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APPENDIX B TO PART 1005 [RESERVED]

APPENDIX C TO PART 1005—ISSUANCE OF OFFICIAL INTERPRETATIONS

Official Interpretations

Interpretations of this part issued by duly authorized officials of the Bureau provide the protection afforded under section 916(d) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically.

Requests for Issuance of Official Interpretations

A request for an official interpretation shall be in writing and addressed to the Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

[88 FR 16538, Mar. 20, 2023]

SUPPLEMENT I TO PART 1005—OFFICIAL INTERPRETATIONS

SECTION 1005.2 DEFINITIONS

2(a) Access Device

1. *Examples.* The term ''access device'' includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer (EFT) to or from a consumer account. The term does not include magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.

2. *Checks used to capture information.* The term ''access device'' does not include a check or draft used to capture the Magnetic Ink Character Recognition (MICR) encoding to initiate a one-time automated clearinghouse (ACH) debit. For example, if a consumer authorizes a one-time ACH debit from the consumer's account using a blank, partially completed, or fully completed and signed check for the merchant to capture the routing, account, and serial numbers to initiate the debit, the check is not an access device. (Although the check is not an access device under Regulation E, the transaction is nonetheless covered by the regulation. *See* comment 3(b)(1)–1.v.)

2(b) Account

1. *Consumer asset account.* The term ''consumer asset account'' includes:

i. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under §1005.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.

ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

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

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

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

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

Paragraph 2(b)(2)

1. *Bona fide trust agreements.* The term ''bona fide trust agreement'' is not defined by the Act or regulation; therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of Regulation E.

Paragraph 2(b)(3)

Paragraph 2(b)(3)(i)

1. *Debit card includes prepaid card.* For purposes of subpart A of Regulation E, unless otherwise specified, the term debit card also includes a prepaid card.

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

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

3. *Marketed or labeled as ''prepaid.''* The term ''marketed or labeled as 'prepaid' '' means promoting or advertising an account using the term ''prepaid.'' For example, an account is marketed or labeled as prepaid if the term ''prepaid'' appears on the access device associated with the account or the access device's packaging materials, or on a display, advertisement, or other publication to promote purchase or use of the account. An account may be marketed or labeled as prepaid if the financial institution, its service provider, including a program manager, or the payment network on which an access device for the account is used, promotes or advertises, or contracts with another party to promote or advertise, the account using the label ''prepaid.'' A product or service that is marketed or labeled as prepaid is not a ''prepaid account'' pursuant to §1005.2(b)(3)(i)(C) if it does not otherwise meet the definition of account under §1005.2(b)(1).

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

5. *Capable of being loaded with funds.* A prepaid account that is not issued on a prepaid basis but is capable of being loaded with funds thereafter includes a prepaid card issued to a consumer with a zero balance to which funds may be loaded by the consumer or a third party subsequent to issuance.

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

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

8. *Primary function.* To satisfy §1005.2(b)(3)(i)(D), an account's primary function must be to provide consumers with general transaction capability, which includes the general ability to use loaded funds to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers. This definition excludes accounts that provide such capability only incidentally. For example, the primary function of a brokerage account is to hold funds so that the consumer can conduct transactions through a licensed broker or firm, not to conduct transactions with multiple, unaffiliated merchants for good or services, or at automated teller machines, or to conduct person-to-person transfers. Similarly, the primary function of a savings account is to accrue interest on funds held in the account; such accounts restrict the extent to which the consumer can conduct general transactions and withdrawals. Accordingly, brokerage accounts and savings accounts do not satisfy §1005.2(b)(3)(i)(D), and thus are not prepaid accounts as defined by §1005.2(b)(3). The following examples provide additional guidance:

i. An account's primary function is to enable a consumer to conduct transactions with multiple, unaffiliated merchants for goods or services, at automated teller machines, or to conduct person-to-person transfers, even if the account also enables a third party to disburse funds to a consumer. For example, a prepaid account that conveys tax refunds or insurance proceeds to a consumer meets the primary function test if the account can be used, *e.g.*, to purchase goods or services at multiple, unaffiliated merchants.

ii. Whether an account satisfies §1005.2(b)(3)(i)(D) is determined by reference to the account, not the access device associated with the account. An account satisfies §1005.2(b)(3)(i)(D) even if the account's access device can be used for other purposes, for example, as a form of identification. Such accounts may include, for example, a prepaid account used to disburse student loan proceeds via a card device that can be used at unaffiliated merchants or to withdraw cash from an automated teller machine, even if that access device also acts as a student identification card.

iii. Where multiple accounts are associated with the same access device, the primary function of each account is determined separately. One or more accounts can satisfy §1005.2(b)(3)(i)(D) even if other accounts associated with the same access device do not. For example, a student identification card may act as an access device associated with

two separate accounts: An account used to conduct transactions with multiple, unaffiliated merchants for goods or services, and an account used to conduct closed-loop transactions on campus. The account used to conduct transactions with multiple, unaffiliated merchants for goods or services satisfies §1005.2(b)(3)(i)(D), even though the account used to conduct closed-loop transactions does not (and as such the latter is not a prepaid account as defined by §1005.2(b)(3)).

iv. An account satisfies §1005.2(b)(3)(i)(D) if its primary function is to provide general transaction capability, even if an individual consumer does not in fact use it to conduct multiple transactions. For example, the fact that a consumer may choose to withdraw the entire account balance at an automated teller machine or transfer it to another account held by the consumer does not change the fact that the account's primary function is to provide general transaction capability.

v. An account whose primary function is other than to conduct transactions with multiple, unaffiliated merchants for goods or services, or at automated teller machines, or to conduct person-to-person transfers, does not satisfy §1005.2(b)(3)(i)(D). Such accounts may include, for example, a product whose only function is to make a one-time transfer of funds into a separate prepaid account.

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

10. *Person-to-person transfers.* A prepaid account whose primary function is to conduct person-to-person transfers is an account that allows a consumer to send funds by electronic fund transfer to another consumer or business. An account may qualify as a prepaid account if its primary function is person-to-person transfers even if it is neither redeemable upon presentation at multiple, unaffiliated merchants for goods or services, nor usable at automated teller machines. A transaction involving a store gift card would not be a person-to-person transfer if it could only be used to make payments to the merchant or affiliated group of merchants on whose behalf the card was issued.

Paragraph 2(b)(3)(ii)

1. *Excluded health care and employee benefit related prepaid products.* For purposes of §1005.2(b)(3)(ii)(A), ''health savings account'' means a health savings account as defined in 26 U.S.C. 223(d); ''flexible spending arrangement'' means a health benefits or a health flexible spending arrangement pursuant to 26 U.S.C. 125; ''medical savings account'' means an Archer MSA as defined in 26 U.S.C. 220(d); ''health reimbursement arrangement'' means a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of 26 U.S.C. 106; ''dependent care assistance program'' means a dependent care assistance program pursuant to 26 U.S.C. 129; and ''transit or parking reimbursement arrangement'' means a qualified transportation fringe benefit provided by an employer pursuant to 26 U.S.C. 132.

2. *Excluded disaster relief funds.* For purposes of §1005.2(b)(3)(ii)(B), ''qualified disaster relief funds'' means funds made available through a qualified disaster relief program as defined in 26 U.S.C. 139(b).

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

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*).

2(d) Business Day

1. *Duration.* A business day includes the entire 24-hour period ending at midnight, and a notice required by the regulation is effective even if given outside normal business hours. The regulation does not require, however, that a financial institution make telephone lines available on a 24-hour basis.

2. *Substantially all business functions.* Substantially all business functions include both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday

does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, *etc.*

3. *Short hours.* A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a financial institution makes a telephone line available on Sundays for reporting the loss or theft of an access device, but performs no other business functions, Sunday is not a business day under the substantially all business functions standard.

2(h) Electronic Terminal

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term ''electronic terminal'' excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:

i. A consumer uses a debit card at a public telephone to pay for the call.

ii. A consumer initiates a transfer by a means analogous in function to a telephone, such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E even if no access device is used to initiate the transaction. *See* §1005.9 for receipt requirements.

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of a consumer's access device (using the consumer's PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

2(k) Preauthorized Electronic Fund Transfer

1. *Advance authorization.* A preauthorized electronic fund transfer under Regulation E is one authorized by the consumer in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a financial institution to make monthly payments to a payee by means of EFTs, and the payments take place without further action by the consumer, the payments are preauthorized EFTs. In contrast, if the consumer must take action each month to initiate a payment (such as by entering instructions on a touch-tone telephone or home computer), the payments are not preauthorized EFTs.

2(m) Unauthorized Electronic Fund Transfer

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes an access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery or fraud.* An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An EFT at an ATM is an unauthorized transfer if the consumer has been induced by force to initiate the transfer.

5. *Reversal of direct deposits.* The reversal of a direct deposit made in error is not an unauthorized EFT when it involves:

i. A credit made to the wrong consumer's account;

ii. A duplicate credit made to a consumer's account; or

iii. A credit in the wrong amount (for example, when the amount credited to the consumer's account differs from the amount in the transmittal instructions).

SECTION 1005.3 COVERAGE

3(a) General

1. *Accounts covered.* The requirements of the regulation apply only to an account for which an agreement for EFT services to or from the account has been entered into between:

i. The consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);

ii. The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

2. *Automated clearing house (ACH) membership.* The fact that membership in an ACH requires a financial institution to accept EFTs to accounts at the institution does not make every account of that institution subject to the regulation.

3. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to

residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in §1005.2(l).

3(b) Electronic Fund Transfer

3(b)(1) Definition

1. *Fund transfers covered.* The term ''electronic fund transfer'' includes:

i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.

ii. A transfer sent via ACH. For example, social security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.

iii. A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.

iv. A transfer from the consumer's account resulting from a debit-card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.

v. A transfer via ACH where a consumer has provided a check to enable the merchant or other payee to capture the routing, account, and serial numbers to initiate the transfer, whether the check is blank, partially completed, or fully completed and signed; whether the check is presented at POS or is mailed to a merchant or other payee or lockbox and later converted to an EFT; or whether the check is retained by the consumer, the merchant or other payee, or the payee's financial institution.

vi. A payment made by a bill payer under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account, and the payee or payees that will be paid in this manner are identified to the consumer.

2. *Fund transfers not covered.* The term ''electronic fund transfer'' does not include:

i. A payment that does not debit or credit a consumer asset account, such as a payroll allotment to a creditor to repay a credit extension (which is deducted from salary).

ii. A payment made in currency by a consumer to another person at an electronic terminal.

iii. A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

iv. Transactions arising from the electronic collection, presentment, or return of checks through the check collection system, such as through transmission of electronic check images.

3(b)(2) Electronic Fund Transfer Using Information From a Check

1. *Notice at POS not furnished due to inadvertent error.* If the copy of the notice under section 1005.3(b)(2)(ii) for electronic check conversion (ECK) transactions is not provided to the consumer at POS because of a bona fide unintentional error, such as when a terminal printing mechanism jams, no violation results if the payee maintains procedures reasonably adapted to avoid such occurrences.

2. *Authorization to process a transaction as an EFT or as a check.* In order to process a transaction as an EFT, or alternatively as a check, the payee must obtain the consumer's authorization to do so. A payee may, at its option, specify the circumstances under which a check may not be converted to an EFT. *See* model clauses in appendix A–6.

3. *Notice for each transfer.* Generally, a notice to authorize an electronic check conversion transaction must be provided for each transaction. For example, a consumer must receive a notice that the transaction will be processed as an EFT for each transaction at POS or each time a consumer mails a check in an accounts receivable (ARC) transaction to pay a bill, such as a utility bill, if the payee intends to convert a check received as payment. Similarly, the consumer must receive notice if the payee intends to collect a service fee for insufficient or uncollected funds via an EFT for each transaction whether at POS or if the consumer mails a check to pay a bill. The notice about when funds may be debited from a consumer's account and the non-return of consumer checks by the consumer's financial institution must also be provided for each transaction. However, if in an ARC transaction, a payee provides a coupon book to a consumer, for example, for mortgage loan payments, and the payment dates and amounts are set out in the coupon book, the payee may provide a single notice on the coupon book stating all of the required disclosures under

paragraph (b)(2) of this section in order to obtain authorization for each conversion of a check and any debits via EFT to the consumer's account to collect any service fees imposed by the payee for insufficient or uncollected funds in the consumer's account. The notice must be placed on a conspicuous location of the coupon book that a consumer can retain—for example, on the first page, or inside the front cover.

4. *Multiple payments/multiple consumers.* If a merchant or other payee will use information from a consumer's check to initiate an EFT from the consumer's account, notice to a consumer listed on the billing account that a check provided as payment during a single billing cycle or after receiving an invoice or statement will be processed as a one-time EFT or as a check transaction constitutes notice for all checks provided in payment for the billing cycle or the invoice for which notice has been provided, whether the check(s) is submitted by the consumer or someone else. The notice applies to all checks provided in payment for the billing cycle or invoice until the provision of notice on or with the next invoice or statement. Thus, if a merchant or other payee receives a check as payment for the consumer listed on the billing account after providing notice that the check will be processed as a one-time EFT, the authorization from that consumer constitutes authorization to convert any other checks provided for that invoice or statement. Other notices required under this paragraph (b)(2) (for example, to collect a service fee for insufficient or uncollected funds via an EFT) provided to the consumer listed on the billing account also constitutes notice to any other consumer who may provide a check for the billing cycle or invoice.

5. *Additional disclosures about ECK transactions at POS.* When a payee initiates an EFT at POS using information from the consumer's check, and returns the check to the consumer at POS, the payee need not provide a notice to the consumer that the check will not be returned by the consumer's financial institution.

3(b)(3) Collection of Returned Item Fees via Electronic Fund Transfer

1. *Fees imposed by account-holding institution.* The requirement to obtain a consumer's authorization to collect a fee via EFT for the return of an EFT or check unpaid applies only to the person that intends to initiate an EFT to collect the returned item fee from the consumer's account. The authorization requirement does not apply to any fees assessed by the consumer's account-holding financial institution when it returns the unpaid underlying EFT or check or pays the amount of an overdraft.

2. *Accounts receivable transactions.* In an ARC transaction where a consumer sends in a payment for amounts owed (or makes an in-person payment at a biller's physical location, such as when a consumer makes a loan payment at a bank branch or places a payment in a drop box), a person seeking to electronically collect a fee for items returned unpaid must obtain the consumer's authorization to collect the fee in this manner. A consumer authorizes a person to electronically collect a returned item fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer's account, and the consumer goes forward with the underlying transaction by providing payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors, such as the number of days the underlying transaction is left outstanding. For example, if a state law permits a maximum fee of $30 or 10% of the underlying transaction, whichever is greater, the person collecting the fee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

3. *Disclosure of dollar amount of fee for POS transactions.* The notice provided to the consumer in connection with a POS transaction under §1005.3(b)(3)(ii) must state the amount of the fee for a returned item if the dollar amount of the fee can be calculated at the time the notice is provided or mailed. For example, if notice is provided to the consumer at the time of the transaction, if the applicable state law sets a maximum fee that may be collected for a returned item based on the amount of the underlying transaction (such as where the amount of the fee is expressed as a percentage of the underlying transaction), the person collecting the fee must state the actual dollar amount of the fee on the notice provided to the consumer. Alternatively, if the amount of the fee to be collected cannot be calculated at the time of the transaction (for example, where the amount of the fee will depend on the number of days a debt continues to be owed), the person collecting the fee may provide a description of how the fee will be determined on both the posted notice as well as on the notice provided at the time of the transaction. However, if the person collecting the fee elects to send the consumer notice after the person has initiated an EFT to collect the fee, that notice must state the amount of the fee to be collected.

4. *Third party providing notice.* The person initiating an EFT to a consumer's account to electronically collect a fee for an item returned unpaid may obtain the authorization and provide the notices required under §1005.3(b)(3) through third parties, such as merchants.

3(c) Exclusions From Coverage

3(c)(1) Checks

1. *Re-presented checks.* The electronic representment of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee debited via an EFT from a consumer's account by the payee because the check was returned for insufficient or uncollected funds. The person debiting the fee electronically must obtain the consumer's authorization.

2. *Check used to capture information for a one-time EFT. See* comment 3(b)(1)–1.v.

3(c)(2) Check Guarantee or Authorization

1. *Memo posting.* Under a check guarantee or check authorization service, debiting of the consumer's account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

3(c)(3) Wire or Other Similar Transfers

1. *Fedwire and ACH.* If a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire or a similar network, the transfer by ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of UCC section 4A–202, which encourages verification of Fedwire payment orders pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately from a telephone bill-payment or other prearranged plan subject to Regulation E. Regulation J of the Board of Governors of the Federal Reserve System (12 CFR part 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire are consistent, the Board of Governors used its preemptive authority under UCC section 4A–107 to determine that subpart B of the Board's Regulation J, including the provisions of Article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B of the Board's Regulation J.

3. *Similar fund transfer systems.* Fund transfer systems that are similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Telex, and transfers made on the books of correspondent banks.

3(c)(4) Securities and Commodities Transfers

1. *Coverage.* The securities exemption applies to securities and commodities that may be sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Example of exempt transfer.* The exemption applies to a transfer involving a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

3. *Examples of nonexempt transfers.* The exemption does not apply to a transfer involving:

i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and that the consumer uses for purchasing goods or services or for obtaining cash.

ii. A payment of interest or dividends into the consumer's account (for example, from a brokerage firm or from a Federal Reserve Bank for government securities).

3(c)(5) Automatic Transfers by Account-Holding Institution

1. *Automatic transfers exempted.* The exemption applies to:

i. Electronic debits or credits to consumer accounts for check charges, stop-payment charges, non-sufficient funds (NSF) charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.

ii. Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.

iii. EFTs between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.

iv. Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. *Automatic transfers not exempted.* Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.

3(c)(6) Telephone-Initiated Transfers

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered by Regulation E if the transfer is made

under a written plan or agreement between the consumer and the financial institution making the transfer. A written statement available to the public or to account holders that describes a service allowing a consumer to initiate transfers by telephone constitutes a plan; for example, a brochure, or material included with periodic statements. The following, however, do not by themselves constitute a written plan or agreement:

i. A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.

ii. A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204).

iii. An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. *Examples of covered transfers.* When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:

i. An employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip).

ii. The consumer is required to make a separate request for each transfer.

iii. The consumer uses the plan infrequently.

iv. The consumer initiates the transfer via a facsimile machine.

v. The consumer initiates the transfer using a financial institution's audio-response or voice-response telephone system.

3(c)(7) Small Institutions

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer other EFTs must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject to sections 913, 916, and 917 of the Act and §1005.10(e), and are therefore exempt from UCC Article 4A.

SECTION 1005.4 GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES

4(a) Form of Disclosures

1. *General.* The disclosures required by this part must be in a clear and readily understandable written form that the consumer may retain. Additionally, except as otherwise set forth in §§1005.18(b)(7) and 1005.31(c), no particular rules govern type size, number of pages, or the relative conspicuousness of various terms. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

2. *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

SECTION 1005.5 ISSUANCE OF ACCESS DEVICES

1. *Coverage.* The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations of this section.

5(a) Solicited Issuance

Paragraph 5(a)(1)

1. *Joint account.* For a joint account, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

2. *Permissible forms of request.* The request for an access device may be written or oral (for example, in response to a telephone solicitation by a card issuer).

Paragraph 5(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, only one renewal or substitute device may replace a previously issued device. For example, only one new card and PIN may replace a card and PIN previously issued. A financial institution may provide additional devices at the time it issues the renewal or substitute access device, however, provided the institution complies with §1005.5(b). *See* comment 5(b)–5. If the replacement device or the additional device permits either fewer or additional types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaces the original financial institution (for example, following a corporate merger or acquisition) or that acquires accounts or assumes the operation of an EFT system.

5(b) Unsolicited Issuance

1. *Compliance.* A financial institution may issue an unsolicited access device (such as the combination of a debit card and PIN) if the institution's ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution verifies the consumer's identity does not comply with the regulation.

2. *PINs.* A financial institution may impose no liability on a consumer for unauthorized transfers involving an unsolicited access device until the device becomes an ''accepted access device'' under the regulation. A card and PIN combination may be treated as an

accepted access device once the consumer has used it to make a transfer.

3. *Functions of PIN.* If an institution issues a PIN at the consumer's request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. *Verification of identity.* To verify the consumer's identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer's identity and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

5. *Additional access devices in a renewal or substitution.* A financial institution may issue more than one access device in connection with the renewal or substitution of a previously issued accepted access device, provided that any additional access device (beyond the device replacing the accepted access device) is not validated at the time it is issued, and the institution complies with the other requirements of §1005.5(b). The institution may, if it chooses, set up the validation procedure such that both the device replacing the previously issued device and the additional device are not validated at the time they are issued, and validation will apply to both devices. If the institution sets up the validation procedure in this way, the institution should provide a clear and readily understandable disclosure to the consumer that both devices are unvalidated and that validation will apply to both devices.

SECTION 1005.6 LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS

6(a) Conditions for Liability

1. *Means of identification.* A financial institution may use various means for identifying the consumer to whom the access device is issued, including but not limited to:

i. Electronic or mechanical confirmation (such as a PIN).

ii. Comparison of the consumer's signature, fingerprint, or photograph.

2. *Multiple users.* When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

6(b) Limitations on Amount of Liability

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized EFTs depending on the situation. A consumer may be liable for: (1) up to $50; (2) up to $500; or (3) an unlimited amount depending on when the unauthorized EFT occurs. More than one tier may apply to a given situation because each corresponds to a different (sometimes overlapping) time period or set of conditions.

2. *Consumer negligence.* Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on a debit card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. (However, refer to comment 2(m)–2 regarding termination of the authority of given by the consumer to another person.)

3. *Limits on liability.* The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

6(b)(1) Timely Notice Given

1. *$50 limit applies.* The basic liability limit is $50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to $50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. *Knowledge of loss or theft of access device.* The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

3. *Two business day rule.* The two business day period does not include the day the consumer learns of the loss or theft or any day that is not a business day. The rule is calculated based on two 24-hour periods, without regard to the financial institution's business hours or the time of day that the consumer learns of the loss or theft. For example, a consumer learns of the loss or theft at 6 p.m. on Friday. Assuming that Saturday is a business day and Sunday is not, the two business day period begins on Saturday and expires at 11:59 p.m. on Monday, not at the end of the financial institution's business day on Monday.

6(b)(2) Timely Notice Not Given

1. *$500 limit applies.* The second tier of liability is $500. For example, the consumer's card is stolen on Monday and the consumer

learns of the theft that same day. The consumer reports the theft on Friday. The $500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In this example, assume a $100 unauthorized transfer was made on Tuesday and a $600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than $50), plus the amount of the unauthorized transfers that occurs after the first two business days and before the consumer gives notice, the consumer's total liability is $500 ($50 of the $100 transfer plus $450 of the $600 transfer, in this example). But if $600 was taken on Tuesday and $100 on Thursday, the consumer's maximum liability would be $150 ($50 of the $600 plus $100).

6(b)(3) Periodic Statement; Timely Notice Not Given

1. *Unlimited liability applies.* The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer made with a lost or stolen debit card, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer's liability for unauthorized transfers before the statement is sent, and up to 60 days following, is determined based on the first two tiers of liability: up to $50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to $500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, a consumer's account is electronically debited for $200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the $200, the consumer's account is debited for a $400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the first unauthorized transfer until the 62nd day, the consumer may be liable for the full $400.

6(b)(4) Extension of Time Limits

1. *Extenuating circumstances.* Examples of circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

6(b)(5) Notice to Financial Institution

1. *Receipt of notice.* A financial institution is considered to have received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner, even if the consumer notifies the institution but uses an address or telephone number other than the one specified by the institution.

2. *Notice by third party.* Notice to a financial institution by a person acting on the consumer's behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer's behalf notifies the bank of the loss or theft. A financial institution may require appropriate documentation from the person representing the consumer to establish that the person is acting on the consumer's behalf.

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide the account number or the card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

SECTION 1005.7 INITIAL DISCLOSURES

7(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. This interpretation also applies to any notice provided about one-time EFTs from a consumer's account initiated using information from the

consumer's check. On the other hand, if an agreement for EFT services to be provided by an account-holding institution is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

2. *Lack of advance notice of a transfer.* Where a consumer authorizes a third party to debit or credit the consumer's account, an account-holding institution that has not received advance notice of the transfer or transfers must provide the required disclosures as soon as reasonably possible after the first debit or credit is made, unless the institution has previously given the disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting EFTs at a financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

4. *Addition of service in interchange systems.* If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed.

5. *Disclosures covering all EFT services offered.* An institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services.

7(b) Content of Disclosures

7(b)(1) Liability of Consumer

1. *No liability imposed by financial institution.* If a financial institution chooses to impose zero liability for unauthorized EFTs, it need not provide the liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. *Preauthorized transfers.* If the only EFTs from an account are preauthorized transfers, liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement. To impose such liability on the consumer, the institution must have disclosed the potential liability and the telephone number and address for reporting unauthorized transfers.

3. *Additional information.* At the institution's option, the summary of the consumer's liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

7(b)(2) Telephone Number and Address

1. *Disclosure of telephone numbers.* An institution may use the same or different telephone numbers in the disclosures for the purpose of:

i. Reporting the loss or theft of an access device or possible unauthorized transfers;

ii. Inquiring about the receipt of a preauthorized credit;

iii. Stopping payment of a preauthorized debit;

iv. Giving notice of an error.

2. *Location of telephone number.* The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as ''Call your branch office. The number is shown on your periodic statement.'' However, an institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

7(b)(4) Types of Transfers; Limitations

1. *Security limitations.* Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to $100 per day. The institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line).

2. *Restrictions on certain deposit accounts.* A limitation on account activity that restricts the consumer's ability to make EFTs must be disclosed even if the restriction also applies to transfers made by non-electronic means. For example, Regulation D of the Board of Governors of the Federal Reserve System (12 CFR part 204) restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs.

3. *Preauthorized transfers.* Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

4. *One-time EFTs initiated using information from a check.* Financial institutions must disclose the fact that one-time EFTs initiated using information from a consumer's check are among the types of transfers that a consumer can make. *See* appendix A–2.

7(b)(5) Fees

1. *Disclosure of EFT fees.* An institution is required to disclose all fees for EFTs or the right to make them. Others fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed. *But see* Regulation DD, 12 CFR part 1030. An institution is not required to disclose fees for inquiries made at an ATM since no transfer of funds is involved.

2. *Fees also applicable to non-EFT.* A per-item fee for EFTs must be disclosed even if the same fee is imposed on non-electronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document that is referenced in the statement.

3. *Interchange system fees.* Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly from the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be disclosed. *See* §1005.7(b)(11) for the general notice requirement regarding fees that may be imposed by ATM operators and by a network used to complete the transfer.

7(b)(9) Confidentiality

1. *Information provided to third parties.* An institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. The term ''third parties'' includes affiliates such as other subsidiaries of the same holding company.

7(b)(10) Error Resolution

1. *Substantially similar.* The error resolution notice must be substantially similar to the model form in appendix A of part 1005. An institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E.

2. *Extended time-period for certain transactions.* To take advantage of the longer time periods for resolving errors under §1005.11(c)(3) (for new accounts as defined in Regulation CC of the Board of Governors of the Federal Reserve System (12 CFR part 229), transfers initiated outside the United States, or transfers resulting from POS debit-card transactions), a financial institution must have disclosed these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in §1005.11(c)(2) for accounts subject to Regulation T of the Board of Governors of the Federal Reserve System (12 CFR part 220) must have disclosed accordingly.

