the financial institution to disclose the name of the additional fee type along with the names of the two fee variations and the fee amounts; if an additional fee type has more than two fee variations, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with § 1005.18(b)(3)(i).<sup>39</sup> Comment 18(b)(2)(ix)(C)-1 provides examples illustrating how to disclose two-tier fees and other fee variations in additional fee types.

As discussed in the 2016 Final Rule, the Bureau believed that it was important for financial institutions to disclose to consumers certain fee types not otherwise listed on the short form. The Bureau believed that disclosing additional fee types creates a dynamic disclosure while reducing incentives for manipulating fee structures by, for example, lowering the price of the common fees listed on the short form in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. The Bureau also believed that putting consumers on notice of such additional fee types would alert them to account features for which they may end up incurring a significant cost. In addition, the Bureau believed that eschewing full standardization in a static short form disclosure in favor of the dynamic disclosure of additional fee types would enable the disclosure to capture market changes and innovations. Furthermore,

<sup>39</sup> Section 1005.18(b)(2)(ix)(C) contains modified requirements for disclosing additional fee types on a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(2).

the Bureau believed that the requirement to disclose additional fee types would allow the short form to reflect the advent of new fee types that consumers may come to incur frequently and for significant cost that otherwise would be prohibited from disclosure in the short form and thus could render it outdated and of diminished value to consumers over time.<sup>40</sup>

The Bureau continues to believe that disclosing additional fee types in the short form is necessary and appropriate for the reasons set forth in the 2016 Final Rule and as summarized above. However, the Bureau has heard concerns through its outreach efforts to industry regarding implementation with respect to the requirement to disclose the highest fee (accompanied by an asterisk indicating the fee may be lower depending on how and where the card is used) for additional fee types with more than two fee variations, where one of those fee variations is significantly higher than the others; this may occur, for example, with expedited delivery of a replacement card or a bill payment. Because current § 1005.18(b)(2)(ix)(C) does not allow financial institutions to disclose fee variations within additional fee types when the additional fee type has more than two variations, some prepaid account providers have suggested that, rather than disclosing the highest fee in these situations, they are considering eliminating the service for which that highest fee is charged so as to avoid having to disclose it without additional explanation on the short form.

Although the Bureau believes that consumers generally would benefit from simplified fee structures, the purpose of requiring disclosure of additional fee types was not to encourage financial institutions to eliminate services that are useful for consumers. While it could add some additional complexity to the short form, the Bureau believes it may be appropriate to give financial institutions additional flexibility to provide more detail for additional fee types with multiple fee variations. The Bureau is therefore proposing to modify § 1005.18(b)(2)(ix)(C) by providing that, for disclosures other than for multiple service plans, a financial institution may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) (ATM balance inquiry fees) and (vi) (customer

service fees) and in accordance with § 1005.18(b)(3)(i) and (b)(7)(ii)(B)(1). The Bureau expects that, if the three or more fee variations cannot be consolidated into two categories in a logical manner, or if doing so would cause consumer confusion, the financial institution would disclose the name of the additional fee type and the highest fee amount in the manner currently required, rather than avail itself of the proposed alternative. The Bureau is also proposing to revise comment 18(b)(2)(ix)(C)–1.ii to illustrate the two options that a financial institution would have to disclose an additional fee type with more than two fee variations. The example and the first option reflect what currently exist in this comment; the second option reflects the proposed alternative.

Specifically, proposed comment 18(b)(2)(ix)(C)–1.ii would provide the following example: A financial institution offers two methods of bill payment—via ACH and paper check—and offers two modes of delivery for bill payments made by paper check—regular standard mail service and expedited delivery. The financial institution charges \$0.25 for bill pay via ACH, \$0.50 for bill pay via paper check sent by regular standard mail service, and \$3 for bill pay via paper check sent via expedited delivery. The financial institution must calculate the total revenue generated from consumers for all methods of bill pay and all modes of delivery during the required time period to determine whether it must disclose bill payment as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are more than two fee variations for the fee type “bill payment,” if bill payment is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution has two options for the disclosure. The financial institution may disclose the highest fee, \$3, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, pursuant to § 1005.18(b)(3)(i). Thus, the financial institution would disclose on the short form the fee type as “Bill payment” and the fee amount as “\$3.00\*.” Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery, with ACH and paper check together constituting regular delivery. In this case, the financial institution would make this disclosure on the short form as: “Bill payment (regular or expedited

delivery)” and the fee amount as “\$0.50\* or \$3.00”.

The Bureau believes that its proposed modification would allow for more detail and certainty about fees that appear on the short form disclosure, which would provide consumers more information about a prepaid account prior to acquisition. The Bureau acknowledges that allowing financial institutions to avail themselves of this alternative could reduce the amount of “white space” on the short form disclosure, which the Bureau has stated is paramount to clarity and consumer comprehension.<sup>41</sup> However, the Bureau believes that the reduction here would be minimal, particularly when contrasted with the potential diminished benefit to consumers of financial institutions eliminating certain relatively expensive but beneficial features, such as expedited card replacement or bill pay.

The Bureau seeks comment on this aspect of the proposal.

#### 18(b)(6) Form of Pre-Acquisition Disclosures

##### 18(b)(6)(i) General

Section 1005.18(b)(6)(i) currently states that the pre-acquisition disclosures required by § 1005.18(b) must be provided in writing, except in certain circumstances where they must be provided electronically or orally by telephone pursuant to § 1005.18(b)(6)(i)(B) and (C), respectively. Specifically, current § 1005.18(b)(6)(i)(B) provides, in part, that these disclosures must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. Current § 1005.18(b)(6)(i)(C) provides, in part, that the disclosures required by § 1005.18(b)(2) and (5) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in § 1005.18(b)(1)(iii).

As explained in the 2016 Final Rule, although the Bureau believed that consumers can best review the terms of a prepaid account before acquiring it when seeing the terms in written form, the Bureau recognized that in certain situations, it is not practicable to provide written disclosures. With respect to electronic disclosures, the Bureau believed it was important for consumers who decide to go online to acquire prepaid accounts to see the relevant disclosures for that prepaid account in electronic form.

<sup>40</sup> 81 FR 83934, 84041 (Nov. 22, 2016).

<sup>41</sup> *Id.* at 84024–25.

Furthermore, regarding oral disclosures, the Bureau believed that when a consumer acquires a prepaid account orally by telephone or when a consumer requests to hear the long form in a retail location by calling the telephone number disclosed on the short form pursuant to § 1005.18(b)(2)(xiii), it would not be practicable for a financial institution to provide these disclosures in written form; however, the Bureau believed that consumers should nonetheless have the benefit of pre-acquisition disclosures.<sup>42</sup>

Through its outreach efforts to industry regarding implementation, the Bureau heard concerns from an issuing bank that it would actually be more practicable and convenient to provide the short form and long form disclosures required by § 1005.18(b) in writing rather than electronically and orally for certain payroll card accounts and government benefit accounts. The issuing bank explained that in these situations consumers would first receive the pre-acquisition disclosures in writing from the employer or agency; in order to actually acquire the account, consumers must either go online or call a customer service line. The issuing bank also expressed concern about the cost to some employers and agencies to train their customer service representatives to provide disclosures orally by telephone or to update their Web sites to accommodate the requirements set forth in the 2016 Final Rule for electronic disclosures, particularly when written disclosures are already provided to the consumer in advance of acquisition.

The Bureau continues to believe that it is important for consumers to receive pre-acquisition disclosures via the method by which they are acquiring a prepaid account. As noted above, however, the Bureau also believes that consumers can best review the terms of a prepaid account before acquiring when seeing the terms in written form. The Bureau appreciates the concerns raised by the issuing bank regarding in providing electronic or oral disclosures in this context, and believes that if written pre-acquisition disclosures are provided then it is not necessary to also require electronic and oral disclosures. The Bureau is therefore proposing to revise § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)-1 to make clear that financial institutions are permitted to provide written disclosures prior to acquisition rather than having to give the disclosures electronically or orally by telephone. The Bureau is also proposing to add new comment

18(b)(6)(i)-1 to illustrate this proposed revision in the payroll card account context. Specifically, the proposed comment would give an example stating that, if an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account, the financial institution is not required to provide the § 1005.18(b) disclosures electronically via the Web site because the consumer has already received the disclosures pre-acquisition in written form. The Bureau believes that the proposed clarification would alleviate the concern described above, without harm to consumers because the requirement to provide consumers with the disclosures before they agree to acquire a prepaid account would remain.

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment regarding whether it should impose timing or other limitations on when a financial institution may provide pre-acquisition disclosures in writing followed by electronic or telephone acquisition of the prepaid account.

#### 18(b)(9) Prepaid Accounts Acquired in Foreign Languages

Section 1005.18(b)(9)(i) requires a financial institution to provide the pre-acquisition disclosures required by § 1005.18(b) in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. Specifically, the financial institution must provide the disclosures in a foreign language if it principally uses a foreign language on the prepaid account packaging material; it principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or it provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. Section 1005.18(b)(9)(ii) requires financial institutions providing the disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) to also provide the information required to be disclosed in the long form pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language.

As discussed in the 2016 Final Rule, the Bureau believed that, if a financial institution affirmatively targets consumers by advertising, soliciting, or marketing to them in a foreign language, principally uses a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, or provides a way for a consumer to acquire a prepaid account in a foreign language, the financial institution is making a deliberate effort to obtain the consumer's business using a foreign language and therefore should be required to provide the pre-acquisition disclosures in that foreign language.<sup>43</sup> The Bureau continues to believe that requiring financial institutions to provide pre-acquisition disclosures in a foreign language is appropriate in the circumstances described above to ensure that non- and limited-English speaking consumers are able to understand the terms of a prepaid account prior to acquisition.

During its outreach efforts to industry regarding implementation, the Bureau discussed with an issuing bank its experiences with employers and government agencies that contract with third parties to provide real-time oral language interpretation services in order to facilitate general processes administered by the employer (such as new employee on-boarding) or agency (enrollment in a benefits program), which may include acquisition of a prepaid account. The bank expressed concern that use of these language interpretation services, although generally beneficial to affected consumers, may potentially pose difficulties providing interpretations of the required disclosures to consumers in foreign languages, while also increasing costs for the employer or agency due to longer call times.

The issuing bank explained that these language interpretation services allow consumers to choose from more than one hundred languages, though the employer or agency may not know it will need interpretation services in a particular language until a consumer requests it. The issuing bank emphasized that it is not involved in selecting the third parties that provide language interpretation services employers and government agencies might use as part of their general enrollment processes, and that the interpreters, who are hired to provide language interpretation services only, may not have any particular experience with financial disclosures. The issuing bank also stated that it would not be able to ensure that the long form

<sup>42</sup> *Id.* at 84075-77.

<sup>43</sup> *Id.* at 84091-92.

disclosures, translated into every possible foreign language that could be selected by a consumer, could be provided either electronically (pursuant to § 1005.18(b)(1)(iii)(B)) or in writing (pursuant to § 1005.18(b)(1)(iii)(C)) to the consumer.

The Bureau intended the foreign language requirements to cover situations where the financial institution affirmatively targets consumers in a foreign language. The Bureau agrees that the situation described above appears somewhat distinct particularly to the extent that it involves providing real-time language interpretation services in the course of facilitating more general processes by an employer or government agency, such as the onboarding an employee or enrollment of a consumer in a benefits program. The Bureau is concerned that applying the foreign language disclosure requirements of § 1005.18(b)(9)(i) in such circumstances might discourage employers and agencies from making language interpretation services available at all. Therefore, the Bureau is proposing revisions to § 1005.18(b)(9)(i)(C) to provide this exception. Specifically, proposed § 1005.18(b)(9)(i)(C) would state that financial institutions must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of a prepaid account if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language, except for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

The Bureau seeks comment on this aspect of the proposal. In particular, the Bureau requests comment on whether this issue is unique to payroll card accounts and government benefit accounts, or whether it extends to other types of programs as well. The Bureau also seeks comment on whether, alternatively, it should completely exclude payroll card accounts or government benefit accounts from the requirement in § 1005.18(b)(9)(i)(C) to provide foreign language disclosures by telephone and whether, if adopted, such an exclusion should extend to any other types of prepaid accounts as well. In addition, the Bureau seeks comment on whether the requirement in § 1005.18(b)(9)(i)(C) poses any related issues for financial institutions offering prepaid accounts that are not addressed by the proposal. The Bureau also seeks comment on whether there are any other

ways the Bureau might address this issue other than those discussed herein, such as by basing the exclusion on the number of foreign languages offered by the financial institution or via the third-party service.

#### 18(d) Modified Disclosure Requirements

##### 18(d)(1) Initial Disclosures

##### 18(d)(1)(ii) Error Resolution

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is proposing to make certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. Relatedly, the Bureau is proposing to amend § 1005.18(d)(1)(ii), which requires certain disclosures regarding error resolution.

EFTA section 905(a)(7) requires financial institutions to provide a summary of the error resolution provisions in EFTA section 908 and the consumer's rights thereunder as part of the initial disclosures and on an annual basis thereafter.<sup>44</sup> These requirements are implemented for accounts generally in §§ 1005.7(b)(10) and 1005.8(b). In the 2016 Final Rule, the Bureau in § 1005.18(d)(1)(ii) required financial institutions that follow the periodic statement alternative in § 1005.18(c)(1) to modify their initial disclosures required by § 1005.7(b) by disclosing a notice concerning error resolution that is substantially similar to the notice contained in Appendix A-7(b), in place of the notice required by § 1005.7(b)(10). The notice in Appendix A-7(b) explains to consumers the error resolution timeframes that apply when financial institutions follow the periodic statement alternative. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau is proposing to exercise its authority under EFTA section 904(c) to adopt an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), to permit notices for prepaid accounts as described in proposed § 1005.18(d)(1)(ii), in order to facilitate compliance with error resolution requirements. The Bureau is thus proposing to amend § 1005.18(d)(1)(ii) to clarify that, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and limitations on consumers' liability for

<sup>44</sup> 15 U.S.C. 1693c(a)(7) and 1693f.

unauthorized transfers or, if none, state that there are no such protections. The proposed revisions to § 1005.18(e)(3), discussed below, would not require a financial institution to offer limited liability and error resolution protections on prepaid accounts in a program for which the financial institution does not have a consumer identification and verification process. This clarification is intended to ensure that financial institutions accurately disclose to consumers the limited liability and error resolution protections (if any) that would apply to any such prepaid account in their initial disclosures. The Bureau seeks comment on this portion of the proposal.

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

##### 18(e)(3) Limitations on Liability and Error Resolution for Unverified Accounts

##### The 2014 Proposal and 2016 Final Rule

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit.<sup>45</sup> EFTA section 909 governs consumer liability for unauthorized EFTs.<sup>46</sup> These requirements are implemented for accounts generally in §§ 1005.11 and 1005.6, respectively. In the 2014 Proposal, the Bureau proposed to use its exceptions authority under EFTA section 904(c) to add new section § 1005.18(e)(3) to exempt unverified prepaid accounts from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remained unverified. That paragraph would have provided that for prepaid accounts that are not payroll card accounts or government benefit accounts,<sup>47</sup> if a financial institution disclosed to the consumer the risks of not registering and verifying the prepaid account using language substantially similar to the model clause proposed by the Bureau, a financial institution would not have been required to comply with the liability limits and error resolution requirements under §§ 1005.6

<sup>45</sup> 15 U.S.C. 1693f.

<sup>46</sup> 15 U.S.C. 1693g.

<sup>47</sup> As explained in the 2016 Final Rule, the Bureau excluded payroll card accounts and government benefit accounts from this provision to ensure that, among other things, they maintained the same level of error resolution and limited liability protections that they had under existing Regulation E. 81 FR 83934, 84112 n.502 (Nov. 22, 2016). Furthermore, payroll card accounts and government benefit accounts generally require the financial institution to verify the identity of the consumer prior to acquisition to determine employment status or eligibility for benefits.

and 1005.11 for any prepaid account for which it had not completed its collection of consumer identifying information and identity verification.<sup>48</sup> The proposal would have required financial institutions to comply with Regulation E requirements regarding limited liability and error resolution, including provisional credit, for accounts that were verified; this would have included applying those protections even to unauthorized transfers or other errors that occurred prior to verification.<sup>49</sup> The Bureau solicited comment on this aspect of the 2014 Proposal, including regarding whether the limited liability and error resolution provisions of Regulation E should apply to unverified, as well as verified, accounts.<sup>50</sup>

The Bureau altered its approach for the 2016 Final Rule in several respects, drawing on two primary sources of information. The first was its analysis of 325 prepaid account agreements, in which the Bureau found that a large majority of the agreements reviewed purported to offer Regulation E error resolution and limited liability protections.<sup>51</sup> The second was comments received from both industry and consumer advocacy groups reflecting a wide spectrum of views on the 2014 Proposal. For instance, while

<sup>48</sup> As the Bureau explained in the 2014 Proposal, this provision primarily affects GPR cards that are purchased at retail, where the financial institution may—but does not always—obtain consumer identifying information and perform verification at the time the consumer calls or goes online to activate the card. Because of restrictions imposed by the Financial Crimes Enforcement Network's Prepaid Access Rule (31 CFR 1022.210(d)(1)(v)) and the payment card networks' operating rules, among other things, the Bureau understands that consumer identification and verification is almost always performed before a card can be reloaded, used to make cash withdrawals, or used to receive cash back at the point of sale. However, the Bureau understands that some providers allow consumers to use GPR cards purchased at retail immediately to make purchases. 79 FR 77102, 77185 (Dec. 23, 2014).

<sup>49</sup> Regulation E sets certain timelines for investigation of alleged errors. A financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, to complete an investigation if it extends provisional credit to the consumer for the amount of the alleged error, so that consumers may continue to access the funds while the financial institution conducts its investigation.

<sup>50</sup> 79 FR 77101, 77185 (Dec. 23, 2014).

<sup>51</sup> CFPB, *Study of Prepaid Account Agreements*, at 13 tbl. 3 and 16 tbl. 4 (Nov. 2014), available at [http://files.consumerfinance.gov/f/201411\\_cfpb\\_study-of-prepaid-account-agreements.pdf](http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf). Specifically, the Bureau found that 77.85 percent of all agreements reviewed appeared to provide full error resolution protections, with provisional credit available for all consumers where the error could not be resolved within a defined period of time, and 88.92 percent of all agreements reviewed appeared to provide liability limitations consistent with Regulation E (or better). *Id.*

some industry commenters expressed support for the Bureau's proposed approach, others predicted that it would increase their risk of fraud losses.<sup>52</sup> The latter group of commenters seemed most concerned with the proposed requirement to extend provisional credit on errors asserted prior to verification. Some commenters, including a number of trade associations, a program manager, and a payment processor, argued that applying error resolution and limited liability protections to pre-verification errors would greatly increase fraud losses because it was extremely difficult to investigate an error that occurs before the financial institution knows the identity of the cardholder. They also asserted, however, that requiring full error resolution and limited liability protections for pre-verification errors would not confer significant additional benefits on consumers, positing that it was unlikely that an unauthorized transfer or other error would occur prior to verification.

On the other hand, consumer advocates emphasized the importance of providing consumers—especially consumers who may have a hard time making ends meet—with recourse if their accounts are subject to error or fraud. Some consumer advocate commenters supported the proposal as striking a good balance between protecting consumers and ensuring that the rule does not encourage additional fraudulent activity, while others urged the Bureau to require full error resolution and limited liability protections for additional account or transaction types.<sup>53</sup>

In response to these considerations, the Bureau finalized § 1005.18(e)(3) and related commentary with several substantive revisions. Specifically, under the 2016 Final Rule, financial institutions must provide error resolution and limited liability protections for all accounts, including

<sup>52</sup> The discussion here focuses on comments received on the 2014 Proposal with respect to proposed § 1005.18(e)(3). As discussed in the 2016 Final Rule's section-by-section analysis of § 1005.18(e)(2), most industry commenters and all consumer group commenters generally supported the Bureau's proposal to extend to all prepaid accounts the same error resolution provisions that apply to payroll card accounts. At the same time, several industry commenters argued that prepaid accounts may have a higher incidence of fraudulently asserted errors than other accounts covered by Regulation E for a number of reasons, and urged the Bureau to limit application of the error resolution provisions in certain respects, such as by not requiring error resolution for certain types of prepaid products. As the Bureau noted in the 2016 Final Rule, these commenters did not provide any data or particular details in support of their assertions. 81 FR 83934, 84106–07 (Nov. 22, 2016).

<sup>53</sup> *Id.* at 84109–10.

accounts for which the financial institution has not successfully completed its consumer identification and verification process (*i.e.*, accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). However, for unverified accounts, the financial institution need not provide provisional credit while investigations are pending. The Bureau also added language to emphasize that financial institutions are not required to adopt a consumer identification and verification process for all prepaid accounts, which had been a point of concern with the 2014 Proposal for some industry commenters. In addition, the Bureau added commentary to clarify when a financial institution should be deemed to have completed its consumer identification and verification process for a particular prepaid account. The Bureau considered whether to require error resolution and limited liability protections for prepaid account programs that do not have a consumer identification and verification process, while excluding financial institutions that have a process in situations where a consumer has failed to complete the process successfully; however, the Bureau concluded that it would be preferable to treat all unverified accounts uniformly.<sup>54</sup>

#### Industry Outreach and Comments Received on 2017 Effective Date Proposal

Through the Bureau's outreach efforts to industry regarding implementation and in connection with the 2017 Effective Date Proposal, several industry stakeholders raised concerns with regard to how the treatment of unverified prepaid accounts in § 1005.18(e) will impact particular consumers and programs. While it appears that for a large number of prepaid account programs financial institutions already provide substantial error resolution and limited liability protections as a matter of contract, as explained above, these industry stakeholders have expressed general concern that mandating error resolution and limited liability protections as a matter of Federal law will increase fraudulent error claims in connection with prepaid programs by making the industry a bigger target or focus for fraudsters. They also offered more detailed explanations of their current practices regarding error resolution and limited liability protections for

<sup>54</sup> *Id.* at 84110–12.

unverified accounts and how they may modify such practices in response to the 2016 Final Rule.

The most widespread concern relates to situations where a consumer has attempted, but failed (or refused to complete) the financial institution's consumer identification and verification process.<sup>55</sup> Currently, financial institutions typically permit consumers in such situations to spend down the balances on their cards as if they were gift cards, but do not permit reloads and restrict other functionalities. To reduce the potential risk of fraud that they anticipate could occur under the 2016 Final Rule, a number of financial institutions have indicated that they may stop allowing consumers to spend down their remaining funds and instead issue refund checks to all such consumers. However, a refund check might take up to 10 business days to reach the consumer during which time he or she would not have access to his or her funds, and additional complications could arise for consumers without a fixed address. Further, unbanked consumers may incur costs to cash the refund check.

The Bureau also learned that some financial institutions are considering limiting the functionality of their prepaid accounts (in particular, accounts sold at retail) prior to completion of the verification process to reduce fraud exposure.<sup>56</sup> Where immediate use of the product is advertised on their retail packaging, these financial institutions asserted that they need to replace all of their retail packaging for those prepaid accounts to ensure that the packaging accurately reflects the functionality of the account, notwithstanding the Bureau's decision to allow financial institutions to continue selling prepaid accounts in non-compliant packaging manufactured in the normal course of business prior to the rule's effective date. The Bureau cited these concerns in the 2017 Effective Date Proposal as one of the reasons it was proposing to delay the 2016 Final Rule's effective date.

A number of industry stakeholders have also explained that they believe that full compliance with Regulation E error resolution and limited liability requirements would be more

burdensome and difficult than the processes they are currently employing with regard to unverified accounts. For example, two prepaid account issuers, a trade association, and a think tank submitted comments in response to the 2017 Effective Date Proposal asserting that most financial institutions do not in fact currently provide full Regulation E error resolution and limited liability protections on unverified prepaid accounts. These commenters explained that financial institutions' error resolution procedures often require comparison of information provided by the consumer when alleging an error with information previously provided by the consumer to the financial institution (for example, by matching the purchaser's name and shipping address for an online purchase with the consumer's information on file with the financial institution); such information would not be available where the identification and verification process has not been completed.<sup>57</sup>

Commenters also stated that the provision in the 2016 Final Rule excluding unverified accounts from the provisional credit requirement does not provide them meaningful relief because financial institutions often are ultimately unable to establish whether a given transaction on an unverified account was in fact unauthorized. Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account. These commenters asserted that the rule would therefore increase financial institutions' fraud protection and mitigation costs. The Bureau is aware, however, that some financial institutions do provide full Regulation E limited liability and error resolution protections (though perhaps without provisional credit) even on unverified accounts.

#### Proposal

The Bureau believes that providing error resolution and limited liability rights to consumers even on unverified accounts would be beneficial to consumers but is concerned about the potential ramifications raised by

industry stakeholders as described above. The Bureau therefore is proposing amendments that would return § 1005.18(e)(3) to approximately what it proposed in the 2014 Proposal, with additional modifications to clarify treatment of prepaid account programs for which there is no consumer identification and verification process. However, as detailed further below, the Bureau also is considering whether more targeted approaches could be warranted, and specifically seeks comment on such alternatives.

To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to propose to exercise its authority under EFTA section 904(c) to revise § 1005.18(e)(3) to except accounts that have not completed the consumer identification and verification process from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remain unverified.

Specifically, the Bureau is proposing to revise § 1005.18(e)(3) and related commentary to provide that, for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. For purposes of this provision, a financial institution would be deemed to have not successfully completed its consumer identification and verification process where: (A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not verifying the account using a notice that is substantially similar to the model notice contained in proposed Appendix A-7(c); (B) the financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in proposed Appendix A-7(c); or (C) the financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has

<sup>55</sup> The Bureau understands that some prepaid issuers separate the registration and verification processes, allowing a consumer to activate some card functionality by providing at least some amount of personal information, while requiring additional information along with identity verification before providing access to full functionality on the account.

<sup>56</sup> As noted above, many GPR providers do not allow consumers to use prepaid accounts purchased at retail immediately.

<sup>57</sup> In conducting its Study of Prepaid Account Agreements, the Bureau observed that very few agreements expressly differentiated between the protections applicable to verified and unverified accounts. In fact, as noted above, many of the account agreements reviewed by the Bureau suggested that error resolution and limited liability protections were provided in accordance with Regulation E.

made the alternative disclosure described in proposed § 1005.18(d)(1)(ii), discussed above, and complies with the process it has disclosed.<sup>58</sup>

Proposed § 1005.18(e)(3)(iii) would provide that, once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. As noted above, some commenters on the 2014 Proposal expressed concern about having to provide provisional credit on pre-verification errors after an account is verified. In comments on the 2017 Effective Date Proposal and other recent feedback, however, industry stakeholders have acknowledged that the issue in fact lies with the obligation to resolve errors generally for unverified accounts, stating that, as noted above, the exception from the provisional credit requirement does not provide meaningful relief. In addition, the Bureau understands that many financial institutions do in fact currently provide error resolution and limited liability protections for pre-verification unauthorized transfers and other errors once the consumer's identity has been verified, and therefore does not believe that this provision should be problematic for financial institutions.<sup>59</sup>

The Bureau is also proposing changes to the commentary accompanying § 1005.18(e). The proposed revisions to comment 18(e)-4 would align it with the proposed text of § 1005.18(e)(3) as well as add commentary from the 2014 Proposal to explain that, for an unauthorized transfer or other error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or other error is based on the

<sup>58</sup> Existing comment 18(e)-5 (to which the Bureau is proposing some modifications for clarity and consistency, as discussed below) makes clear that a financial institution may not delay completing its consumer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

<sup>59</sup> Comments on the 2017 Effective Date Proposal describing this issue suggested that the primary concern about providing error resolution and limited liability protections on unverified accounts is the lack of available information regarding the consumer for use in confirming whether an EFT was in fact authorized. Upon successful verification of the consumer's identity, however, the Bureau believes that financial institutions should have sufficient information to investigate alleged errors.

date the consumer contacts the financial institution to report the unauthorized transfer or other error, not the date the financial institution successfully completes its consumer identification and verification process. For an error asserted on a previously unverified account, the time limits for the financial institution's investigation pursuant to § 1005.11(c) would begin on the day following the date the financial institution successfully completed its consumer identification and verification process.

The Bureau is proposing to revise comments 18(e)-5 and -6 to more closely align with the proposed text of § 1005.18(e)(3) and to clarify the example provided in comment 18(e)-5 illustrating a situation where a financial institution has not successfully completed its consumer identification and verification process. Proposed comment 18(e)-5 would continue to make clear that financial institutions may not delay completing their consumer identification and verification processes or refuse to verify a consumer's identity in order to avoid investigating an error asserted by a consumer.<sup>60</sup>

The Bureau remains concerned, as it expressed in adopting the 2016 Final Rule, that consumers with prepaid accounts that have not been or cannot be verified would not have a right to Regulation E error resolution and limited liability protections under this proposal. However, the Bureau appreciates the concerns raised by industry that applying those protections to unverified prepaid accounts may increase fraud losses that could, in turn, lead financial institutions to stop offering prepaid accounts at retail that allow for immediate access to funds, provide refunds for accounts that fail verification via paper check, or make other policy changes that would decrease the availability or utility of prepaid accounts to consumers.<sup>61</sup>

<sup>60</sup> Under the proposed approach, the Bureau anticipates that when a consumer calls to assert an unauthorized transfer or other error on an unverified account that offers verification, the financial institution would inform the consumer of its policy regarding error resolution and limited liability on unverified accounts and would begin its consumer identification and verification process at that time. The Bureau also expects that the pre-acquisition disclosures regarding registration and deposit insurance, in § 1005.18(b)(2)(xi) and (b)(4)(iii), will help encourage consumers to register their prepaid accounts promptly.

<sup>61</sup> The Bureau also acknowledges that there is some risk that this proposal, if adopted, might increase the incentive for financial institutions to offer prepaid accounts for which there is no customer identification and verification process and are therefore excepted from error resolution and limited liability protections, although the Bureau

For example, the Bureau is concerned that consumers who are not able to complete the consumer identification and verification process successfully could experience days of serious financial disruption while waiting for a return of their funds by check. The Bureau is also aware that consumers use prepaid accounts for a variety of reasons, and that consumers who do not wish to submit their personal information for verification or who may not be able to have their identities verified would have few other options if financial institutions stop allowing any functionality prior to successful verification. Such consumers could choose instead to use open loop gift cards, for which there is not generally an identification and verification process, but in that case would not receive any of the other benefits of the Prepaid Accounts Rule. The Bureau seeks comment on the various tradeoffs to particular groups of consumers in these scenarios.

The Bureau has considered various alternatives to this proposal, and seeks comment on whether more tailored approaches would be workable. For example, the Bureau considered whether it might be appropriate to apply a different standard to prepaid accounts for which a consumer has attempted but failed to complete the consumer identification and verification process. The Bureau is concerned, however, that adding a third category of accounts would increase the complexity of the rule, and in particular that it may be difficult for financial institutions to determine whether a consumer has definitely "failed to complete" the process, as opposed to a delay in providing information requested by the financial institution.

The Bureau seeks comment on all aspects of this part of its proposal. In particular, the Bureau seeks comment on financial institutions' existing practices with respect to error resolution and limited liability on unverified accounts, including how those practices align or diverge from what the Bureau is proposing, and how those practices are currently explained to consumers. Information or data regarding the number or percentage of accounts or consumers that do not attempt the consumer identification and verification process, that do not complete the process, and that fail the process, as well as projections for fraudulently

believes that any such incentives would generally be outweighed by the potential benefits to the financial institution of encouraging consumers to register their prepaid accounts to increase the functionality and thus the longevity of the consumer's use of the account.

asserted errors and corresponding fraud losses under the 2016 Final Rule and the proposed approach, would be particularly useful. The Bureau also seeks comment on any disadvantages to the proposed approach, as well as the pros and cons of the alternatives discussed above. Relatedly, the Bureau seeks comment on whether there are any other alternative solutions that would better protect consumers with legitimate unauthorized transfers or other errors on unverified accounts while also limiting financial institutions' exposure to fraud.

#### Section 1005.19 Internet Posting of Prepaid Account Agreements

##### 19(b) Submission of Agreements to the Bureau

Section 1005.19 requires prepaid account issuers to post and submit agreements to the Bureau, pursuant to the Bureau's authority under EFTA sections 904(c) and 905(a) and sections 1022(c)(4) and 1032(a) of the Dodd-Frank Act.<sup>62</sup> As discussed in the section-by-section analyses that follow, the Bureau is proposing to narrow the scope of several aspects of § 1005.19(b) to facilitate compliance and reduce burden.

##### 19(b)(2) Amended Agreements

Section 1005.19(b)(1) requires issuers to make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Submissions must be made to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer a prepaid account agreement and must contain certain information, including other relevant parties to the agreement (such as the employer for a payroll card program).<sup>63</sup> As explained in the 2016 Final Rule, the Bureau believes that providing this information about each agreement will help the Bureau, consumers, and other parties locate agreements on the Bureau's Web site quickly and more effectively.<sup>64</sup> Section 1005.19(b)(2) currently provides that, if a prepaid account agreement previously submitted to the Bureau is amended, the issuer

must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective. Comment 19(a)(2)–1 provides examples of changes to an agreement that generally would be considered substantive, and therefore would be deemed amendments of the agreement.

Through its outreach efforts to industry regarding implementation, the Bureau learned that some industry stakeholders are concerned about needing to notify the Bureau every time relevant parties to a prepaid account agreement are added or removed, particularly in the payroll card context. The Bureau understands that while some payroll card programs are customized for specific employers, payroll card issuers often use a standard account agreement with multiple employers, so that new employers may be added or removed although the agreement itself is not revised. These stakeholders explained that changes to these employers as relevant parties to the agreement might occur on a somewhat frequent basis, and they were thus concerned about continually needing to notify the Bureau of these changes.