7(c) Addition of Electronic Fund Transfer Services

1. *Addition of electronic check conversion services.* One-time EFTs initiated using information from a consumer's check are a new type of transfer requiring new disclosures, as applicable. *See* appendix A–2.

SECTION 1005.8 CHANGE-IN-TERMS NOTICE; ERROR RESOLUTION NOTICE

8(a) Change-in-Terms Notice

1. *Form of notice.* No specific form or wording is required for a change-in-terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. *Changes not requiring notice.* The following changes do not require disclosure:

i. Closing some of an institution's ATMs;

ii. Cancellation of an access device.

3. *Limitations on transfers.* When the initial disclosures omit details about limitations because secrecy is essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits in place when the initial disclosures were given and now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. *See also* §1005.7(b)(4) and the related commentary.

4. *Change in telephone number or address.* When a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, a change-in-terms notice is required only if the institution will impose liability on the consumer for unauthorized transfers under §1005.6. *See also* §1005.6(a) and the related commentary.

8(b) Error Resolution Notice

1. *Change between annual and periodic notice.* If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice sent under the old method.

2. *Exception for new accounts.* For new accounts, disclosure of the longer error resolution time periods under §1005.11(c)(3) is not

required in the annual error resolution notice or in the notice that may be provided with each periodic statement as an alternative to the annual notice.

SECTION 1005.9 RECEIPTS AT ELECTRONIC TERMINALS; PERIODIC STATEMENTS

9(a) Receipts at Electronic Terminals

1. *Receipts furnished only on request.* The regulation requires that a receipt be ''made available.'' A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. *Third party providing receipt.* An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. *Inclusion of promotional material.* A financial institution may include promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer may not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. *Transfer not completed.* The receipt requirement does not apply to a transfer that is initiated but not completed (for example, if the ATM is out of currency or the consumer decides not to complete the transfer).

5. *Receipts not furnished due to inadvertent error.* If a receipt is not provided to the consumer because of a bona fide unintentional error, such as when a terminal runs out of paper or the mechanism jams, no violation results if the financial institution maintains procedures reasonably adapted to avoid such occurrences.

6. *Multiple transfers.* If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

9(a)(1) Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as a consumer is given the option to cancel the transaction after receiving notice of a fee. *See* §1005.16 for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.

2. *Relationship between §1005.9(a)(1) and §1005.16.* The requirements of §§1005.9(a)(1) and 1005.16 are similar but not identical.

i. Section 1005.9(a)(1) requires that if the amount of the transfer as shown on the receipt will include the fee, then the fee must be disclosed either on a sign on or at the terminal, or on the terminal screen. Section 1005.16 requires disclosure both on a sign on or at the terminal (in a prominent and conspicuous location) and on the terminal screen. Section 1005.16 permits disclosure on a paper notice as an alternative to the on-screen disclosure.

ii. The disclosure of the fee on the receipt under §1005.9(a)(1) cannot be used to comply with the alternative paper disclosure procedure under §1005.16, if the receipt is provided at the completion of the transaction because, pursuant to the statute, the paper notice must be provided before the consumer is committed to paying the fee.

iii. Section 1005.9(a)(1) applies to any type of electronic terminal as defined in Regulation E (for example, to POS terminals as well as to ATMs), while §1005.16 applies only to ATMs.

9(a)(2) Date

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

9(a)(3) Type

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account include ''withdrawal from checking,'' ''transfer from savings to checking,'' or ''payment from savings.''

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one particular account at terminals not operated by the account-holding institution, or may be able to access only one particular account when the terminal is off-line. The exception is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify which account was accessed, such as ''withdrawal from checking I'' or ''withdrawal from checking II.'' If only one account besides the primary checking account can be debited, the receipt can identify the account as ''withdrawal from other account.''

4. *Generic descriptions.* Generic descriptions may be used for accounts that are similar in function, such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a ''withdrawal from checking.''

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

9(a)(5) Terminal Location

1. *Options for identifying terminal.* The institution may provide either:

i. The city, state or foreign country, and the information in §1005.9(a)(5) (i), (ii), or (iii), or

ii. A number or a code identifying the terminal. If the institution chooses the second option, the code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

3. *Omission of a state.* A state may be omitted from the location information on the receipt if:

i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or

ii. All transfers occur at terminals located within 50 miles of the financial institution's main office.

4. *Omission of a city and state.* A city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

Paragraph 9(a)(5)(i)

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

Paragraph 9(a)(5)(ii)

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

Paragraph 9(a)(5)(iii)

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

9(a)(6) Third Party Transfer

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.

2. *Receipt as proof of payment.* Documentation required under the regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

9(b) Periodic Statements

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular cycle. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.

2. *Interim statements.* Generally, a financial institution must provide periodic statements for each monthly cycle in which an EFT occurs, and at least quarterly if a transfer has not occurred. Where EFTs occur between regularly-scheduled cycles, interim statements must be provided. For example, if an institution issues quarterly statements at the end of March, June, September and December, and the consumer initiates an EFT in February, an interim statement for February must be provided. If an interim statement contains interest or rate information, the institution must comply with Regulation DD, 12 CFR 1030.6.

3. *Inactive accounts.* A financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

4. *Statement pickup.* A financial institution may permit, but may not require, consumers to pick up their periodic statements at the financial institution.

5. *Periodic statements limited to EFT activity.* A financial institution that uses a passbook as the primary means for displaying account activity, but also allows the account to be debited electronically, may provide a periodic statement requirement that reflects only the EFTs and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). *See* §1005.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may:

i. Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;

ii. Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;

iii. Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

9(b)(1) Transaction Information

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to ensure the integrity of data obtained from another institution, a merchant, or other third parties, verification of each transfer that appears on the periodic statement is not required.

Paragraph 9(b)(1)(i)

1. *Incorrect deposit amount.* If a financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify the consumer of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution's adjustment.

Paragraph 9(b)(1)(iii)

1. *Type of transfer.* There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

Paragraph 9(b)(1)(iv)

1. *Nonproprietary terminal in network.* An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity that owns or operates the terminal, plus the city and state.

Paragraph 9(b)(1)(v)

1. *Recurring payments by government agency.* The third-party name for recurring payments from Federal, state, or local governments need not list the particular agency. For example, ''U.S. gov't'' or ''N.Y. sal'' will suffice.

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. *Terminal location/third party.* A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as ''XYZ Store, Anytown, Ohio.''

4. *Account-holding institution as third party.* Transfers to the account-holding institution (by ATM, for example) must show the institution as the recipient, unless other information on the statement (such as, ''loan payment from checking'') clearly indicates that the payment was to the account-holding institution.

5. *Consistency in third-party identity.* The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the ''dba'' (doing business as) name of the third party or the parent corporation's name.

6. *Third-party identity on deposits at electronic terminal.* A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

9(b)(3) Fees

1. *Disclosure of fees.* The fees disclosed may include fees for EFTs and for other non-electronic services, and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for EFTs, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

3. *Finance charges.* The requirement to disclose any fees assessed against the account does not include a finance charge imposed on the account during the statement period.

9(b)(4) Account Balances

1. *Opening and closing balances.* The opening and closing balances must reflect both EFTs and other account activity.

9(b)(5) Address and Telephone Number for Inquiries

1. *Telephone number.* A single telephone number, preceded by the ''direct inquiries to'' language, will satisfy the requirements of §§ 1005.9(b)(5) and (6).

9(b)(6) Telephone Number for Preauthorized Transfers

1. *Telephone number. See* comment 9(b)(5)–1.

9(c) Exceptions to the Periodic Statement Requirements for Certain Accounts

1. *Transfers between accounts.* The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. The financial institution must still comply with the applicable periodic statement requirements for any other EFTs to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

9(c)(1) Preauthorized Transfers to Accounts

1. *Accounts that may be accessed only by preauthorized transfers to the account.* The exception for ''accounts that may be accessed only by preauthorized transfers to the account'' includes accounts that can be accessed by means other than EFTs, such as checks. If, however, an account may be accessed by any EFT other than preauthorized credits to the account, such as preauthorized debits or ATM transactions, the account does not qualify for the exception.

2. *Reversal of direct deposits.* For direct-deposit-only accounts, a financial institution must send a periodic statement at least quarterly. A reversal of a direct deposit to correct an error does not trigger the monthly statement requirement when the error represented a credit to the wrong consumer's account, a duplicate credit, or a credit in the wrong amount. *See also* comment 2(m)–5.

9(d) Documentation for Foreign-Initiated Transfers

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign-initiated transfers. For example, even if the institution is not able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

SECTION 1005.10 PREAUTHORIZED TRANSFERS

10(a) Preauthorized Transfers to Consumer's Account

10(a)(1) Notice by Financial Institution

1. *Content.* No specific language is required for notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. *Notice of credit.* A financial institution may use different methods of notice for various types or series of preauthorized transfers, and the institution need not offer consumers a choice of notice methods.

3. *Positive notice.* A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. *Negative notice.* The absence of a deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice.

5. *Telephone notice.* If a financial institution uses the telephone notice option, the institution should be able in most instances to verify during a consumer's initial call whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. *Phone number for passbook accounts.* The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook, or include the number with the annual error resolution notice.

7. *Telephone line availability.* To satisfy the readily-available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

1. *Preexisting authorizations.* The financial institution need not require a new authorization before changing from paper-based to electronic debiting when the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting will occur by paper means. A new authorization also is not required when a successor institution begins collecting payments.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate the regulation when a third-party payee fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer ''only by a writing'' cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer.

4. *Use of a confirmation form.* A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a preauthorization form, and ask the consumer to sign and return one and to retain the second copy.

5. *Similarly authenticated.* The similarly authenticated standard permits signed, written authorizations to be provided electronically. The writing and signature requirements of this section are satisfied by complying with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*, which defines electronic records and electronic signatures. Examples of electronic signatures include, but are not limited to, digital signatures and security codes. A security code need not originate with the account-holding institution. The authorization process should evidence the consumer's identity and assent to the authorization. The person that obtains the authorization must provide a copy of the terms of the authorization to the consumer either electronically or in paper form. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

6. *Requirements of an authorization.* An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

7. *Bona fide error.* Consumers sometimes authorize third-party payees, by telephone or online, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. Procedures reasonably adapted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit (or check) card or a credit card is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit or check card), the payee may rely on the consumer's statement without seeking further information about the type of card. If the payee believes, at the time of the authorization, that a credit card is involved, and later finds that the card used is a debit card (for example, because the consumer later brings the matter to the payee's attention), the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer's account.

10(c) Consumer's Right to Stop Payment

1. *Stop-payment order.* The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order (for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume).

2. *Revocation of authorization.* Once a financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. *But see* comment 10(c)–3. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

3. *Alternative procedure for processing a stop-payment request.* If an institution does not have the capability to block a preauthorized debit from being posted to the consumer's account—as in the case of a preauthorized debit made through a debit card network or other system, for example—the institution may instead comply with the stop-payment requirements by using a third party to block the transfer(s), as long as the consumer's account is not debited for the payment.

10(d) Notice of Transfers Varying in Amount

10(d)(1) Notice

1. *Preexisting authorizations.* A financial institution holding the consumer's account does not violate the regulation if the designated payee fails to provide notice of varying amounts.

10(d)(2) Range

1. *Range.* A financial institution or designated payee that elects to offer the consumer a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide an acceptable range that could be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

2. *Transfers to an account of the consumer held at another institution.* A financial institution need not provide a consumer the option of receiving notice with each varying transfer, and may instead provide notice only when a debit to an account of the consumer falls outside a specified range or differs by more than a specified amount from the most recent transfer, if the funds are transferred and credited to an account of the consumer held at another financial institution. The specified range or amount, however, must be one that reasonably could be anticipated by the consumer, and the institution must notify the consumer of the range or amount at the time the consumer provides authorization for the preauthorized transfers. For example, if the transfer is for payment of interest for a fixed-rate certificate of deposit account, an appropriate range might be based on a month containing 28 days and a month containing 31 days.

10(e) Compulsory Use

10(e)(1) Credit

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

2. *Overdraft credit plans not accessible by hybrid prepaid-credit cards.* i. Section 1005.10(e)(1) provides an exception from the general rule for an overdraft credit plan other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. A financial institution may therefore require the automatic repayment of an overdraft credit plan, other than a covered separate credit feature accessible by a hybrid prepaid-credit card, even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

ii. Credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z, 12 CFR 1026.61(a)(4), is considered credit extended pursuant to an overdraft credit plan for purposes of §1005.10(e)(1). Thus, the exception for overdraft credit plans in §1005.10(e)(1) applies to this credit.

3. *Applicability to covered separate credit features accessible by hybrid prepaid-credit cards.* i. Under §1005.10(e)(1), creditors may not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. The prohibition in §1005.10(e)(1) applies to any credit extended under such a credit feature, including preauthorized checks. *See* Regulation Z, 12 CFR 1026.61, and comment 61(a)(1)–3.

ii. Under Regulation Z, 12 CFR 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under Regulation Z, 12 CFR 1026.12(d)(3), with respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, a card issuer generally is not prohibited from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer is prohibited under Regulation Z, 12 CFR 1026.12(d), from automatically deducting all or part of the cardholder's credit card debt under a covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. Section 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

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

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

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

10(e)(2) Employment or Government Benefit

1. *Payroll.* An employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by check or cash.

2. *Government benefit.* A government agency may not require consumers to receive government benefits by direct deposit to any particular institution. A government agency may require direct deposit of benefits by electronic means if recipients are allowed to choose the institution that will receive the direct deposit. Alternatively, a government agency may give recipients the choice of having their benefits deposited at a particular institution (designated by the government agency) or receiving their benefits by another means.

SECTION 1005.11 PROCEDURES FOR RESOLVING ERRORS

11(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, a consumer's request for the terminal location or other information triggers the error resolution procedures, but the financial institution need only provide the ATM location if it has captured that information.

2. *Verifying an account debit or credit.* If the consumer contacts the financial institution to ascertain whether a payment (for example, in a home-banking or bill-payment program) or any other type of EFT was debited to the account, or whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error resolution procedures do not apply.

3. *Loss or theft of access device.* A financial institution is required to comply with the error resolution procedures when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

4. *Error asserted after account closed.* The financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

5. *Request for documentation or information.* A request for documentation or other information must be treated as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other record-keeping purposes.

6. *Terminal receipts for transfers of $15 or less.* The fact that an institution does not make a terminal receipt available for a transfer of $15 or less in accordance with §1005.9(e) is not an error for purposes of §1005.11(a)(1)(vi) or (vii).

11(b) Notice of Error From Consumer

11(b)(1) Timing; Contents

1. *Content of error notice.* The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a Social Security number or other unique means of identification.

2. *Investigation pending receipt of information.* While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.

3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. *Discovery of error by institution.* The error resolution procedures of this section apply when a notice of error is received from the consumer, and not when the financial institution itself discovers and corrects an error.

6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

7. *Effect of late notice.* An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with §1005.6 before it may impose any liability on the consumer.

11(b)(2) Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days in getting to the right place because it was sent to the wrong address.

11(c) Time Limits and Extent of Investigation

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

2. *Written confirmation of oral notice.* A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the financial institution may not impose a charge related to any aspect of the error-resolution process (including charges for documentation or investigation). Since the Act grants the consumer error-resolution rights, the institution should avoid any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of §1005.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. The institution must determine whether such a mailing will be prompt enough to satisfy the requirements of this section, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it must correct the error (subject to the liability provisions of §§1005.6(a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/EFT transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. *Extent of required investigation.* A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in §1005.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in §1005.11(c). If the institution has provisionally credited the consumer's account in accordance with §1005.11(c)(2), it may debit the amount upon transmitting the requested information, clarification, or documentation.

Paragraph 11(c)(2)(i)

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account under §§1005.11(c)(2)(i)(A) and (B) must still comply with all other requirements of §1005.11.

11(c)(3) Extension of Time Periods

1. *POS debit card transactions.* The extended deadlines for investigating errors resulting from POS debit card transactions apply to all debit card transactions, including those for cash only, at merchants' POS terminals, and also including mail and telephone orders. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location.

11(c)(4) Investigation

1. *Third parties.* When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time period.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of §1005.11(c)(4)(ii) solely because it participates in transactions that occur under the Federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because the institution agrees to be bound by the rules of such an arrangement.

5. *No EFT agreement.* When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review any relevant information within the institution's own records for the particular account to resolve the consumer's claim. The extent of the investigation required may vary depending on the facts and circumstances. However,

a financial institution may not limit its investigation solely to the payment instructions where additional information within its own records pertaining to the particular account in question could help to resolve a consumer's claim. Information that may be reviewed as part of an investigation might include:

i. The ACH transaction records for the transfer;

ii. The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;

iii. Whether the check number of the transaction in question is notably out-of-sequence;

iv. The location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;

v. Information relative to the account in question within the control of the institution's third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; or

vi. Any other information appropriate to resolve the claim.

11(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both §§1005.11(c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

11(d)(1) Written Explanation

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape, it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

11(d)(2) Debiting Provisional Credit

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under §1005.11. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

11(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

SECTION 1005.12 RELATION TO OTHER LAWS

12(a) Relation to Truth in Lending

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

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

3. *Issuance of prepaid access devices that can access a covered separate credit feature subject to Regulation Z.* An access device for a prepaid account cannot access a covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, when the access device is issued if the access device is issued prior to the expiration of the 30-day period set forth in 12 CFR 1026.61(c). Regulation Z, 12 CFR 1026.61(c), provides that with respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered: (1) Open a covered separate credit feature accessible by the hybrid prepaid-credit card; (2) make a solicitation or provide an application to open a covered separate credit feature accessible by the hybrid prepaid-credit card; or (3) allow

an existing credit feature that was opened prior to the consumer to become a covered separate credit feature accessible by the hybrid prepaid-credit card. An access device for a prepaid account that is not a hybrid prepaid-credit card as that term is defined in Regulation Z, 12 CFR 1026.61, is subject to the issuance rules in Regulation E.

4. *Addition of a covered separate credit feature to an existing access device for a prepaid account.* Regulation Z governs the addition of a covered separate credit feature as that term is defined in Regulation Z, 12 CFR 1026.61, to an existing access device for a prepaid account. In this case, the access device would become a hybrid prepaid-credit card under Regulation Z (12 CFR part 1026). A covered separate credit feature may be added to a previously issued access device for a prepaid account only upon the consumer's application or specific request as described in Regulation Z, 12 CFR 1026.12(a)(1), and only in compliance with 12 CFR 1026.61(c).

5. *Determining applicable regulation related to liability and error resolution.* i. Under §1005.12(a)(1)(iv)(B), with respect to a transaction that involves a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, where credit is extended under a covered separate credit feature accessible by a hybrid prepaid-credit card that is incident to an electronic fund transfer when the hybrid prepaid-credit card accesses both funds in the asset feature of a prepaid account and credit extensions from the credit feature with respect to a particular transaction, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the covered separate credit feature). Section 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involves credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in Regulation Z, 12 CFR 1026.61(a)(4), these transactions are governed solely by the liability limitations and error resolution procedures in Regulation E, and Regulation Z does not apply. Section 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, a financial institution must comply with Regulation E's liability limitations and error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's liability limitations and error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

ii. Under §1005.12(a)(1)(iv)(A), with respect to an account (other than a prepaid account) where credit is extended incident to an electronic fund transfer under an agreement to extend overdraft credit between the consumer and the financial institution, Regulation E's liability limitations and error resolution provisions apply to the transaction, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account).

iii. For transactions involving access devices that also function as credit cards under Regulation Z (12 CFR part 1026), whether Regulation E or Regulation Z applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not access funds in a consumer asset account, such as a checking account or prepaid account, the liability limitations and error resolution requirements of Regulation Z apply. If the transaction accesses funds in an asset account only (with no credit extended), the provisions of Regulation E apply. If the transaction access funds in an asset account but also involves an extension of credit under the overdraft credit feature subject to Regulation Z attached to the account, Regulation E's liability limitations and error resolution provisions apply, in addition to Regulation Z, 12 CFR 1026.13(d) and (g) (which apply because of the extension of credit associated with the overdraft feature on the asset account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from an asset account, but also is used to obtain unauthorized cash advances directly from a credit feature that is subject to Regulation Z that is separate from the asset account, both Regulation E and Regulation Z apply.

iv. The following examples illustrate these principles:

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

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

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

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft credit feature subject to Regulation Z attached to the checking account. The overdraft credit feature associated with the card is accessed only when the consumer uses the card to make a purchase (or other transaction) for which there are insufficient or unavailable funds in the checking account. In this situation, if the card is stolen and used to make purchases funded entirely by available funds in the checking account, the liability limits and the error resolution provisions of Regulation E apply. If the use of the card results in an extension of credit that is incident to an electronic fund transfer where the transaction is funded partially by funds in the consumer's asset account and partially by credit extended under the overdraft credit feature, the error resolution provisions of Regulation Z, 12 CFR 1026.13(d) and (g), apply in addition to the Regulation E provisions, but the other liability limit and error resolution provisions of Regulation Z do not. Relatedly, if the use of the card is funded entirely by credit extended under the overdraft credit feature, the transaction is governed solely by the liability limitations and error resolution requirements of Regulation Z. *See* Regulation Z, 12 CFR 1026.13(i).

E. The same principles in comment 12(a)–5.iv.A, B, C, and D apply to an access device for a prepaid account that also is a hybrid prepaid-credit card with respect to a covered separate credit feature under Regulation Z, 12 CFR 1026.61. *See also* Regulation Z, 12 CFR 1026.13(i)(2) and comment 13(i)–4.

12(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern EFTs, and state laws regarding gift certificates, store gift cards, or general-use prepaid cards that govern dormancy, inactivity, or service fees, or expiration dates, are preempted by the Act and the regulation. A state law that is inconsistent may be preempted even if the Bureau has not issued a determination. However, nothing in §1005.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Bureau later determines that the state law is not preempted.

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

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

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

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

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

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

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

i. *Gift certificates, store gift cards, and general-use prepaid cards.* Section 66–29–116 of

Tennessee's Uniform Disposition of Unclaimed (Personal) Property Act is preempted to the extent that it permits gift certificates, store gift cards, and general-use prepaid cards, as defined in §1005.20(a), to be declined at the point-of-sale sooner than the gift certificates, store gift cards, or general-use prepaid cards and their underlying funds are permitted to expire under §1005.20(e).

SECTION 1005.13 ADMINISTRATIVE ENFORCEMENT; RECORD RETENTION

13(b) Record Retention

1. *Requirements.* A financial institution need not retain records that it has given disclosures and documentation to each consumer; it need only retain evidence demonstrating that its procedures reasonably ensure the consumers' receipt of required disclosures and documentation.

SECTION 1005.14 ELECTRONIC FUND TRANSFER SERVICE PROVIDER NOT HOLDING CONSUMER'S ACCOUNT

14(a) Electronic Fund Transfer Service Providers Subject to Regulation

1. *Applicability.* This section applies only when a service provider issues an access device to a consumer for initiating transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this EFT service. If the service provider does not issue an access device to the consumer for accessing an account held by another institution, it does not qualify for the treatment accorded by §1005.14. For example, this section does not apply to an institution that initiates preauthorized payroll deposits to consumer accounts on behalf of an employer. By contrast, §1005.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer's account at another institution. This is the case even if the consumer has accounts at both institutions.

2. *ACH agreements.* The ACH rules generally do not constitute an agreement for purposes of this section. However, an ACH agreement under which members specifically agree to honor each other's debit cards is an ''agreement,'' and thus this section does not apply.

14(b) Compliance by Electronic Fund Transfer Service Provider

1. *Liability.* The service provider is liable for unauthorized EFTs that exceed limits on the consumer's liability under §1005.6.

14(b)(1) Disclosures and Documentation

1. *Periodic statements from electronic fund transfer service provider.* A service provider that meets the conditions set forth in this paragraph does not have to issue periodic statements. A service provider that does not meet the conditions need only include on periodic statements information about transfers initiated with the access device it has issued.

14(b)(2) Error Resolution

1. *Error resolution.* When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with §1005.11 as modified by §1005.14(b)(2). If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

14(c) Compliance by Account-Holding Institution

14(c)(1) Documentation

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by §1005.9(b)(1).

Section 1005.15—Electronic Fund Transfer of Government Benefits

15(c) Pre-Acquisition Disclosure Requirements

1. *Disclosing the short and long form before acquisition.* Section 1005.15(c)(1) requires that, before a consumer acquires an account governed by §1005.15, a government agency must comply with the pre-acquisition disclosure requirements applicable to prepaid accounts as set forth in §1005.18(b). Section 1005.18(b)(1)(i) generally requires delivery of both the short form disclosure required by §1005.18(b)(2), accompanied by the information in §1005.18(b)(5), and the long form disclosure required by §1005.18(b)(4) before a consumer acquires a prepaid account. For purposes of §1005.15(c), a consumer is deemed to have received the disclosures required by §1005.18(b) prior to acquisition when the consumer receives the disclosures before choosing to receive benefits via the government benefit account. The following example illustrates when a consumer receives disclosures before acquisition of an account for purposes of §1005.15(c):

i. A government agency informs a consumer that she can receive distribution of benefits via a government benefit account in the form of a prepaid card. The consumer receives the prepaid card and the disclosures required by §1005.18(b) to review at the time the consumer receives benefits eligibility information from the agency. After receiving the disclosures, the consumer chooses to receive benefits via the government benefit account. These disclosures were provided to

the consumer pre-acquisition, and the agency has complied with §1005.15(c). By contrast, if the consumer does not receive the disclosures required by §1005.18(b) to review until the time at which the consumer received the first benefit payment deposited into the government benefit account, these disclosures were provided to the consumer post-acquisition, and were not provided in compliance with §1005.15(c).

2. *Acquisition and disclosures given during the same appointment.* The disclosures and notice required by §1005.15(c) may be given in the same process or appointment during which the consumer receives a government benefit card. When a consumer receives benefits eligibility information and enrolls to receive benefits during the same process or appointment, a government agency that gives the disclosures and notice required by §1005.15(c) before the consumer chooses to receive the first benefit payment on the card complies with the timing requirements of §1005.15(c).

3. *Form and formatting requirements for government benefit account disclosures.* The form and formatting requirements for government benefit accounts in §1005.15(c) correspond to those for payroll card accounts set forth in §1005.18(b). See comments 18(b)(2)(xiv)(A)–1 and 18(b)(2)(xiv)(B)–1 for additional guidance regarding the requirements set forth in §1005.15(c)(2)(i) and (ii), respectively.

4. *Disclosure requirements outside the short form disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution be disclosed outside the short form disclosure. For government benefit accounts, the financial institution that must be disclosed pursuant to §1005.18(b)(5) is the financial institution that directly holds the account or issues the account's access device. The disclosure provided outside the short form disclosure may, but is not required to, also include the name of the government agency that established the government benefit account.

15(d) Access to Account Information

1. *Access to account information.* For guidance, see comments 18(c)–1 through –3 and 18(c)–5 through –9.

15(e) Modified Disclosure, Limitations on Liability, and Error Resolution Requirements

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

15(f) Disclosure of Fees and Other Information

1. *Disclosures on prepaid account access devices.* Pursuant to §1005.18(f)(3), the name of the financial institution and the Web site URL and a telephone number a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. For government benefit accounts, the financial institution whose name and contact information must be disclosed pursuant to §1005.18(f)(3) is the financial institution that directly holds the account or issues the account's access device.