While the Bureau continues to believe that information about other relevant parties to agreements will be useful to the Bureau, consumers, and others, the Bureau acknowledges that reporting frequent changes of relevant parties to an agreement for an otherwise unchanging agreement could be time consuming for certain issuers. Therefore, the Bureau is proposing to revise § 1005.19(b)(2) to provide that an issuer may delay submitting a change in the names of other relevant parties to an agreement until such time as the issuer is submitting an amended agreement pursuant to proposed § 1005.19(b)(2) or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i), in lieu of submitting such a change no later than 30 days after the change becomes effective. The Bureau is also proposing to revise comment 19(a)(2)–1.vii to add a reference to § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau.

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on how often changes are made to the relevant parties to a prepaid account agreement, such as an employer or government agency, as well as how often changes are made to such agreements themselves. In addition, the Bureau seeks comment on whether there

are any alternative approaches the Bureau might adopt to reduce burden on issuers while still ensuring that information about other relevant parties is submitted in a timely manner, such as by requiring submission of updated information on other relevant parties at least once per quarter.

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

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

Section 1005.19(b)(6)(ii) provides that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. It further provides that the agreement or the addendum thereto must contain all of the fee information, which § 1005.19(a)(3) defines as the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). As explained in the 2016 Final Rule, the Bureau believed that permitting issuers to include the short form and long form disclosures together as part of the prepaid account agreement or in a single addendum to that agreement would provide issuers some flexibility, while ensuring that consumers and other parties reviewing the agreements have access to such information.<sup>65</sup>

Upon further consideration, the Bureau is concerned that permitting the short form and long form disclosures to be included either as part of the prepaid account agreement or in a single addendum might not provide issuers the flexibility the Bureau intended. Given the form and content requirements of the short form and long form disclosures, the Bureau expects that many issuers will likely create two separate documents, making the task of combining the documents into the agreement or a single addendum potentially unnecessarily complex. Therefore, the Bureau is proposing to revise § 1005.19(b)(6)(ii) to allow issuers to submit the pre-acquisition disclosures either as one or separate addenda. Specifically, proposed § 1005.19(b)(6)(ii) would provide that fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the long form disclosure for the prepaid account pursuant to

<sup>62</sup> 15 U.S.C. 1693b(c) and 1693c(a); 12 U.S.C. 5512(c)(4) and 5532(a).

<sup>63</sup> Specifically, § 1005.19(b)(1)(i) requires issuers to submit identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number); the effective date of the prepaid account agreement; the name of the program manager, if any; and the names of other relevant parties, if applicable (such as the employer for a payroll card program or the agency for a government benefit program).

<sup>64</sup> 81 FR 83934, 84136 (Nov. 22, 2016).

<sup>65</sup> *Id.* at 84143.



§ 1005.18(b)(4). The agreement or addenda thereto must contain all of the fee information, as defined by § 1005.19(a)(3).

Relatedly, the Bureau is proposing to make conforming changes to § 1005.19(b)(6)(iii) and comment 19(b)(6)–3, which govern the requirements for integrated prepaid account agreements and which reference an optional fee information addendum, to reflect the proposed changes to § 1005.19(b)(6)(ii).

The Bureau seeks comment on this aspect of the proposal. The Bureau additionally seeks comment on whether it should make further modifications to this requirement, such as requiring (rather than permitting) the short form disclosure to be provided as an addendum or as a separate document.

#### 19(f) Effective Date

Section 1005.19(f)(1) establishes that the April 1, 2018 effective date of the Prepaid Accounts Rule<sup>66</sup> applies to the requirements of § 1005.19, with the exception of § 1005.19(b), which governs the requirements to submit prepaid account agreements to the Bureau on a rolling basis. Section 1005.19(f)(2) currently provides that the effective date for the submission requirements in § 1005.19(b) is October 1, 2018; issuers must submit to the Bureau any prepaid account agreements they are offering as of October 1, 2018 no later than October 31, 2018.

The Bureau continues to believe that the October 1, 2018 effective date for § 1005.19(b) is appropriate and is working to develop a streamlined electronic submission process, which it expects will be fully operational before the October 1, 2018 effective date. The Bureau is proposing to make clarifications related to how the October 1, 2018 effective date is described in § 1005.19(f)(2) and comment 19(f)–1 to avoid any potential confusion between the delayed effective date for § 1005.19(b) and the Bureau's recent six-month delay of the general effective date of the Prepaid Accounts Rule, to April 1, 2018.<sup>67</sup> Specifically, the Bureau is proposing to refer to the October 1, 2018 effective date in the regulatory text and commentary as a compliance date, instead of as a delayed effective date. The Bureau is also proposing to make other minor clarifying revisions to § 1005.19(f)(2) and comment 19(f)–1 to

<sup>66</sup> The 2017 Effective Date Final Rule extended the original October 1, 2017 general effective date of the prepaid accounts final rule by six months, to April 1, 2018. 82 FR 18975 (Apr. 25, 2017).

<sup>67</sup> *Id.*

align with the regulatory text of § 1005.19(b)(1).

The Bureau seeks comment on this aspect of the proposal.

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

Current Appendix A–7(c) provides model language for use by a financial institution that chooses not to provide provisional credit while investigating an alleged error for prepaid accounts for which it has not completed its consumer identification and verification process. The Bureau is proposing to revise that model language to reflect the proposed amendments to § 1005.18(d)(1)(ii) and (e)(3). This proposed language is similar to the language used in the 2014 Proposal, with additional language to clarify that limited liability and error resolution rights would apply only upon successful verification of the consumer's identity.<sup>68</sup>

The proposed model language would read: “It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to [Internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity. Once we have done so, we will address your complaint or question as set forth above.”

The Bureau seeks comment on the proposed revisions to this model language.

#### Regulation Z

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

##### Section 1026.61 Hybrid Prepaid-Credit Cards

##### 61(a) Hybrid Prepaid-Credit Card

##### 61(a)(5) Definitions

##### 61(a)(5)(iii)

In the 2016 Final Rule, the Bureau amended Regulations Z and E to

<sup>68</sup> The Bureau tested a version of this proposed model language with consumers as part of its pre-proposal disclosure testing. See 79 FR 77101, 77203 and n.327 (Dec. 23, 2014) and ICF Int'l, *ICF Report: Summary of Findings: Design and Testing of Prepaid Card Fee Disclosures*, at 23 (Nov. 2014), available at [https://www.consumerfinance.gov/documents/4776/201411\\_cfpb\\_summary-findings-design-testing-prepaid-card-disclosures.pdf](https://www.consumerfinance.gov/documents/4776/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf).

establish a set of requirements in connection with “hybrid prepaid-credit cards” that can access overdraft credit features offered by the prepaid account issuer, its affiliate, or its business partner.<sup>69</sup> The Bureau was concerned about overdraft credit features that are associated with prepaid accounts in part because of the way that such services have evolved on traditional checking accounts. As explained in detail in the 2016 Final Rule, checking overdraft originally developed as an occasional courtesy to consumers by honoring checks that would otherwise overdraw their accounts, and was exempted from the normal rules governing credit under Regulation Z. As debit card use expanded and fees rose, overdrafts increased substantially and depository institutions changed their account pricing structures in part in reliance on overdraft income. In the 2016 Final Rule, the Bureau noted that a substantial number of consumers have moved to prepaid accounts specifically because they have had difficult experiences with overdraft services on traditional checking accounts, and that prepaid account providers have frequently marketed their products as safer and easier to use than comparable products with credit features. In light of these and other considerations, the Bureau concluded that it was appropriate to apply traditional credit card rules to overdraft credit features accessible by hybrid prepaid-credit cards, as well as a short list of tailored provisions established by the 2016 Final Rule to reduce the risk that consumers would experience problems in accessing and managing their prepaid accounts that are linked to such credit features.<sup>70</sup>

Overdraft credit features accessible by hybrid prepaid-credit cards are referred to as “covered separate credit features” in the Prepaid Accounts Rule, as set forth in current § 1026.61(a)(2)(i). The Bureau designed this portion of the Prepaid Accounts Rule to ensure that these products would be treated consistently regardless of certain details about how the credit relationship was structured. For example, the rules for covered separate credit features accessible by hybrid prepaid-credit cards apply regardless of whether the credit is offered by the prepaid account issuer itself, its affiliate, or its business partner. Specifically, current § 1026.61(a)(5)(iii) defines the term

<sup>69</sup> Under the Prepaid Accounts Rule, overdraft credit features involve credit that can be accessed from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

<sup>70</sup> 81 FR 83934, 84158–61 (Nov. 22, 2016).

“business partner” as a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate. Current comment 61(a)(5)(iii)–1 explains that there are two types of arrangements that create a business partner relationship for purposes of current § 1026.61(a)(5)(iii): (1) An agreement between the parties under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) a cross-marketing or other similar agreement between the parties to cross-market the credit feature or the prepaid account, where the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

As explained in the 2016 Final Rule, the Bureau believed that it was appropriate to consider a third party that can extend credit to be the prepaid account issuer’s business partner in the above circumstances because such arrangements can be used to replicate overdraft programs on a prepaid account. Specifically, the Bureau believed that these types of relationships between the prepaid account issuer and the unaffiliated third party are likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related.<sup>71</sup>

Thus, the Bureau believed that it was appropriate to consider these entities to be business partners in this context, although it did not apply the rules related to hybrid prepaid-credit cards in situations in which there is less of a connection between the party offering credit and the prepaid account issuer, such that the person offering credit may not be aware its credit feature is being used as an overdraft credit feature with respect to a prepaid account.<sup>72</sup> This could occur if the prepaid account issuer allows consumers to link their prepaid cards to credit card accounts offered by unrelated third party card issuers.<sup>73</sup> Where the two parties do not

have a business arrangement or where the prepaid card cannot be used from time to time to draw, transfer, or authorize a draw or transfer of credit in the course of a transaction with the prepaid account, the separate credit feature is deemed a “non-covered separate credit feature” as set forth in current § 1026.61(a)(2)(ii) and does not trigger the Prepaid Accounts Rule provisions governing hybrid prepaid-credit cards, though it generally will be subject to Regulation Z in its own right.

Since issuance of the 2016 Final Rule, the Bureau has received feedback indicating digital wallet providers were concerned that application of the substantive rules in certain circumstances would create a number of unique challenges for their products. Unlike a general purpose reloadable prepaid card, which is generally designed to be used as a standalone product similar to a checking account, a digital wallet is a product that by its nature is generally intended to facilitate the consumer’s use of multiple payment options in online and mobile transactions, similar to a physical wallet holding credit and debit cards as well as cash. As set forth in Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6, the term “prepaid account” includes digital wallets that are capable of being loaded with funds; those that simply hold payment credentials for other accounts but that are incapable of having funds stored in them are not covered. Some digital wallets provide *both* types of functionality. Accordingly, even where a digital wallet provides the ability to hold funds directly, consumers also may want to store credentials for their existing credit, debit, and prepaid cards and deposit accounts so that they have a range of payment options available. These digital wallet providers may actively encourage consumers to use both functions, either by direct marketing to consumers or through joint arrangements with card issuers.

As detailed below, the Bureau has considered the feedback received through comments on the 2017 Effective Date Proposal and through its outreach efforts to industry regarding implementation, and believes that it is appropriate to consider creating a limited exception from the definition of “business partner” that would exclude

creditor would have no reason to think that the provisions in the Prepaid Accounts Rule tailored to hybrid prepaid-credit cards would apply to its product. The Bureau was concerned that card issuers might try to mitigate compliance risk in ways that would make it harder for prepaid account consumers to access credit. 81 FR 83934, 84253 (Nov. 22, 2016).

certain arrangements between companies that offer credit card accounts and companies that offer prepaid accounts (including digital wallet providers) from the tailored provisions in the Prepaid Accounts Rule applicable to covered separate credit features accessible by hybrid prepaid-credit cards. As explained below, where the credit card products would already be subject to traditional credit card rules under Regulation Z and certain other safeguards are present, the Bureau believes that it may not be necessary to apply the Prepaid Accounts Rule’s tailored provisions to such business arrangements. Rather, the Bureau is proposing to treat such products as “non-covered separate credit features,” comparable to situations in which a prepaid account issuer allows a consumer to link a prepaid account to a credit card account offered by a company that does not have a business arrangement with the prepaid account issuer.

#### Comments Received on the 2017 Effective Date Proposal

In response to the 2017 Effective Date Proposal, a digital wallet provider whose product can store funds (such that its digital wallet accounts are prepaid accounts under Regulation E § 1005.2(b)(3)) submitted a comment raising several concerns about the account number for the digital wallet account becoming a hybrid prepaid-credit card where consumers link their digital wallet accounts to credit card accounts that are offered by companies with which the wallet provider has cross-marketing or other agreements that would create a business partner relationship under current § 1026.61(a)(5)(iii).

First, the commenter pointed to a requirement in § 1026.61(c) that generally requires a card issuer to wait 30 days after a prepaid account has been registered before soliciting or opening new credit features or linking existing credit features to the prepaid account that would be accessible by a hybrid prepaid-credit card. The commenter expressed concern that this requirement would delay a consumer’s ability to link credit card accounts offered by its business partners to the digital wallet account, noting that where a digital wallet provider has entered into a business partner arrangement with Issuer A but not Issuer B, consumers could add Issuer B’s credit card accounts to their digital wallet accounts immediately after opening the digital wallet accounts, but could not add Issuer A’s credit card accounts for a period of 30 days after the digital wallet

<sup>71</sup> *Id.* at 84253 (Nov. 22, 2016).

<sup>72</sup> *See id.* at 84252–53.

<sup>73</sup> The unaffiliated third party creditor might not realize that its credit feature is accessible by a prepaid card in the course of transaction, so that the

accounts are registered because Issuer A is a business partner of the digital wallet provider. The commenter asserted that the policy concerns underlying the Bureau's decision to impose the 30-day waiting period are inapplicable to digital wallet accounts in these circumstances and that such a delay would likely lead to consumer confusion and reduced consumer choice.

Second, the commenter indicated that additional consumer confusion is likely to arise from the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii), which mandate that disclosures of key credit pricing terms set forth in § 1026.60(e)(1) be included on a prepaid account's long form disclosure if a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to a consumer in connection with the prepaid account. The commenter indicated that these credit disclosures for each credit card product offered by each business partner would have to be provided to all new digital wallet account holders in the digital wallet account's long form disclosure even if many of the digital wallet account holders never hold, or apply for, credit card accounts offered by those business partners. The commenter indicated that such disclosures might be numerous depending on how many business partners the digital wallet provider has and how many credit card products are offered by each business partner and asserted that additional consumer confusion was likely to arise from the inclusion of those disclosures in the long form for its digital wallet accounts.

Third, the commenter raised concerns about an exception in § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit in the course of administering the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The Bureau created this provision to allow prepaid account issuers to provide certain forms of incidental credit to their customers, including situations where a negative balance results because a consumer is allowed to complete transactions with his or her prepaid account while an incoming load of funds from an asset account is still being processed.<sup>74</sup>

<sup>74</sup> This exception is intended to except three types of incidental credit so long as the prepaid account issuer generally does not charge credit-related fees for the credit: (1) Credit related to "force pay" transactions; (2) a de minimis \$10 payment cushion; and (3) a delayed load cushion

However, to limit evasion, the exception only applies where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer generally does not charge credit-related fees; and (3) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit). The commenter pointed out that it could not take advantage of the exception in situations in which a customer links a credit card account offered by a business partner of the digital wallet provider. Rather, the rule would prohibit negative balances and instead require that even the incidental credit be obtained using the covered separate credit feature that is subject to the full protections of Regulation Z. The commenter expressed concern that this could cause consumer confusion and make it more likely that consumers would be charged fees or interest because the incidental credit would be provided formally via the separate credit feature, rather than as a temporary negative balance on the asset account.

To avoid these various concerns, the commenter suggested two changes to the provisions in Regulation Z and its commentary that were adopted as part of the 2016 Final Rule. First, the commenter suggested that the Bureau amend the commentary to the definition of "business partner" in current § 1026.61(a)(5)(iii) to restrict it to situations in which a person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. Second, the commenter suggested that the Bureau amend § 1026.61(a)(4) and its commentary to permit incidental credit to be provided via negative balances on a prepaid account even when a covered separate credit feature is connected to the prepaid account, as long as the other

where credit is extended while a load of funds from an asset account is pending.

prerequisites contained in § 1026.61(a)(4)(ii) are satisfied.

#### Overview of the Regulation Z Proposal

In light of the feedback described above, the Bureau believes that it may be appropriate to narrow the definition of "business partner" in current § 1026.61(a)(5)(iii) to exclude certain arrangements between prepaid account issuers and companies that offer products already subject to traditional credit card rules, provided that certain additional safeguards are in place. Most importantly, these safeguards include restrictions to ensure that the prepaid and credit card accounts are priced independent of the linkage. As described further below, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to propose to exercise its exception authority under TILA section 105(a) so that a prepaid card that is linked to a credit card account meeting the conditions in proposed § 1026.61(a)(5)(iii)(D) would be excluded from the definition of "credit card" under TILA section 103(I)<sup>75</sup> and Regulation Z § 1026.2(a)(15)(i). Under the proposed exception, the prepaid account issuer and the card issuer would not be "business partners" under § 1026.61(a)(5)(iii) and thus the prepaid card would not be a "hybrid prepaid-credit card" under § 1026.61(a)(2)(i) with respect to the credit card account if certain conditions are met. The proposed exception would facilitate compliance by allowing the card issuer to comply with the rules in Regulation Z that already apply to the credit card account without also requiring the card issuer or the prepaid account issuer to comply with the tailored provisions in Regulations Z and E that were adopted in the 2016 Final Rule.<sup>76</sup>

To effectuate this potential exception, the Bureau is proposing several revisions to the definition of "business partner" in current § 1026.61(a)(5)(iii). First, the Bureau is proposing to make technical revisions to current § 1026.61(a)(5)(iii) by moving certain guidance on when there is an arrangement between business partners from current comment 61(a)(5)(iii)-1 to the regulatory text itself in proposed § 1026.61(a)(5)(iii)(A) through (C), and to revise this language for clarity, as discussed in more detail below. In

<sup>75</sup> 15 U.S.C. 1602(I).

<sup>76</sup> For the same reasons, the Bureau declines to extend the additional tailored provisions of the Prepaid Accounts Rule authorized under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and EFTA section 904(c) to these cards that are excluded from coverage as hybrid prepaid-credit cards.

particular, this proposed change would include moving the descriptions of the two types of arrangements that trigger coverage as business partners to proposed § 1026.61(a)(5)(iii)(B) and (C).<sup>77</sup>

Second, in response to concerns raised by the digital wallet provider, the Bureau is proposing to add an exception in § 1026.61(a)(5)(iii)(D) to the definition of “business partner.” Specifically, proposed § 1026.61(a)(5)(iii)(D) would provide that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with regard to such credit card account if all of the following conditions are met:

(1) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(2) The prepaid account issuer and the card issuer will not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above.

(3) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(2).

<sup>77</sup> As noted above, the two types of arrangements are: (1) Agreements between the person that can extend credit or its affiliate with the prepaid account issuer or its affiliate under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) cross-marketing or other similar agreement between the person that can extend credit or its affiliate with the prepaid account issuer or its affiliate to cross-market the credit feature or the prepaid account, and at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card can from time to time draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

(4) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(2) as it applies to the consumer’s prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from a credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer’s prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement.

(5) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(2) as it applies to the consumer’s credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Each of these conditions is discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(1), (2), (3), (4), and (5) below, respectively.

The Bureau is not proposing to specifically tailor the proposed exception to digital wallet accounts because the Bureau believes that it may be difficult to distinguish these digital wallet accounts from other types of prepaid accounts, particularly those that operate without a physical access device. Nonetheless, the Bureau believes that the proposed exception will address most of the concerns raised by the digital wallet provider, as discussed above. While prepaid account issuers do not generally permit card-based prepaid accounts to be linked to credit card accounts in order to back up transactions where the prepaid account is lacking sufficient funds, the Bureau believes that the potential risk to consumers if issuers were to do so would also be minimal if the conditions in proposed § 1026.61(a)(5)(iii)(D) were met.

If the exception in proposed § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through a credit card account that can be linked to a prepaid account would not be a business partner of the prepaid account issuer with which it has an arrangement

as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with respect to the credit card account. The credit feature would be subject to traditional credit card rules in its own right because one of the conditions for the proposed exception is that the credit feature be a credit card account under an open-end (not home-secured) consumer credit plan, as would be required by proposed § 1026.61(a)(5)(iii)(D)(1). The prepaid card that is linked to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2) would not be a hybrid prepaid credit-card with respect to that credit card account, and thus the Prepaid Accounts Rule’s tailored provisions applicable in connection with covered separate credit features accessible by hybrid prepaid-credit cards would not apply, such as the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii).<sup>78</sup> In addition, when the exception in proposed § 1026.61(a)(5)(iii)(D) applies, the fact that the prepaid card can access the credit card account would not prevent the prepaid account issuer from providing incidental credit through a negative balance on the linked prepaid account if the conditions of § 1026.61(a)(4) are met.

The Bureau believes that if the conditions of the proposed exception are met, an exception from coverage as a “covered separate credit feature” accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i) would be appropriate to facilitate compliance and is consistent with the consumer protection purposes of TILA. First, the credit card account would be subject to the credit card rules in Regulation Z in its own right because it would be a credit card account under an open-end (not home-secured) consumer credit plan that the consumer can access with

<sup>78</sup> Other provisions in Regulations Z and E setting forth additional protections that only apply to covered separate credit features accessible by a hybrid prepaid-credit card or to prepaid accounts that are connected to such credit features include:

(1) Restriction in Regulation E § 1026.18(g) on account terms, conditions, and features imposed on the asset feature of the prepaid account and applicability of the fee restriction in § 1026.52(a) to certain fees imposed on the asset feature of the prepaid account;

(2) Repayment-related provisions applicable to covered separate credit features in §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12(d)(2) and (3), and Regulation E § 1005.10(e)(1);

(3) Applicability of the claims and defenses provision in § 1026.12(c); and

(4) Applicability of limits on liability for unauthorized use and error resolution provisions in §§ 1026.12(b) and 1026.13 and Regulation E § 1005.12(a).

a traditional credit card, pursuant to proposed § 1026.61(a)(5)(iii)(D)(1). Thus, the linked credit feature would still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan.

Second, the Bureau believes that the conditions of the exception would create substantial safeguards to protect against the prepaid account and the credit card account being connected in a way that would pose the kinds of risks to consumers that motivated the Bureau's approach to the general rules for covered separate credit features accessible by hybrid prepaid-credit cards. For example, the 30-day waiting period in § 1026.61(c) was designed to ensure that consumers do not feel undue pressure to decide at the time that they purchase or register a prepaid account whether to link a covered separate credit feature to such account without having the opportunity to fully consider the terms of the prepaid account, the separate credit feature, and the consequences of linking the two.<sup>79</sup> The Bureau also carefully crafted rules to govern the pricing for prepaid accounts and covered separate credit features upon linkage via a hybrid prepaid-credit card, and the disclosure thereof, to better ensure that the consumer could understand the cost and consequences of linking credit to a prepaid account. The Bureau believes that these requirements may not be necessary when the safeguards of the exception are met because those safeguards will help make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure. In particular, the Bureau has tailored the proposed exception to ensure that it is limited to traditional credit card accounts already covered by Regulation Z's open-end credit card rules and that the consumer could not be required to link the prepaid account and the credit card account to obtain or retain either account. In addition, to qualify for the proposed exception, certain terms and conditions that apply to the credit card account and the prepaid account must be the same regardless of whether the two accounts are linked. Thus, the consequences to the consumer of linking the two accounts are less complex. As discussed in more detail below, the Bureau believes that when the conditions of the proposed exception are met, it may not be necessary to apply the 30-day waiting period in § 1026.61(c) or the other

additional protections in Regulations Z and E that are applicable only to covered separate credit features or to prepaid accounts that are connected to covered separate credit features.<sup>80</sup>

The Bureau solicits comment generally on the proposed exception in § 1026.61(a)(5)(iii)(D).<sup>81</sup> The Bureau also solicits comment on the proposed scope of this exception to apply to all types of prepaid accounts, rather than limiting its applicability to digital wallets, and whether that general applicability would pose challenges for particular types of prepaid accounts. The Bureau further solicits comment on whether any alternative or additional conditions should be added in order to qualify for the proposed exception in § 1026.61(a)(5)(iii)(D).

The Bureau also considered the suggestion by the digital wallet provider that the Bureau amend the commentary accompanying the definition of "business partner" in § 1026.61(a)(5)(iii) to restrict it to situations in which a person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. The Bureau believes that the proposed exception would provide clearer guidance to industry regarding which credit features would qualify for the exception, thereby reducing potential confusion relative to this alternative. In addition, the Bureau's proposed approach, which provides for a more narrowly tailored exception to the definition of "business partner," would ensure that substantial safeguards are in place to protect against the prepaid account and the credit card account being connected in a way that

<sup>80</sup> The Bureau believes that ensuring separation and independence is more complicated when both accounts are issued by entities under common control, particularly given that offset, security interests, and other types of linkages may be present. Therefore the Bureau believes that the Prepaid Accounts Rule's tailored protections, including the 30-day waiting period, are warranted in such cases and is not proposing to apply the exception where the prepaid account issuer or its affiliate is offering the credit card account.

<sup>81</sup> In the section-by-section analyses that follow, the Bureau also solicits comment and poses questions about particular aspects of specific portions of the proposed exception.

would pose the kinds of risks to consumers that motivated the Bureau's approach to the general rules for covered separate credit features accessible by hybrid prepaid-credit cards.

As discussed above, the digital wallet provider also requested that the Bureau amend § 1026.61(a)(4) and its commentary to permit incidental credit to be provided via negative balance on a prepaid account even when a covered separate credit feature is connected to the prepaid account, so long as the other prerequisites contained in § 1026.61(a)(4)(ii) are satisfied. The Bureau is not proposing such changes. As noted above, the Bureau believes that the proposed exception would address the commenter's concern by substantially narrowing the circumstances in which digital wallets would be likely to trigger these Regulation Z requirements. However, where the conditions of the proposed exception are not met, the Bureau believes that the structure and terms, conditions, or features of the prepaid account and the credit card account are sufficiently connected such that the protections set forth in the Prepaid Accounts Rule should apply, including the provisions in § 1026.61(a)(4) and (b) that prohibit incidental credit from being provided via negative balance on a prepaid account when a covered separate credit feature is connected. The Bureau believes that when the proposed exception does not apply, the prepaid account issuer and the card issuer will have a substantial relationship such that the parties can avoid the concerns raised by the digital wallet provider by structuring the terms of the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account.

Nevertheless, the Bureau solicits comment on whether it should permit incidental credit to be provided via negative balance on a prepaid account even when a covered separate credit feature is connected to the prepaid account, as requested by the digital wallet commenter. The Bureau also solicits comment on whether prepaid account issuers or card issuers are likely to incur any significant difficulties in structuring the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account, such as any significant difficulties in identifying for the card issuer which transactions on the prepaid account relate to incidental credit.

<sup>79</sup> 81 FR 83934, 84268 (Nov. 22, 2016).

## 61(a)(5)(iii)(A) Through (C)

Current § 1026.61(a)(5)(iii) defines the term “business partner” for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards generally to mean a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate. The Bureau is proposing generally to retain this language in proposed § 1026.61(a)(5)(iii) with a revision to reference the proposed exception in § 1026.61(a)(5)(iii)(D).

Current comment 61(a)(5)(iii)–1 describes the two types of business arrangements that create a business partnership for purposes of the rule, separately provided in paragraphs i and ii. The Bureau is proposing to move most of this language into the regulatory text, with introductory language in proposed § 1026.61(a)(5)(iii)(A) and the two types of business arrangements described in proposed § 1026.61(a)(5)(iii)(B) and (C), respectively, with small revisions for clarity. The Bureau is also proposing to consolidate the language regarding membership in card networks or payment networks that appears in current comments 61(a)(5)(iii)–1.i and ii in a new proposed comment 61(a)(5)(iii)–1, which would explain that a draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network, but emphasize that for the purposes of proposed § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an “agreement” or a “business, marketing, or promotional agreement or other arrangement” described in proposed § 1026.61(a)(5)(iii)(B) or (C), respectively. The Bureau is not proposing any changes to comment 61(a)(5)(iii)–2.

## 61(a)(5)(iii)(D)

For the reasons set forth in the *Overview of the Regulation Z Proposal* above, the Bureau is proposing to add an exception in proposed § 1026.61(a)(5)(iii)(D) to the definition of “business partner.” Specifically, proposed § 1026.61(a)(5)(iii)(D) would provide that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with

regard to such credit card account if certain conditions are met. The conditions are broadly designed to ensure that the credit card account would be subject to Regulation Z credit card requirements in its own right and that the acquisition, retention, and pricing terms of the prepaid account and credit card account would not depend on whether a consumer authorizes the linking of the two accounts to allow the prepaid card to access credit from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Each of the proposed conditions is discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(1), (2), (3), (4) and (5) below, respectively.

Proposed comment 61(a)(5)(iii)(D)–1 would provide that if the exception in proposed § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through the credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C). Accordingly, in those cases where a consumer has authorized his or her prepaid card in accordance with proposed § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2), the linked prepaid card would not be a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account would be a non-covered separate credit feature as discussed in § 1026.61(a)(2)(ii). The proposed comment would further note that in this case, by definition, the linked credit card account would be subject to the credit card rules in Regulation Z in its own right because it would be a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(1).

## 61(a)(5)(iii)(D)(1)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(1), the credit card account at issue must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. Proposed comment 61(a)(5)(iii)(D)(1)–1 would explain that for purposes of the proposed exception, the term “traditional credit card” would mean a

credit card that is not a hybrid prepaid-credit card. Thus, the condition in proposed § 1026.61(a)(5)(iii)(D)(1) would not be satisfied if the only credit card that a consumer can use to access the credit card account under an open-end (not home-secured) consumer credit plan is a hybrid prepaid-credit card.

As discussed in the *Overview of the Regulation Z Proposal* above, this proposed condition would ensure that the exception only applies to credit features subject to the full protections of the credit card rules in Regulation Z that are applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. As discussed in the 2016 Final Rule, these protections include a range of requirements governing pricing, restrictions on repayment terms, limits on liability for unauthorized use, and requirements that card issuers must assess the consumer’s ability to pay the credit before opening the account. The pricing protections include restrictions on the fees that an issuer can charge during the first year after an account is opened, and limits on the instances in which and the amount of fees that issuers can charge as penalty fees when a consumer makes a late payment or exceeds his or her credit limit. The protections also restrict the circumstances under which issuers can increase interest rates on credit card accounts and establishes procedures for doing so. As explained in the 2016 Final Rule, the Bureau believed that applying these protections to overdraft features in connection with prepaid accounts would promote transparent pricing for prepaid account holders.<sup>82</sup>

## 61(a)(5)(iii)(D)(2)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(2), the prepaid account issuer and the card issuer would be prohibited from allowing the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above. To aid compliance with the proposed exception, proposed comment 61(a)(5)(iii)(D)(2)–1 would explain that any account holder on

<sup>82</sup> 81 FR 83934, 84161 (Nov. 22, 2016).

either the prepaid account or the credit feature may make the written request.

The Bureau believes that this condition, in combination with others described further below, would help to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account so as to access credit from time to time in the course of transactions conducted with the prepaid card. In particular, it would help to underscore to consumers that the prepaid account and credit card account are not required to be linked in order for the consumer to obtain or retain the two accounts, and to ensure that consumers have made a deliberate affirmative decision before authorizing such a link. Two of the tailored provisions adopted in the 2016 Final Rule—the 30-day waiting period in § 1026.61(c), and the requirement in Regulation E § 1005.18(b)(4)(vii) to provide certain credit disclosures in the prepaid long form disclosure—were similarly designed to promote deliberative decision making without undue pressure. The Bureau believes that it may not be necessary to apply these tailored provisions to a credit card account when the conditions of the proposed exception are met, given that detailed application and solicitation disclosures for the credit card account still would be required under § 1026.60 and the other conditions in proposed § 1026.61(a)(5)(iii)(D) would make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. Specifically, as described below, to satisfy the condition in proposed § 1026.61(a)(5)(iii)(D)(3), a prepaid account issuer and a card issuer could not condition the acquisition or retention of either account upon whether a consumer authorized linking the two accounts together, and proposed § 1026.61(a)(5)(iii)(D)(4) and (5) are designed to ensure that certain terms and conditions (including pricing) that apply to the two accounts are not dependent on whether they are linked.

The Bureau solicits comment on the procedures that digital wallet providers currently use to obtain a consumer's consent to connect a credit card account to a digital wallet account. The Bureau also solicits comment on the procedures that prepaid account issuers use to connect a credit card to a prepaid account generally, if any. In addition, the Bureau solicits comment on whether there are alternative options that the Bureau should consider to ensure that consumers understand that the prepaid account and the credit card account are

not required to be linked for the consumer to obtain or retain the two accounts, and to ensure that consumers are making a deliberate affirmative decision before authorizing such a link.

#### 61(a)(5)(iii)(D)(3)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(3), the prepaid account issuer and the card issuer must not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2).