SECTION 1005.17 REQUIREMENTS FOR OVERDRAFT SERVICES

17(a) Definition

1. *Exempt securities- and commodities-related lines of credit.* The definition of ''overdraft service'' does not include the payment of transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

17(b) Opt-In Requirement

1. *Scope.* i. *Account-holding institutions.* Section 1005.17(b) applies to ATM and one-time debit card transactions made with a debit card issued by or on behalf of the account-holding institution. Section 1005.17(b) does not apply to ATM and one-time debit card transactions made with a debit card issued by or through a third party unless the debit card is issued on behalf of the account-holding institution.

ii. *Coding of transactions.* A financial institution complies with the rule if it adapts its systems to identify debit card transactions as either one-time or recurring. If it does so, the financial institution may rely on the transaction's coding by merchants, other institutions, and other third parties as a one-time or a preauthorized or recurring debit card transaction.

iii. *One-time debit card transactions.* The opt-in applies to any one-time debit card transaction, whether the card is used, for example, at a point-of-sale, in an online transaction, or in a telephone transaction.

iv. *Application of fee prohibition.* The prohibition on assessing overdraft fees under §1005.17(b)(1) applies to all institutions. For example, the prohibition applies to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. However, the institution is not required to comply with §§1005.17(b)(1)(i)–(iv), including the notice and opt-in requirements, if it does not assess overdraft fees for paying ATM or one-time debit card transactions that overdraw the consumer's account. Assume an institution does not provide an opt-in notice, but authorizes an ATM or one-time debit card transaction on the reasonable belief that the

consumer has sufficient funds in the account to cover the transaction. If, at settlement, the consumer has insufficient funds in the account (for example, due to intervening transactions that post to the consumer's account), the institution is not permitted to assess an overdraft fee or charge for paying that transaction.

2. *No affirmative consent.* A financial institution may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service. If the institution pays such an overdraft without the consumer's affirmative consent, however, it may not impose a fee or charge for doing so. These provisions do not limit the institution's ability to debit the consumer's account for the amount overdrawn if the institution is permitted to do so under applicable law.

3. *Overdraft transactions not required to be authorized or paid.* Section 1005.17 does not require a financial institution to authorize or pay an overdraft on an ATM or one-time debit card transaction even if the consumer has affirmatively consented to an institution's overdraft service for such transactions.

4. *Reasonable opportunity to provide affirmative consent.* A financial institution provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A financial institution provides such reasonable methods, if:

i. *By mail.* The institution provides a form for the consumer to fill out and mail to affirmatively consent to the service.

ii. *By telephone.* The institution provides a readily-available telephone line that consumers may call to provide affirmative consent.

iii. *By electronic means.* The institution provides an electronic means for the consumer to affirmatively consent. For example, the institution could provide a form that can be accessed and processed at its Web site, where the consumer may click on a check box to provide consent and confirm that choice by clicking on a button that affirms the consumer's consent.

iv. *In person.* The institution provides a form for the consumer to complete and present at a branch or office to affirmatively consent to the service.

5. *Implementing opt-in at account-opening.* A financial institution may provide notice regarding the institution's overdraft service prior to or at account-opening. A financial institution may require a consumer, as a necessary step to opening an account, to choose whether or not to opt into the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. For example, the institution could require the consumer, at account opening, to sign a signature line or check a box on a form (consistent with comment 17(b)–6) indicating whether or not the consumer affirmatively consents at account opening. If the consumer does not check any box or provide a signature, the institution must assume that the consumer does not opt in. Or, the institution could require the consumer to choose between an account that does not permit the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service and an account that permits the payment of such overdrafts, provided that the accounts comply with §1005.17(b)(2) and §1005.17(b)(3).

6. *Affirmative consent required.* A consumer's affirmative consent, or opt-in, to a financial institution's overdraft service must be obtained separately from other consents or acknowledgements obtained by the institution, including a consent to receive disclosures electronically. An institution may obtain a consumer's affirmative consent by providing a blank signature line or check box that the consumer could sign or select to affirmatively consent, provided that the signature line or check box is used solely for purposes of evidencing the consumer's choice whether or not to opt into the overdraft service and not for other purposes. An institution does not obtain a consumer's affirmative consent by including preprinted language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowledges the consumer's acceptance of the account terms. Nor does an institution obtain a consumer's affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service.

7. *Confirmation.* A financial institution may comply with the requirement in §1005.17(b)(1)(iv) to provide confirmation of the consumer's affirmative consent by mailing or delivering to the consumer a copy of the consumer's completed opt-in notice, or by mailing or delivering a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution's service. The confirmation, which must be provided in writing, or electronically if the consumer agrees, must include a statement informing the consumer of the right to revoke the opt-in at any time. *See* §1005.17(d)(6), which permits institutions to include the revocation statement on the initial opt-in notice. An institution complies with the confirmation requirement if it has adopted reasonable procedures designed to ensure that overdraft fees are assessed only in connection with transactions paid after the confirmation has been mailed or delivered to the consumer.

8. *Outstanding Negative Balance.* If a fee or charge is based on the amount of the outstanding negative balance, an institution is prohibited from assessing any such fee if the negative balance is solely attributable to an ATM or one-time debit card transaction, unless the consumer has opted into the institution's overdraft service for ATM or one-time debit card transactions. However, the rule does not prohibit an institution from assessing such a fee if the negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the prohibition on assessing overdraft fees in §1005.17(b)(1).

9. *Daily or Sustained Overdraft, Negative Balance, or Similar Fee or Charge* i. *Daily or sustained overdraft, negative balance, or similar fees or charges.* If a consumer has not opted into the institution's overdraft service for ATM or one-time debit card transactions, the fee prohibition in §1005.17(b)(1) applies to all overdraft fees or charges for paying those transactions, including but not limited to daily or sustained overdraft, negative balance, or similar fees or charges. Thus, where a consumer's negative balance is solely attributable to an ATM or one-time debit card transaction, the rule prohibits the assessment of such fees unless the consumer has opted in. However, the rule does not prohibit an institution from assessing daily or sustained overdraft, negative balance, or similar fees or charges if a negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the fee prohibition. When the negative balance is attributable in part to an ATM or one-time debit card transaction, and in part to a check, ACH, or other type of transaction not subject to the fee prohibition, the date on which such a fee may be assessed is based on the date on which the check, ACH, or other type of transaction is paid into overdraft.

ii. *Examples.* The following examples illustrate how an institution complies with the fee prohibition. For each example, assume the following: (a) The consumer has not opted into the payment of ATM or one-time debit card overdrafts; (b) these transactions are paid into overdraft because the amount of the transaction at settlement exceeded the amount authorized or the amount was not submitted for authorization; (c) under the account agreement, the institution may charge a per-item fee of $20 for each overdraft, and a one-time sustained overdraft fee of $20 on the fifth consecutive day the consumer's account remains overdrawn; (d) the institution posts ATM and debit card transactions before other transactions; and (e) the institution allocates deposits to account debits in the same order in which it posts debits.

A. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $60 and a check transaction of $40. The institution charges an overdraft fee of $20 for the check overdraft but cannot assess an overdraft fee for the debit card transaction. At the end of the day, the consumer has an account balance of negative $70. The consumer does not make any deposits to the account, and no other transactions occur between March 2 and March 6. Because the consumer's negative balance is attributable in part to the $40 check (and associated overdraft fee), the institution may charge a sustained overdraft fee on March 6 in connection with the check.

B. Same facts as in A., except that on March 3, the consumer deposits $40 in the account. The institution allocates the $40 to the debit card transaction first, consistent with its posting order policy. At the end of the day on March 3, the consumer has an account balance of negative $30, which is attributable to the check transaction (and associated overdraft fee). The consumer does not make any further deposits to the account, and no other transactions occur between March 4 and March 6. Because the remaining negative balance is attributable to the March 1 check transaction, the institution may charge a sustained overdraft fee on March 6 in connection with the check.

C. Assume that a consumer has a $50 account balance on March 1. That day, the institution posts a one-time debit card transaction of $60. At the end of that day, the consumer has an account balance of negative $10. The institution may not assess an overdraft fee for the debit card transaction. On March 3, the institution pays a check transaction of $100 and charges an overdraft fee of $20. At the end of that day, the consumer has an account balance of negative $130. The consumer does not make any deposits to the account, and no other transactions occur between March 4 and March 8. Because the consumer's negative balance is attributable in part to the check, the institution may assess a $20 sustained overdraft fee. However, because the check was paid on March 3, the institution must use March 3 as the start date for determining the date on which the sustained overdraft fee may be assessed. Thus, the institution may charge a $20 sustained overdraft fee on March 8.

iii. *Alternative approach.* For a consumer who does not opt into the institution's overdraft service for ATM and one-time debit card transactions, an institution may also comply with the fee prohibition in §1005.17(b)(1) by not assessing daily or sustained overdraft, negative balance, or similar fees or charges unless a consumer's negative balance is attributable solely to check, ACH or other types of transactions not subject to the fee prohibition while that negative balance remains outstanding. In such

case, the institution would not have to determine how to allocate subsequent deposits that reduce but do not eliminate the negative balance. For example, if a consumer has a negative balance of $30, of which $10 is attributable to a one-time debit card transaction, an institution complies with the fee prohibition if it does not assess a sustained overdraft fee while that negative balance remains outstanding.

17(b)(2) Conditioning Payment of Other Overdrafts on Consumer's Affirmative Consent

1. *Application of the same criteria.* The prohibitions on conditioning in §1005.17(b)(2) generally require an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution's overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution's internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions, it must also apply the same criteria in a consistent manner in determining whether to pay the check overdraft if the consumer has not opted in.

2. *No requirement to pay overdrafts on checks, ACH transactions, or other types of transactions.* The prohibition on conditioning in §1005.17(b)(2) does not require an institution to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. Rather, the rule simply prohibits institutions from considering the consumer's decision not to opt in when deciding whether to pay overdrafts for checks, ACH transactions, or other types of transactions.2≤17(b)(3) Same Account Terms, Conditions, and Features

1. *Variations in terms, conditions, or features.* A financial institution may not vary the terms, conditions, or features of an account provided to a consumer who does not affirmatively consent to the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. This includes, but is not limited to:

i. Interest rates paid and fees assessed;

ii. The type of ATM or debit card provided to the consumer. For instance, an institution may not provide consumers who do not opt in a PIN-only card while providing a debit card with both PIN and signature-debit functionality to consumers who opt in;

iii. Minimum balance requirements; or

iv. Account features such as online bill payment services.

2. *Limited-feature bank accounts.* Section 1005.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in. For example, §1005.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history, which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.

17(c) Timing

1. *Permitted fees or charges.* Fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid on or after the date the financial institution receives the consumer's affirmative consent to the institution's overdraft service. *See also* comment 17(b)–7.

17(d) Content and Format

1. *Overdraft service.* The description of the institution's overdraft service should indicate that the consumer has the right to affirmatively consent, or opt into payment of overdrafts for ATM and one-time debit card transactions. The description should also disclose the institution's policies regarding the payment of overdrafts for other transactions, including checks, ACH transactions, and automatic bill payments, provided that this content is not more prominent than the description of the consumer's right to opt into payment of overdrafts for ATM and one-time debit card transactions. As applicable, the institution also should indicate that it pays overdrafts at its discretion, and should briefly explain that if the institution does not authorize and pay an overdraft, it may decline the transaction.

2. *Maximum fee.* If the amount of a fee may vary from transaction to transaction, the financial institution may indicate that the consumer may be assessed a fee ''up to'' the maximum fee. The financial institution must disclose all applicable overdraft fees, including but not limited to:

i. Per item or per transaction fees;

ii. Daily overdraft fees;

iii. Sustained overdraft fees, where fees are assessed when the consumer has not repaid the amount of the overdraft after some period of time (for example, if an account remains overdrawn for five or more business days); or

iv. Negative balance fees.

3. *Opt-in methods.* The opt-in notice must include the methods by which the consumer may consent to the overdraft service for ATM and one-time debit card transactions. Institutions may tailor Model Form A–9 to

the methods offered to consumers for affirmatively consenting to the service. For example, an institution need not provide the tear-off portion of Model Form A–9 if it is only permitting consumers to opt-in telephonically or electronically. Institutions may, but are not required, to provide a signature line or check box where the consumer can indicate that he or she declines to opt in.

4. *Identification of consumer's account.* An institution may use any reasonable method to identify the account for which the consumer submits the opt-in notice. For example, the institution may include a line for a printed name and an account number, as shown in Model Form A–9. Or, the institution may print a bar code or use other tracking information. *See also* comment 17(b)–6, which describes how an institution obtains a consumer's affirmative consent.

5. *Alternative plans for covering overdrafts.* If the institution offers both a line of credit subject to Regulation Z (12 CFR part 1026) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state in its opt-in notice that both alternative plans are offered. For example, the notice might state ''We also offer *overdraft protection plans,* such as a link to a savings account or to an overdraft line of credit, which may be less expensive than our standard overdraft practices.'' If the institution offers one, but not the other, it must state in its opt-in notice the alternative plan that it offers. If the institution does not offer either plan, it should omit the reference to the alternative plans.

17(f) Continuing Right To Opt-In or To Revoke the Opt-In

1. *Fees or charges for overdrafts incurred prior to revocation.* Section 1005.17(f)(1) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the financial institution to waive or reverse any overdraft fees assessed on the consumer's account prior to the institution's implementation of the consumer's revocation request.

17(g) Duration of Opt-In

1. *Termination of overdraft service.* A financial institution may, for example, terminate the overdraft service when the consumer makes excessive use of the service.

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 the consumer has no other means by which to initially receive the funds in the prepaid account other than by accepting the access device, as well as the consequences of disposing of the access device.

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

18(b) Pre-Acquisition Disclosure Requirements

1. *Written and electronic pre-acquisition disclosures.* Section 1005.4(a)(1) generally requires that disclosures be made in writing; written disclosures may be provided in electronic form in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). Because §1005.18(b)(6)(i)(B) provides that electronic disclosures required by §1005.18(b) need not meet the consumer consent or other applicable provisions of the E-Sign Act, §1005.18(b) addresses certain requirements for written and electronic pre-acquisition disclosures separately. Section 1005.18(b) also addresses specific requirements for pre-acquisition disclosures provided orally.

2. *Currency.* Fee amounts required to be disclosed by §1005.18(b) may be disclosed in a foreign currency for a prepaid account denominated in that foreign currency, other than the fee for the purchase price required by §1005.18(b)(5). For example, a prepaid account sold in a U.S. airport intended for use in England may disclose in pound sterling (£)

the fees required to be disclosed in the short form and long form disclosures and outside the short form disclosure, except for the purchase price.

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.

2. *Disclosures provided electronically.* Disclosures required by §1005.18(b) may be provided before or after a consumer has initiated the process of acquiring a prepaid account electronically. When the disclosures required by §1005.18(b) are presented after a consumer has initiated the process for acquiring a prepaid account online or via a mobile device, but before a consumer chooses to accept the prepaid account, such disclosures are also made pre-acquisition in accordance with §1005.18(b)(1)(i). The disclosures required by §1005.18(b) that are provided electronically when a consumer acquires a prepaid account electronically are not considered to be given pre-acquisition unless a consumer must view the web page containing the disclosures before choosing to accept the prepaid account. The following examples illustrate several methods by which a financial institution may present §1005.18(b) disclosures before a consumer acquires a prepaid account electronically in compliance with §1005.18(b)(1)(i):

i. A financial institution presents the short form disclosure required by §1005.18(b)(2), together with the information required by §1005.18(b)(5), and the long form disclosure required by §1005.18(b)(4) on the same web page. A consumer must view the web page before choosing to accept the prepaid account.

ii. A financial institution presents the short form disclosure required by §1005.18(b)(2), together with the information required by §1005.18(b)(5), on a web page. The financial institution includes, after the short form disclosure or as part of the statement required by §1005.18(b)(2)(xiii), a link that directs the consumer to a separate web page containing the long form disclosure required by §1005.18(b)(4). The consumer must view the web page containing the long form disclosure before choosing to accept the prepaid account.

iii. A financial institution presents on a web page the short form disclosure required by §1005.18(b)(2), together with the information required by §1005.18(b)(5), followed by the initial disclosures required by §1005.7(b), which contains the long form disclosure required by §1005.18(b)(4), in accordance with §1005.18(f)(1). The financial institution includes, after the short form disclosure or as part of the statement required by §1005.18(b)(2)(xiii), a link that directs the consumer to the section of the initial disclosures containing the long form disclosure pursuant to §1005.18(b)(4). A consumer must view this web page before choosing to accept the prepaid account.

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

1. *Retail locations.* Section 1005.18(b)(1)(ii) sets forth an alternative timing regime for pre-acquisition disclosures for prepaid accounts acquired in person at retail locations. For purposes of §1005.18(b)(1)(ii), a retail location is a store or other physical site where a consumer can purchase a prepaid account in person and that is operated by an entity other than the financial institution that issues the prepaid account. A branch of a financial institution that offers its own prepaid accounts is not a retail location with respect to those accounts and, thus, both the short form and the long form disclosure must be provided pre-acquisition pursuant to the timing requirement set forth in §1005.18(b)(1)(i).

2. *Disclosures provided inside prepaid account access device packaging material.* Except when providing the long form disclosure post-acquisition in accordance with the retail location exception set forth in §1005.18(b)(1)(ii), the disclosures required by §1005.18(b)(2), (4), and (5) must be provided to a consumer pre-acquisition in compliance with §1005.18(b)(1)(i). A short form disclosure is not considered to have been provided pre-acquisition if, for example, it is inside the packaging material accompanying a prepaid account access device such that the consumer cannot see or access the disclosure before acquiring the prepaid account.

3. *Consumers working in retail locations.* A payroll card account offered to consumers working in retail locations is not eligible for the retail location exception in §1005.18(b)(1)(ii); thus, a consumer employee must receive both the short form and long form disclosures for the payroll card account pre-acquisition pursuant to the timing requirement set forth in §1005.18(b)(1)(i).

4. *Providing the long form disclosure by telephone and website 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 website 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)(1)(iii) Disclosures for Prepaid Accounts Acquired Orally by Telephone

1. *Prepaid accounts acquired by telephone.* Section 1005.18(b)(1)(iii) sets forth requirements for prepaid accounts acquired orally by telephone. For purposes of §1005.18(b)(1)(iii), a prepaid account is considered to have been acquired orally by telephone when a consumer speaks to a customer service agent or communicates with an automated system, such as an interactive voice response system, to provide personally identifiable information to acquire a prepaid account. Prepaid accounts acquired using a mobile device without speaking to a customer service agent or communicating with an automated system are not considered to have been acquired orally by telephone.

18(b)(2) Short Form Disclosure Content

1. *Disclosures that are not applicable or are free.* The short form disclosures required by §1005.18(b)(2) must always be provided prior to prepaid account acquisition, even when a particular feature is free or is not applicable to a specific prepaid account product. For example, if a financial institution does not charge a fee to a consumer for withdrawing money at an automated teller machine in the financial institution's network or an affiliated network, which is required to be disclosed pursuant to §1005.18(b)(2)(iii), the financial institution would list ''ATM withdrawal in-network'' on the short form disclosure and list ''$0'' as the fee. If, however, the financial institution does not have its own network or an affiliated network from which a consumer can withdraw money via automated teller machine, the financial institution would list ''ATM withdrawal in-network'' on the short form disclosure but instead of disclosing a fee amount, state ''N/A.'' (The financial institution must still disclose any fee it charges for out-of-network ATM withdrawals.)

2. *Prohibition on disclosure of finance charges.* Pursuant to §1005.18(b)(3)(vi), a financial institution may not include in the short form disclosure finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61. *See also* comment 18(b)(3)(vi)–1.

18(b)(2)(i) Periodic Fee

1. *Periodic fee variation.* If the amount of a fee disclosed on the short form could vary, the financial institution must disclose in the short form the information required by §1005.18(b)(3)(i). If the amount of the periodic fee could vary, the financial institution may opt instead to use an alternative disclosure

pursuant to §1005.18(b)(3)(ii). *See* comments 18(b)(3)(i)–1 and 18(b)(3)(ii)–1.

18(b)(2)(iii) ATM Withdrawal Fees

1. *International ATM withdrawal fees.* Pursuant to §1005.18(b)(2)(iii), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to initiate a withdrawal of cash in the United States from the prepaid account, both within and outside of the financial institution's network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to initiate a withdrawal of cash in a foreign country in the disclosure required by §1005.18(b)(2)(iii), although it may be required to disclose that fee as an additional fee type pursuant to §1005.18(b)(2)(ix).

18(b)(2)(iv) Cash Reload Fee

1. *Total of all charges.* Pursuant to §1005.18(b)(2)(iv), a financial institution must disclose the total of all charges imposed when a consumer reloads cash into a prepaid account, including charges imposed by the financial institution as well as any charges that may be imposed by third parties for the cash reload. The cash reload fee includes the cost of adding cash to the prepaid account at a point-of-sale terminal, the cost of purchasing an additional card or other device on which cash is loaded and then transferred into the prepaid account, or any other method a consumer may use to reload cash into the prepaid account. For example, a financial institution does not have its own proprietary cash reload network and instead contracts with a third-party reload network for this service. The financial institution itself does not charge any fee related to cash reloads but the third-party reload network charges a fee of $3.95 per cash reload. The financial institution must disclose the cash reload fee as $3.95. If the financial institution offers more than one method to reload cash into the prepaid account, §1005.18(b)(3)(i) requires disclosure of the highest cash reload fee. For example, a financial institution contracts with two third-party cash reload networks; one third party charges $3.95 for a point-of-sale reload and the other third party charges $2.95 for purchase of a reload pack. In addition to the third-party cash reload charge, the financial institution charges a $1 fee for every cash reload. The financial institution must disclose the cash reload fee on the short form as $4.95, that is, the highest third-party fee plus the financial institution's $1 fee. See comment 18(b)(3)(v)–1 for additional guidance regarding third-party fees for cash reloads.

2. *Cash deposit fee.* If a financial institution does not permit cash reloads via a third-party reload network but instead permits cash deposits, for example, in a bank branch, the term ''cash deposit'' may be substituted for ''cash reload.''

18(b)(2)(v) ATM Balance Inquiry Fees

1. *International ATM balance inquiry fees.* Pursuant to §1005.18(b)(2)(v), a financial institution must disclose the fees imposed when a consumer uses an automated teller machine to check the balance of the prepaid account in the United States, both within and outside of the financial institution's network or a network affiliated with the financial institution. A financial institution may not disclose its fee (if any) for using an automated teller machine to check the balance of the prepaid account in a foreign country in the disclosure required by §1005.18(b)(2)(v), although it may be required to disclose that fee as an additional fee type pursuant to §1005.18(b)(2)(ix).

18(b)(2)(vii) Inactivity Fee

1. *Inactivity fee conditions.* Section 1005.18(b)(2)(vii) requires disclosure of any fee for non-use, dormancy, or inactivity of the prepaid account as well as the conditions that trigger the financial institution to impose that fee. For example, a financial institution that imposes an inactivity fee of $1 per month after 12 months without any transactions on the prepaid account would disclose on the short form ''Inactivity (after 12 months with no transactions)'' and ''$1.00 per month.''

18(b)(2)(viii) Statements Regarding Additional Fee Types

18(b)(2)(viii)(A) Statement Regarding Number of Additional Fee Types Charged

1. *Fee types counted in total number of additional fee types.* Section 1005.18(b)(2)(viii)(A) requires a statement disclosing the number of additional fee types the financial institution may charge consumers with respect to the prepaid account, using the following clause or a substantially similar clause: ''We charge [x] other types of fees.'' The number of additional fee types disclosed must reflect the total number of fee types under which the financial institution may charge fees, excluding fees required to be disclosed pursuant to §1005.18(b)(2)(i) through (vii) and (b)(5) and any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. The following clarify which fee types to include in the total number of additional fee types:

i. *Fee types excluded from the number of additional fee types.* The number of additional fee types required to be disclosed pursuant to §1005.18(b)(2)(viii)(A) does not include the fees otherwise required to be disclosed in the

short form pursuant to §1005.18(b)(2)(i) through (vii), nor any purchase fee or activation fee required to be disclosed outside the short form pursuant to §1005.18(b)(5). It also does not include any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a credit feature defined in 12 CFR 1026.61. The number of additional fee types includes only fee types under which the financial institution may charge fees; accordingly, third-party fees are not included unless they are imposed for services performed on behalf of the financial institution. In addition, the number of additional fee types includes only fee types the financial institution may charge consumers with respect to the prepaid account; accordingly, additional fee types does not include other revenue sources such as interchange fees or fees paid by employers for payroll card programs, government agencies for government benefit programs, or other entities sponsoring prepaid account programs for financial disbursements.

ii. *Fee types counted in the number of additional fee types.* Fee types that bear a relationship to, but are separate from, the static fee types disclosed in the short form must be counted as additional fees for purposes of §1005.18(b)(2)(viii). For example, the ATM withdrawal and ATM balance inquiry fee types required to be disclosed respectively by §1005.18(b)(2)(iii) and (v) that are excluded from the number of additional fee types pursuant to §1005.18(b)(2)(viii) do not include such services outside of the United States. Thus, any international ATM fees charged by the financial institution for ATM withdrawal or balance inquiries must each be counted in the total number of additional fee types. Similarly, any fees for reloading funds into a prepaid account in a form other than cash (such as electronic reload and check reload, as described in comment 18(b)(2)(viii)(A)–2) must be counted in the total number of additional fee types because §1005.18(b)(2)(iv) is limited to cash reloads. Also, additional fee types disclosed in the short form pursuant to §1005.18(b)(2)(ix) must be counted in the total number of additional fee types.

2. *Examples of fee types and fee variations.* The term fee type, as used in §1005.18(b)(2)(viii) and (ix), is a general category under which a financial institution charges fees to consumers. A financial institution may charge only one fee within a particular fee type, or may charge two or more variations of fees within the same fee type. The following is a list of examples of fee types a financial institution may use when determining both the number of additional fee types charged pursuant to §1005.18(b)(2)(viii)(A) and any additional fee types to disclose pursuant to §1005.18(b)(2)(ix). A financial institution may create an appropriate name for other additional fee types.

i. *Fee types related to reloads of funds.* Fee types for reloading funds into a prepaid account. Fees for cash reloads are required to be disclosed in the short form pursuant to §1005.18(b)(2)(iv) and that such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to §1005.18(b)(2)(ix). Fee types for other methods to reload funds, such as Electronic reload or Check reload, would be counted in the total number of additional fee types and may be required to be disclosed as additional fee types pursuant to §1005.18(b)(2)(ix).

A. *Electronic reload.* Fees for reloading a prepaid account through electronic methods. Fee variations within this fee type may include fees for transferring funds from a consumer's bank account via ACH, reloads conducted using a debit card or credit card, and for incoming wire transfers.

B. *Check reload.* Fees for reloading a prepaid account using checks. Fee variations within this fee type may include fees for depositing checks at an ATM, depositing checks with a teller at the financial institution's branch location, mailing checks to the financial institution for deposit, and depositing checks using remote deposit capture.

ii. *Fee types related to withdrawals of funds.* Fee types for withdrawing funds from a prepaid account. Per purchase fees and ATM withdrawal fees within the United States are fee types required to be disclosed in the short form respectively pursuant to §1005.18(b)(2)(ii) and (iii) and thus such fees are not counted in the total number of additional fee types or disclosed as an additional fee type pursuant to §1005.18(b)(2)(ix). Fee types for other methods to withdraw funds, such as Electronic withdrawal, Teller withdrawal, Cash back at point of sale (POS), and Account closure would be counted in the total of additional fee types and may be required to be disclosed as additional fee types pursuant to §1005.18(b)(2)(ix).

A. *Electronic withdrawal.* Fees for withdrawing funds from a prepaid account through electronic methods other than an ATM. Fee variations within this fee type may include fees for transferring funds from the prepaid account to a consumer's bank account or other destination.