For the same reasons described above in connection with proposed § 1026.61(a)(5)(iii)(D)(2), the Bureau believes that this condition would help to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account. As described above, the Bureau believes that the prohibition on conditioning the acquisition or retention of the two accounts, in combination with the other conditions discussed above in connection with proposed § 1026.61(a)(5)(iii)(D)(2), would help to obviate the need for the tailored protections adopted in the 2016 Final Rule concerning the 30-day waiting period in § 1026.61(c) for linking a prepaid account to a covered separate credit feature, and the credit disclosures under Regulation E § 1026.18(b)(4)(vii) required to be provided in the prepaid account's pre-acquisition long form disclosure in connection with covered separate credit features.

#### 61(a)(5)(iii)(D)(4)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(4), the prepaid account issuer must apply the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2) as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer must apply the same fees to load funds from a credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Each

of these conditions is discussed in more detail below.

Proposed comment 61(a)(5)(iii)(D)(4)–1 would provide examples of the types of account terms, conditions, and features that would be subject to the conditions set forth in proposed § 1026.61(a)(5)(iii)(D)(4), underscoring that it applies both to pricing and to such items as account access devices, minimum balance requirements, and account features such as online bill payment services.

Same terms, conditions, and features on the prepaid account regardless of whether the prepaid account is linked to the credit card account. With respect to the first condition set forth in proposed § 1026.61(a)(5)(iii)(D)(4), proposed comment 61(a)(5)(iii)(D)(4)–2 would provide an example of impermissible variations in account terms under this condition in proposed § 1026.61(a)(5)(iii)(D)(4). For example, a prepaid account issuer would not satisfy this condition if it provides on a consumer's prepaid account reward points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2), while not providing such reward points or cash back on the consumer's account if the consumer has not authorized such a linkage.

The Bureau believes that an appropriate comparison for purposes of proposed § 1026.61(a)(5)(iii)(D)(4) would be between the terms of the consumer's prepaid account when the two accounts are linked and the terms of the consumer's prepaid account when the consumer has not authorized such a linkage. This proposed approach would ensure that the pre-acquisition disclosures provided to the consumer with respect to his or her prepaid account reflect the same terms, conditions, and features regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. This proposed standard also is consistent with the comparison standard proposed under § 1026.61(a)(5)(iii)(D)(5), where the card issuer would compare the specified terms and conditions on the consumer's credit card account if there is a link to the prepaid account with the specified terms and conditions that apply to the consumer's account if there is no such link. The Bureau believes that the proposed approach for the comparison

of terms, conditions, and features on the consumer's prepaid account would aid compliance by ensuring that a consistent comparison approach can be used for both the prepaid account and the credit card account (which is addressed in proposed § 1026.61(a)(5)(iii)(D)(5), discussed below).<sup>83</sup>

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(4) and comment 61(a)(5)(iii)(D)(4)–2 provide an appropriate standard for comparing account terms, conditions, and features offered on the prepaid account for purposes of the proposed exception, and if not, what alternative standard the Bureau should adopt. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard, and if so, what additional guidance is needed.

*Same load fees.* Proposed § 1026.61(a)(5)(iii)(D)(4) also would provide a standard for comparing load fees for credit extensions from the credit card account that is linked to the prepaid account as described in proposed § 1026.61(a)(5)(iii)(D)(2). For these fees, to satisfy the conditions of proposed § 1026.61(a)(5)(iii)(D)(4), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an

arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Proposed comment 61(a)(5)(iii)(D)(4)–3 would provide an example to illustrate this proposed condition. Specifically, the proposed comment would provide that a prepaid account issuer would not satisfy this condition if it charges on the consumer's prepaid account \$0.50 to load funds in the course of a transaction from the credit card account offered by a card issuer with which the prepaid account issuer has an arrangement as discussed in proposed § 1026.61(a)(5)(iii)(A) through (C), but \$1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have such an arrangement.

The Bureau believes that the proposed standard would provide an appropriate test with regard to comparing load fees by focusing specifically on what fees are charged on the consumer's prepaid account in a comparable load from a separate credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C). The Bureau believes that this approach would facilitate compliance and is appropriate given that the proposed exception in § 1026.61(a)(5)(iii)(D) would most likely be used with respect to digital wallet accounts that consumers may choose to associate with multiple credit card accounts, including those offered by unaffiliated third parties.<sup>84</sup> The Bureau believes that

ensuring that the terms, conditions, and features of the consumer's prepaid account do not depend on whether the consumer authorizes a link with the credit card account as provided for in proposed § 1026.61(a)(5)(iii)(D)(2) is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(2) above, the fact that the prepaid account terms, conditions, and features cannot vary based on whether the consumer authorizes a linkage would make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex, thus, along with the other conditions, would help to obviate the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the condition would help to ensure that certain terms and conditions of the prepaid account and the credit card account operate independent of whether the two accounts are linked and restrict the kind of price restructuring that the Bureau observed with regard to overdraft service programs on checking accounts and that various provisions adopted in the 2016 Final Rule were designed to address.<sup>85</sup>

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(4) provides an appropriate standard for comparable load fees imposed on the prepaid account, and if not, what the appropriate standard for comparable load fees should be. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard,

<sup>83</sup> This proposed approach for comparison of the terms, conditions and features on the prepaid account differs from the approach used in the 2016 Final Rule for comparing the terms, conditions, and features of the prepaid account when a covered separate credit feature is connected with the prepaid account. See § 1026.4(b)(11) and Regulation E § 1026.18(g). For those provisions, the approach used is to compare the terms, conditions, and features of prepaid accounts held by different consumers in the same prepaid program. While these two approaches might yield similar results in comparing the terms, conditions, and features on the prepaid account, the Bureau believes that the approach set forth in the 2016 Final Rule would not be appropriate with respect to comparing specified terms and conditions on the credit card account because risk-based pricing might cause one consumer's pricing to differ from another consumer's pricing based on the consumers' creditworthiness. Thus, the Bureau is proposing to adopt an approach for comparing the terms, conditions, and features of the prepaid account that is consistent with the one proposed in § 1026.61(a)(5)(iii)(D)(5) for comparing specified terms and conditions imposed on the credit card account. See the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(5) below for a more detailed discussion on the proposed approach for comparing specified terms and conditions imposed on the credit card account.

<sup>84</sup> This standard for comparing load fees set forth in proposed § 1026.61(a)(5)(iii)(D)(4) differs from the comparison for load fees adopted in the 2016 Final Rule with regard to covered separate credit features accessible by hybrid prepaid-credit cards. Specifically, as adopted in the 2016 Final Rule, Regulation E comment 18(g)–5.iii compares what fees are charged for a load from a covered separate credit feature accessible to a hybrid prepaid-credit card in the course of a transaction to the per transaction fee that is charged to access available funds in prepaid accounts in the same prepaid account program without a covered separate credit feature. Also, Regulation E comment 18(g)–5.iv compares what fees are charged for a load from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction to the fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts in the same prepaid account program without a covered separate credit feature. The Bureau took this approach in the 2016 Final Rule because it believed that many prepaid account holders who wish to use covered separate credit features may not have other asset or credit accounts from which they can draw or transfer funds, and was concerned that prepaid account issuers might therefore inflate such load fees as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84187 (Nov. 22,

2016). In contrast, the Bureau believes that competitive pressures would discourage digital wallet providers seeking to qualify for the exception in proposed § 1026.61(a)(5)(iii)(D) from artificially inflating all load fees in this manner.

<sup>85</sup> With the 2016 Final Rule, the Bureau was concerned that prepaid account issuers might inflate fees imposed on prepaid accounts as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84222–23 (Nov. 22, 2016). To prevent this, the 2016 Final Rule included in Regulation Z several provisions to ensure that where a fee imposed on the prepaid account with a covered separate feature is higher than a comparable fee on a prepaid account without such a credit feature, the excess amount of the fee is subject to certain fees restrictions applicable to credit card accounts. See, e.g., § 1026.52(a) and comments 6(b)(3)(iii)(D)–1 and 52(a)(2)–2. Proposed § 1026.61(a)(5)(iii)(D)(5) would ensure that this type of activity does not occur when the proposed exception applies.



and if so, what additional guidance is needed.

61(a)(5)(iii)(D)(5)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(5), the card issuer must apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2) as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, to satisfy proposed § 1026.61(a)(5)(iii)(D)(5), the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Proposed § 1026.61(a)(5)(iii)(D)(5) would specifically define "specified terms and conditions" to mean the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions that apply to the credit card account. Proposed comment 61(a)(5)(iii)(D)(5)–1 provides additional detail regarding this definition. Specifically proposed comment 61(a)(5)(iii)(D)(5)–1.i, would explain that the terms and conditions required to be disclosed under § 1026.6(b) include: (a) Pricing terms, such as periodic rates, annual percentage rates (APRs), and fees and charges imposed on the credit account; (b) any security interests acquired under the credit account; (c) claims and defenses rights under § 1026.12(c); and (d) error resolution rights under § 1026.13. Proposed comment 61(a)(5)(iii)(D)(5)–1.ii would explain that the repayment terms and conditions related to a credit card account include the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit card account. The Bureau notes that the limits on liability for unauthorized use of a credit card are set forth in § 1026.12(b) and error resolution procedures applicable to unauthorized use of an open-end credit account are set forth in § 1026.13. Proposed comments 61(a)(5)(iii)(D)(5)–2 and –3 would provide more detailed guidance on application of the two conditions, as discussed further below.

The Bureau believes that ensuring that the specified terms and conditions of the credit card account do not vary depending on whether the consumer

authorizes a prepaid card to access the account is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(2) above, the fact that the specified terms and conditions on the credit card account would not vary based on whether the consumer authorizes the prepaid card to access the credit card account would help simplify consumers' decisions about account acquisition, retention, and link authorization and make these decisions less prone to undue pressure and the consequences of linking the two accounts less complex, thus, along with the other conditions, would help to obviate the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the proposed condition would help to ensure that the specified terms and conditions of the prepaid account and the credit card account operate independent of whether the two accounts are linked, and restrict the kind of price restructuring that the Bureau observed with regard to overdraft service programs on checking accounts. Third, this proposed condition would prevent a card issuer from manipulating repayment terms on the credit card account when it is linked to the prepaid account to ensure that the consumer retains control over the funds in his or her prepaid account even if the two accounts are linked.<sup>86</sup>

This proposed condition regarding credit card account terms and conditions is similar to the condition for prepaid account terms, conditions, and features set forth in proposed § 1026.61(a)(5)(iii)(D)(4), although it applies to a smaller set of account terms. This smaller set of account terms would allow card issuers to make adjustments to credit limits or other metrics (other

<sup>86</sup> As explained in the 2016 Final Rule, the Bureau was concerned that when a prepaid account was connected to a covered separate credit feature, the creditor may manipulate the repayment terms of the credit feature to better ensure repayment of the credit from the prepaid account funds. As a result, the 2016 Final Rule contained several provisions designed to prevent this type of manipulation. *See, e.g.*, §§ 1026.7(b)(11) and 1026.12(d)(3), comments 5(b)(2)(ii)–4.i and 12(d)(2)–1, and Regulation E § 1005.10(e)(1). These provisions were designed to ensure that consumers retain control over the funds in their prepaid accounts even when a covered separate credit feature becomes associated with that prepaid account. *See, e.g.*, 81 FR 83934, 83982, 84192, 84199, 84211, 84213 (Nov. 22, 2016). This proposed condition would ensure that the card issuer could not engage in this type of manipulation of repayment terms when the prepaid account becomes linked to the credit card account under the proposed exception.

than the specified terms and conditions) to account for any increased credit risk where a consumer has linked the two accounts. In addition, the Bureau recognizes that the merchants at which the prepaid card and the traditional credit card can be used might not necessarily be the same, and the smaller set of account terms to which the condition in proposed § 1026.61(a)(5)(iii)(D)(5) applies would ensure that a card issuer would not lose the proposed exception because of these or similar differences in account features depending on whether the credit is accessed through the prepaid card or the traditional credit card itself.

Thus, a card issuer could satisfy proposed § 1026.61(a)(5)(iii)(D)(5) even if it applies different terms or conditions to the linked credit card account than it would apply if the prepaid account were not linked, so long as the those terms or conditions are not "specified terms and conditions" as defined in proposed § 1026.61(a)(5)(iii)(D)(5) and proposed comment 61(a)(5)(iii)(D)(5)–1. For example, a card issuer could offer different rewards points for purchases on the credit card account, or offer a different credit limit on the credit card account, depending on whether the prepaid account is linked to the credit card account. Reward points and the credit limit offered on the credit card account would not be "specified terms and conditions" because these terms are not required to be disclosed under § 1026.6(b), are not repayment terms or conditions, and are not limitations on liability for unauthorized use.<sup>87</sup>

The Bureau also believes that the proposed condition prohibiting the card issuer from varying specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card is important to address the

<sup>87</sup> The Bureau is aware that some card issuers have co-brand agreements with digital wallet providers where the reward points on the credit card account vary based on whether a transaction is made through the digital wallet or with the traditional credit card. The proposed condition in § 1026.61(a)(5)(iii)(D)(5) would not restrict a card issuer from varying the reward points on the credit card account based on whether the two accounts are linked, or whether the transactions are made with the prepaid card or the traditional credit card. Nonetheless, the Bureau does not believe in these situations that digital wallet providers typically will offer additional reward points on the prepaid account that vary based on whether a consumer has linked the two accounts. Thus, the proposed condition in § 1026.61(a)(5)(iii)(D)(4) does not permit the digital wallet provider to vary reward points on the prepaid account depending on whether the two accounts are linked. The Bureau solicits comment on whether the exception should permit a prepaid account issuer to vary reward points on the prepaid account depending on whether the two accounts are linked.

policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.<sup>88</sup>

Same specified terms and conditions regardless of whether the credit feature is linked to the prepaid account. As discussed above, to satisfy the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(5), a card issuer must apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2) as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. Proposed comment 61(a)(5)(iii)(D)(5)–2 would provide examples of the circumstances in which a card issuer would not meet the condition described above. Proposed comment 61(a)(5)(iii)(D)(5)–2.i would provide that a card issuer does not satisfy this condition if the card issuer structures the credit card account as a "charge card account" (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to a prepaid card as described in proposed § 1026.61(a)(5)(iii)(D)(2), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card account structure) if there is no such link.<sup>89</sup> As another example, proposed comment 61(a)(5)(iii)(D)(5)–2.ii would provide that a card issuer would not satisfy the condition if the card issuer imposes a \$50 annual fee on a consumer's credit card account if the credit feature is linked as described in proposed § 1026.61(a)(5)(iii)(D)(2), but does not

<sup>88</sup> In some cases, a card issuer may impose different terms and conditions to extensions of credit from a credit card account depending on how that credit is accessed. For example, a card issuer may impose a higher annual percentage rate on transactions made with a check that accesses the credit card account than it imposes on purchase transactions made with the credit card. In addition, the limits on liability for unauthorized use in § 1026.12(b) and the claims and defenses rights in § 1026.12(c) generally only apply to credit extended through use of a credit card, and do not apply to credit accessed by use of a check. This proposed condition would ensure that a card issuer could not vary the specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card, which would make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.

<sup>89</sup> The term "charge card" is defined in § 1026.2(a)(15)(iii) to mean a credit card on an account for which no periodic rate is used to compute a finance charge.

impose an annual fee on the consumer's credit card account if there is no such link.

The Bureau believes that an appropriate comparison standard for determining whether the same specified terms and conditions are being provided to the consumer is to compare the specified terms and conditions on the consumer's account if there is a link to the prepaid account as described above with the specified terms and conditions that apply to the consumer's account if there is no such link. This proposed approach would ensure that the application and solicitation disclosures provided to the consumer under § 1026.60 with respect to the credit card account would reflect the same specified terms and conditions regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. In addition, the Bureau believes that this proposed comparison approach would capture situations when the specified terms and conditions vary based on whether there is a link, but would avoid capturing situations where they vary due to risk based pricing based on consumers' creditworthiness.<sup>90</sup>

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(5) provides an appropriate standard for comparing specified terms and conditions offered on the credit card account for purposes of the proposed exception, and if not, what the appropriate standard should be. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard, and if so, what additional guidance is needed.

Same specified terms and conditions regardless of whether credit is extended through prepaid card or traditional credit card. For the proposed exception in proposed § 1026.61(a)(5)(iii)(D) to apply, proposed § 1026.61(a)(5)(iii)(D)(5) provides that the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. As discussed above, under proposed § 1026.61(a)(5)(iii)(D)(1), to qualify for

<sup>90</sup> See note 83 above for a discussion of how this proposed approach differs from the approach for comparing terms, conditions, and features on the prepaid account in connection with a covered separate credit features as adopted in the 2016 Final Rule.

the proposed exception, the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.<sup>91</sup>

Proposed comment 61(a)(5)(iii)(D)(5)–3 would provide several examples illustrating the condition described above. Proposed comment 61(a)(5)(iii)(D)(5)–3.i would set forth examples of circumstances in which a card issuer that has an arrangement with a prepaid account issuer would not meet the condition of proposed § 1026.61(a)(5)(iii)(D)(5) described above. For example, proposed comment 61(a)(5)(iii)(D)(5)–3.i.A would provide that the card issuer would not meet this condition if it considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain APRs, fees, and a grace period that applies to those purchase transactions, but treats transactions involving extensions of credit using the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer as a cash advance that is subject to different APRs, fees, grace periods, and other specified terms and conditions. As another example, proposed comment 61(a)(5)(iii)(D)(5)–3.i.B would provide that the card issuer would not satisfy this condition if it generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

The Bureau solicits comment on this condition generally and whether card issuers would have any difficulty knowing the type of transaction that is being conducted on the prepaid account, such as whether it is a transaction to obtain goods or services, whether it is a P2P transaction, or whether it is a transfer of credit to the prepaid account outside the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transactions. The Bureau also requests comment on how likely there are to be circumstances where the prepaid card can be used for a particular type of transaction while the traditional credit card could not be used for those types of transactions (e.g., the prepaid card

<sup>91</sup> As discussed above, for purposes of proposed § 1026.61(a)(5)(iii)(D), proposed comment 61(a)(5)(iii)(D)(1)–1 would define the term "traditional credit card" to mean a credit card that is not a hybrid prepaid-credit card.

can be used to purchase goods or services at merchants but the traditional credit card can only be used to obtain cash advances at automated teller machines and cannot be used to purchase goods or services at merchants). The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition, and if so, what additional guidance is needed.

Proposed comment 61(a)(5)(iii)(D)(5)–3.ii would provide guidance on how a card issuer must comply with this condition in proposed § 1026.61(a)(5)(iii)(D)(5) with respect to the claims and defenses rights set forth in § 1026.61(c). These rights apply in certain circumstances to purchases of property or services made with a credit card. Proposed comment 61(a)(5)(iii)(D)(5)–3.ii would explain that to satisfy this condition in proposed § 1026.61(a)(5)(iii)(D)(5) with respect to the claims and defenses rights in § 1026.12(c), the card issuer must treat the prepaid card when it is used to access credit from the credit card account to purchase property or services as if it is a credit card and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card.

The Bureau solicits comment on this proposed guidance for how to apply the same claims and defenses rights in § 1026.12(c) to extensions of credit with the prepaid card and with the traditional credit card and whether there are other options the Bureau should consider for how to ensure that the same rights under § 1026.12(c) are provided with respect to credit transactions made with the prepaid card and transactions made with the traditional credit card. The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition.

Proposed comment 61(a)(5)(iii)(D)(5)–3.iii would provide guidance on how a card issuer must comply with this condition in proposed § 1026.61(a)(5)(iii)(D)(5) with respect to limits on liability set forth in § 1026.12(b). Section 1026.12(b) sets forth certain limits on liability for unauthorized use of a credit card. Proposed comment 61(a)(5)(iii)(D)(5)–3.iii would provide that to apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the

card issuer must treat the prepaid card as if it were an accepted credit card for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) as it applies to unauthorized transactions using the traditional credit card.

The Bureau solicits comment on this proposed guidance for how to apply the same limits on liability under § 1026.12(b) to extensions of credit with the prepaid card and with the traditional credit card and whether there are other options the Bureau should consider for how to ensure that the same rights under § 1026.12(b) are provided with respect to credit transactions made with the prepaid card and transactions made with the traditional credit card. The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition.

## VI. Proposed Effective Date

The Bureau is proposing that this rule take effect at the same time as the general effective date of the Prepaid Accounts Rule, which is currently April 1, 2018. This rule thus would become effective more than 30 days after publication in the **Federal Register**, as required under section 553(d) of the Administrative Procedure Act.<sup>92</sup> The Bureau seeks comment on this aspect of the proposal.

### A. General Effective Date of the Prepaid Accounts Rule

In response to the 2017 Effective Date Proposal, some commenters argued that the Bureau should delay the effective date of the 2016 Final Rule by longer than the six months proposed (and ultimately finalized) by the Bureau. These commenters generally argued that the Bureau should extend the effective date by 12 or 18 months, citing a number of concerns regarding their ability to comply with the rule by April 1, 2018. Some commenters supported a six-month delay of the effective date, contingent on the Bureau revisiting the rule to address certain substantive provisions that they asserted necessitated changes to disclosures and business models that could not be implemented by April 1, 2018. The Bureau believes that several of the amendments proposed herein would reduce compliance burden and address the concerns raised by commenters on the 2017 Effective Date Proposal related to the effective date of the rule.

<sup>92</sup> 5 U.S.C. 553(d).

While the Bureau is not proposing to further extend the effective date of the Prepaid Accounts Rule, the Bureau solicits comment on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments proposed herein. Specifically, the Bureau requests comment on which provisions in particular might cause financial institutions to need additional time, and whether any further modifications to any of the particular amendments proposed herein would reduce or eliminate that need. The Bureau also solicits comment on the appropriate length of such a further delay.

### B. Safe Harbor for Early Compliance

Two trade association commenters on the 2017 Effective Date Proposal urged the Bureau to establish a safe harbor for financial institutions that comply with the Prepaid Accounts Rule (or portions of it) prior to the rule's effective date. These commenters expressed concerns that financial institutions may be exposed to potential liability if they comply with the rule prior to the effective date, as they suggested the possibility that there may be some conflict between the Prepaid Accounts Rule and current requirements for payroll card accounts and government benefit accounts, though they did not provide any specific examples. One commenter stated that early compliance would benefit consumers and should not be discouraged.

As noted in the 2017 Effective Date Final Rule, the Bureau agrees that early compliance with the Prepaid Accounts Rule could benefit both industry and consumers. The Bureau is not aware of any conflicts between the requirements of the Prepaid Accounts Rule and current Federal regulations applying to accounts that will be covered by the rule.<sup>93</sup> Thus, the Bureau is not at this time proposing language for a specific provision addressing early compliance with the Prepaid Accounts Rule. Nonetheless, the Bureau seeks comment on whether a specific provision addressing early compliance with the Prepaid Accounts Rule is necessary and appropriate to address conflicts between the Prepaid Accounts Rule and current Federal requirements for accounts that

<sup>93</sup> Regulation E, for example, currently contains protections for consumers who use payroll card accounts and certain government benefit accounts, as well as consumers who use certain gift cards and similar products. See §§ 1005.18, 1005.15, and 1005.20, respectively. Regulations promulgated by the Department of the Treasury also require prepaid cards that are eligible to receive Federal payments to comply with the rules governing payroll card accounts, among other requirements. 31 CFR 210.5(b)(5)(i).

will be covered by the rule. In particular, the Bureau solicits comment on whether specific provisions of current requirements for such accounts conflict with provisions of the Prepaid Accounts Rule. To the extent that a specific provision addressing early compliance is necessary and appropriate, the Bureau solicits comment on the proper scope of such a provision. The Bureau also solicits comment regarding whether a specific provision addressing early compliance should only be available to financial institutions that comply with the entire Prepaid Accounts Rule prior to its effective date, or whether it should also cover financial institutions that comply with portions of the Prepaid Accounts Rule prior to its effective date. If the latter, the Bureau solicits comment regarding which portions of the Prepaid Accounts Rule a financial institution should be required to comply with in order to be covered by a provision addressing early compliance.

#### VII. Section 1022(b)(2)(A) of the Dodd-Frank Act

In developing this proposed rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The Bureau consulted, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the benefits, costs, and impacts of the 2016 Final Rule's major provisions<sup>94</sup> as well as those of the 2017 Effective Date Final

Rule.<sup>95</sup> The baseline<sup>96</sup> for this discussion is the market for prepaid accounts as it would exist "but for" this proposed rule; that is, the Bureau considers the benefits, costs, and impacts of this proposed rule on consumers and covered persons relative to the baseline established by the 2016 Final Rule, as amended by the 2017 Effective Date Final Rule.<sup>97</sup> There are two major provisions in this proposed rule; the discussion below considers them both, as well as certain alternatives that the Bureau considered in the development of this proposed rule:

1. Amending the Prepaid Accounts Rule so that it would not require financial institutions to resolve errors or limit consumers' liability pursuant to Regulation E for prepaid accounts, other than payroll card accounts or government benefit accounts, for which a financial institution has not successfully completed its consumer identification and verification process;<sup>98</sup> and

2. Adding an exception to the Prepaid Accounts Rule's definition of "business partner" in Regulation Z, which would have the effect of not subjecting certain credit card accounts, or the prepaid accounts to which they are linked, to provisions of the Prepaid Accounts Rule that are applicable in connection with covered separate credit features accessible by hybrid prepaid-credit cards, provided certain conditions are met.<sup>99</sup>

The Bureau also is proposing to make clarifications and minor adjustments to certain discrete aspects of the Prepaid Accounts Rule. Similarly to the major provisions discussed, these clarifications and minor adjustments would provide industry participants

<sup>94</sup> 82 FR 18975, 18979 (Apr. 25, 2017).

<sup>95</sup> The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

<sup>96</sup> As discussed above, the Bureau refers to the 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, as the Prepaid Accounts Rule in this proposed rule.

<sup>97</sup> However, for prepaid accounts that are later verified, financial institutions would be required to resolve errors and limit liability with regard to unauthorized transfers or other errors that occurred prior to verification.

<sup>98</sup> Although a credit card account would be subject to the credit card provisions of Regulation Z in its own right if the account and the arrangement between the prepaid account issuer and credit card account issuer meet all conditions for this exception, it would not be subject to the provisions in Regulations Z that apply only to covered separate credit features accessible by a hybrid prepaid-credit card. In addition, the prepaid account with which it is linked would not be subject to the provisions in Regulation E that apply only to prepaid accounts connected to covered separate credit features.

with additional options for compliance and should not increase burden on covered persons. In addition, the Bureau does not believe that this proposed rule's minor modifications to the Prepaid Accounts Rule's disclosure requirements would appreciably decrease transparency or have an adverse impact on informed consumer choice.<sup>100</sup>

In considering the relevant potential benefits, costs, and impacts of this proposed rule, the Bureau has used feedback received to date and has applied its knowledge and expertise concerning consumer financial markets. Because the Prepaid Accounts Rule is not yet in effect and this proposed rule addresses specialized issues encountered by some industry participants for a subset of prepaid accounts, this discussion of the potential benefits, costs, and impacts on consumers and covered persons, evaluated relative to the baseline established by that rule, is largely qualitative. Nonetheless, the Bureau requests comment on this discussion generally as well as the submission of data or other information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposed rule.

The proposed rule's provisions generally decrease burden incurred by industry participants and provide more options for complying with the provisions of the Prepaid Accounts Rule. As is described in more detail below, the Bureau does not believe that the proposed rule's provisions would reduce consumer access to consumer financial products and services. In particular, the provisions relating to error resolution and limited liability for unverified accounts may increase consumer access to consumer financial products and services relative to the baseline established by the Prepaid Accounts Rule.

*Error resolution and limited liability for unverified accounts.* The Bureau is proposing to amend §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), and Appendix A-7(c) to provide that Regulation E's error resolution and

<sup>100</sup> For example, proposed § 1005.18(b)(1)(ii)(D) would allow financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide long form disclosures after acquisition by allowing such disclosures to be delivered electronically without receiving consumer consent under the E-Sign Act if the financial institution does not provide it inside the prepaid account packaging material and is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

<sup>94</sup> 81 FR 83934, 84269 (Nov. 22, 2016).

limited liability requirements do not extend to prepaid accounts held by consumers who have not successfully completed the financial institution's consumer identification and verification process (*i.e.*, consumers who have not concluded the process, consumers who have completed the process but whose identity could not be verified, and consumers holding accounts belonging to prepaid account programs for which there is no such process).<sup>101</sup> In addition, the Bureau is proposing related changes to model language in Appendix A-7(c) and is proposing to require that financial institutions offering prepaid account programs that do not have a consumer identification and verification process disclose to consumers any error resolution and limited liability protections they do offer (or, if applicable, that no such protections are offered) and comply with any error resolution and limited liability protections that are disclosed to consumers.

If adopted, covered persons would benefit from avoiding the burdens associated with providing Regulation E's error resolution and limited liability protections for those prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process.<sup>102</sup> The Bureau considered the costs associated with providing error resolution and limited liability protections in its section 1022(b)(2) discussion for the 2016 Final Rule.<sup>103</sup> Potential sources of burden include, among other things, receiving oral or written error claims, investigating error claims, providing consumers with investigation results in writing, responding to consumer requests for copies of the documents that the financial institution relied on in making its determination, and correcting any errors discovered within the required timeframes.

These proposed changes would also permit covered persons to avoid any additional burdens that could result from providing these protections for unverified accounts in particular. During the Bureau's outreach efforts to industry regarding implementation, industry participants have expressed concern that offering these consumer

protections for holders of unverified accounts would significantly increase fraud risk. To mitigate this risk, financial institutions that currently have verification processes in place may choose to issue check refunds, rather than allow the consumer to spend down the account balance, for those accounts that fail the consumer identification and verification process. Other financial institutions that currently do not have such processes in place may choose to institute one to avoid the additional fraud risk arising from providing these protections for unverified accounts. Some financial institutions have suggested that they may further limit the functionality offered to holders of unverified accounts; they therefore believe that they may need to replace retail packaging to accurately reflect this decreased functionality, notwithstanding the Bureau's decision to allow financial institutions to use non-compliant packaging manufactured in the normal course of business prior to the effective date. Covered persons would avoid incurring these costs were the proposed changes adopted.

Consumers holding unverified prepaid accounts may both incur costs and derive benefits from these proposed provisions relative to the baseline requirements established by the Prepaid Accounts Rule. Under this proposed rule's approach, consumers holding unverified accounts would no longer benefit from the error resolution and limited liability protections offered by the Prepaid Accounts Rule.<sup>104</sup> However, if financial institutions were to attempt to mitigate potential fraud losses arising from the Prepaid Accounts Rule by not offering unverified prepaid accounts, consumers desiring to hold unverified accounts would lose the benefits from the error resolution and limited liability protections as they would no longer have access to unverified accounts. Alternatively, if financial institutions were to respond to the Prepaid Accounts Rule's requirement to provide error resolution and limited liability protections for unverified accounts by decreasing the functionality associated with unverified accounts, this proposed rule would enable current and future holders of such accounts to retain that functionality, though they would not have the error resolution and limited liability protections they would have enjoyed under the Prepaid Accounts Rule. Therefore, consumers holding unverified prepaid accounts (or those

desiring to hold unverified accounts) may experience increased product access or functionality relative to the baseline established by the Prepaid Accounts Rule's requirements.

In addition to these impacts on consumers holding (or desiring to hold) unverified prepaid accounts, consumers holding verified prepaid accounts may also benefit relative to the baseline established by the Prepaid Accounts Rule's requirement that financial institutions offer error resolution and limited liability protections for unverified accounts. Financial institutions may pass through some portion of the cost savings arising from not providing error resolution and limited liability protections on unverified accounts to holders of verified accounts in the form of lower prices, or they may invest cost savings into innovation efforts to create higher quality products.

*Credit card accounts linked to prepaid accounts.* As adopted in the 2016 Final Rule, the term "business partner" means a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate. The Bureau is proposing to move most of the current guidance in comment 61(a)(5)(iii)-1 on when there is an arrangement to proposed § 1026.61(a)(5)(iii)(A) through (C) and to revise it for clarity. The Bureau is also proposing to add an exception to the definition of "business partner." Specifically, proposed § 1026.61(a)(5)(iii)(D) would provide that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement, as defined in proposed § 1026.61(a)(5)(iii)(A) through (C), with regard to such a credit card account so long as certain conditions are met. For example, under these conditions, the credit card account would remain subject to Regulation Z's credit card requirements in its own right, and both the credit card and prepaid accounts' pricing terms would be independent of whether the two accounts were linked. So long as they meet certain conditions, prepaid account issuers would be able to enter into certain business arrangements with credit card issuers without subjecting the credit card accounts and the prepaid accounts to coverage by those provisions of the Prepaid Accounts Rule that apply only to covered separate credit features accessible by hybrid prepaid-credit

<sup>101</sup> Given current business practices, the Bureau believes that this amendment would predominately affect financial institutions distributing prepaid accounts to consumers through the retail channel.

<sup>102</sup> Covered persons that choose not to offer Regulation E's error resolution and limited liability protections for unverified prepaid accounts would need to disclose which protections they do offer or that they do not offer such protections.

<sup>103</sup> 81 FR 83934, 84292 (Nov. 22, 2016).

<sup>104</sup> For prepaid accounts that are later verified, financial institutions would be required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification.

cards and prepaid accounts with such credit features.