B. *Teller withdrawal.* Fees for withdrawing funds from a prepaid account in person with a teller at a bank or credit union. Fee variations within this fee type may include fees for withdrawing funds, whether at the financial institution's own branch locations or at another bank or credit union.

C. *Cash back at POS.* Fees for withdrawing cash from a prepaid account via cash back at a merchant's point-of-sale terminal.

D. *Account closure.* Fees for closing out a prepaid account, such as for a check refund.

Fee variations within this fee type may include fees for regular and expedited delivery of close-out funds.

iii. *Fee types related to international transactions.* Fee types for international transactions and ATM activity.

A. *International ATM withdrawal.* Fees for withdrawing funds at an ATM outside the United States. This fee type does not include fees for ATM withdrawals in the United States, as such fees are required to be disclosed in the short form pursuant to §1005.18(b)(2)(iii).

B. *International ATM balance inquiry.* Fees for balance inquiries at an ATM outside the United States. This fee type does not include fees for ATM balance inquiries in the United States, as such fees are required to be disclosed in the short form pursuant to §1005.18(b)(2)(v).

C. *International transaction (excluding ATM withdrawal and balance inquiry).* Fees for transactions outside the United States. Fee variations within this fee type may include fees for currency conversion, foreign exchange processing, and other charges for transactions outside of the United States.

iv. *Bill payment.* Fees for bill payment services. Fee variations within this fee type may include fees for ACH bill payment, paper check bill payment, check cancellation, and expedited delivery of paper check.

v. *Person-to-person or card-to-card transfer of funds.* Fees for transferring funds from one prepaid account to another prepaid account. Fee variations within this fee type may include fees for transferring funds to another prepaid account within or outside of a specified prepaid account program, transferring funds to another cardholder within the United States or outside the United States, and expedited transfer of funds.

vi. *Paper checks.* Fees for providing paper checks that draw on the prepaid account. Fee variations within this fee type may include fees for providing checks and associated shipping costs. This does not include checks issued as part of a bill pay service, which are addressed in comment 18(b)(2)(viii)(A)–2.iv above.

vii. *Stop payment.* Fees for stopping payment of a preauthorized transfer of funds.

viii. *Fee types related to card services.* Fee types for card services.

A. *Card replacement.* Fees for replacing or reissuing a prepaid card that has been lost, stolen, damaged, or that has expired. Fee variations within this fee types may include fees for replacing the card, regular or expedited delivery of the replacement card, and international card replacement.

B. *Secondary card.* Fees for issuing an additional access device assigned to a particular prepaid account.

C. *Personalized card.* Fees for customizing or personalizing a prepaid card.

ix. *Legal.* Fees for legal process. Fee variations within this fee type may include fees for garnishments, attachments, levies, and other court or administrative orders against a prepaid account.

3. *Multiple service plans.* Pursuant to §1005.18(b)(2)(vi), a financial institution using the multiple service plan short form disclosure pursuant to §1005.18(b)(6)(iii)(B)(*2*) must disclose only the fee for calling customer service via a live agent. Thus, pursuant to §1005.18(b)(2)(viii), any charge for calling customer service via an interactive voice response system must be counted in the total number of additional fee types.

4. *Consistency in additional fee type categorization.* A financial institution must use the same categorization of fee types in the number of additional fee types disclosed pursuant to §1005.18(b)(2)(viii) and in its determination of which additional fee types to disclose pursuant to §1005.18(b)(2)(ix).

18(b)(2)(viii)(B) Statement Directing Consumers to Disclosure of Additional Fee Types

1. *Statement clauses.* Section 1005.18(b)(2)(viii)(B) requires, if a financial institution makes a disclosure of additional fee types pursuant to §1005.18(b)(2)(ix), it must include in the short form a statement directing consumers to that disclosure, located after but on the same line of text as the statement regarding the number of additional fee types required by §1005.18(b)(2)(viii)(A), using the following clause or a substantially similar clause: ''Here are some of them:''. A financial institution that makes no disclosure pursuant to §1005.18(b)(2)(ix) may not include a disclosure pursuant to §1005.18(b)(2)(viii)(B). The following examples provide guidance regarding substantially similar clauses a financial institution may use in certain circumstances to make its disclosures under §1005.18(b)(2)(viii)(A) and (B):

i. A financial institution that has one additional fee type and discloses that additional fee type pursuant to §1005.18(b)(2)(ix) might provide the statements required by §1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 1 other type of fee. It is:''.

ii. A financial institution that has five additional fee types and discloses one of those additional fee types pursuant to §1005.18(b)(2)(ix) might provide the statements required by §1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 5 other types of fees. Here is 1 of them:''.

iii. A financial institution that has two additional fee types and discloses both of those fee types pursuant to §1005.18(b)(2)(ix) might provide the statement required by §1005.18(b)(2)(viii)(A) and (B) together as: ''We charge 2 other types of fees. They are:''.

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

18(b)(2)(ix)(A) Determination of Which Additional Fee Types To Disclose

1. *Number of fee types to disclose.* Section 1005.18(b)(2)(ix)(A) requires disclosure of 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), excluding the categories set forth in §1005.18(b)(2)(ix)(A)(*1*) through (*3*). See comment 18(b)(2)(viii)(A)–2 for guidance on and examples of fee types. If a prepaid account program has two fee types that satisfy the criteria in §1005.18(b)(2)(ix)(A), it must disclose both fees. If a prepaid account program has three or more fee types that potentially satisfy the criteria in §1005.18(b)(2)(ix)(A), the financial institution must disclose only the two fee types that generate the highest revenue from consumers. See comment 18(b)(2)(ix)(B)–1 for guidance regarding the disclosure of additional fee types for a prepaid account with fewer than two fee types that satisfy the criteria in §1005.18(b)(2)(ix)(A).

2. *Abbreviations.* Commonly accepted or readily understandable abbreviations may be used as needed for additional fee types and fee variations disclosed pursuant to §1005.18(b)(2)(ix). For example, to accommodate on one line in the short form disclosure the additional fee types ''international ATM balance inquiry'' or ''person-to-person transfer of funds,'' with or without fee variations, a financial institution may choose to abbreviate the fee type name as ''Int'l ATM inquiry'' or ''P2P transfer.''

3. *Revenue from consumers.* The revenue calculation for the disclosure of additional fee types pursuant to §1005.18(b)(2)(ix)(A) is based on fee types that the financial institution may charge consumers with respect to the prepaid account. The calculation excludes other revenue sources such as revenue generated from interchange fees and fees paid by employers for payroll card programs, government agencies for government benefit programs, and other entities sponsoring prepaid account programs for financial disbursements. It also excludes third-party fees, unless they are imposed for services performed on behalf of the financial institution.

4. *Assessing revenue within and across prepaid account programs to determine disclosure of additional fee types.* Pursuant to §1005.18(b)(2)(ix)(A), the disclosure of the two fee types that generate the highest revenue from consumers must be determined for each prepaid account program or across prepaid account programs that share the same fee schedule. Thus, if a financial institution offers more than one prepaid account program, unless the programs share the same fee schedule, the financial institution must consider the fee revenue data separately for each prepaid account program and not consolidate the fee revenue data across prepaid account programs. Prepaid account programs are deemed to have the same fee schedules if they charge the same fee amounts, including offering the same fee waivers and fee reductions for the same features. The following examples illustrate how to assess revenue within and across prepaid account programs to determine the disclosure of additional fee types:

i. *Prepaid account programs with different fee schedules.* A financial institution offers multiple prepaid account programs and each program has a different fee schedule. The financial institution must consider the revenue from consumers for each program separately; it may not consider the revenue from all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

ii. *Prepaid account programs with identical fee schedules.* A financial institution offers multiple prepaid account programs and they all share the same fee schedule. The financial institution may consider the revenue across all of its prepaid account programs together in determining the disclosure of additional fee types for its programs.

iii. *Prepaid account programs with both different fee schedules and identical fee schedules.* A financial institution offers multiple prepaid account programs, some of which share the same fee schedule. The financial institution may consider the revenue across all prepaid account programs with identical fee schedules in determining the disclosure of additional fee types for those programs. The financial institution must separately consider the revenue from each of the prepaid account programs with unique fee schedules.

iv. *Multiple service plan prepaid account programs.* A financial institution that discloses multiple service plans on a short form disclosure as permitted by §1005.18(b)(6)(iii)(B)(*2*) must consider revenue across all of those plans in determining the disclosure of additional fee types for that program. If, however, the financial institution instead is disclosing the default service plan pursuant to §1005.18(b)(6)(iii)(B)(*1*), the financial institution must consider the revenue generated from consumers for the default service plan only. See §1005.18(b)(6)(iii)(B)(*2*) and comment 18(b)(6)(iii)(B)(*2*)–1 for guidance on what constitutes multiple service plans.

5. *Exclusions.* Once the financial institution has calculated the fee revenue data for the prepaid account program or across prepaid account programs that share the same fee schedule during the appropriate time period, it must remove from consideration the categories excluded pursuant to

§1005.18(b)(2)(ix)(A)(*1*) through (*3*) before determining the fee types, if any, that generated the highest revenue.

i. *Exclusion for fee types required to be disclosed elsewhere.* Fee types otherwise required to be disclosed in or outside the short form are excluded from the additional fee types required to be disclosed pursuant to §1005.18(b)(2)(ix)(A)(*1*). Thus, the following fee types are excluded: Periodic fee, per purchase fee, ATM withdrawal fees (for ATM withdrawals in the United States), cash reload fee, ATM balance inquiry fees (for ATM balance inquiries in the United States), customer service fees, and inactivity fee. However, while the cash reload fee type is excluded, other reload fee types, such as electronic reload and check reload, are not excluded under §1005.18(b)(2)(ix)(A)(*1*) and thus may be disclosed as additional fee types pursuant to §1005.18(b)(2)(ix). Similarly, while the fee types ATM withdrawal and ATM balance inquiry in the United States are excluded, international ATM withdrawal and international ATM balance inquiry fees are not excluded under §1005.18(b)(2)(ix)(A)(*1*) and thus may be disclosed as additional fee types pursuant to §1005.18(b)(2)(ix). Also pursuant to §1005.18(b)(2)(ix)(A)(*1*), the purchase price and activation fee, if any, required to be disclosed outside the short form disclosure pursuant to §1005.18(b)(5), are excluded from the additional fee types required to be disclosed pursuant to §1005.18(b)(2)(ix).

ii. *De minimis exclusion.* Any fee types that generated less than 5 percent of the total revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in §1005.18(b)(2)(ix)(D) and (E) are excluded from the additional fee types required to be disclosed pursuant to §1005.18(b)(2)(ix)(A)(*2*). For example, for a particular prepaid account program over the appropriate time period, bill payment, check reload, and card replacement are the only fee types that generated 5 percent or more of the total revenue from consumers at, respectively, 15 percent, 10 percent, and 7 percent. Two other fee types, legal fee and personalized card, generated revenue below 1 percent of the total revenue from consumers. The financial institution must disclose bill payment and check reload as the additional fee types for that particular prepaid account program because those two fee types generated the highest revenue from consumers from among the categories not excluded from disclosure as additional fee types. For a different prepaid account program over the appropriate time period, bill payment is the only fee type that generated 5 percent or more of the total revenue from consumers. Two other fee types, check reload and card replacement, each generated revenue below 5 percent of the total revenue from consumers. The financial institution must disclose bill payment as an additional fee type for that particular prepaid account program because it is the only fee type that satisfies the criteria of §1005.18(b)(2)(ix)(A). The financial institution may, but is not required to, disclose either check reload or card replacement on the short form as well, pursuant to §1005.18(b)(2)(ix)(B). *See* comment 18(b)(2)(ix)(B)–1.

iii. *Exclusion for credit-related fees.* Any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, are excluded from the additional fee types required to be disclosed pursuant to §1005.18(b)(2)(ix)(A)(*3*). Pursuant to §1005.18(b)(2)(viii)(A)(*2*), such finance charges are also excluded from the number of additional fee types disclosed.

18(b)(2)(ix)(B) Disclosure of Fewer Than Two Additional Fee Types

1. *Disclosure of one or no additional fee types.* The following examples provide guidance on the additional fee types disclosure pursuant to §1005.18(b)(2)(ix)(B) for a prepaid account with fewer than two fee types that satisfy the criteria in §1005.18(b)(2)(ix)(A):

i. A financial institution has a prepaid account program with only one fee type that satisfies the criteria in §1005.18(b)(2)(ix)(A) and thus, pursuant to §1005.18(b)(2)(ix)(A), the financial institution must disclose that one fee type. The prepaid account program has three other fee types that generate revenue from consumers, but they do not exceed the de minimis threshold or otherwise satisfy the criteria in §1005.18(b)(2)(ix)(B). Pursuant to §1005.18(b)(2)(ix)(B), the financial institution is not required to make any additional disclosure, but it may choose to disclose one of the three fee types that do not meet the criteria in §1005.18(b)(2)(ix)(A).

ii. A financial institution has a prepaid account program with four fee types that generate revenue from consumers, but none exceeds the de minimis threshold or otherwise satisfy the criteria in §1005.18(b)(2)(ix)(A). Pursuant to §1005.18(b)(2)(ix)(B), the financial institution is not required to make any disclosure, but it may choose to disclose one or two of the fee types that do not meet the criteria in §1005.18(b)(2)(ix)(A).

2. *No disclosure of finance charges as an additional fee type.* Pursuant to §1005.18(b)(3)(vi), a financial institution may not disclose any finance charges as a voluntary additional fee disclosure under §1005.18(b)(2)(ix)(B).

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

1. *Two or more fee variations.* Section 1005.18(b)(2)(ix)(C) specifies how to disclose additional fee types with two fee variations,

more than two fee variations, and for multiple service plans pursuant to §1005.18(b)(6)(iii)(B)(*2*). See comment 18(b)(2)(viii)(A)–2 for guidance on and examples of fee types and fee variations within those fee types. The following examples illustrate how to disclose two-tier fees and other fee variations in additional fee types:

i. *Two fee variations with different fee amounts.* A financial institution charges a fee of $1 for providing a card replacement using standard mail service and charges a fee of $5 for providing a card replacement using expedited delivery. The financial institution must calculate the total revenue generated from consumers for all card replacements, both via standard mail service and expedited delivery, during the required time period to determine whether it is required to disclose card replacement as an additional fee type pursuant to §1005.18(b)(2)(ix). Because there are only two fee variations for the fee type ''card replacement,'' if card replacement is required to be disclosed as an additional fee type pursuant to §1005.18(b)(2)(ix)(A), the financial institution must disclose both fee variations pursuant to §1005.18(b)(2)(ix)(C). Thus, the financial institution would disclose on the short form the fee type and two variations as ''Card replacement (regular or expedited delivery)'' and the fee amount as ''$1.00 or $5.00''.

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*''. 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''.

iii. *Two fee variations with like fee amounts.* A financial institution offers two methods of check reload for which it charges a fee—depositing checks at an ATM and depositing checks with a teller at the financial institution's branch locations. There is a fee of $0.50 for both methods of check deposit. The financial institution must calculate the total revenue generated from both of these check reload methods during the required time period to determine whether it must disclose this fee type as an additional fee type pursuant to §1005.18(b)(2)(ix). Because the fee amounts are the same for the two methods of check deposit, if the fee type is required to be disclosed as an additional fee type, the financial institution's options for disclosing this fee type in accordance with §1005.18(b)(2)(ix)(C) and (b)(3)(iii) include: ''Check reload (ATM or teller check dep)'' and the fee amount as ''$0.50'' or ''Check reload'' and the fee amount as ''$0.50''.

iv. *Multiple service plans.* A financial institution provides a short form disclosure for multiple service plans pursuant to §1005.18(b)(6)(iii)(B)(*2*). Notwithstanding that an additional fee type has only two fee variations, a financial institution must disclose the highest fee in accordance with §1005.18(b)(3)(i).

2. *One fee variation under a particular fee type.* Section 1005.18(b)(2)(ix)(C) provides in part that, 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, if any, for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by §1005.18(b)(2)(v) and (vi), except that the financial institution must disclose only the one fee variation name and fee amount instead of two. For example, a financial institution offers one method of electronic reload for which it charges a fee—electronic reload conducted using a debit card. The financial institution must calculate the total revenue generated from consumers for the fee type electronic reload (*i.e.*, in this case, electronic reloads conducted using a debit card) during the required time period to determine whether it must disclose electronic reload as an additional fee type pursuant to §1005.18(b)(2)(ix). Because the financial institution only charges one fee variation under the fee type electronic reload, if this fee type is required to be disclosed as an additional fee type, the financial institution has two options for disclosing this fee type in accordance with §1005.18(b)(2)(ix)(C): ''Electronic reload (debit card)'' and the fee amount as

''$1.00'' or ''Electronic reload'' and the fee amount as ''$1.00''.

18(b)(2)(ix)(D) Timing of Initial Assessment of Additional Fee Types Disclosure

18(b)(2)(ix)(D)(1) Existing Prepaid Account Programs as of April 1, 2019

1. *24 month period with available data.* Section 1005.18(b)(2)(ix)(D)(*1*) requires for a prepaid account program in effect as of April 1, 2019 the financial institution must disclose additional fee types based on revenue for a 24-month period that begins no earlier than October 1, 2014. Thus, a prepaid account program that was in existence as of April 1, 2019 must assess its additional fee types disclosure from data collected during a consecutive 24-month period that took place between October 1, 2014 and April 1, 2019. For example, an existing prepaid account program was first offered to consumers on January 1, 2012 and provides its first short form disclosure on April 1, 2019. The earliest 24-month period from which that financial institution could calculate its first additional fee types disclosure would be from October 1, 2014 to September 30, 2016.

18(b)(2)(ix)(D)(2) Existing Prepaid Account Programs as of April 1, 2019 With Unavailable Data

1. *24 month period without available data.* Section 1005.18(b)(2)(ix)(D)(*2*) requires that if a financial institution does not have 24 months of fee revenue data for a particular prepaid account program from which to calculate the additional fee types disclosure in advance of April 1, 2019, the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on April 1, 2019. For example, a financial institution begins offering to consumers a prepaid account program six months before April 1, 2019. Because the prepaid account program will not have 24 months of fee revenue data prior to April 1, 2019, pursuant to §1005.18(b)(2)(ix)(D)(*2*) the financial institution must disclose the additional fee types it reasonably anticipates the prepaid account program will generate over the 24-month period that begins on April 1, 2019. The financial institution would take into account the data it had accumulated at the time of its calculation to arrive at the reasonably anticipated additional fee types for the prepaid account program.

18(b)(2)(ix)(E) Timing of Periodic Reassessment and Update of Additional Fee Types Disclosure

18(b)(2)(ix)(E)(2) Periodic Reassessment

1. *Periodic reassessment and, if applicable, update of additional fee types disclosure.* Pursuant to §1005.18(b)(2)(ix)(E)(*2*), a financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of §1005.18(b)(2)(ix) every 24 months based on revenue for the previous 24-month period. The financial institution must complete this reassessment and update its disclosure, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in §1005.18(b)(2)(ix)(E)(*4*). The following examples provide guidance on the periodic assessment and, if applicable, update of the disclosure of additional fee types pursuant to §1005.18(b)(2)(ix)(E)(*2*):

i. *Reassessment with no change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on April 1, 2019. Starting on April 1, 2021, the financial institution assessed the fee revenue data it collected over the previous 24 months, and the two additional fee types previously disclosed continue to qualify as additional fee types pursuant to §1005.18(b)(2)(ix). The financial institution is not required to take any action with regard to the disclosure of additional fee types for that prepaid account program.

ii. *Reassessment with a change in the additional fee types disclosed.* A financial institution disclosed two additional fee types (bill payment and card replacement) for a particular prepaid account program on April 1, 2019. Starting on April 1, 2021, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill payment continued to qualify as an additional fee type pursuant to §1005.18(b)(2)(ix) but check reload qualified as the second additional fee type instead of card replacement. The financial institution must update the additional fee types disclosure in its short form disclosures provided electronically, orally, and in writing (other than for printed materials that qualify for the update printing exception in §1005.18(b)(2)(ix)(E)(*4*)) no later than July 1, 2021, which is three months after the end of the 24-month period.

iii. *Reassessment with the addition of an additional fee type already voluntarily disclosed.* A financial institution disclosed one additional fee type (bill payment) and voluntarily disclosed one other additional fee type (card replacement, both for regular and expedited delivery) for a particular prepaid account program on April 1, 2019. Starting on

April 1, 2021, the financial institution assessed the fee revenue data it collected over the previous 24 months, and bill payment continued to qualify as an additional fee type pursuant to §1005.18(b)(2)(ix) and card replacement now qualified as the second additional fee type. Because the financial institution already had disclosed its card replacement fees in the format required for an additional fee type disclosure, the financial institution is not required to take any action with regard to the additional fee types disclosure in the short form for that prepaid account program.

2. *Reassessment more frequently than every 24 months.* Pursuant to §1005.18(b)(2)(ix)(E)(*2*), a financial institution may, but is not required to, carry out the reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences. A financial institution may choose to do this, for example, to sync its reassessment process for additional fee types with its financial reporting schedule or other financial analysis it performs regarding the particular prepaid account program. If a financial institution chooses to reassess its additional fee types disclosure more frequently than every 24 months, it is still required to use 24 months of fee revenue data to conduct the reassessment. For example, a financial institution first offered a particular prepaid account program on April 1, 2018 and thus was required to estimate its initial additional fee types disclosure pursuant to §1005.18(b)(2)(ix)(D)(*2*). If the financial institution chooses to begin its reassessment of its fee revenue data on April 1, 2020, it would use the data it collected over the previous 24 months (April 1, 2018 to March 31, 2020) and complete its reassessment and its update, if applicable, by July 1, 2020.

18(b)(2)(ix)(E)(3) Fee Schedule Change

1. *Revised prepaid account programs.* Section 1005.18(b)(2)(ix)(E)(*3*) requires that if a financial institution revises the fee schedule for a prepaid account program, it must determine whether it reasonably anticipates that the previously disclosed additional fee types will continue to comply with the requirements of §1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change. A fee schedule change resets the 24-month period for assessment; a financial institution must comply with the requirements of §1005.18(b)(2)(ix)(E)(*2*) at the end of the 24-month period following implementation of the fee schedule change. If the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of §1005.18(b)(2)(ix), it must update the disclosure based on its reasonable anticipation of what those additional fee types will be at the time the fee schedule change goes into effect, except as provided in the update printing exception in §1005.18(b)(2)(ix)(E)(*4*). For example, if a financial institution lowers its card replacement fee from $4 to $3 on June 1, 2019 after having first assessed its additional fee types disclosure as of April 1, 2019, the financial institution would assess whether it reasonably anticipates that the existing additional fee types disclosure will continue to reflect the additional fee types that generate the highest revenue from consumers for that prepaid account program for the next 24 months (until June 1, 2021). If the financial institution reasonably anticipates that its additional fee types will remain unchanged over the next 24 months, the financial institution is not required to take any action with regard to the additional fee types disclosure for that prepaid account program. In the same example, if the financial institution reasonably anticipates that the previously disclosed additional fee types will not comply with the requirements of §1005.18(b)(2)(ix) for the 24 months following implementation of the fee schedule change, the financial institution must update the listing of additional fee types at the time the fee schedule change goes into effect, except as provided in the update printing exception pursuant to §1005.18(b)(2)(ix)(E)(*4*).

18(b)(2)(ix)(E)(4) Update Printing Exception

1. *Application of the update printing exception to prepaid accounts sold in retail locations.* Pursuant to §1005.18(b)(2)(ix)(E)(*4*), notwithstanding the requirements to update the additional fee types disclosure in §1005.18(b)(2)(ix)(E), a financial institution is not required to update the listing of additional fee types that are provided on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced prior to a periodic reassessment and update pursuant to §1005.18(b)(2)(ix)(E)(*2*) or prior to a fee schedule change pursuant to §1005.18(b)(2)(ix)(E)(*3*). For prepaid accounts sold in retail locations, for example, §1005.18(b)(2)(ix)(E)(*4*) permits a financial institution to implement any necessary updates to the listing of the additional fee types on the short form disclosure that appear on its physical prepaid account packaging materials at the time the financial institution prints new materials. Section 1005.18(b)(2)(ix)(E)(*4*) does not require financial institutions to destroy existing inventory in retail locations or elsewhere in the distribution channel, to the extent the disclosures on such packaging materials are otherwise accurate, to comply with this requirement. For example, a financial institution determines that an additional fee type listed on a short form disclosure in a retail location no longer qualifies as an additional

fee type pursuant to §1005.18(b)(2)(ix). The financial institution must update any electronic and oral short form disclosures pursuant to the timing requirements set forth in §1005.18(b)(2)(ix)(E). Pursuant to §1005.18(b)(2)(ix)(E)(*4*), the financial institution may continue selling any previously printed prepaid account packages that contain the prior listing of additional fee types; prepaid account packages printed after that time must contain the updated listing of additional fee types.

18(b)(2)(x) Statement Regarding Overdraft Credit Features

1. *Short form disclosure when overdraft credit feature may be offered.* Section 1005.18(b)(2)(x) requires disclosure of a statement if a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered at any point to a consumer in connection with the prepaid account. This statement must be provided on the short form disclosures for all prepaid accounts that may offer such a feature, regardless of whether some consumers may never be solicited or qualify to enroll in such a feature.

18(b)(2)(xi) Statement Regarding Registration and FDIC or NCUA Insurance

1. *Disclosure of FDIC or NCUA insurance.* Section 1005.18(b)(2)(xi) requires a statement regarding the prepaid account program's eligibility for FDIC deposit insurance or NCUA share insurance, as appropriate, and directing the consumer to register the prepaid account for insurance and other account protections, where applicable. If the consumer's prepaid account funds are held at a credit union, the disclosure must indicate NCUA insurance eligibility. If the consumer's prepaid account funds are held at a financial institution other than a credit union, the disclosure must indicate FDIC insurance eligibility.

2. *Consumer identification and verification processes.* For additional guidance on the timing of consumer identification and verification processes, and on prepaid account programs for which there is no consumer identification and verification process for any prepaid accounts within the prepaid account program, see §1005.18(e)(3) and comments 18(e)–4 through 6.

18(b)(2)(xiii) Statement Regarding Information on All Fees and Services

1. *Financial institution's telephone number.* For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in §1005.18(b)(1)(ii), the statement required by §1005.18(b)(2)(xiii) must also include a telephone number (and the website URL) that a consumer may use to directly access an oral version of the long form disclosure. To provide the long form disclosure by telephone, a financial institution could use a live customer service agent or an interactive voice response system. The financial institution could use a telephone number specifically dedicated to providing the long form disclosure or a more general customer service telephone number for the prepaid account program. For example, a financial institution would be deemed to provide direct access pursuant to §1005.18(b)(2)(xiii) if a consumer navigates one or two prompts to reach the oral long form disclosure via a live customer service agent or an interactive voice response system using either a specifically dedicated telephone number of a more general customer service telephone number.

2. *Financial institution's website.* For a financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in §1005.18(b)(1)(ii), the statement required by §1005.18(b)(2)(xiii) must also include a website URL (and a telephone number) that a consumer may use to directly access an electronic version of the long form disclosure. For example, a financial institution that requires a consumer to navigate various other web pages before viewing the long form disclosure would not be deemed to provide direct access pursuant to §1005.18(b)(2)(xiii). Trademark and product names and their commonly accepted or readily understandable abbreviations comply with the requirement in §1005.18(b)(2)(xiii) that the URL be meaningfully named. For example, ABC or ABCard would be readily understandable abbreviations for a prepaid account program named the Alpha Beta Card.