Although the Bureau believes that few industry participants would qualify for this exception at present, the proposed exception would relieve burden for those industry participants that currently qualify and would decrease the cost incurred by industry participants entering into qualifying relationships in the future. For example, under the Prepaid Accounts Rule's current definition of "business partner," a provider of a digital wallet that can store funds that has a cross-marketing arrangement with a credit card issuer could be subject to those provisions of the Prepaid Accounts Rule applicable to covered separate credit features accessible by a hybrid prepaid-credit card if the prepaid card from time to time can access credit from the credit card account in the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transactions. Among other things, the digital wallet provider would be required to wait 30 days after the digital wallet account is registered before allowing the consumer to add a credit card account issued by a "business partner" of the provider to his or her digital wallet, though there would be no such required waiting period for credit card accounts offered by unaffiliated card issuers with whom there is no such relationship. Under the 2016 Final Rule, such a requirement applies even if the credit card account is subject to the provisions of Regulation Z that apply to credit card accounts in its own right.

Because the Bureau has narrowly tailored the proposed exception to the definition of "business partner," consumers likely will not incur many costs as a result of this exception. For example, proposed § 1026.61(a)(5)(iii)(D)(1) would provide that for the credit card account to be eligible for the exception, it must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card and thus subject to the applicable credit card provisions of Regulation Z in its own right. Therefore, consumers would still enjoy the credit card protections provided by Regulation Z with respect to the linked credit card account.

The Bureau also believes that when the conditions of the proposed exception are met, consumers would be further protected. For example, proposed § 1026.61(a)(5)(iii)(D)(3) would prohibit both the prepaid account issuer and the credit card issuer from conditioning the acquisition or retention of either the prepaid or credit

card account on whether the consumer authorizes their linkage. Also, under proposed § 1026.61(a)(5)(iii)(D)(4) and (5), both the prepaid account issuer and card issuer generally would be prohibited from varying the prepaid and credit card account terms and conditions based on whether the consumer chooses to link the accounts.<sup>105</sup> These provisions would help to ensure that the consumer's choice to acquire or retain a prepaid account or a credit card account is distinct from his or her choice to link a credit card account and a prepaid account. By ensuring that the pricing structures do not depend on the individual consumer's choice to link the accounts, the proposed provisions would help to give the consumer the opportunity to independently identify and appreciate the costs associated with each product. Proposed § 1026.61(a)(5)(iii)(D)(2) would require that the consumer provide either the prepaid account issuer or the card issuer a written request that is separately signed or initialized authorizing the prepaid card to access the credit card account, thereby helping to ensure that any account linkages are transparent to and represent the deliberate choice of the consumer.

Further, absent the proposed exception, there would be more instances in which the Prepaid Accounts Rule's provisions would apply to some, but not all, credit card accounts provisioned to a digital wallet. This uneven application could result in increased consumer confusion because credit card payment credentials stored within the same digital wallet would be subject to different disclosure regimes and use restrictions with greater frequency than would be experienced under the proposed exception. By helping to foster uniformity in

<sup>105</sup> More specifically, proposed § 1026.61(a)(5)(iii)(D)(4) would ensure that the prepaid account issuer applies the same terms, conditions, or features to the prepaid account regardless of whether a consumer authorizes linking the prepaid card to the credit card account offered by the card issuer subject to the exception. In addition, the prepaid account issuer would be required to apply the same fees to load funds from a linked credit card account to the prepaid account as it charges for a comparable load from a credit feature offered by a person who is not the prepaid account issuer, its affiliate, or person with whom the prepaid account issuer has an arrangement. With respect to the credit card account, proposed § 1026.61(a)(5)(iii)(D)(5) would require that the card issuer apply the same specified terms and conditions to the credit card account regardless of whether the consumer authorizes its linkage to the prepaid account and additionally would require that the same specified terms and conditions apply to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

application, the proposed exception could benefit consumers relying on digital wallet products.

In terms of alternatives, the Bureau also considered amending the definition of "business partner" in current § 1026.61(a)(5)(iii) to restrict it to situations in which a person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. The Bureau believes that the proposed exception would provide clearer guidance to industry regarding which credit features would qualify for the exception, thereby reducing potential confusion relative to this alternative. In addition, the Bureau's approach, which provides for a more narrowly tailored exception to the definition of "business partner," would help to ensure that consumers retain the benefits of the protections offered by provisions of the Prepaid Accounts Rule applicable to covered separate credit features and prepaid accounts with those credit features in more situations potentially presenting risk to consumers.

*Potential specific impacts of the proposed rule.* The requirements of the proposed rule would apply uniformly across covered financial institutions without regard to their asset size. The Bureau does not expect the proposed rule to have a differential impact on depository institutions and credit unions with \$10 billion or less in total assets, as described in section 1026 of the Dodd-Frank Act. The Bureau solicits comment regarding the proposed rule's impact on those depository institutions and credit unions with \$10 billion or less in total assets and how those impacts may be distinct from those experienced by larger institutions.

The Bureau has no reason to believe that the additional flexibility offered to covered persons by this proposed rule would differentially impact consumers in rural areas. The Bureau requests comment regarding the impact of the proposed provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

### VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act,<sup>106</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>107</sup> (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.<sup>108</sup> The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.<sup>109</sup>

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.<sup>110</sup> The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.<sup>111</sup>

This proposed rule would be the second rule promulgated by the Bureau to amend the 2016 Final Rule, which created comprehensive consumer protections for prepaid accounts under Regulations E and Z. In the 2014 Proposal, the Bureau concluded that rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.<sup>112</sup> That conclusion remained unchanged for the 2016 Final Rule.<sup>113</sup> In addition, the Bureau determined that the 2017 Effective Date Final Rule, which extended the general effective date of the 2016 Final Rule by six months, likewise would not have a significant

economic impact on a substantial number of small entities.<sup>114</sup>

Similarly, the Bureau concludes that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and therefore an IRFA is not required. As discussed above, the proposed rule would amend certain provisions of the Prepaid Accounts Rule. Specifically, the Bureau is proposing to amend the Prepaid Accounts Rule so that it does not require financial institutions to resolve errors or limit consumers’ liability on prepaid accounts (other than payroll card accounts or government benefit accounts) which are unverified. In addition, the Bureau is proposing to except certain prepaid account issuers and unaffiliated card issuers with business arrangements from coverage under the tailored provisions of the Prepaid Accounts Rule applicable only to covered separate credit features accessible by hybrid prepaid-credit cards and prepaid accounts with those credit features. The Bureau is also proposing to make clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule.

As discussed below, the proposed amendments would generally benefit small entities by providing additional flexibility with respect to their implementation of the Prepaid Accounts Rule and would not increase burden on small entities. The Bureau seeks comment on the methodology for estimating burden described in this analysis and requests any relevant data, including information regarding the implementation costs and ongoing costs associated with the proposed rule, especially as they pertain to small entities.

*Error resolution and limited liability for unverified accounts.* The Bureau is proposing to amend §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), and Appendix A–7(c) to provide that Regulation E’s error resolution and limited liability requirements do not extend to prepaid accounts held by consumers who have not successfully completed the financial institution’s consumer identification and verification process. If adopted, small entities would benefit from avoiding the burdens associated with providing Regulation E’s error resolution and limited liability protections for those prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process. In addition, any increase in fraud risk

arising from the Prepaid Accounts Rule’s requirement that financial institutions offer error resolution and limited liability protections to consumers holding unregistered accounts may be avoided. However, these benefits would be limited if small entities tend not to distribute prepaid accounts that can be used before verification or that offer significant pre-verification functionality and thus may not have the same concerns regarding increased fraud risk associated with offering error resolution and limited liability protections for unverified prepaid accounts.

*Credit card accounts linked to prepaid accounts.* The Bureau is proposing to add an exception in proposed § 1026.61(a)(5)(iii)(D) to the definition of “business partner.” If the conditions of the proposed exception are met, an unaffiliated credit card issuer and a prepaid account issuer with a business arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C) would not be business partners with respect to the credit card account even if the credit card account is linked to a prepaid account to access credit during the course of a transaction. The linked credit card account would not be considered to be a “covered separate credit feature” accessible by a hybrid prepaid-credit card and therefore would not be subject to the provisions of the Prepaid Accounts Rule that only apply to those credit features or prepaid accounts with those credit features. Under this proposed exception, the consumer holding the linked credit card account would still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, but the tailored provisions in the Prepaid Accounts Rule applicable to covered separate credit features or prepaid accounts with those credit features would not apply. The proposed amendment would facilitate compliance with the Prepaid Accounts Rule by digital wallet providers that both offer the ability to store funds (such that the digital wallet is a prepaid account) and permit consumers to use the digital wallet account number from time to time to access stored credentials for credit card accounts in the course of a transaction by excepting such providers from the tailored provisions in the Prepaid Accounts Rule applicable only to covered separate credit features or prepaid accounts with those features so long as they meet the conditions described above. The Bureau believes that, at present, this exception would apply to few entities.

<sup>106</sup> Public Law 96–354, 94 Stat. 1164 (1980).

<sup>107</sup> Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

<sup>108</sup> 5 U.S.C. 601 through 612. The term “ ‘small organization’ means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].” 5 U.S.C. 601(4). The term “ ‘small governmental jurisdiction’ means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].” 5 U.S.C. 601(5).

<sup>109</sup> 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

<sup>110</sup> 5 U.S.C. 601 *et seq.*

<sup>111</sup> 5 U.S.C. 609.

<sup>112</sup> 79 FR 77102, 77283 (Dec. 23, 2014).

<sup>113</sup> 81 FR 83934, 84308 (Nov. 22, 2016).

<sup>114</sup> 82 FR 18975, 18979 (Apr. 25, 2017).

*Other modifications.* In addition to these provisions, the Bureau is proposing to make clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule. Similar to those provisions discussed, these clarifications or minor adjustments would provide additional options for compliance and should not increase burden on small entities.

In summary, this proposed rule would not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Rule because small entities retain the option of complying with the Prepaid Accounts Rule as it currently exists. Therefore, small entities would not experience a significant economic impact as a result of this proposed rule.

#### *Certification*

Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

### **IX. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA),<sup>115</sup> Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the Prepaid Accounts Rule have been reviewed and approved by OMB previously in accordance with the PRA and assigned OMB Control Numbers 3170-0014 (Regulation E) and 3170-0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would provide firms with additional flexibility and clarity with respect to what must be disclosed under the Prepaid Accounts Rule; therefore, it would have only minimal impact on the industry-wide aggregate PRA burden relative to the baseline. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

### **List of Subjects**

#### *12 CFR Part 1005*

Automated teller machines, Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

#### *12 CFR Part 1026*

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

### **Authority and Issuance**

For the reasons set forth above, the Bureau proposes to further amend 12 CFR parts 1005 and 1026, as amended November 22, 2016, at 81 FR 83934, and April 25, 2017, at 82 FR 18975, as follows:

### **PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)**

■ 1. The authority citation for part 1005 continues to read as follows:

**Authority:** 12 U.S.C. 5512, 5532, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o-1.

#### **Subpart A—General**

■ 2. Section 1005.2 is amended by revising paragraph (b)(3)(ii)(D)(3) to read as follows:

#### **§ 1005.2 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(D) \* \* \*

(3) A loyalty, award, or promotional gift card as defined in § 1005.20(a)(4), or that satisfies the criteria in § 1005.20(a)(4)(i) and (ii) and is excluded from § 1005.20 pursuant to § 1005.20(b)(4); or

\* \* \* \* \*

■ 3. Section 1005.11 is amended by removing paragraph (c)(2)(i)(C) and revising paragraphs (c)(2)(i)(A) and (B) to read as follows:

#### **§ 1005.11 Procedures for resolving errors.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T

of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220).

\* \* \* \* \*

■ 4. Section 1005.18 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii)(D), (b)(2)(ix)(C), (b)(6)(i)(B), (b)(6)(i)(C), (b)(9)(i)(C), (d)(1)(ii), and (e)(3) as follows:

#### **§ 1005.18 Requirements for financial institutions offering prepaid accounts.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *General.* Except as provided in paragraphs (b)(1)(ii) or (iii) of this section, a financial institution shall provide the disclosures required by paragraph (b) of this section before a consumer acquires a prepaid account. When a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, for purposes of this paragraph, the disclosures required by paragraph (b) of this section may be provided at the time the consumer receives the prepaid account.

(ii) \* \* \*

(D) The long form disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account. If a financial institution does not provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure pursuant to this paragraph in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

\* \* \* \* \*

(2) \* \* \*

(ix) \* \* \*

(C) *Fee variations in additional fee types.* If an additional fee type required to be disclosed pursuant to paragraph (b)(2)(ix)(A) of this section has more than two fee variations, or when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with paragraph (b)(3)(i) of this section; for disclosures other than for multiple

<sup>115</sup> 44 U.S.C. 3501 *et seq.*



service plans, it may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraphs (b)(3)(i) and (b)(7)(ii)(B)(1) of this section. Except when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraph (b)(7)(ii)(B)(1) of this section. If a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section, except that the financial institution would disclose only the one fee variation name and fee amount instead of two.

\* \* \* \* \*

- (6) \* \* \*
- (j) \* \* \*

(B) *Electronic disclosures.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, the disclosures required by paragraph (b) of this section must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a Web site when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section. Electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via Web browsers or mobile applications, as applicable, and via screen readers. Electronic disclosures provided pursuant to paragraph (b) of

this section need not meet the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(C) *Oral disclosures.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, disclosures required by paragraphs (b)(2) and (5) of this section must be provided orally when a consumer acquires a prepaid account orally by telephone pursuant to the exception in paragraph (b)(1)(iii) of this section. For prepaid accounts acquired in retail locations or orally by telephone, disclosures required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(B) or (b)(1)(iii)(B) of this section also must be made orally.

\* \* \* \* \*

- (9) \* \* \*
- (i) \* \* \*

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language, except for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A-7 of this part, in place of the notice required by § 1005.7(b)(10). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections.

\* \* \* \* \*

- (e) \* \* \*

(3) *Limitations on liability and error resolution for unverified accounts—*(i) For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not successfully completed its

consumer identification and verification process where:

(A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7 of this part.

(B) The financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account, but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A-7 of this part; or

(C) The financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has made the alternative disclosure described in paragraph (d)(1)(ii) of this section and complies with the process it has disclosed.

(iii) *Resolution of pre-verification errors following successful verification.* Once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in this paragraph (e), as applicable.

\* \* \* \* \*

■ 5. Section 1005.19, is amended by revising paragraphs (b)(2), (b)(6)(ii), (b)(6)(iii), and (f)(2) as follows:

**§ 1005.19 Internet posting of prepaid account agreements.**

\* \* \* \* \*

- (b) \* \* \*

(2) *Amended agreements.* If a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective. An issuer may delay submitting a change in the names of other relevant parties to the agreement until such time as the issuer is submitting an amended agreement pursuant to this paragraph or changes to other identifying information about the

issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section, in lieu of submitting such a change no later than 30 days after the change becomes effective.

\* \* \* \* \*

(6) \* \* \*

(ii) *Fee information.* Fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). The agreement or addenda thereto must contain all of the fee information, as defined by paragraph (a)(3) of this section.

(iii) *Integrated agreement.* An issuer may not provide provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addenda described in paragraph (b)(6)(ii) of this section). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addenda, as appropriate.

\* \* \* \* \*

(f) \* \* \*

(2) *Compliance date for the agreement submission requirement.* The compliance date for the requirement to make submissions of prepaid account agreements to the Bureau on a rolling basis pursuant to paragraph (b) of this section is October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018.

\* \* \* \* \*

■ 6. In Appendix A to part 1005, Model Clause A-7 is amended by revising paragraph (c), including the heading, as follows:

**Appendix A to Part 1005—Model Disclosure Clauses and Forms**

\* \* \* \* \*

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

\* \* \* \* \*

(c) *Warning regarding unverified prepaid accounts (§ 1005.18(e)(3)).*

It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to [Internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address,

date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity. Once we have done so, we will address your complaint or question as set forth above.

\* \* \* \* \*

■ 7. In Supplement I to part 1005:

■ a. Under Section 1005.2—Definitions, in subsection Paragraph 2(b)(3)(ii), paragraph 4 is added.

■ b. Under Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts:

■ i. In subsection 18(a) Coverage, paragraph 1 is revised.

■ ii. In subsection 18(b)(1)(i) General, paragraph 1 is revised.

■ iii. In subsection 18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations, paragraph 4 is revised.

■ iv. In subsection 18(b)(2)(ix)(C) Fee Variations in Additional Fee Types, paragraph 1.ii is revised.

■ v. In subsection 18(b)(6)(i) General, paragraph 1 is added.

■ vi. In subsection 18(b)(6)(i)(B) Electronic Disclosures, paragraph 1 is revised.

■ vii. In subsection 18(e) Modified Limitations on Liability and Error Resolution Requirements, paragraphs 4, 5, and 6 are revised.

■ c. Under Section 1005.19 Internet Posting of Prepaid Account Agreements:

■ i. In subsection 19(a)(2) Amends, paragraph 1.vii is revised.

■ ii. In subsection 19(b)(6) Form and Content of Agreements Submitted to the Bureau, paragraph 3 is revised.

■ iii. In subsection 19(f) Effective Date, paragraph 1 is revised.

The revisions and additions read as follows:

**Supplement I to Part 1005—Official Interpretations**

Section 1005.2—Definitions

\* \* \* \* \*

2(b) Account

\* \* \* \* \*

Paragraph 2(b)(3)

\* \* \* \* \*

Paragraph 2(b)(3)(ii)

\* \* \* \* \*

4. *Loyalty, award, or promotional gift cards.* Section 1005.2(b)(3)(ii)(D)(3) excludes loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). Section 1005.2(b)(3)(ii)(D)(3) also excludes cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public; such products are not required to set forth the disclosures enumerated in

§ 1005.20(a)(4)(iii) in order to be excluded pursuant to § 1005.2(b)(3)(ii)(D)(3).

\* \* \* \* \*

Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

1. *Issuance of access device.* Consistent with § 1005.5(a) and except as provided, as applicable, in § 1005.5(b), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online. If an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that he or she has no other means by which to receive any funds in the prepaid account if the consumer disposes of the access device.

\* \* \* \* \*

18(b) Pre-Acquisition Disclosure Requirements

\* \* \* \* \*

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

1. *Disclosing the short form and long form before acquisition.* Section 1005.18(b)(1)(i) generally requires delivery of a short form disclosure as described in § 1005.18(b)(2), accompanied by the information required to be disclosed by § 1005.18(b)(5), and a long form disclosure as described in § 1005.18(b)(4) before a consumer acquires a prepaid account.

i. For purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening or choosing to be paid via a prepaid account, as illustrated by the following examples:

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

B. A consumer learns that he or she can receive wages via a payroll card account, at which time the consumer is provided with a payroll card and the disclosures required by § 1005.18(b) to review. The consumer then chooses to receive wages via a payroll card account. These disclosures were provided

pre-acquisition in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the disclosures required by § 1005.18(b) to review at the end of the first pay period, after the consumer received the first payroll payment on the payroll card, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with § 1005.18(b)(1)(i).

ii. Section 1005.18(b)(1)(i) permits delivery of the disclosures required by § 1005.18(b) at the time the consumer receives the prepaid account, rather than prior to acquisition, for prepaid accounts that are used for disbursing funds to consumers when the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account. For example, a utility company refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. Neither the utility company nor the financial institution that issues the prepaid accounts offer another means for a consumer to receive that refund other than by accepting the prepaid account. In this case, the financial institution may provide the disclosures required by § 1005.18(b) together with the prepaid account (e.g., in the same envelope as the prepaid account); it is not required to deliver the disclosures separately prior to delivery of the prepaid account.

\* \* \* \* \*

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

\* \* \* \* \*

4. *Providing the long form disclosure by telephone and Web site pursuant to the retail location exception.* Pursuant to § 1005.18(b)(1)(ii), a financial institution may provide the long form disclosure described in § 1005.18(b)(4) after a consumer acquires a prepaid account in a retail location, if the conditions set forth in § 1005.18(b)(1)(ii)(A) through (D) are met. Pursuant to § 1005.18(b)(1)(ii)(C), a financial institution must make the long form disclosure accessible to consumers by telephone and via a Web site when not providing a written version of the long form disclosure pre-acquisition. A financial institution may, for example, provide the long form disclosure by telephone using an interactive voice response or similar system or by using a customer service agent. A financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

\* \* \* \* \*

18(b)(2) Short Form Disclosure Content

\* \* \* \* \*

18(b)(2)(ix) Disclosure of Additional Fee Types

\* \* \* \* \*

18(b)(2)(ix)(C) Fee Variations in Additional Fee Types

\* \* \* \* \*

1. \* \* \*

ii. *More than two fee variations.* A financial institution offers two methods of bill payment—via ACH and paper check—and offers two modes of delivery for bill payments made by paper check—regular standard mail service and expedited delivery. The financial institution charges \$0.25 for bill pay via ACH, \$0.50 for bill pay via paper check sent by regular standard mail service, and \$3 for bill pay via paper check sent via expedited delivery. The financial institution must calculate the total revenue generated from consumers for all methods of bill pay and all modes of delivery during the required time period to determine whether it must disclose bill payment as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are more than two fee variations for the fee type “bill payment,” if bill payment is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution has two options for the disclosure. The financial institution may disclose the highest fee, \$3, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, pursuant to § 1005.18(b)(3)(i). Thus, the financial institution would disclose on the short form the fee type as “Bill payment” and the fee amount as “\$3.00\*<sup>\*</sup>”. Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery. In this case, the financial institution would make this disclosure on the short form as: “Bill payment (regular or expedited delivery)” and the fee amount as “\$0.50\* or \$3.00”.

\* \* \* \* \*

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

1. *Written pre-acquisition disclosures.* If a financial institution provides the disclosures required by § 1005.18(b) in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), they need not also be provided electronically or orally. For example, an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account. The financial institution is not required to provide the § 1005.18(b) disclosures electronically via the Web site because the consumer has already received the disclosures pre-acquisition in written form.

18(b)(6)(i)(B) Electronic Disclosures

1. *Providing pre-acquisition disclosures electronically.* Unless provided in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), § 1005.18(b)(6)(i)(B) requires electronic delivery of the disclosures required by § 1005.18(b) when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and, among other things, in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. For example,

if a consumer is acquiring a prepaid account via a Web site or mobile application, it would be reasonable to expect that a consumer would be able to access the disclosures required by § 1005.18(b) on the first page or via a direct link from the first page of the Web site or mobile application or on the first page that discloses the details about the specific prepaid account program. See comment 18(b)(1)(i)-2 for additional guidance on placement of the short form and long form disclosures on a Web page.

\* \* \* \* \*

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

\* \* \* \* \*

4. *Verification of accounts.* Section 1005.18(e)(3)(i) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. Consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. Section 1005.18(e)(3)(iii) provides that once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, a financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. For an unauthorized transfer or other error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or other error is based on the date the consumer contacts the financial institution to report the unauthorized transfer or other error, not the date the financial institution successfully completes its consumer identification and verification process. For an error asserted on a previously unverified prepaid account, the time limits for the financial institution's investigation pursuant to § 1005.11(c) begin on the day following the date the financial institution successfully completed its consumer identification and verification process.

5. *Financial institution has not successfully completed verification.* Section 1005.18(e)(3)(ii)(A) states that, provided it discloses to the consumer the risks of not registering and verifying a prepaid account, a financial institution has not successfully completed its consumer identification and verification process where it has not concluded the process with respect to a particular prepaid account. For example, a financial institution initiates its consumer identification and verification process by collecting identifying information about a consumer, and attempts to verify the consumer's identity. The financial institution is unable to conclude the process because of

conflicting information about the consumer's current address. The financial institution informs the consumer about the nature of the information at issue and requests additional documentation, but the consumer does not provide the requested documentation. As long as the information needed to complete the verification process remains outstanding, the financial institution has not concluded its consumer identification and verification process with respect to that consumer. A financial institution may not delay completing its consumer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

6. *Account verification prior to acquisition.* A financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have successfully completed its consumer identification and verification process with respect to that account. For example, a university contracts with a financial institution to disburse financial aid to students via the financial institution's prepaid accounts. To facilitate the accurate disbursement of aid awards, the university provides the financial institution with identifying information about the university's students, whose identities the university had previously verified. The financial institution is deemed to have completed its consumer identification and verification process with respect to those accounts.

\* \* \* \* \*

#### Section 1005.19 Internet Posting of Prepaid Account Agreements

##### 19(a) Definitions

\* \* \* \* \*

##### 19(a)(2) Amends

\* \* \* \* \*

###### 1. \* \* \*

vii. Changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program. But see § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau.

\* \* \* \* \*

##### 19(b) Submission of Agreements to the Bureau

\* \* \* \* \*

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

\* \* \* \* \*

3. *Integrated agreement requirement.* Issuers may not submit provisions of the agreement or fee information in the form of change-in-terms notices or riders. The only addenda that may be submitted as part of an agreement are the optional fee information addenda described in § 1005.19(b)(6)(ii). Changes in provisions or fee information must be integrated into the body of the agreement or the optional fee information addenda. For example, it would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms

and conditions document on January 1 and subsequently submit a change-in-terms notice to indicate amendments to the previously submitted agreement. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and the optional addenda displaying variations in fee information.

\* \* \* \* \*

##### 19(f) Effective Date

1. *Compliance date for the agreement submission requirement.* Section 1005.19(f)(2) provides that the compliance date for the requirement to make submissions of prepaid account agreements to the Bureau on a rolling basis pursuant to § 1005.19(b) is October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. After October 1, 2018, issuers must submit on a rolling basis prepaid account agreements or notifications of withdrawn agreements to the Bureau no later than 30 days after offering, amending, or ceasing to offer the agreements.

\* \* \* \* \*

## PART 1026—TRUTH IN LENDING (REGULATION Z)

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

**Authority:** 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 9. Section 1026.61 is amended by revising paragraph (a)(5)(iii) to read as follows:

### § 1026.61 Hybrid prepaid-credit cards.

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(iii) *Business partner* means a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate except as provided in paragraph (a)(5)(iii)(D) of this section.

(A) *Arrangement defined.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a separate credit feature or the person's affiliate has an arrangement with a prepaid account issuer or its affiliate if the circumstances in either paragraph (a)(5)(iii)(B) or (C) of this section are met.

(B) *Arrangement by agreement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the parties have an agreement that allows the prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit

in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(C) *Marketing arrangement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if:

(1) The parties have a business, marketing, or promotional agreement or other arrangement which provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or the separate credit feature offered by the person who can extend credit will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to encourage them to authorize the prepaid card to access the separate credit feature as described in paragraph (a)(5)(iii)(C)(2) of this section); and

(2) At the time of the marketing agreement or arrangement described in paragraph (a)(5)(iii)(C)(1) of this section, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement between the parties that the card can access the credit feature, as described in paragraph (a)(5)(iii)(B) of this section.

(D) *Exception for certain credit card account arrangements.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in paragraphs (a)(5)(iii)(A) through (C) of this section with regard to such credit card account if all of the following conditions are met:

(1) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(2) The prepaid account issuer and the card issuer will not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to

obtain goods or services, obtain cash, or conduct person-to-person transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above.

(3) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in paragraph (a)(5)(iii)(D)(2) of this section.

(4) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(2) of this section as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in paragraphs (a)(5)(iii)(A) through (C) of this section.

(5) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(2) of this section as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. For purposes of this paragraph, "specified terms and conditions" means the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions.

\* \* \* \* \*

■ 10. In Supplement I to part 1026—Official Interpretations:

■ a. Under Section 1026.61—Hybrid Prepaid-Credit Cards:

■ i. In subsection Paragraph 61(a)(5)(iii), paragraph 1 is revised.

■ ii. Subsections 61(a)(5)(iii)(D) Exception For Certain Credit Card

Account Arrangements, Paragraph 61(a)(5)(iii)(D)(1), Paragraph 61(a)(5)(iii)(D)(2), Paragraph 61(a)(5)(iii)(D)(4), and Paragraph 61(a)(5)(iii)(D)(5) are added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

\* \* \* \* \*

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

\* \* \* \* \*

Section 1026.61—Hybrid Prepaid-Credit Cards

\* \* \* \* \*

61(a) Hybrid Prepaid-Credit Card

\* \* \* \* \*

61(a)(5) Definitions

Paragraph 61(a)(5)(iii)

1. Card network or payment network agreements. A draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network. However, for purposes of § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an "agreement" or a "business, marketing, or promotional agreement or other arrangement" described in § 1026.61(a)(5)(iii)(B) or (C), respectively.

\* \* \* \* \*

61(a)(5)(iii)(D) Exception For Certain Credit Card Account Arrangements

1. When the exception applies. If the exception in § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through the credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in § 1026.61(a)(5)(iii)(A) through (C). Accordingly, where a consumer has authorized his or her prepaid card in accordance with § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in § 1026.61(a)(5)(iii)(D)(2), the linked prepaid card is not a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account is a non-covered separate credit feature as discussed in § 1026.61(a)(2)(ii). See comment 61(a)(2)–5. In this case, by definition, the linked credit card account will be subject to the credit card rules in this regulation in its own right because it is a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in § 1026.61(a)(5)(iii)(D)(1).

Paragraph 61(a)(5)(iii)(D)(1)

1. Traditional credit card. For purposes of § 1026.61(a)(5)(iii)(D), "traditional credit card" means a credit card that is not a hybrid prepaid-credit card. Thus, the condition in § 1026.61(a)(5)(iii)(D)(1) is not satisfied if the

only credit card that a consumer can use to access the credit card account under an open-end (not home-secured) consumer credit plan is a hybrid prepaid-credit card.

Paragraph 61(a)(5)(iii)(D)(2)

1. Written request. Under § 1026.61(a)(5)(iii)(D)(2), any account holder on either the prepaid account or the credit card account may make the written request. Paragraph 61(a)(5)(iii)(D)(4)

1. Account terms, conditions, or features. Account terms, conditions, and features subject to § 1026.61(a)(5)(iii)(D)(4) include, but are not limited to:

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

ii. Fees or charges imposed on the prepaid account (see comment 61(a)(5)(iii)(D)(4)–3 for additional guidance on this element with regard to load fees);

iii. The type of access device provided to the consumer;

iv. Minimum balance requirements on the prepaid account; or

v. Account features offered in connection with the prepaid account, such as online bill payment services.

2. The same terms, conditions, and features apply to the consumer's prepaid account. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(4), the prepaid account issuer must not vary the terms, conditions, and features on the consumer's prepaid account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(2). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(4) if it provides on a consumer's prepaid account reward points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account as discussed above while not providing such reward points or cash back on the consumer's account if the consumer has not authorized such a linkage.

3. Example of impermissible variations in load fees. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(4), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account as described in § 1026.61(a)(5)(iii)(D)(2) as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliates, or a person with which the prepaid account issuer has an arrangement as described in § 1026.61(a)(5)(iii)(A) through (C). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(4) if it charges on the consumer's prepaid account \$0.50 to load funds in the course of a transaction from a credit card account offered by a card issuer with which the prepaid account issuer has an arrangement, but \$1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have an arrangement.

Paragraph 61(a)(5)(iii)(D)(5)

1. *Specified terms and conditions.* For purposes of § 1026.61(a)(5)(iii)(D), “specified terms and conditions” on a credit card account means:

i. The terms and conditions required to be disclosed under § 1026.6(b), which include pricing terms, such as periodic rates, annual percentage rates, and fees and charges imposed on the credit card account; any security interests acquired under the credit account; claims and defenses rights under § 1026.12(c); and error resolution rights under § 1026.13;

ii. Any repayment terms and conditions, including the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit feature; and

iii. The limits on liability for unauthorized credit transactions.

2. *Same specified terms and conditions regardless of whether the credit card account is linked to the prepaid account.* For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(5), the card issuer must not vary the specified terms and conditions on the consumer’s credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(2). The following are examples of circumstances in which a card issuer would not meet the condition described above:

i. The card issuer structures the credit card account as a “charge card account” (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(2), but applies a periodic rate to compute a finance charge on the consumer’s account (and thus does not use a charge card account structure)

if there is no such link. See § 1026.2(a)(15)(iii) for the definition of “charge card.”

ii. The card issuer imposes a \$50 annual fee on a consumer’s credit card account if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(2), but does not impose an annual fee on the consumer’s credit card account if there is no such link.

3. *Same specified terms and conditions regardless of whether credit is extended through the prepaid card or the traditional credit card.* To satisfy the condition of § 1026.61(a)(5)(iii)(D)(1), the credit card account must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. As explained in comment 61(a)(5)(iii)(D)(1)–1, for purposes of § 1026.61(a)(5)(iii)(D), “traditional credit card” means a credit card that is not a hybrid prepaid-credit card. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(5), a card issuer must not vary the specified terms and conditions on the credit card account when a consumer authorizes linking the account with the prepaid card as described in § 1026.61(a)(5)(iii)(D)(2) depending on whether a particular credit extension from the credit card account is made with the prepaid card or with the traditional credit card.

i. The following examples are circumstances in which a card issuer would not meet the condition of § 1026.61(a)(5)(iii)(D)(5) described above:

A. The card issuer considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain annual percentage rates (APRs), fees, and a grace period that applies to those purchase transactions, but treats transactions involving extensions of credit using the prepaid card to obtain goods

or services from an unaffiliated merchant of the card issuer as a cash advance that is subject to different APRs, fees, grace periods, and other specified terms and conditions.

B. The card issuer generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

ii. To apply the same rights under § 1026.12(c) regarding claims and defenses applicable to use of a credit card to purchase property or services, the card issuer must treat the prepaid card when it is used to access credit from the credit card account to purchase property or services as if it is a credit card and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card.

iii. To apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat the prepaid card as if it were an accepted credit card for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) as it applies to unauthorized transactions using the traditional credit card.

\* \* \* \* \*

Dated: June 15, 2017.

**Richard Cordray,**  
*Director, Bureau of Consumer Financial Protection.*

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