18(b)(2)(xiv) Additional Content for Payroll Card Accounts

18(b)(2)(xiv)(A) Statement Regarding Wage or Salary Payment Options

1. *Statement options for payroll card accounts.* Section 1005.18(b)(2)(xiv)(A) requires a financial institution to include at the top of the short form disclosure for payroll card accounts, above the information required by §1005.18(b)(2)(i) through (iv), one of two statements regarding wage payment options. Financial institutions offering payroll card accounts may choose which of the two statements required by §1005.18(b)(2)(xiv)(A) to use in the short form disclosure. The list of other options required in the second statement might include the following, as applicable: Direct deposit to the consumer's bank account, direct deposit to the consumer's own prepaid account, paper check, or cash. A financial institution may, but is not required to, provide more specificity as to whom consumers must ask or inform of their choice of wage payment method, such as specifying

the employer's Human Resources Department.

2. *Statement options for government benefit accounts.* See §1005.15(c)(2)(i) for statement options for government benefit accounts.

3. *Statement permitted for other prepaid accounts.* A financial institution offering a prepaid account other than a payroll card account or government benefit account may, but is not required to, include a statement in the short form disclosure regarding payment options that is similar to either of the statements required for payroll card accounts pursuant to §1005.18(b)(2)(xiv)(A) or government benefit accounts pursuant to §1005.15(c)(2)(i). For example, a financial institution issuing a prepaid account to disburse student financial aid proceeds may disclose a statement such as the following: ''You have several options to receive your financial aid payments: Direct deposit to your bank account, direct deposit to your own prepaid card, paper check, or this prepaid card. Tell your school which option you choose.''

18(b)(2)(xiv)(B) Statement Regarding State-Required Information or Other Fee Discounts and Waivers

1. *Statement options for state-required information or other fee discounts or waivers.* Section 1005.18(b)(2)(xiv)(B) permits, but does not require, a financial institution to include in the short form disclosure for payroll card accounts one additional line of text directing the consumer to a particular location outside the short form disclosure for information on ways the consumer may access payroll card account funds and balance information for free or for a reduced fee. For example, a financial institution might include the following line of text in the short form disclosure: ''See below for free ways to access your funds and balance information'' and then list below, but on the same page as, the short form disclosure several ways consumers can access their prepaid account funds and balance information for free. Alternatively, the financial institution might direct the consumer to another location for that information, such as by stating ''See the cardholder agreement for free ways to access your funds and balance information.'' A similar statement is permitted for government benefit accounts pursuant to §1005.15(c)(2)(ii).

18(b)(3) Short Form Disclosure of Variable Fees and Third-Party Fees and Prohibition on Disclosure of Finance Charges

18(b)(3)(i) General Disclosure of Variable Fees

1. *Short form disclosure of variable fees.* Section 1005.18(b)(3)(i) requires disclosure in the short form of the highest fee when a fee can vary, 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. For example, a financial institution provides interactive voice response (IVR) customer service for free and provides the first three live agent customer service calls per month for free, after which it charges $0.50 for each additional live agent customer service call during that month. Pursuant to §1005.18(b)(2)(vi), the financial institution must disclose both its IVR and live agent customer service fees on the short form disclosure. The financial institution would disclose the IVR fee as $0 and the live agent customer service fee as $0.50, followed by an asterisk (or other symbol) linked to a statement explaining that the fee can be lower depending on how and where the prepaid account is used. Except as described in §1005.18(b)(3)(ii), §1005.18(b)(3)(i) does not permit a financial institution to describe in the short form disclosure the specific conditions under which a fee may be reduced or waived, but the financial institution could use, for example, any other part of the prepaid account's packaging or other printed materials to disclose that information. The conditions under which a fee may be lower are required to be disclosed in the long form disclosure pursuant to §1005.18(b)(4)(ii).

18(b)(3)(ii) Disclosure of Variable Periodic Fee

1. *Periodic fee variation alternative.* If the amount of the periodic fee disclosed in the short form pursuant to §1005.18(b)(2)(i) could vary, a financial institution has two alternatives for disclosing the variation, as set forth in §1005.18(b)(3)(i) and (ii). For example, a financial institution charges a monthly fee of $4.95, but waives this fee if a consumer receives direct deposit into the prepaid account or conducts 30 or more transactions during that month. Pursuant to §1005.18(b)(3)(ii), the financial institution could list its monthly fee of $4.95 on the short form disclosure followed by a dagger symbol that links to a statement that states, for example, ''No monthly fee with direct deposit or 30 transactions per month.'' This statement may take up no more than one line of text in the short form disclosure and must be located directly above or in place of the linked statement required by §1005.18(b)(3)(i). Alternatively, pursuant to §1005.18(b)(3)(i), the financial institution could list its monthly fee of $4.95 on the short form disclosure followed by an asterisk that links to a statement that states, ''This fee can be lower depending on how and where this card is used.''

18(b)(3)(iii) Single Disclosure for Like Fees

1. *Alternative for two-tier fees in the short form disclosure.* Pursuant to §1005.18(b)(3)(iii),

a financial institution may opt to disclose one fee instead of the two fees required by §1005.18(b)(2)(iii), (v), and (vi) and any two-tier fee required by §1005.18(b)(2)(ix), when the amount is the same for both fees. The following examples illustrate how to provide a single disclosure for like fees on both the short form disclosure and the multiple service plan short form disclosure:

i. A financial institution charges $1 for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may list the $1 fee once under the general heading ''ATM withdrawal'' required by §1005.18(b)(2)(iii); in that case, it need not disclose the terms ''in-network'' or ''out-of-network.''

ii. A financial institution using the multiple service plan short form disclosure pursuant to §1005.18(b)(6)(iii)(B)(*2*) charges $1 under each of its service plans for both in-network and out-of-network automated teller machine withdrawals in the United States. The financial institution may disclose the ATM withdrawal fee on one line, instead of two, using the general heading ''ATM withdrawal'' required by §1005.18(b)(2)(iii); in that case, it need not disclose the terms ''in-network'' or ''out-of-network.''

18(b)(3)(iv) Third-Party Fees in General

1. *General prohibition on disclosure of third-party fees in the short form.* Section 1005.18(b)(3)(iv) states that a financial institution may not include any third-party fees in a disclosure made pursuant to §1005.18(b)(2), except for, as provided by §1005.18(b)(3)(v), the cash reload fee required to be disclosed by §1005.18(b)(2)(iv). Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed pursuant to §1005.18(b)(3)(iv). For example, if a program manager performs customer service functions for a financial institution's prepaid account program, and charges a fee for live agent customer service, that fee must be disclosed pursuant to §1005.18(b)(2)(iv).

18(b)(3)(v) Third-Party Cash Reload Fees

1. *Updating third-party fees.* Section 1005.18(b)(3)(v) provides that a financial institution is not required to revise its short form disclosure to reflect a cash reload fee change by a third party until such time that the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the short form disclosure. For example, at the time a financial institution first prints packaging material for its prepaid account program, it discloses on the short form the $3.99 fee charged by the third-party reload network with which it contracts to provide cash reloads. Ten months later, the third-party reload network raises its cash reload fee to $4.25. The financial institution is not required to update its on-package disclosures to reflect the change in the cash reload fee until the financial institution next prints packaging materials for that prepaid account program. With respect to that financial institution's electronic and oral disclosures for that prepaid account program, the financial institution may, but is not required to, update its short form disclosure immediately upon learning of the third-party reload network's change to its cash reload fee. Alternatively, the financial institution may wait to update its electronic and oral short form disclosures to reflect the change in the cash reload fee until it otherwise updates those disclosures.

18(b)(3)(vi) Prohibition on Disclosure of Finance Charges

1. *No disclosure of finance charges in the short form.* Section 1005.18(b)(3)(vi) provides that a financial institution may not include in a disclosure made pursuant to §1005.18(b)(2)(i) through (ix) any finance charges as described in Regulation Z, 12 CFR 1026.4(b)(11), imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61. If a financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature, it must disclose on the short form for purposes of §1005.18(b)(2)(i) through (vii) and (ix) the amount of the comparable fee rather than the higher fee. *See, e.g.,* §1005.18(g)(2) and related commentary.

18(b)(4) Long Form Disclosure Content

18(b)(4)(ii) Fees

1. *Disclosure of all fees.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose in the long form all fees that may be imposed in connection with a prepaid account, not just fees for electronic fund transfers or the right to make transfers. The requirement to disclose all fees in the long form includes any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 but does not include finance charges imposed on the covered separate credit feature as described in 12 CFR 1026.4(b)(11)(i). See comment 18(b)(7)(i)(B)–2 for guidance on disclosure of finance charges

as part of the §1005.18(b)(4)(ii) fee disclosure in the long form. A financial institution may also be required to include finance charges in the Regulation Z disclosures required pursuant to §1005.18(b)(4)(vii).

2. *Disclosure of conditions.* Section 1005.18(b)(4)(ii) requires a financial institution to disclose the amount of each fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. For example, if a financial institution charges a cash reload fee, the financial institution must list the amount of the cash reload fee and also specify any circumstances under which a consumer can qualify for a lower fee. Similarly, if a financial institution discloses both a periodic fee and an inactivity fee, it must indicate whether the inactivity fee will be charged in addition to, or instead of, the periodic fee. A financial institution may, but is not required to, also include on the long form disclosure additional information or limitations related to the service or feature for which a fee is charged, such as, for cash reloads, any limit on the amount of cash a consumer may load into the prepaid account in a single transaction or during a particular time period. The general requirement in §1005.18(b)(4)(ii) does not apply to individual fee waivers or reductions granted to a particular consumer or group of consumers on a discretionary or case-by-case basis.

3. *Disclosure of a service or feature without a charge.* Pursuant to §1005.18(b)(4)(ii), a financial institution may, but is not required to, list in the long form disclosure any service or feature it provides or offers at no charge to the consumer. For example, a financial institution may list ''online bill pay'' in its long form disclosure and indicate a fee amount of ''$0'' when the financial institution does not charge consumers a fee for that feature. By contrast, where a fee is waived or reduced under certain circumstances or where a service or feature is available for an introductory period without a fee, the financial institution may not list the fee amount as ''$0''. Rather, the financial institution must list the highest fee, accompanied by an explanation of the waived or reduced fee amount and any conditions for the waiver or discount. For example, if a financial institution waives its monthly fee for any consumer who receives direct deposit payments into the prepaid account or conducts 30 or more transactions in a given month, the long form disclosure must list the regular monthly fee amount along with an explanation that the monthly fee is waived if the consumer receives direct deposit or conducts 30 or more transactions each month. Similarly, for an introductory fee, the financial institution would list the highest fee, and explain the introductory fee amount, the duration of the introductory period, and any conditions that apply during the introductory period.

4. *Third-party fees.* Section 1005.18(b)(4)(ii) requires disclosure in the long form of any third-party fee amounts known to the financial institution that may apply. Fees imposed by another party, such as a program manager, for services performed on behalf of the financial institution are not third-party fees and therefore must be disclosed on the long form pursuant to §1005.18(b)(4)(ii). Also pursuant to §1005.18(b)(4)(ii), for any third-party fee disclosed, a financial institution may, but is not required to, include either or both a statement that the fee is accurate as of or through a specific date or that the third-party fee is subject to change. For example, a financial institution that contracts with a third-party remote deposit capture service must include in the long form disclosure the amount of the fee known to the financial institution that is charged by the third party for remote deposit capture services. The financial institution may, but is not required to, also state that the third-party remote deposit capture fee is accurate as of or through a specific date, such as the date the financial institution prints the long form disclosure. The financial institution may also state that the fee is subject to change. Section 1005.18(b)(4)(ii) also provides that, if a third-party fee may apply but the amount of the fee is not known by the financial institution, it must include a statement indicating that a third-party fee may apply without specifying the fee amount. For example, a financial institution that permits out-of-network ATM withdrawals would disclose that, for ATM withdrawals that occur outside the financial institution's network, the ATM operator may charge the consumer a fee for the withdrawal, but the financial institution is not required to disclose the out-of-network ATM operator's fee amount if it does not know the amount of the fee.

18(b)(4)(iii) Statement Regarding Registration and FDIC or NCUA Insurance

1. *Statement regarding registration and FDIC or NCUA insurance, including implications thereof.* Section 1005.18(b)(4)(iii) requires that the long form disclosure include the same statement regarding prepaid account registration and FDIC or NCUA insurance eligibility required by §1005.18(b)(2)(xi) in the short form disclosure, together with an explanation of FDIC or NCUA insurance coverage and the benefit of such coverage or the consequence of the lack of such coverage, as applicable.

i. *Bank disclosure of FDIC insurance.* For example, XYZ Bank offers a prepaid account program for sale at retail locations that is set up to be eligible for FDIC deposit insurance, but does not conduct consumer identification and verification before consumers purchase the prepaid account. XYZ Bank may disclose the required statements as

''Register your card for FDIC insurance eligibility and other protections. Your funds will be held at or transferred to XYZ Bank, an FDIC-insured institution. Once there, your funds are insured up to $250,000 by the FDIC in the event XYZ Bank fails, if specific deposit insurance requirements are met and your card is registered. See *fdic.gov/deposit/deposits/prepaid.html* for details.'' Conversely, if XYZ Bank offers another prepaid account program for sale at retail locations for which it conducts consumer identification and verification after purchase of the prepaid account, but the program is not set up to be eligible for FDIC insurance, XYZ Bank may disclose the required statements as ''Not FDIC insured. Your funds will be held at or transferred to XYZ Bank. If XYZ Bank fails, you are not protected by FDIC deposit insurance and could lose some or all of your money. Register your card for other protections.''

ii. *Credit union disclosure of NCUA insurance.* For example, ABC Credit Union offers a prepaid account program for sale at its own branches that is set up to be eligible for NCUA share insurance, but does not conduct consumer identification and verification before consumers purchase the prepaid account. ABC Credit Union may disclose the requirement statements as ''Register your card for NCUA insurance, if eligible, and other protections. Your funds will be held at or transferred to ABC Credit Union, an NCUA-insured institution. Once there, if specific share insurance requirements are met and your card is registered, your funds are insured up to $250,000 by the NCUA in the event ABC Credit Union fails.'' See comment 18(b)(2)(xi)-1 for guidance as to when NCUA insurance coverage should be disclosed instead of FDIC insurance coverage.

18(b)(4)(vii) Regulation Z Disclosures for Overdraft Credit Features

1. *Long form Regulation Z disclosure of overdraft credit features.* Section 1005.18(b)(4)(vii) requires that the long form include the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), in accordance with the requirements for such disclosures in 12 CFR 1026.60, if, at any point, a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, may be offered to a consumer in connection with the prepaid account. If the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), pursuant to §1005.18(b)(7)(i)(B), such disclosures must appear below the statements required by §1005.18(b)(4)(vi). If the disclosures provided pursuant to Regulation Z, 12 CFR 1026.60(e)(1), are provided in writing, these disclosures must be provided in the form required by 12 CFR 1026.60(a)(2), and to the extent possible, on the same page as the other disclosures required by §1005.18(b)(4).

2. *Updates to the long form for changes to the Regulation Z disclosures.* Pursuant to §1005.18(b)(4)(vii), a financial institution is not required to revise the disclosure required by that paragraph to reflect a change in the fees or other terms disclosed therein until such time as the financial institution manufactures, prints, or otherwise produces new prepaid account packaging materials or otherwise updates the long form disclosure. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed on the long form pursuant to §1005.18(b)(4)(ii). *See* comment 18(b)(4)(ii)–1.

18(b)(5) Disclosure Requirements Outside the Short Form Disclosure

1. *Content of disclosure.* Section 1005.18(b)(5) requires that the name of the financial institution, the name of the prepaid account program, and any purchase price or activation fee for the prepaid account be disclosed outside the short form disclosure. A financial institution may, but is not required to, also disclose the name of the program manager or other service provider involved in the prepaid account program.

2. *Location of disclosure.* In addition to setting forth the required content for disclosures outside the short form disclosure, §1005.18(b)(5) requires that, in a setting other than a retail location, the information required by §1005.18(b)(5) must be disclosed in close proximity to the short form. For example, if the financial institution provides the short form disclosure online, the information required by §1005.18(b)(5) is deemed disclosed in close proximity to the short form if it appears on the same web page as the short form disclosure. If the financial institution offers the prepaid account in its own branch locations and provides the short form disclosure on the exterior of its preprinted packaging materials, the information required by §1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it appears on the exterior of the packaging. If the financial institution provides a written short form disclosure in a manner other than on preprinted packaging materials, such as on paper, the information required by §1005.18(b)(5) is deemed disclosed in close proximity if it appears on the same piece of paper as the short form disclosure. If the financial institution provides the short form disclosure orally, the information required by §1005.18(b)(5) is deemed disclosed in close proximity to the short form disclosure if it is

provided immediately before or after disclosing the fees and information required pursuant to §1005.18(b)(2). For prepaid accounts sold in a retail location pursuant to the retail location exception in §1005.18(b)(1)(ii), §1005.18(b)(5) requires the information other than purchase price be disclosed on the exterior of the access device's packaging material. If the purchase price, if any, is not also disclosed on the exterior of the packaging, disclosure of the purchase price on or near the sales rack or display for the packaging material is deemed in close proximity to the access device's packaging material.

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 website 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 website 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 website 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 website 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.

2. *Disclosures responsive to smaller screens.* In accordance with the requirement in §1005.18(b)(6)(i)(B) that electronic disclosures be provided in a responsive form, electronic disclosures provided pursuant to §1005.18(b) must be provided in a way that responds to different screen sizes, for example, by stacking elements of the disclosures in a manner that accommodates consumer viewing on smaller screens, while still meeting the other formatting requirements set forth in §1005.18(b)(7). For example, the disclosures permitted by §1005.18(b)(2)(xiv)(B) or (b)(3)(ii) must take up no more than one additional line of text in the short form disclosure. If a consumer is acquiring a prepaid account using a mobile device with a screen too small to accommodate these disclosures on one line of text in accordance with the size requirements set forth in §1005.18(b)(7)(ii)(B), a financial institution is permitted to display the disclosures permitted by §1005.18(b)(2)(xiv)(B) and (b)(3)(ii), for example, by stacking those disclosures in a way that responds to smaller screen sizes, while still meeting the other formatting requirements in §1005.18(b)(7).

3. *Machine-readable text.* Section 1005.18(b)(6)(i)(B) requires that electronic disclosures must be provided using machine-readable text that is accessible via both Web browsers (or mobile applications, as applicable) and screen readers. A disclosure would not be deemed to comply with this requirement if it was not provided in a form that can be read automatically by internet search engines or other computer systems.

18(b)(6)(i)(C) Oral Disclosures

1. *Disclosures for prepaid accounts acquired by telephone.* Unless it provides disclosures in written form prior to acquisition pursuant to §1005.18(b)(1)(i), a financial institution must disclose the information required by §1005.18(b)(2) and (5) orally before a consumer acquires a prepaid account orally by telephone pursuant to the exception in §1005.18(b)(1)(iii). A financial institution may, for example, provide these disclosures by using an interactive voice response or similar system or by using a customer service agent, after the consumer has initiated the purchase of a prepaid account by telephone, but before the consumer acquires the prepaid account. In addition, a financial institution must provide the initial disclosures required by §1005.7, as modified by §1005.18(f)(1), before the first electronic fund transfer is made involving the prepaid account.

18(b)(6)(ii) Retainable Form

1. *Retainable disclosures.* Section 1005.18(b)(6)(ii) requires that, except for disclosures provided orally pursuant to §1005.18(b)(1)(ii) or (iii), long form disclosures provided via SMS as permitted by §1005.18(b)(2)(xiii) for a prepaid account sold

at retail locations pursuant to the retail location exception in §1005.18(b)(1)(ii), and the disclosure of a purchase price pursuant to §1005.18(b)(5) that is not disclosed on the exterior of the packaging material for a prepaid account sold at a retail location pursuant to the retail location exception in §1005.18(b)(1)(ii), disclosures provided pursuant to §1005.18(b) must be made in a form that a consumer may keep. For example, a short form disclosure with a tear strip running though it would not be deemed retainable because use of the tear strip to gain access to the prepaid account access device inside the packaging would destroy part of the short form disclosure. Electronic disclosures are deemed retainable if the consumer is able to print, save, and email the disclosures from the Web site or mobile application on which they are displayed.

18(b)(6)(iii) Tabular Format

18(b)(6)(iii)(B) Multiple Service Plans

18(b)(6)(iii)(B)(1) Short Form Disclosure for Default Service Plan

1. *Disclosure of default service plan excludes short-term or promotional service plans.* Section 1005.18(b)(6)(iii)(B)(*1*) provides that when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, the information required by final §1005.18(b)(2)(i) through (ix) may be provided in the tabular format described in final §1005.18(b)(6)(iii)(A) for the service plan in which a consumer is initially enrolled by default upon acquiring a prepaid account. Pursuant to the requirement in §1005.18(b)(3)(i) to disclose the highest amount a financial institution may impose for a fee disclosed pursuant to §1005.18(b)(2)(i) through (vii) and (ix), a financial institution would not be permitted to disclose any short-term or promotional service plans as a default service plan.

18(b)(6)(iii)(B)(2) Short Form Disclosure for Multiple Service Plans

1. *Disclosure of multiple service plans.* The multiple service plan disclosure requirements in §1005.18(b)(6)(iii)(B)(*2*) apply when a financial institution offers more than one service plan within a particular prepaid account program, each plan has a different fee schedule, and the financial institution opts not to disclose the default service plan pursuant to §1005.18(b)(6)(iii)(B)(*1*). *See* Model Form A–10(e). For example, a financial institution that offers a prepaid account program with one service plan for which a consumer pays no periodic fee but instead pays a fee for each transaction, and another plan that includes a monthly fee but no per transaction fee may use the short form disclosure for multiple service plans pursuant to §1005.18(b)(6)(iii)(B)(*2*). Similarly, a financial institution that offers a prepaid account program with preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service (*e.g.*, a mobile phone service), often referred to as ''loyalty plans,'' may also use the short form disclosure for multiple service plans pursuant to §1005.18(b)(6)(iii)(B)(*2*). Pricing variations based on whether a consumer elects to use a specific feature of a prepaid account, such as waiver of the monthly fee for consumers electing to receive direct deposit, does not constitute multiple service plans or a loyalty plan. See comment 18(b)(3)(iii)–1.ii for guidance on providing a single disclosure for like fees for multiple service plan short form disclosures.

18(b)(7) Specific Formatting Requirements for Pre-Acquisition Disclosures

18(b)(7)(i) Grouping

18(b)(7)(i)(B) Long Form Disclosure

1. *Conditions must be in close proximity to fee amount.* Pursuant to §1005.18(b)(4)(ii), the long form disclosure generally must disclose all fees that may be imposed in connection with a prepaid account, including the amount of the fee and any conditions under which the fee may be imposed, waived, or reduced. Pursuant to §1005.18(b)(7)(i)(B), text describing the conditions under which a fee may be imposed must appear in the table in the long form disclosure in close proximity to the fee amount disclosed pursuant to §1005.18(b)(4)(ii). For example, a financial institution is deemed to comply with this requirement if the text describing the conditions is located directly to the right of the fee amount in the long form disclosure, as illustrated in Sample Form A–10(f). See comment 18(b)(6)(i)(B)–2 regarding stacking of electronic disclosures for display on smaller screen sizes.

2. *Category of function for finance charges.* Section 1005.18(b)(7)(i)(B) requires that the information required by §1005.18(b)(4)(ii) must be generally grouped together and organized under subheadings by the categories of function for which a financial institution may impose the fee. If any finance charges may be imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61, the financial institution may, but is not required to, group all finance charges together under a single subheading. This includes situations where the financial institution imposes a higher fee or charge on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the

amount of a comparable fee or charge it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature. For example, if a financial institution charges on the prepaid account a $0.50 per transaction fee for each transaction that accesses funds in the asset feature of a prepaid account and a $1.25 per transaction fee for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction, the financial institution is permitted to disclose the $0.50 per transaction fee under a general transactional subheading and disclose the additional $0.75 per transaction fee under a separate subheading together with any other finance charges that may be imposed on the prepaid account.

18(b)(7)(ii) Prominence and Size

1. *Minimum type size.* Section 1005.18(b)(7)(ii) sets forth minimum point/pixel size requirements for each element of the disclosures required by §1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4). A financial institution may provide disclosures in a type size larger than the required minimum to enhance consumer comprehension in any acquisition scenario, as long as the financial institution complies with the point/pixel size hierarchy set forth in §1005.18(b)(7)(ii).

2. ''*Point*'' *refers to printed disclosures and* ''*pixel*'' *refers to electronic disclosures.* References in §1005.18(b)(7)(ii) to ''point'' size correspond to printed disclosures and references to ''pixel'' size correspond to disclosures provided via electronic means.

18(b)(7)(ii)(A) General

1. *Contrast required between type color and background of disclosures.* Section §1005.18(b)(7)(ii)(A) requires that all text used to disclose information in the short form or in the long form disclosure pursuant to §1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) must be in a single, easy-to-read type that is all black or one color and printed on a background that provides a clear contrast. A financial institution complies with the color requirements if, for example, it provides the disclosures required by §1005.18(b)(2), (b)(3)(i) and (ii), and (b)(4) printed in black type on a white background or white type on a black background. Also, pursuant to §1005.18(b)(7)(ii)(A), the type and color may differ between the short form disclosure and the long form disclosure provided for a particular prepaid account program. For example, a financial institution may use one font/type style for the short form disclosure for a particular prepaid account program and use a different font/type style for the long form disclosure for that same prepaid account program. Similarly, a financial institution may use black type for the short form disclosure for a particular prepaid account program and use blue type for the long form disclosure for that same prepaid account program.

18(b)(7)(iii) Segregation

1. *Permitted information outside the short form and long form disclosures.* Section 1005.18(b)(7)(iii) requires that the short form and long form disclosures required by §1005.18(b)(2) and (4) be segregated from other information and contain only information that is required or permitted for those disclosures by §1005.18(b). This segregation requirement does not prohibit the financial institution from providing information elsewhere on the same page as the short form disclosure, such as the information required by §1005.18(b)(5), additional disclosures required by state law for payroll card accounts, or any other information the financial institution wishes to provide about the prepaid account. Similarly, the segregation requirement does not prohibit a financial institution from providing the long form disclosure on the same page as other disclosures or information, or as part of a larger document, such as the prepaid account agreement. *See also* §1005.18(b)(1) and (f)(1).

18(b)(8) Terminology of Pre-Acquisition Disclosures

1. *Consistent terminology.* Section 1005.18(b)(8) requires that fee names and other terms be used consistently within and across the disclosures required by §1005.18(b). For example, a financial institution may not name the fee required to be disclosed by §1005.18(b)(2)(vii) an ''inactivity fee'' in the short form disclosure and a ''dormancy fee'' in the long form disclosure. However, a financial institution may substitute the term prepaid ''account'' for the term prepaid ''card,'' as appropriate, wherever it is used in §1005.18(b).

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

1. *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 in certain circumstances.

i. *Examples of situations in which foreign language disclosures are required.* The following examples illustrate situations in which a financial institution must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of that prepaid account:

A. The financial institution principally uses a foreign language on the packaging material of a prepaid account sold in a retail location or distributed at a bank or credit union branch, even though a few words appear in English on the packaging.

B. The financial institution principally uses a foreign language in a television advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account, whether by speaking to a customer service representative or interacting with an interactive voice response (IVR) system.

C. The financial institution principally uses a foreign language in an online advertisement for a prepaid account. That advertisement includes a website URL through which a consumer can acquire the prepaid account.

D. The financial institution principally uses a foreign language on a printed advertisement for a prepaid account. That advertisement includes a telephone number or a website URL a consumer can call or visit to acquire the prepaid account. The pre-acquisition disclosures must be provided to the consumer in that same foreign language prior to the consumer acquiring the prepaid account.

E. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution and has the option to proceed with the prepaid account acquisition process in a foreign language, whether by speaking to a customer service representative or interacting with an IVR system. (But see §1005.18(b)(9)(i)(C), which limits the obligation to provide foreign language disclosures for payroll card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

F. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer visits the financial institution's website. On that website, the consumer has the option to proceed with the prepaid account acquisition process in a foreign language.

ii. *Examples of situations in which foreign language disclosures are not required.* The following examples illustrate situations in which a financial institution is not required to provide the pre-acquisition disclosures in a foreign language:

A. A consumer visits the financial institution's branch location in person and speaks to an employee in a foreign language about acquiring a prepaid account. The consumer proceeds with the acquisition process in that foreign language.

B. The financial institution does not principally use a foreign language on prepaid account packaging material nor does it principally use a foreign language to advertise, solicit, or market a prepaid account. A consumer calls the financial institution's customer service line and speaks to a customer service representative in a foreign language. However, if the customer service representative proceeds with the prepaid account acquisition process over the telephone, the financial institution would be required to provide the pre-acquisition disclosures in that foreign language. (But see §1005.18(b)(9)(i)(C), which limits the obligation to provide foreign language disclosures for payroll card accounts and government benefit accounts acquired orally by telephone in certain circumstances.)

C. The financial institution principally uses a foreign language in an advertisement for a prepaid account. That advertisement includes a telephone number a consumer can call to acquire the prepaid account. The consumer calls the telephone number provided on the advertisement and has the option to proceed with the prepaid account acquisition process in English or in a foreign language. The consumer chooses to proceed with the acquisition process in English.

D. A consumer calls a government agency to enroll in a government benefits program. The government agency does not offer through its telephone system an option for consumers to proceed in a foreign language. An employee of the government agency assists the consumer with the enrollment process, including helping the consumer acquire a government benefits account. The employee also happens to speak the foreign language in which the consumer is most comfortable communicating, and chooses to communicate with the consumer in that language to facilitate the enrollment process. In this case, the employee offered language interpretation assistance on an informal or ad hoc basis to accommodate the prospective government benefits account holder.

2. *Principally used.* All relevant facts and circumstances determine whether a foreign language is principally used by the financial institution to advertise, solicit, or market under §1005.18(b)(9). Whether a foreign language is principally used is determined at the packaging material, advertisement, solicitation, or marketing communication level, not at the prepaid account program level or across the financial institution's activities as a whole. A financial institution that advertises a prepaid account program in multiple languages would evaluate its use of foreign language in each advertisement to determine whether it has principally used a foreign language therein.

3. *Advertise, solicit, or market a prepaid account.* Any commercial message, appearing in any medium, that promotes directly or indirectly the availability of prepaid accounts constitutes advertising, soliciting, or marketing for purposes of §1005.18(b)(9). Examples illustrating advertising, soliciting, or marketing include, but are not limited to:

i. Messages in a leaflet, promotional flyer, newspaper, or magazine.

ii. Electronic messages, such as on a website or mobile application.

iii. Telephone solicitations.

iv. Solicitations sent to the consumer by mail or email.

v. Television or radio commercials.

4. *Information in the long form disclosure in English.* Section 1005.18(b)(9)(ii) states that a financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to §1005.18(b)(9)(i) must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to §1005.18(b)(4) in English upon a consumer's request and on any part of the website where it discloses this information in a foreign language. A financial institution may, but is not required to, provide the English version of the information required by §1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in §1005.18(b) for the long form disclosure.

18(c) Access to Prepaid Account Information

1. *Posted transactions.* The electronic and written history of the consumer's account transactions provided under §1005.18(c)(1)(ii) and (iii), respectively, shall reflect transfers once they have been posted to the account. Thus, a financial institution does not need to include transactions that have been authorized but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under §1005.18(c)(1)(ii) must be made available in a form that the consumer may keep, as required under §1005.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, a financial institution satisfies the requirement if it provides electronic history on a website in a format that is capable of being printed or stored electronically using a web browser.

3. *Written history.* Requests that exceed the requirements of §1005.18(c)(1)(iii) for providing written account transaction history, and which therefore a financial institution may charge a fee, include the following:

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

ii. If a financial institution maintains more than 24 months of written account transaction history, it may assess a fee or charge to the consumer for providing a written history for transactions occurring more than 24 months preceding the date the financial institution receives the consumer's request, provided the consumer specifically requests the written account transaction history for that time period.

iii. If a financial institution offers a consumer the ability to request automatic mailings of written account transaction history on a monthly or other periodic basis, it may assess a fee or charge for such automatic mailings but not for the written account transaction history requested pursuant to §1005.18(c)(1)(iii). *See* comment 18(c)–6.

4. *12 months of electronic account transaction history.* Section 1005.18(c)(1)(ii) requires a financial institution to make available at least 12 months of account transaction history electronically. If a prepaid account has been opened for fewer than 12 months, the financial institution need only provide electronic account transaction history pursuant to §1005.18(c)(1)(ii) since the time of account opening. If a prepaid account is closed or becomes inactive, as defined by the financial institution, the financial institution need not make available electronic account transaction history. *See* comment 9(b)–3. If an inactive account becomes active, the financial institution must again make available 12 months of electronic account transaction history.

5. *24 months of written account transaction history.* Section 1005.18(c)(1)(iii) requires a financial institution to provide at least 24 months of account transaction history in writing upon the consumer's request. A financial institution may provide fewer than 24 months of written account transaction history if the consumer requests a shorter period of time. If a prepaid account has been opened for fewer than 24 months, the financial institution need only provide written account transaction history pursuant to §1005.18(c)(1)(iii) since the time of account opening. Even if a prepaid account is closed or becomes inactive, the financial institution must continue to provide upon request at least 24 months of written account transaction history preceding the date the request is received. When a prepaid account has been closed or inactive for 24 months or longer, the financial institution is no longer required to provide any written account transaction history pursuant to §1005.18(c)(1)(iii).

6. *Periodic statement alternative for unverified prepaid accounts.* For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to provide a written

history of the consumer's account transactions for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in §1005.18(e)(3)(ii)(A) through (C). If a prepaid account is verified, a financial institution must provide written account transaction history upon the consumer's request that includes the period during which the account was not verified, provided that the period is within the 24-month time frame specified in §1005.18(c)(1)(iii).

7. *Inclusion of all fees charged.* A financial institution that furnishes a periodic statement pursuant to §1005.9(b) for a prepaid account must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its website, the financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the periodic statement and on the consumer's electronic account transaction history made available on its website. Likewise, a financial institution that follows the periodic statement alternative in §1005.18(c)(1) must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on the electronic history of the consumer's account transactions made available pursuant to §1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to §1005.18(c)(1)(iii).

8. *Summary totals of fees.* Section 1005.18(c)(5) requires a financial institution to disclose a summary total of the amount of all fees assessed by the financial institution against a prepaid account for the prior calendar month and for the calendar year to date.

i. *Generally.* A financial institution that furnishes a periodic statement pursuant to §1005.9(b) for a prepaid account must display the monthly and annual fee totals on the periodic statement as well as on any electronic or written account transaction history the financial institution makes available or provides to the consumer. For example, if a financial institution sends periodic statements and also makes available the consumer's electronic account transaction history on its website, the financial institution must display the monthly and annual fee totals on the periodic statement and on the consumer's electronic account transaction history made available on its website. Likewise, a financial institution that follows the periodic statement alternative in §1005.18(c)(1) must display the monthly and annual fee totals on the electronic history of the consumer's account transactions made available pursuant to §1005.18(c)(1)(ii) and any written history of the consumer's account transactions provided pursuant to §1005.18(c)(1)(iii). If a financial institution provides periodic statements pursuant to §1005.9(b), fee totals may be disclosed for each statement period rather than each calendar month, if different. The summary totals of fees should be net of any fee reversals.

ii. *Third-party fees.* A financial institution may, but is not required to, include third-party fees in its summary totals of fees provided pursuant to §1005.18(c)(5). For example, a financial institution must include in the summary totals of fees the fee it charges a consumer for using an out-of-network ATM, but it need not include any fee charged by an ATM operator, with whom the financial institution has no relationship, for the consumer's use of that operator's ATM. Similarly, a financial institution need not include in the summary totals of fees the fee charged by a third-party reload network for the service of adding cash to a prepaid account at a point-of-sale terminal. A financial institution may, but is not required to, inform consumers of third-party fees such as by providing a disclaimer to indicate that the summary totals do not include certain third-party fees or to explain when third-party fees may occur or through some other method.

9. *Display of summary totals of fees.* A financial institution may, but is not required to, also include sub-totals of the types of fees that make up the summary totals of fees as required by §1005.18(c)(5). For example, if a financial institution distinguishes optional fees (*e.g.*, custom card design fees) from fees to use the account, in displaying the summary totals of fees, the financial institution may include sub-totals of those fees, provided the financial institution also presents the combined totals of all fees.

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

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

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

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

3. *Untimely notice of error.* An institution that provides a transaction history under §1005.18(c)(1) is not required to comply with the requirements of §1005.11 for any notice of error from the consumer received more than 60 days after the earlier of the date the consumer electronically accesses the account transaction history or the date the financial institution sends a written account transaction history upon the consumer's request. (Alternatively, as provided in §1005.18(e)(2)(ii), an institution need not comply with the requirements of §1005.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with §1005.6 (including the extension of time limits in §1005.6(b)(4)) before it may impose any liability on the consumer.

4. *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, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with §1005.6 or §1005.11, or the modified timing requirements in §1005.18(e), as applicable. A financial institution is not required to limit a consumer's liability for unauthorized transfers or resolve errors that occur prior to the financial institution's successful completion of its consumer identification and verification process with respect to a prepaid account.

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 disbursal 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 successfully completed its consumer identification and verification process with respect to those accounts.

18(f) Disclosure of Fees and Other Information

1. *Initial disclosure of fees and other information.* Section 1005.18(f)(1) requires a financial institution to include, as part of the initial disclosures given pursuant to §1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure pursuant to §1005.18(b)(4). Section 1005.18(b)(4)(ii) requires a financial institution to disclose in its pre-acquisition long form disclosure all fees imposed in connection with a prepaid account. Section 1005.18(b)(4) also contains several specific statements that must be provided as part of the long form disclosure. A financial institution may, but is not required to, disclose the information required by §1005.18(b)(4) in accordance with the formatting, grouping, size and other requirements set forth in §1005.18(b) for the long form disclosure as part of its initial disclosures provided pursuant to §1005.7; a financial institution may choose to do so, however, in order to satisfy other requirements in §1005.18. See, *e.g.*, §1005.18(b)(1)(ii) regarding the retail location exception.

2. *Changes to the Regulation Z disclosures for overdraft credit features.* Pursuant to §1005.18(f)(2), if a financial institution provides pursuant §1005.18(f)(1) the Regulation Z disclosures required by §1005.18(b)(4)(vii) for an overdraft credit feature, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in the fees or other terms disclosed therein. This exception does not extend to any finance charges imposed on the prepaid account as described in Regulation Z, 12 CFR 1026.4(b)(11)(ii), in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61 that are required to be disclosed pursuant to §1005.18(b)(4)(ii). *See* comment 18(b)(4)(ii)–1.

3. *Web site and telephone number on a prepaid account access device.* Section 1005.18(f)(3) requires that the name of a financial institution and the Web site URL and a telephone number that a consumer can use to contact the financial institution about the prepaid account must be disclosed on the prepaid account access device. A disclosure made on an accompanying document, such as a terms and conditions document, on packaging material surrounding an access device, or on a sticker or other label affixed to an access device does not constitute a disclosure on the access device. The financial institution must provide this information to allow consumers to, for example, contact the financial institution to learn about the terms and conditions of the prepaid account, obtain prepaid account balance information, request a copy of transaction history pursuant to §1005.18(c)(1)(iii) if the financial institution does not provide periodic statements pursuant to §1005.9(b), or to notify the financial institution when the consumer believes that an unauthorized electronic fund transfer has occurred as required by §§1005.7(b)(2) and 1005.18(d)(1)(ii).

18(g) Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards

1. *Covered separate credit feature accessible by a hybrid prepaid-credit card.* Regulation Z, 12 CFR 1026.61, defines the term covered separate credit feature accessible by a hybrid prepaid-credit card.

2. *Asset feature.* i. Regulation Z, 12 CFR 1026.61(a)(5)(ii), defines the term asset feature.

ii. Section 1005.18(g) applies to account terms, conditions, and features that apply to the asset feature of the prepaid account. Section 1005.18(g) does not apply to the account terms, conditions, or features that apply to the covered separate credit feature, regardless of whether it is structured as a separate credit account or as a credit subaccount of the prepaid account that is separate from the asset feature of the prepaid account.

3. *Scope of §1005.18(g).* Under §1005.18(g), a financial institution may offer different terms on different prepaid account programs. For example, the terms may differ between a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

4. *Variation in account terms, conditions, or features.* i. Account terms, conditions, and features subject to §1005.18(g) include, but are not limited to:

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

B. Fees or charges imposed on the asset feature of the prepaid account. See comment 18(g)–5 for additional guidance on how §1005.18(g) applies to fees or charges imposed on the asset feature of the prepaid account.

C. The type of access device provided to the consumer. For instance, an institution may not provide a PIN-only card on prepaid accounts without a covered separate credit

feature that is accessible by a hybrid prepaid-credit card, while providing a prepaid card with both PIN and signature-debit functionality for prepaid accounts in the same prepaid account program with such a credit feature;

D. Minimum balance requirements on the asset feature of the prepaid account; or

E. Account features offered in connection with the asset feature of the prepaid account, such as online bill payment services.

5. *Fees.* i. With respect to a prepaid account program where consumers may be offered a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by Regulation Z, 12 CFR 1026.61, §1005.18(g) only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program that do not have a such a credit feature. Section 1005.18(g) prohibits a financial institution from imposing a lower fee or charge on prepaid accounts with a covered separate credit feature than the amount of a comparable fee or charge it charges on prepaid accounts in the same prepaid account program without such a credit feature. With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, a fee or charge imposed on the asset feature of the prepaid account generally is a finance charge under Regulation Z (12 CFR part 1026) to the extent that the amount of the fee or charge exceeds the amount of a comparable fee or charge imposed on prepaid accounts in the same prepaid account program that do not have such a credit feature. *See* Regulation Z, 12 CFR 1026.4(b)(11)(ii). With regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, this comment below provides illustrations of how §1005.18(g) applies to fees or charges imposed on the asset feature of a prepaid account. The term ''non-covered separate credit feature'' refers to a separate credit feature that is not accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

ii. The following examples illustrate how §1005.18(g) applies to per transaction fees for each transaction to access funds available in the asset feature of the prepaid account.

A. Assume that a consumer has selected a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered. For prepaid accounts without such a credit feature, the financial institution charges $0.50 for each transaction conducted that accesses funds available in the prepaid account. For prepaid accounts with a credit feature, the financial institution also charges $0.50 on the asset feature for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, for purposes of §1005.18(g), the financial institution is imposing the same fee for each transaction that accesses funds in the asset feature of the prepaid account, regardless of whether the prepaid account has a covered separate credit feature accessible by a hybrid prepaid-credit card. Also, with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as those terms are defined in Regulation Z, 12 CFR 1026.61, the $0.50 per transaction fee imposed on the asset feature for each transaction that accesses funds available in the asset feature of the prepaid account is not a finance charge under 12 CFR 1026.4(b)(11)(ii). See Regulation Z, 12 CFR 1026.4(b)(11)(ii) and comment 4(b)(11)(ii)–1, for a discussion of the definition of finance charge with respect to fees or charges imposed on the asset feature of a prepaid account with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in 12 CFR 1026.61.

B. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a $1.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is permitted to charge a higher fee under §1005.18(g)(2) on prepaid accounts with a covered separate credit feature than it charges on prepaid accounts without such a credit feature. The $0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that for prepaid accounts with a covered separate credit feature, the financial institution imposes a $0.25 fee for each transaction conducted that accesses funds available in the asset feature of the prepaid account. In this case, the financial institution is in violation of §1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than it imposes on prepaid accounts in the same program without such a credit feature.

iii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, with such a credit feature are comparable only to per transaction fees for each transaction to

access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from a source other than the funds in the asset feature are not comparable for purposes of §1005.18(g). To illustrate:

A. Assume a financial institution charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Also, assume that the financial institution charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, for purposes of §1005.18(g), the financial institution is imposing the same fee for each transaction it pays, regardless of whether the transaction accesses funds available in the asset feature of the prepaid accounts without a covered separate credit feature, or is paid from credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Also, for purposes of Regulation Z, 12 CFR 1026.4(b)(11)(ii), the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the financial institution charges $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. The financial institution is permitted to charge the higher fee under §1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $0.75 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

C. Same facts as in paragraph A, except that the financial institution imposes $0.25 on the asset feature of the prepaid account for each transaction conducted where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the financial institution is in violation of §1005.18(g) because it is imposing a lower fee on the asset feature of a prepaid account with a covered separate credit feature than the amount of the comparable fee it imposes on prepaid accounts in the same program without such a credit feature.

D. Assume a financial institution charges $0.50 on prepaid accounts for each transaction that accesses funds in the asset feature of the prepaid accounts without a covered separate credit feature. Assume also that the financial institution charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. The financial institution is permitted to charge a higher fee under §1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction that accesses funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

E. Assume same facts as in paragraph D above, except that assume the financial institution also charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a $0.50 per transaction fee. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of $1.75 per transaction) must be compared to the per transaction fee (*i.e.*, the fee of $0.50) to access funds available in the asset feature of the prepaid accounts on a prepaid account without a covered separate credit feature. Per transaction fees for a transaction that is conducted by drawing funds into a prepaid account from some other source (*i.e.*, the fee of $1.25) are not comparable for purposes of §1005.18(g). The financial institution is permitted to charge a higher fee under §1005.18(g) for transactions that access the covered separate credit feature in the course of the transaction than the amount of the comparable fee it charges for each transaction to access funds available in the asset feature of the prepaid accounts without such a credit feature. The $1.25 excess is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

iv. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or service, obtain cash, or conduct person-to-person transfers.

For example, a consumer may use the prepaid card at the financial institution's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* Regulation Z, 12 CFR 1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with 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 without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of §1005.18(g). To illustrate:

A. Assume a financial institution charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.*, the fee of $1.25) is compared with the fees 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 without a covered separate credit feature (*i.e.*, the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.*, the fee of $1.25) is not comparable for purposes of §1005.18(g). In this case, the financial institution is permitted to charge a higher fee under §1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

B. Assume that a financial institution charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the financial institution charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction (*i.e.*, the fee of $1.25) is compared with the fees 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 without a covered separate credit feature (*i.e.*, the fee of $0). Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account (*i.e.*, the fee of $1.25) is not comparable for purposes of §1005.18(g). In this case, the financial institution is permitted to charge a higher fee under §1005.18(g) for transactions that access the covered separate credit feature on prepaid accounts with a credit feature than the amount of the comparable fee it charges on prepaid accounts in the same program without such a credit feature. The $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge under Regulation Z, 12 CFR 1026.4(b)(11)(ii).

18(h) Effective Date and Special Transition Rules for Disclosure Provisions

1. *Disclosures not on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(1) provides that, except as provided in §1005.18(h)(2) and (3), the disclosure requirements of subpart A, as modified by §1005.18, apply to prepaid accounts as defined in §1005.2(b)(3), including government benefit accounts subject to §1005.15, beginning April 1, 2019. This effective date applies to disclosures made available or provided to consumers electronically, orally by telephone, or in a form other than on pre-printed materials, such as disclosures printed on paper by a financial institution upon a consumer's request.

2. *Disclosures on prepaid account access devices and prepaid account packaging materials.* Section 1005.18(h)(2)(i) provides that the disclosure requirements of subpart A, as modified by §1005.18, do not apply to any disclosures that are provided, or that would otherwise be required to be provided, on prepaid account access devices, or on, in, or with prepaid account packaging materials that were manufactured, printed, or otherwise produced in the normal course of business prior to April 1, 2019. This includes, for example, disclosures contained on or in packages for

prepaid accounts sold at retail, or disclosures for payroll card accounts or government benefit accounts that are distributed to employees or benefits recipients in packages or envelopes. Disclosures on, in, or with access devices or packaging materials that are manufactured, printed, or otherwise produced on or after April 1, 2019 must comply with all the requirements of subpart A.

3. *Form of notice to consumers.* A financial institution that is required to notify consumers of a change in terms and conditions pursuant to §1005.18(h)(2)(ii) or (iii), or that otherwise provides updated initial disclosures as a result of §1005.18(h)(1) taking effect, may provide the notice or disclosures either as a separate document or included in another notice or mailing that the consumer receives regarding the prepaid account to the extent permitted by other laws and regulations.

4. *Ability to contact the consumer.* 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(h)(2)(ii) or (iii). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

5. *Closed and inactive prepaid accounts.* The requirements of §1005.18(h)(2)(iii) do not apply to prepaid accounts that are closed or inactive, as defined by the financial institution. However, if an inactive account becomes active, the financial institution must comply with the requirements of §1005.18(h)(2)(ii) within 30 days of the account becoming active again in order to avail itself of the timing requirements and accommodations set forth in §1005.18(h)(2)(iii) and (iv).

6. *Account information not available on April 1, 2019.* i. *Electronic and written account transaction history.* A financial institution following the periodic statement alternative in §1005.18(c) must make available 12 months of electronic account transaction history pursuant to §1005.18(c)(1)(ii) and must provide 24 months of written account transaction history upon request pursuant to §1005.18(c)(1)(iii) beginning April 1, 2019. If, on April 1, 2019, the financial institution does not have readily accessible the data necessary to make available or provide the account histories for the required time periods, the financial institution may make available or provide such histories using the data for the time period it has until the financial institution has accumulated the data necessary to comply in full with the requirements set forth in §1005.18(c)(1)(ii) and (iii). For example, a financial institution that had been retaining only 60 days of account history before April 1, 2019 would provide 60 days of written account transaction history upon a consumer's request on April 1, 2019. If, on May 1, 2019, the consumer made another request for written account transaction history, the financial institution would be required to provide three months of account history. The financial institution must continue to provide as much account history as it has accumulated at the time of a consumer's request until it has accumulated 24 months of account history. Thus, all financial institutions must fully comply with the electronic account transaction history requirement set forth in §1005.18(c)(1)(ii) no later than April 1, 2020 and must fully comply with the written account transaction history requirement set forth in §1005.18(c)(1)(iii) no later than April 1, 2021.

ii. *Summary totals of fees.* A financial institution must display a summary total of the amount of all fees assessed by the financial institution on the consumer's prepaid account for the prior calendar month and for the calendar year to date pursuant to §1005.18(c)(5) beginning April 1, 2019. If, on April 1, 2019, the financial institution does not have readily accessible the data necessary to calculate the summary totals of fees for the prior calendar month or the calendar year to date, the financial institution may provide the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by §1005.18(c)(5). That is, the financial institution would first display the monthly fee total beginning on May 1, 2019 for the month of April, and the year-to-date fee total beginning on April 1, 2019, provided the financial institution discloses that it is displaying the year-to-date total beginning on April 1, 2019 rather than for the entire calendar year 2019. On January 1, 2020, financial institutions must begin displaying year-to-date fee totals for calendar year 2020.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(a) Definitions

19(a)(1) Agreement

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

19(a)(2) Amends

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 1005.19(a)(2) provides that any

change in the fee information, as defined in §1005.19(a)(3), is deemed to be substantive. Examples of other changes that generally would be considered substantive include:

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

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

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

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

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

vi. Changes to the corporate name of the issuer or program manager, or to the issuer's address or identifying number, such as its RSSD ID number or tax identification number.

vii. Changes to the list of 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)(ii) regarding the timing of submitting such changes to the Bureau.

viii. Changes to the name of the prepaid account program to which the agreement applies.

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

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

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

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

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

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

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

19(a)(4) Issuer

1. *Issuer.* Section 1005.19(a)(4) provides that, for purposes of §1005.19, issuer or prepaid account issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement. For example, Bank X and Bank Y work together to issue prepaid accounts. A consumer that obtains a prepaid account issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states ''This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Prepaid Account.'' The prepaid account issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the prepaid account through a link on Bank Y's website and the cards prominently feature the Bank Y logo on the front of the card.

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

3. *Third-party websites.* As explained in comment 19(c)–2, if an issuer provides consumers with access to specific information about their individual accounts, such as making available to consumers their electronic account transaction history, pursuant to §1005.18(c)(1)(ii), through a third-party website, the issuer is deemed to maintain that website for purposes of §1005.19. Such a website is deemed to be maintained by the issuer for purposes of §1005.19 even where, for example, an unaffiliated entity designs the website and owns and maintains the information technology infrastructure that supports the website, consumers with prepaid accounts from multiple issuers can access individual account information through the same website, and the website is not labeled, branded, or otherwise held out to the public

as belonging to the issuer. A partner institution's website is an example of a third-party website that may be deemed to be maintained by the issuer for purposes of §1005.19. For example, Program Manager and Bank work together to issue prepaid accounts. Under the §1005.19(a)(4) definition of issuer, Bank is the issuer of these prepaid accounts for purposes of §1005.19. Bank does not maintain a website specifically related to prepaid accounts. However, consumers can access information about their individual accounts, such as an electronic account transaction history, through a website maintained by Program Manager. Program Manager designs the website and owns and maintains the information technology infrastructure that supports the website. The website is branded and held out to the public as belonging to Program Manager. Because consumers can access information about their individual accounts through this website, the website is deemed to be maintained by Bank for purposes of §1005.19. Bank therefore may comply with §1005.19(c) or (d)(1) by ensuring that agreements offered by Bank are posted on Program Manager's website in accordance with §1005.19(c) or (d)(1), respectively. Bank need not create and maintain a website branded and held out to the public as belonging to Bank in order to comply with §1005.19(c) and (d) as long as Bank ensures that Program Manager's website complies with these sections.

19(a)(6) Offers to the General Public

1. *Prepaid accounts offered to limited groups.* An issuer is deemed to offer a prepaid account agreement to the general public even if the issuer markets, solicits applications for, or otherwise makes available prepaid accounts only to a limited group of persons. For example, an issuer may solicit only residents of a specific geographic location for a particular prepaid account; in this case, the agreement would be considered to be offered to the general public. Similarly, agreements for prepaid accounts issued by a credit union are considered to be offered to the general public even though such prepaid accounts are available only to credit union members.

2. *Prepaid account agreements not offered to the general public.* A prepaid account agreement is not offered to the general public when a consumer is offered the agreement only by virtue of the consumer's relationship with a third party. Examples of agreements not offered to the general public include agreements for payroll card accounts, government benefit accounts, or for prepaid accounts used to distribute student financial aid disbursements, or property and casualty insurance payouts, and other similar programs.

19(a)(7) Open Account

1. *Open account.* A prepaid account is an open account if (i) there is an outstanding balance in the account; (ii) the consumer can load more funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61, in connection with a prepaid account. Under this definition, an account that meets any of these criteria is considered to be open even if the account is deemed inactive by the issuer.

19(a)(8) Prepaid Account

1. *Prepaid account.* Section 1005.19(a)(7) provides that, for purposes of §1005.19, the term prepaid account means a prepaid account as defined in §1005.2(b)(3). Therefore, for purposes of §1005.19, a prepaid account includes, among other things, a payroll card account as defined in §1005.2(b)(3)(iii) and a government benefit account as defined in §§1005.2(b)(3)(iii) and 1005.15(a)(2).

19(b) Submission of Agreements to the Bureau

19(b)(1) Submissions on a Rolling Basis

1. *Rolling submission requirement.* Section 1005.19(b)(1) requires issuers to send submissions to the Bureau no later than 30 days after offering, amending, or ceasing to offer any prepaid account agreement, as described in §1005.19(b)(1)(ii) through (iv). For example, if on July 1 an issuer offers a prepaid account agreement that has not been previously submitted to the Bureau, it must submit that agreement to the Bureau by July 31 of the same year. Similarly, if on August 1 an issuer amends a prepaid account agreement previously submitted to the Bureau, and the change becomes effective on September 15, the issuer must submit the entire amended agreement as required by §1005.19(b)(2)(i) by October 15 of the same year. Furthermore, if on December 31 an issuer ceases to offer a prepaid account agreement that was previously submitted to the Bureau, it must submit notification to the Bureau that it is withdrawing that agreement as required by §1005.19(b)(3) by January 30 of the following year.

2. *Prepaid accounts offered in conjunction with multiple issuers.* If a program manager offers prepaid account agreements in conjunction with multiple issuers, each issuer must submit its own agreement to the Bureau. Alternatively, each issuer may use the program manager to submit the agreement on its behalf, in accordance with comment 19(a)(4)–2.

19(b)(2) Amended Agreements

1. *Change-in-terms notices not permissible.* Section 1005.19(b)(2)(i) requires that if an agreement previously submitted to the Bureau is amended, the issuer must submit the entire revised agreement to the Bureau. An issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. Amendments must be integrated into the text of the agreement (or the optional addenda described in §1005.19(b)(6)), not provided as separate riders.

2. *Updates to the list of names of other relevant parties to an agreement.* Section 1005.19(b)(2)(ii) permits an issuer to delay making a submission to the Bureau regarding a change in the list of other relevant parties to a particular agreement until the earlier of such time as the issuer is otherwise submitting an amended agreement or changes to other identifying information about the issuer and its submitted agreements pursuant to §1005.19(b)(1)(i); or May 1 of each year, for any updates to the list of names of other relevant parties that occurred between the issuer's last submission of relevant party information for that agreement and April 1 of that year. Section 1005.19(b)(2)(ii) thus ensures that the Bureau has a list of names of other relevant parties for all submitted agreements that is up-to-date as of April 1 of each year. The following examples illustrate these requirements:

i. An issuer first submits to the Bureau a payroll card agreement, along with a list of names of the other relevant parties (*i.e.*, employers) to that agreement, on May 1, 2019. On July 1, 2020, the issuer adds four new employers under the agreement. The issuer is not required to make a submission to the Bureau regarding the addition of other relevant parties to that agreement at that time.

ii. On January 1, 2020, a change to the payroll card agreement becomes effective reflecting a new feature and accompanying fee that the issuer has added to the program. The issuer is required, by January 31, 2020, to submit to the Bureau its entire revised agreement and an updated list of the names of other relevant parties to that agreement.

iii. If the issuer has not added any other employers to the agreement by April 1, 2020, the issuer is not required to submit to the Bureau an updated list of names of other relevant parties to that agreement, because the list it previously submitted to the Bureau remains current.

iv. If, however, on March 1, 2020, the issuer adds two new employers under the agreement but makes no other changes to the agreement, then as of April 1 there are new relevant parties to the agreement that the issuer has not submitted to the Bureau. The issuer is required, by May 1, 2020, to submit to the Bureau an updated list of names of other relevant parties to that agreement reflecting the two employers it added in March. Because the issuer has not made any other changes to the agreement since it was submitted in January, the issuer is not required to re-submit the agreement itself by May 1, 2020.

19(b)(3) Withdrawal of Agreements No Longer Offered

1. *No longer offers agreement.* Section 1005.19(b)(3) provides that, if an issuer no longer offers an agreement that was previously submitted to the Bureau, the issuer must notify the Bureau no later than 30 days after the issuer ceases to offer the agreement that it is withdrawing the agreement. An issuer no longer offers an agreement when it no longer allows a consumer to activate or register a new account in connection with that agreement.

19(b)(4) De Minimis Exception

1. *Relationship to other exceptions.* The de minimis exception in §1005.19(b)(4) is distinct from the product testing exception under §1005.19(b)(5). The de minimis exception provides that an issuer with fewer than 3,000 open prepaid accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the product testing exception. In contrast, the product testing exception provides that an issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of prepaid account programs with fewer than 3,000 open accounts, regardless of the issuer's total number of open accounts.

2. *De minimis exception.* Under §1005.19(b)(4), an issuer is not required to submit any prepaid account agreements to the Bureau under §1005.19(b)(1) if the issuer has fewer than 3,000 open prepaid accounts. For example, an issuer has 2,000 open prepaid accounts. The issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception.

3. *Date for determining whether issuer qualifies.* Whether an issuer qualifies for the de minimis exception is determined as of the last day of each calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of December 31, the last day of the calendar quarter. As of January 30, the issuer has 3,100 open prepaid accounts. As of March 31, the last day of the following calendar quarter, the issuer has 2,700 open prepaid accounts. Even though the issuer had 3,100 open prepaid accounts at one time during the calendar quarter, the issuer qualifies for the de minimis exception because the number of open prepaid accounts was less than 3,000 as

of March 31. The issuer therefore is not required to submit any agreements to the Bureau under §1005.19(b)(1).

4. *Date for determining whether issuer ceases to qualify.* Whether an issuer ceases to qualify for the de minimis exception under §1005.19(b)(4) is determined as of the last day of the calendar quarter. For example, an issuer has 2,500 open prepaid accounts as of June 30, the last day of the calendar quarter. The issuer is not required to submit any agreements to the Bureau under §1005.19(b) by July 30 (the 30th day after June 30) because the issuer qualifies for the de minimis exception. As of July 15, the issuer has 3,100 open prepaid accounts. The issuer is not required to take any action at this time, because whether an issuer qualifies for the de minimis exception under §1005.19(b)(4) is determined as of the last day of the calendar quarter. The issuer still has 3,100 open prepaid accounts as of September 30. Because the issuer had 3,100 open prepaid accounts as of September 30, the issuer ceases to qualify for the de minimis exception and must submit its agreements to the Bureau by October 30, the 30th day after the last day of the calendar quarter.

5. *Option to withdraw agreements.* Section 1005.19(b)(4) provides that if an issuer that did not previously qualify for the de minimis exception newly qualifies for the de minimis exception, the issuer must continue to make rolling submissions to the Bureau as required by §1005.19(b)(1) until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. For example, an issuer offers three agreements and has 3,001 open accounts as of December 31. The issuer submitted each of the three agreements to the Bureau by January 30 as required under §1005.19(b). As of March 31, the issuer has only 2,999 open accounts. The issuer has two options. First, the issuer may notify the Bureau that the issuer is withdrawing each of the three agreements it previously submitted. Once the issuer has notified the Bureau, the issuer is no longer required to make rolling submissions to the Bureau under §1005.19(b) unless it later ceases to qualify for the de minimis exception. Alternatively, the issuer may choose not to notify the Bureau that it is withdrawing its agreements. In this case, the issuer must continue making rolling submissions to the Bureau as required by §1005.19(b). The issuer might choose not to withdraw its agreements if, for example, the issuer believes it will likely cease to qualify for the de minimis exception again in the near future.

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

1. *Agreements currently in effect.* Agreements submitted to the Bureau must contain the provisions of the agreement and fee information currently in effect. For example, on June 1, an issuer decides to decrease the out-of-network ATM withdrawal fee associated with one of the agreements it offers. The change in that fee will become effective on August 1. The issuer must submit and post the amended agreement with the decreased out-of-network ATM withdrawal fee to the Bureau by August 31 as required by §1005.19(b)(2)(i) and (c).

2. *Fee information variations do not constitute separate agreements.* Fee information that may vary from one consumer to another depending on the consumer's state of residence or other factors must be disclosed by setting forth all the possible variations. For example, an issuer offers a prepaid account with a monthly fee of $4.95 or $0 if the consumer regularly receives direct deposit to the prepaid account. The issuer must submit to the Bureau one agreement with fee information listing the possible monthly fees of $4.95 or $0 and including the explanation that the latter fee is dependent upon the consumer regularly receiving direct deposit.

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(c) Posting of Agreements Offered to the General Public

1. *Requirement applies only to agreements offered to the general public.* An issuer is only required to post and maintain on its publicly available Web site the prepaid account agreements that the issuer offers to the general public as defined by §1005.19(a)(6) and must submit to the Bureau under §1005.19(b). For agreements not offered to the general public, the issuer is not required to post and maintain the agreements on its publicly available Web site, but is still required to provide each individual consumer with access to his or her specific prepaid account agreement under §1005.19(d). This posting requirement is distinct from that of §1005.7, as

modified by §1005.18(f)(1), which requires an issuer to provide certain disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account, and the change-in-terms notice required under §1005.8(a), as modified by §1005.18(f)(2). This requirement is also distinct from that of §1005.18(b)(4), which requires issuers to make the long form disclosure available to consumers prior to prepaid account acquisition and which, depending on the methods an issuer offers prepaid accounts to consumers, may require posting of the long form disclosure on the issuer's Web site. Additionally, if an issuer is not required to submit any agreements to the Bureau because the issuer qualifies for the de minimis exception under §1005.19(b)(4) or the agreement qualifies for the product testing exception under §1005.19(b)(5), the issuer is not required to post and maintain any agreements on its Web site under §1005.19(c). The issuer is still required to provide each individual consumer with access to his or her specific prepaid account agreement under §1005.19(d) by posting and maintaining the agreement on the issuer's Web site or by providing a copy of the agreement upon the consumer's request.

2. *Issuers that do not otherwise maintain Web sites.* If an issuer offers an agreement to the general public as defined by §1005.19(a)(6), that issuer must post that agreement on a publicly available Web site it maintains. If an issuer provides consumers with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of §1005.19. Such a third-party Web site is deemed to be maintained by the issuer for purposes of §1005.19(c) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, consumers with prepaid accounts from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide consumers with access to account-specific information through a third-party Web site can comply with §1005.19(c) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with §1005.19(c).

19(d) Agreements for All Open Accounts

1. *Requirement applies to all open accounts.* The requirement to provide access to prepaid account agreements under §1005.19(d) applies to all open prepaid accounts. For example, an issuer that is not required to post agreements on its Web site because it qualifies for the de minimis exception under §1005.19(b)(4) would still be required to provide consumers with access to their specific agreements under §1005.19(d). Similarly, an agreement that is no longer offered would not be required to be posted on the issuer's Web site, but would still need to be provided to the consumer to whom it applies under §1005.19(d). Additionally, an issuer is not required to post on its Web site agreements not offered to the general public, such as agreements for payroll card accounts and government benefit accounts, as explained in comment 19(c)–1, but the issuer must still provide consumers with access to their specific agreements under §1005.19(d).

2. *Agreements sent to consumers.* Section 1005.19(d)(1)(ii) provides, in part, that if an issuer makes an agreement available upon request, the issuer must send the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request. If the issuer mails the agreement, the agreement must be posted in the mail five business days after the issuer receives the consumer's request. If the issuer hand delivers or provides the agreement electronically, the agreement must be hand delivered or provided electronically five business days after the issuer receives the consumer's request. For example, if the issuer emails the agreement, the email with the attached agreement must be sent no later than five business days after the issuer receives the consumer's request.

SECTION 1005.20 REQUIREMENTS FOR GIFT CARDS AND GIFT CERTIFICATES

20(a) Definitions

1. *Form of card, code, or device.* Section 1005.20 applies to any card, code, or other device that meets one of the definitions in §§1005.20(a)(1) through (a)(3) (and is not otherwise excluded by §1005.20(b)), even if it is not issued in card form. Section 1005.20 applies, for example, to an account number or bar code that can be used to access underlying funds. Similarly, §1005.20 applies to a device with a chip or other embedded mechanism that links the device to stored funds, such as a mobile phone or sticker containing a contactless chip that enables the consumer to access the stored funds. A card, code, or other device that meets the definition in §§1005.20(a)(1) through (a)(3) includes an electronic promise (*see* comment 20(a)–2) as well as a promise that is not electronic. *See, however,* §1005.20(b)(5). In addition, §1005.20 applies if a merchant issues a code that entitles a consumer to redeem the code for goods or services, regardless of the medium in which the code is issued (*see, however,* §1005.20(b)(5)), and whether or not it may be redeemed electronically or in the merchant's

store. Thus, for example, if a merchant emails a code that a consumer may redeem in a specified amount either online or in the merchant's store, that code is covered under §1005.20, unless one of the exclusions in §1005.20(b) apply.

2. *Electronic promise.* The term ''electronic promise'' as used in EFTA sections 915(a)(2)(B), (a)(2)(C), and (a)(2)(D) means a person's commitment or obligation communicated or stored in electronic form made to a consumer to provide payment for goods or services for transactions initiated by the consumer. The electronic promise is itself represented by a card, code or other device that is issued or honored by the person, reflecting the person's commitment or obligation to pay. For example, if a merchant issues a code that can be given as a gift and that entitles the recipient to redeem the code in an online transaction for goods or services, that code represents an electronic promise by the merchant and is a card, code, or other device covered by §1005.20.

3. *Cards, codes, or other devices redeemable for specific goods or services.* Certain cards, codes, or other devices may be redeemable upon presentation for a specific good or service, or ''experience,'' such as a spa treatment, hotel stay, or airline flight. In other cases, a card, code, or other device may entitle the consumer to a certain percentage off the purchase of a good or service, such as 20% off of any purchase in a store. Such cards, codes, or other devices generally are not subject to the requirements of this section because they are not issued to a consumer ''in a specified amount'' as required under the definitions of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card.'' However, if the card, code, or other device is issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service, such as a certificate or card redeemable for a spa treatment up to $50, the card, code, or other device is subject to this section, unless one of the exceptions in §1005.20(b) apply. *See, e.g.,* §1005.20(b)(3). Similarly, if the card, code, or other device states a specific monetary value, such as ''a $50 value,'' the card, code, or other device is subject to this section, unless an exclusion in §1005.20(b) applies.

4. *Issued primarily for personal, family, or household purposes.* Section 1005.20 only applies to cards, codes, or other devices that are sold or issued to a consumer primarily for personal, family, or household purposes. A card, code, or other device initially purchased by a business is subject to this section if the card, code, or other device is purchased for redistribution or resale to consumers primarily for personal, family, or household purposes. Moreover, the fact that a card, code, or other device may be primarily funded by a business, for example, in the case of certain rewards or incentive cards, does not mean the card, code, or other device is outside the scope of §1005.20, if the card, code, or other device will be provided to a consumer primarily for personal, family, or household purposes. *But see* §1005.20(b)(3). Whether a card, code, or other device is issued to a consumer primarily for personal, family, or household purposes will depend on the facts and circumstances. For example, if a program manager purchases store gift cards directly from an issuing merchant and sells those cards through the program manager's retail outlets, such gift cards are subject to the requirements of §1005.20 because the store gift cards are sold to consumers primarily for personal, family, or household purposes. In contrast, a card, code, or other device generally would not be issued to consumers primarily for personal, family, or household purposes, and therefore would fall outside the scope of §1005.20, if the purchaser of the card, code, or device is contractually prohibited from reselling or redistributing the card, code, or device to consumers primarily for personal, family, or household purposes, and reasonable policies and procedures are maintained to avoid such sale or distribution for such purposes. However, if an entity that has purchased cards, codes, or other devices for business purposes sells or distributes such cards, codes, or other devices to consumers primarily for personal, family, or household purposes, that entity does not comply with §1005.20 if it has not otherwise met the substantive and disclosure requirements of the rule or unless an exclusion in §1005.20(b) applies.

5. *Examples of cards, codes, or other devices issued for business purposes.* Examples of cards, codes, or other devices that are issued and used for business purposes and therefore excluded from the definitions of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card'' include:

i. Cards, codes, or other devices to reimburse employees for travel or moving expenses.

ii. Cards, codes, or other devices for employees to use to purchase office supplies and other business-related items.

20(a)(2) Store Gift Card

1. *Relationship between ''gift certificate'' and ''store gift card.''* The term ''store gift card'' in §1005.20(a)(2) includes ''gift certificate'' as defined in §1005.20(a)(1). For example, a numeric or alphanumeric code representing a specified dollar amount or value that is electronically sent to a consumer as a gift which can be redeemed or exchanged by the recipient to obtain goods or services may be both a ''gift certificate'' and a ''store gift card'' if the specified amount or value cannot be increased.

2. *Affiliated group of merchants.* The term ''affiliated group of merchants'' means two

or more affiliated merchants or other persons that are related by common ownership or common corporate control (*see, e.g.*, 12 CFR 227.3(b) and 12 CFR 223.2) and that share the same name, mark, or logo. For example, the term includes franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among themselves, by contract or otherwise, to redeem cards, codes, or other devices bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, assume a movie theatre chain and a restaurant chain jointly agree to issue cards that share the same ''Flix and Food'' logo that can be redeemed solely towards the purchase of movie tickets or concessions at any of the participating movie theatres, or towards the purchase of food or beverages at any of the participating restaurants. For purposes of §1005.20, the movie theatre chain and the restaurant chain would be considered to be an affiliated group of merchants, and the cards are considered to be ''store gift cards.'' However, merchants or other persons are not considered to be affiliated merely because they agree to accept a card that bears the mark, logo, or brand of a payment network.

3. *Mall gift cards. See* comment 20(a)(3)–2.

20(a)(3) General-Use Prepaid Card

1. *Redeemable upon presentation at multiple, unaffiliated merchants.* A card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network.

2. *Mall gift cards.* Mall gift cards that are intended to be used or redeemed for goods or services at participating retailers within a shopping mall may be considered store gift cards or general-use prepaid cards depending on the merchants with which the cards may be redeemed. For example, if a mall card may only be redeemed at merchants within the mall itself, the card is more likely to be redeemable at an affiliated group of merchants and considered a store gift card. However, certain mall cards also carry the brand of a payment network and can be used at any retailer that accepts that card brand, including retailers located outside of the mall. Such cards are considered general-use prepaid cards.

20(a)(4) Loyalty, Award, or Promotional Gift Card

1. *Examples of loyalty, award, or promotional programs.* Examples of loyalty, award, or promotional programs under §1005.20(a)(4) include, but are not limited to:

i. Consumer retention programs operated or administered by a merchant or other person that provide to consumers cards or coupons redeemable for or towards goods or services or other monetary value as a reward for purchases made or for visits to the participating merchant.

ii. Sales promotions operated or administered by a merchant or product manufacturer that provide coupons or discounts redeemable for or towards goods or services or other monetary value.

iii. Rebate programs operated or administered by a merchant or product manufacturer that provide cards redeemable for or towards goods or services or other monetary value to consumers in connection with the consumer's purchase of a product or service and the consumer's completion of the rebate submission process.

iv. Sweepstakes or contests that distribute cards redeemable for or towards goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.

v. Referral programs that provide cards redeemable for or towards goods or services or other monetary value to consumers in exchange for referring other potential consumers to a merchant.

vi. Incentive programs through which an employer provides cards redeemable for or towards goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales, or to encourage employee wellness and safety.

vii. Charitable or community relations programs through which a company provides cards redeemable for or towards goods or services or other monetary value to a charity or community group for their fundraising purposes, for example, as a reward for a donation or as a prize in a charitable event.

2. *Issued for loyalty, award, or promotional purposes.* To indicate that a card, code, or other device is issued for loyalty, award, or promotional purposes as required by §1005.20(a)(4)(iii), it is sufficient for the card, code, or other device to state on the front, for example, ''Reward'' or ''Promotional.''

3. *Reference to toll-free number and Web site.* If a card, code, or other device issued in connection with a loyalty, award, or promotional program does not have any fees, the disclosure under §1005.20(a)(4)(iii)(D) is not required on the card, code, or other device.

20(a)(6) Service Fee

1. *Service fees.* Under §1005.20(a)(6), a service fee includes a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes

any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card, such as a monthly maintenance fee, a transaction fee, an ATM fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. A service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee.

20(a)(7) Activity

1. *Activity.* Under §1005.20(a)(7), any action that results in an increase or decrease of the funds underlying a gift certificate, store gift card, or general-use prepaid card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction, constitutes activity for purposes of §1005.20. For example, the purchase and activation of a certificate or card, the use of the certificate or card to purchase a good or service, or the reloading of funds onto a store gift card or general-use prepaid card constitutes activity. However, the imposition of a fee, the replacement of an expired, lost, or stolen certificate or card, and a balance inquiry do not constitute activity. In addition, if a consumer attempts to engage in a transaction with a gift certificate, store gift card, or general-use prepaid card, but the transaction cannot be completed due to technical or other reasons, such attempt does not constitute activity. Furthermore, if the funds underlying a gift certificate, store gift card, or general-use prepaid card are adjusted because there was an error or the consumer has returned a previously purchased good, the adjustment also does not constitute activity with respect to the certificate or card.

20(b) Exclusions

1. *Application of exclusion.* A card, code, or other device is excluded from the definition of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card'' if it meets any of the exclusions in §1005.20(b). An excluded card, code, or other device generally is not subject to any of the requirements of this section. *See, however,* §1005.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards.

2. *Eligibility for multiple exclusions.* A card, code, or other device may qualify for one or more exclusions. For example, a corporation may give its employees a gift card that is marketed solely to businesses for incentive-related purposes, such as to reward job performance or promote employee safety. In this case, the card may qualify for the exclusion for loyalty, award, or promotional gift cards under §1005.20(b)(3), or for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4). In addition, as long as any one of the exclusions applies, a card, code, or other device is not covered by §1005.20, even if other exclusions do not apply. In the above example, the corporation may give its employees a type of gift card that can also be purchased by a consumer directly from a merchant. Under these circumstances, while the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4) because the card can also be obtained through retail channels, it is nevertheless exempt from the substantive requirements of §1005.20 because it is a loyalty, award, or promotional gift card. *See, however,* §1005.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards. Similarly, a person may market a reloadable card to teenagers for occasional expenses that enables parents to monitor spending. Although the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under §1005.20(b)(4), it may nevertheless be exempt from the requirements of §1005.20 under §1005.20(b)(2) if it is reloadable and not marketed or labeled as a gift card or gift certificate.

Paragraph 20(b)(1)

1. *Examples of excluded products.* The exclusion for products usable solely for telephone services applies to prepaid cards for long-distance telephone service, prepaid cards for wireless telephone service and prepaid cards for other services that function similar to telephone services, such as prepaid cards for voice over Internet protocol (VoIP) access time.

Paragraph 20(b)(2)

1. *Reloadable.* A card, code, or other device is ''reloadable'' if the terms and conditions of the agreement permit funds to be added to the card, code, or other device after the initial purchase or issuance. A card, code, or other device is not ''reloadable'' merely because the issuer or processor is technically able to add functionality that would otherwise enable the card, code, or other device to be reloaded.

2. *Marketed or labeled as a gift card or gift certificate.* The term ''marketed or labeled as a gift card or gift certificate'' means directly or indirectly offering, advertising, or otherwise suggesting the potential use of a card, code or other device, as a gift for another person. Whether the exclusion applies generally does not depend on the type of entity that makes the promotional message. For

example, a card may be marketed or labeled as a gift card or gift certificate if anyone (other than the purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. A card, code, or other device, including a general-purpose reloadable card, is marketed or labeled as a gift card or gift certificate even if it is only occasionally marketed as a gift card or gift certificate. For example, a network-branded general purpose reloadable card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as ''the perfect gift'' during the holiday season. However, the mere mention of the availability of gift cards or gift certificates in an advertisement or on a sign that also indicates the availability of other excluded prepaid cards does not by itself cause the excluded prepaid cards to be marketed as a gift card or a gift certificate. For example, the posting of a sign in a store that refers to the availability of gift cards does not by itself constitute the marketing of otherwise excluded prepaid cards that may also be sold in the store as gift cards or gift certificates, provided that a consumer acting reasonably under the circumstances would not be led to believe that the sign applies to all prepaid cards sold in the store. *See, however,* comment 20(b)(2)–4.ii.

3. *Examples of marketed or labeled as a gift card or gift certificate.* i. Examples of marketed or labeled as a gift card or gift certificate include:

A. Using the word ''gift'' or ''present'' on a card, certificate, or accompanying material, including documentation, packaging and promotional displays.

B. Representing or suggesting that a certificate or card can be given to another person, for example, as a ''token of appreciation'' or a ''stocking stuffer,'' or displaying a congratulatory message on the card, certificate or accompanying material.

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or congratulatory message, on a card, certificate, accompanying documentation, or promotional material.

ii. The term does not include:

A. Representing that a card or certificate can be used as a substitute for a checking, savings, or deposit account.

B. Representing that a card or certificate can be used to pay for a consumer's health-related expenses—for example, a card tied to a health savings account.

C. Representing that a card or certificate can be used as a substitute for traveler's checks or cash.

D. Representing that a card or certificate can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4. *Reasonable policies and procedures to avoid marketing as a gift card.* The exclusion for a card, code, or other device that is reloadable and not marketed or labeled as a gift card or gift certificate in §1005.20(b)(2) applies if a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable card, code, or other device from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the card, code or other device is not being marketed as a gift card. Whether a reloadable card, code, or other device has been marketed as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable consumer would be led to believe that the card, code, or other device is a gift card or gift certificate. The following examples illustrate the application of §1005.20(b)(2):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for excluded products under §1005.20(b), including general-purpose reloadable cards and wireless telephone cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in i., except that the issuer or program manager sets up a single

promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating ''Gift Cards'' appears prominently at the top of the display. The exclusion in §1005.20(b)(2) does not apply with respect to the general-purpose reloadable cards because policies and procedures reasonably designed to avoid the marketing of excluded cards as gift cards or gift certificates are not maintained.

iii. Same facts as in i., except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating ''Gift Cards'' at the top of the display or located near the display. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in i., except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exclusion in §1005.20(b)(2) applies because policies and procedures reasonably designed to avoid marketing the general-purpose reloadable cards as gift cards or gift certificates are maintained.

5. *Online sales of prepaid cards.* Some Web sites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the Web site exclusively sells gift cards or gift certificates. For example, a Web site may display a banner advertisement or a graphic on the home page that prominently states ''Gift Cards,'' ''Gift Giving,'' or similar language without mention of other available products, or use a web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates. Under these facts, the Web site has marketed all such products, including general-purpose reloadable cards, as gift cards or gift certificates, and the exclusion in §1005.20(b)(2) does not apply.

6. *Temporary non-reloadable cards issued in connection with a general-purpose reloadable card.* Certain general-purpose reloadable cards that are typically marketed as an account substitute initially may be sold or issued in the form of a temporary non-reloadable card. After the card is purchased, the cardholder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a reloadable replacement card. In most cases, the temporary non-reloadable card can be used for purchases until the replacement reloadable card arrives and is activated by the cardholder. Because the temporary non-reloadable card may only be obtained in connection with the general-purpose reloadable card, the exclusion in §1005.20(b)(2) applies so long as the card is not marketed as a gift card or gift certificate.

Paragraph 20(b)(4)

1. *Marketed to the general public.* A card, code, or other device is marketed to the general public if the potential use of the card, code, or other device is directly or indirectly offered, advertised, or otherwise promoted to the general public. A card, code, or other device may be marketed to the general public through any advertising medium, including television, radio, newspaper, the Internet, or signage. However, the posting of a company policy that funds may be disbursed by prepaid card (such as a sign posted at a cash register or customer service center stating that store credit will be issued by prepaid card) does not constitute the marketing of a card, code, or other device to the general public. In addition, the method of distribution by itself is not dispositive in determining whether a card, code, or other device is marketed to the general public. Factors that may be considered in determining whether the exclusion applies to a particular card, code, or other device include the means or channel through which the card, code, or device may be obtained by a consumer, the subset of consumers that are eligible to obtain the card, code, or device, and whether the availability of the card, code, or device is advertised or otherwise promoted in the marketplace.

2. *Examples.* The following examples illustrate the application of the exclusion in §1005.20(b)(4):

i. A merchant sells its gift cards at a discount to a business which may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card falls within the exclusion in §1005.20(b)(4), the merchant must consider

whether the card is of a type that is advertised or made available to consumers generally or can be obtained elsewhere. If the card can also be purchased through retail channels, the exclusion in §1005.20(b)(4) does not apply, even if the consumer obtained the card from the business as an incentive or reward. *See, however*, §1005.20(b)(3).

ii. A national retail chain decides to market its gift cards only to members of its frequent buyer program. Similarly, a bank may decide to sell gift cards only to its customers. If a member of the general public may become a member of the program or a customer of the bank, the card does not fall within the exclusion in §1005.20(b)(4) because the general public has the ability to obtain the cards. *See, however*, §1005.20(b)(3).

iii. A card issuer advertises a reloadable card to teenagers and their parents promoting the card for use by teenagers for occasional expenses, schoolbooks and emergencies and by parents to monitor spending. Because the card is marketed to and may be sold to any member of the general public, the exclusion in §1005.20(b)(4) does not apply. *See, however*, §1005.20(b)(2).

iv. An insurance company settles a policyholder's claim and distributes the insurance proceeds to the consumer by means of a prepaid card. Because the prepaid card is simply the means for providing the insurance proceeds to the consumer and the availability of the card is not advertised to the general public, the exclusion in §1005.20(b)(4) applies.

v. A merchant provides store credit to a consumer following a merchandise return by issuing a prepaid card that clearly indicates that the card contains funds for store credit. Because the prepaid card is issued for the stated purpose of providing store credit to the consumer and the ability to receive refunds by a prepaid card is not advertised to the general public, the exclusion in §1005.20(b)(4) applies.

vi. A tax preparation company elects to distribute tax refunds to its clients by issuing prepaid cards, but does not advertise or otherwise promote the ability to receive proceeds in this manner. Because the prepaid card is simply the mechanism for providing the tax refund to the consumer, and the tax preparer does not advertise the ability to obtain tax refunds by a prepaid card, the exclusion in §1005.20(b)(4) applies. However, if the tax preparer promotes the ability to receive tax refund proceeds through a prepaid card as a way to obtain ''faster'' access to the proceeds, the exclusion in §1005.20(b)(4) does not apply.

Paragraph 20(b)(5)

1. *Exclusion explained.* To qualify for the exclusion in §1005.20(b)(5), the sole means of issuing the card, code, or other device must be in a paper form. Thus, the exclusion generally applies to certificates issued in paper form where solely the paper itself may be used to purchase goods or services. A card, code or other device is not issued solely in paper form simply because it may be reproduced or printed on paper. For example, a bar code, card or certificate number, or certificate or coupon electronically provided to a consumer and redeemable for goods and services is not issued in paper form, even if it may be reproduced or otherwise printed on paper by the consumer. In this circumstance, although the consumer might hold a paper facsimile of the card, code, or other device, the exclusion does not apply because the information necessary to redeem the value was initially issued in electronic form. A paper certificate is within the exclusion regardless of whether it may be redeemed electronically. For example, a paper certificate or receipt that bears a bar code, code, or account number falls within the exclusion in §1005.20(b)(5) if the bar code, code, or account number is not issued in any form other than on the paper. In addition, the exclusion in §1005.20(b)(5) continues to apply in circumstances where an issuer replaces a gift certificate that was initially issued in paper form with a card or electronic code (for example, to replace a lost paper certificate).

2. *Examples.* The following examples illustrate the application of the exclusion in §1005.20(b)(5):

i. A merchant issues a paper gift certificate that entitles the bearer to a specified dollar amount that can be applied towards a future meal. The merchant fills in the certificate with the name of the certificate holder and the amount of the certificate. The certificate falls within the exclusion in §1005.20(b)(5) because it is issued in paper form only.

ii. A merchant allows a consumer to prepay for a good or service, such as a car wash or time at a parking meter, and issues a paper receipt bearing a numerical or bar code that the consumer may redeem to obtain the good or service. The exclusion in §1005.20(b)(5) applies because the code is issued in paper form only.

iii. A merchant issues a paper certificate or receipt bearing a bar code or certificate number that can later be scanned or entered into the merchant's system and redeemed by the certificate or receipt holder towards the purchase of goods or services. The bar code or certificate number is not issued by the merchant in any form other than paper. The exclusion in §1005.20(b)(5) applies because the bar code or certificate number is issued in paper form only.

iv. An online merchant electronically provides a bar code, card or certificate number, or certificate or coupon to a consumer that the consumer may print on a home printer and later redeem towards the purchase of goods or services. The exclusion in §1005.20(b)(5) does not apply because the bar

code or card or certificate number was issued to the consumer in electronic form, even though it can be reproduced or otherwise printed on paper by the consumer.

Paragraph 20(b)(6)

1. *Exclusion explained.* The exclusion for cards, codes, or other devices that are redeemable solely for admission to events or venues at a particular location or group of affiliated locations generally applies to cards, codes, or other devices that are not redeemed for a specified monetary value, but rather solely for admission or entry to an event or venue. The exclusion also covers a card, code, or other device that is usable to purchase goods or services in addition to entry into the event or the venue, either at the event or venue or at an affiliated location or location in geographic proximity to the event or venue.

2. *Examples.* The following examples illustrate the application of the exclusion in §1005.20(b)(6):

i. A consumer purchases a prepaid card that entitles the holder to a ticket for entry to an amusement park. The prepaid card may only be used for entry to the park. The card qualifies for the exclusion in §1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission. In addition, if the prepaid card does not have a monetary value, and therefore is not ''issued in a specified amount,'' the card does not meet the definitions of ''gift certificate,'' ''store gift card,'' or ''general-use prepaid card'' in §1005.20(a). *See* comment 20(a)–3.

ii. Same facts as in i., except that the gift card also entitles the holder of the gift card to a dollar amount that can be applied towards the purchase of food and beverages or goods or services at the park or at nearby affiliated locations. The card qualifies for the exclusion in §1005.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission.

iii. A consumer purchases a $25 gift card that the holder of the gift card can use to make purchases at a merchant, or, alternatively, can apply towards the cost of admission to the merchant's affiliated amusement park. The card is not eligible for the exclusion in §1005.20(b)(6) because it is not redeemable solely for the admission or ticket itself (or for goods and services purchased in conjunction with such admission). The card meets the definition of ''store gift card'' and is therefore subject to §1005.20, unless a different exclusion applies.

20(c) Form of Disclosures

20(c)(1) Clear and Conspicuous

1. *Clear and conspicuous standard.* All disclosures required by this section must be clear and conspicuous. Disclosures are clear and conspicuous for purposes of this section if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Disclosures need not be located on the front of the certificate or card, except where otherwise required, to be considered clear and conspicuous. Disclosures are clear and conspicuous for the purposes of this section if they are in a print that contrasts with and is otherwise not obstructed by the background on which they are printed. For example, disclosures on a card or computer screen are not likely to be conspicuous if obscured by a logo printed in the background. Similarly, disclosures on the back of a card that are printed on top of indentations from embossed type on the front of the card are not likely to be conspicuous if the indentations obstruct the readability of the disclosures. To the extent permitted, oral disclosures meet the standard when they are given at a volume and speed sufficient for a consumer to hear and comprehend them.

2. *Abbreviations and symbols.* Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as ''mo.'' for month or a ''/'' to indicate ''per.'' Under the clear and conspicuous standard, it is sufficient to state, for example, that a particular fee is charged ''$2.50/mo. after 12 mos.''

20(c)(2) Format

1. *Electronic disclosures.* Disclosures provided electronically pursuant to this section are not subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E–Sign Act) (15 U.S.C. 7001 *et seq.).* Electronic disclosures must be in a retainable form. For example, a person may satisfy the requirement if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the purchaser can bypass the disclosure. A person is not required to confirm that the consumer has read the electronic disclosures.

20(c)(3) Disclosure Prior to Purchase

1. *Method of purchase.* The disclosures required by this paragraph must be provided before a certificate or card is purchased regardless of whether the certificate or card is purchased in person, online, by telephone, or by other means.

2. *Electronic disclosures.* Section 1005.20(c)(3) provides that the disclosures required by this section must be provided to the consumer prior to purchase. For certificates or cards purchased electronically, disclosures made

to the consumer after a consumer has initiated an online purchase of a certificate or card, but prior to completing the purchase of the certificate or card, would satisfy the prior-to-purchase requirement. However, electronic disclosures made available on a person's Web site that may or may not be accessed by the consumer are not provided to the consumer and therefore would not satisfy the prior-to-purchase requirement.

3. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures must be provided to the consumer before the certificate or card is purchased. For example, where a gift certificate or card is a code that is provided by telephone, the required disclosures may be provided orally prior to purchase. *See also* §1005.20(c)(2).

20(c)(4) Disclosures on the Certificate or Card

1. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures required by this paragraph must be disclosed on the code, confirmation, or other written or electronic document provided to the consumer. For example, where a gift certificate or card is a code or confirmation that is provided to a consumer online or sent to a consumer's email address, the required disclosures may be provided electronically on the same document as the code or confirmation.2. *No disclosures on a certificate or card.* Disclosures required by §1005.20(c)(4) need not be made on a certificate or card if it is accompanied by a certificate or card that complies with this section. For example, a person may issue or sell a supplemental gift card that is smaller than a standard size and that does not bear the applicable disclosures if it is accompanied by a fully compliant certificate or card. *See also* comment 20(c)(2)–2.

20(d) Prohibition on Imposition of Fees or Charges

1. *One-year period.* Section 1005.20(d) provides that a person may impose a dormancy, inactivity, or service fee only if there has been no activity with respect to a certificate or card for one year. The following examples illustrate this rule:

i. A certificate or card is purchased on January 15 of year one. If there has been no activity on the certificate or card since the certificate or card was purchased, a dormancy, inactivity, or service fee may be imposed on the certificate or card on January 15 of year two.

ii. Same facts as i., and a fee was imposed on January 15 of year two. Because no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month, the earliest date that another dormancy, inactivity, or service fee may be imposed, assuming there continues to be no activity on the certificate or card, is February 1 of year two. A dormancy, inactivity, or service fee is permitted to be imposed on February 1 of year two because there has been no activity on the certificate or card for the preceding year (February 1 of year one through January 31 of year two), and February is a new calendar month. The imposition of a fee on January 15 of year two is not activity for purposes of §1005.20(d). *See* comment 20(a)(7)–1.

iii. Same facts as i., and a fee was imposed on January 15 of year two. On January 31 of year two, the consumer uses the card to make a purchase. Another dormancy, inactivity, or service fee could not be imposed until January 31 of year three, assuming there has been no activity on the certificate or card since January 31 of year two.

2. *Relationship between §§1005.20(d)(2) and (c)(3).* Sections 1005.20(d)(2) and (c)(3) contain similar, but not identical, disclosure requirements. Section 1005.20(d)(2) requires the disclosure of dormancy, inactivity, and service fees on a certificate or card. Section 1005.20(c)(3) requires that vendor person that issues or sells such certificate or card disclose to a consumer any dormancy, inactivity, and service fees associated with the certificate or card before such certificate or card may be purchased. Depending on the context, a single disclosure that meets the clear and conspicuous requirements of both §§1005.20(d)(2) and (c)(3) may be used to disclose a dormancy, inactivity, or service fee. For example, if the disclosures on a certificate or card, required by §1005.20(d)(2), are visible to the consumer without having to remove packaging or other materials sold with the certificate or card, for a purchase made in person, the disclosures also meet the requirements of §1005.20(c)(3). Otherwise, a dormancy, inactivity, or service fee may need to be disclosed multiple times to satisfy the requirements of §§1005.20(d)(2) and (c)(3). For example, if the disclosures on a certificate or card, required by §1005.20(d)(2), are obstructed by packaging sold with the certificate or card, for a purchase made in person, they also must be disclosed on the packaging sold with the certificate or card to meet the requirements of §1005.20(c)(3).

3. *Relationship between §§1005.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required under §1005.20(d)(2), any applicable disclosures under §§1005.20(e)(3) and (f)(2) of this section must also be provided on the certificate or card.

4. *One fee per month.* Under §1005.20(d)(3), no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month. For example, if a dormancy fee is imposed on January 1, following a year of inactivity, and a consumer makes a balance inquiry on January 15, a balance inquiry fee may not be imposed at that time because a dormancy fee was already imposed earlier that month and a balance inquiry fee is a

type of service fee. If, however, the dormancy fee could be imposed on January 1, following a year of inactivity, and the consumer makes a balance inquiry on the same date, the person assessing the fees may choose whether to impose the dormancy fee or the balance inquiry fee on January 1. The restriction in §1005.20(d)(3) does not apply to any fee that is not a dormancy, inactivity, or service fee. For example, assume a service fee is imposed on a general-use prepaid card on January 1, following a year of inactivity. If a consumer cashes out the remaining funds by check on January 15, a cash-out fee, to the extent such cash-out fee is permitted under §1005.20(e)(4), may be imposed at that time because a cash-out fee is not a dormancy, inactivity, or service fee.

5. *Accumulation of fees.* Section 1005.20(d) prohibits the accumulation of dormancy, inactivity, or service fees for previous periods into a single fee because such a practice would circumvent the limitation in §1005.20(d)(3) that only one fee may be charged per month. For example, if a consumer purchases and activates a store gift card on January 1 but never uses the card, a monthly maintenance fee of $2.00 a month may not be accumulated such that a fee of $24 is imposed on January 1 the following year.

20(e) Prohibition on Sale of Gift Certificates or Cards With Expiration Dates

1. *Reasonable opportunity.* Under §1005.20(e)(1), no person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless there are policies and procedures in place to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if:

i. There are policies and procedures established to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or initially issued to a consumer; or

ii. A certificate or card is available to consumers to purchase five years and six months before the certificate or card expiration date.

2. *Applicability to replacement certificates or cards.* Section 1005.20(e)(1) applies solely to the *purchase* of a certificate or card. Therefore, §1005.20(e)(1) does not apply to the replacement of such certificates or cards. Certificates or cards issued as a replacement may bear a certificate or card expiration date of less than five years from the date of issuance of the replacement certificate or card. If the certificate or card expiration date for a replacement certificate or card is later than the date set forth in §1005.20(e)(2)(i), then pursuant to §1005.20(e)(2), the expiration date for the underlying funds at the time the replacement certificate or card is issued must be no earlier than the expiration date for the replacement certificate or card. For purposes of §1005.20(e)(2), funds are not considered to be loaded to a store gift card or general-use prepaid card solely because a replacement card has been issued or activated for use.

3. *Disclosure of funds expiration—date not required.* Section 1005.20(e)(3)(i) does not require disclosure of the precise date the funds will expire. It is sufficient to disclose, for example, ''Funds expire 5 years from the date funds last loaded to the card.''; ''Funds can be used 5 years from the date money was last added to the card.''; or ''Funds do not expire.''

4. *Disclosure not required if no expiration date.* If the certificate or card and underlying funds do not expire, the disclosure required by §1005.20(e)(3)(i) need not be stated on the certificate or card. If the certificate or card and underlying funds expire at the same time, only one expiration date need be disclosed on the certificate or card.

5. *Reference to toll-free telephone number and Web site.* If a certificate or card does not expire, or if the underlying funds are not available after the certificate or card expires, the disclosure required by §1005.20(e)(3)(ii) need not be stated on the certificate or card. *See, however,* §1005.20(f)(2).

6. *Relationship to §226.20(f)(2).* The same toll-free telephone number and Web site may be used to comply with §§226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and the certificate or card and the underlying funds do not expire.

7. *Distinguishing between certificate or card expiration and funds expiration.* If applicable, a disclosure must be made on the certificate or card that notifies a consumer that the certificate or card expires, but the funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card. The disclosure must be made with equal prominence and in close proximity to the certificate or card expiration date. The close proximity requirement does not apply to oral disclosures. In the case of a certificate or card, close proximity means that the disclosure must be on the same side as the certificate or card expiration date. For example, if the disclosure is the same type size and is located immediately next to or directly above or below the certificate or card expiration date, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. The disclosure need

not be embossed on the certificate or card to be deemed equally prominent, even if the expiration date is embossed on the certificate or card. The disclosure may state on the front of the card, for example, ''Funds expire after card. Call for replacement card.'' or ''Funds do not expire. Call for new card after 09/2016.'' Disclosures made pursuant to §1005.20(e)(3)(iii)(A) may also fulfill the requirements of §1005.20(e)(3)(i). For example, making a disclosure that ''Funds do not expire'' to comply with §1005.20(e)(3)(iii)(A) also fulfills the requirements of §1005.20(e)(3)(i).

8. *Expiration date safe harbor.* A nonreloadable certificate or card that bears an expiration date that is at least seven years from the date of manufacture need not state the disclosure required by §1005.20(e)(3)(iii). However, §1005.20(e)(1) still prohibits the sale or issuance of such certificate or card unless there are policies and procedures in place to provide a consumer with a reasonable opportunity to purchase the certificate or card with at least five years remaining until the certificate or card expiration date. In addition, under §1005.20(e)(2), the funds may not expire before the certificate or card expiration date, even if the expiration date of the certificate or card bears an expiration date that is more than five years from the date of purchase. For purposes of this safe harbor, the date of manufacture is the date on which the certificate or card expiration date is printed on the certificate or card.

9. *Relationship between §§1005.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required to be made under §1005.20(e)(3), any applicable disclosures under §§1005.20(d)(2) and (f)(2) must also be provided on the certificate or card.

10. *Replacement or remaining balance of an expired certificate or card.* When a certificate or card expires, but the underlying funds have not expired, an issuer, at its option in accordance with applicable state law, may provide either a replacement certificate or card or otherwise provide the certificate or card holder, for example, by check, with the remaining balance on the certificate or card. In either case, the issuer may not charge a fee for the service.

11. *Replacement of a lost or stolen certificate or card not required.* Section 1005.20(e)(4) does not require the replacement of a certificate or card that has been lost or stolen.

12. *Date of issuance or loading.* For purposes of §1005.20(e)(2)(i), a certificate or card is not issued or loaded with funds until the certificate or card is activated for use.

13. *Application of expiration date provisions after redemption of certificate or card.* The requirement that funds underlying a certificate or card must not expire for at least five years from the date of issuance or date of last load ceases to apply once the certificate or card has been fully redeemed, even if the underlying funds are not used to contemporaneously purchase a specific good or service. For example, some certificates or cards can be used to purchase music, media, or virtual goods. Once redeemed by a consumer, the entire balance on the certificate or card is debited from the certificate or card and credited or transferred to another ''account'' established by the merchant of such goods or services. The consumer can then make purchases of songs, media, or virtual goods from the merchant using that ''account'' either at the time the value is transferred from the certificate or card or at a later time. Under these circumstances, once the card has been fully redeemed and the ''account'' credited with the amount of the underlying funds, the five-year minimum expiration term no longer applies to the underlying funds. However, if the consumer only partially redeems the value of the certificate or card, the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.

20(f) Additional Disclosure Requirements for Gift Certificates or Cards

1. *Reference to toll-free telephone number and Web site.* If a certificate or card does not have any fees, the disclosure under §1005.20(f)(2) is not required on the certificate or card. *See, however,* §1005.20(e)(3)(ii).

2. *Relationship to §226.20(e)(3)(ii).* The same toll-free telephone number and Web site may be used to comply with §§226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and both the certificate or card and underlying funds do not expire.

3. *Relationship between §§1005.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required pursuant to §1005.20(f)(2), any applicable disclosures under §§1005.20(d)(2) and (e)(3) must also be provided on the certificate or card.

20(g) Compliance Dates

1. *Period of eligibility for loyalty, award, or promotional programs.* For purposes of §1005.20(g)(2), the period of eligibility is the time period during which a consumer must engage in a certain action or actions to meet the terms of eligibility for a loyalty, award, or promotional program and obtain the card, code, or other device. Under §1005.20(g)(2), a gift card issued pursuant to a loyalty, award, or promotional program that began prior to August 22, 2010 need not state the disclosures in §1005.20(a)(4)(iii) regardless of whether the consumer became eligible to receive the gift card prior to August 22, 2010, or after that date. For example, a product manufacturer may provide a $20 rebate card to a consumer

if the consumer purchases a particular product and submits a fully completed entry between January 1, 2010 and December 31, 2010. Similarly, a merchant may provide a $20 gift card to a consumer if the consumer makes $200 worth of qualifying purchases between June 1, 2010 and October 30, 2010. Under both examples, gift cards provided pursuant to these loyalty, award, or promotional programs need not state the disclosures in §1005.20(a)(4)(iii) to qualify for the exclusion in §1005.20(b)(3) for loyalty, award, or promotional gift cards because the period of eligibility for each program began prior to August 22, 2010.

20(h) Temporary Exemption

20(h)(1) Delayed Effective Date

1. *Application to certificates or cards produced prior to April 1, 2010.* Certificates or cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of §§1005.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§1005.20(h)(1)(i) through (iv). Issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (§§1005.20(a) through (f)). For example, the in-store signage and other disclosures required by §1005.20(h)(2) do not apply to gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule.

2. *Expiration of temporary exemption.* Certificates or cards produced prior to April 1, 2010 that do not fully comply with §§1005.20(a) through (f) may not be issued or sold to consumers on or after January 31, 2011.

20(h)(2) Additional Disclosures

1. *Disclosures through third parties.* Issuers may make the disclosures required by §1005.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by §1005.20(h)(2) on the issuer's behalf.

2. *General advertising disclosures.* Section 1005.20(h)(2) does not impose an obligation on the issuer to advertise gift certificates, store gift cards, or general-use prepaid cards.

SECTION 1005.30—REMITTANCE TRANSFER DEFINITIONS

1. *Applicability of definitions in subpart A.* Except as modified or limited by subpart B (which modifications or limitations apply only to subpart B), the definitions in §1005.2 apply to all of Regulation E, including subpart B.

30(b) Business Day

1. *General.* A business day, as defined in §1005.30(b), includes the entire 24-hour period ending at midnight, and a notice given pursuant to any section of subpart B is effective even if given outside of normal business hours. A remittance transfer provider is not required under subpart B to make telephone lines available on a 24-hour basis.

2. *Substantially all business functions.* ''Substantially all business functions'' include both the public and the back-office operations of the provider. For example, if the offices of a provider are open on Saturdays for customers to request remittance transfers, but not for performing internal functions (such as investigating errors), then Saturday is not a business day for that provider. In this case, Saturday does not count toward the business-day standard set by subpart B for resolving errors, processing refunds, etc.

3. *Short hours.* A provider may determine, at its election, whether an abbreviated day is a business day. For example, if a provider engages in substantially all business functions until noon on Saturdays instead of its usual 3 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a provider makes a telephone line available on Sundays for cancelling the transfer, but performs no other business functions, Sunday is not a business day under the ''substantially all business functions'' standard.

30(c) Designated Recipient

1. *Person.* A designated recipient can be either a natural person or an organization, such as a corporation. *See* §1005.2(j) (definition of person). The designated recipient is identified by the name of the person provided by the sender to the remittance transfer provider and disclosed by the provider to the sender pursuant to §1005.31(b)(1)(iii).

2. *Location in a foreign country.* i. A remittance transfer is received at a location in a foreign country if funds are to be received at a location physically outside of any State, as defined in §1005.2(l). A specific pick-up location need not be designated for funds to be received at a location in a foreign country. If it is specified that the funds will be transferred to a foreign country to be picked up by the designated recipient, the transfer will be received at a location in a foreign country, even though a specific pick-up location within that country has not been designated. If it is specified that the funds will be received at a location on a U.S. military installation that is physically located in a foreign country, the transfer will be received in a State.

ii. For transfers to a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), where the funds are to be received in

a location physically outside of any State depends on whether the provider at the time the transfer is requested has information indicating that funds are to be received in a foreign country. See comments 30(c)–2.iii and 30(e)–3.i.C for illustrations of when a remittance transfer provider would have such information and when the provider would not. For transfers to all other accounts, whether funds are to be received at a location physically outside of any State depends on where the account is located. If the account is located in a State, the funds will not be received at a location in a foreign country. Further, for these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then these accounts are located in a State.

iii. Where the sender does not specify information about a designated recipient's account, but instead provides information about the recipient, a remittance transfer provider may make the determination of whether the funds will be received at a location in a foreign country on information that is provided by the sender, and other information the provider may have, at the time the transfer is requested. For example, if a consumer in a State gives a provider the recipient's email address, and the provider has no other information about whether the funds will be received by the recipient at a location in a foreign country, then the provider may determine that funds are not to be received at a location in a foreign country. However, if the provider at the time the transfer is requested has additional information indicating that funds are to be received in a foreign country, such as if the recipient's email address is already registered with the provider and associated with a foreign account, then the provider has sufficient information to conclude that the remittance transfer will be received at a location in a foreign country. Similarly, if a consumer in a State purchases a prepaid card, and the provider mails or delivers the card directly to the consumer, the provider may conclude that funds are not to be received in a foreign country, because the provider does not know whether the consumer will subsequently send the prepaid card to a recipient in a foreign country. In contrast, the provider has sufficient information to conclude that the funds are to be received in a foreign country if the remittance transfer provider sends a prepaid card to a specified recipient in a foreign country, even if a person located in a State, including the sender, retains the ability to access funds on the prepaid card.

3. *Sender as designated recipient.* A ''sender,'' as defined in §1005.30(g), may also be a designated recipient if the sender meets the definition of ''designated recipient'' in §1005.30(c). For example, a sender may request that a provider send an electronic transfer of funds from the sender's checking account in a State to the sender's checking account located in a foreign country. In this case, the sender would also be a designated recipient.

30(d) Preauthorized Remittance Transfer

1. *Advance authorization.* A preauthorized remittance transfer is a remittance transfer authorized in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a remittance transfer provider to make monthly payments to a payee by means of a remittance transfer, and the payments take place without further action by the consumer, the payments are preauthorized remittance transfers. In contrast, if the consumer must take action each month to initiate a transfer (such as by entering instructions on a telephone or home computer), the payments are not preauthorized remittance transfers.

30(e) Remittance Transfer

1. *Electronic transfer of funds.* The definition of ''remittance transfer'' requires an electronic transfer of funds. The term electronic has the meaning given in section 106(2) of the Electronic Signatures in Global and National Commerce Act. There may be an electronic transfer of funds if a provider makes an electronic book entry between different settlement accounts to effectuate the transfer. However, where a sender mails funds directly to a recipient, or provides funds to a courier for delivery to a foreign country, there is not an electronic transfer of funds. Similarly, generally, where a provider issues a check, draft, or other paper instrument to be mailed to a person abroad, there is not an electronic transfer of funds. Nonetheless, an electronic transfer of funds occurs for a payment made by a provider under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account to be mailed abroad, and the payee or payees that will be paid in this manner are identified to the consumer. With respect to such a bill-payment service, if a provider provides a check, draft or similar paper instrument drawn on a consumer's account to be mailed abroad for a payee that is not identified to the consumer as described above, this payment by check, draft or similar payment instrument will be an electronic transfer of funds.

2. *Sent by a remittance transfer provider.* i. The definition of ''remittance transfer'' requires that a transfer be ''sent by a remittance transfer provider.'' This means that

there must be an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender to a designated recipient.

ii. A payment card network or other third party payment service that is functionally similar to a payment card network does not send a remittance transfer when a consumer provides a debit, credit or prepaid card directly to a foreign merchant as payment for goods or services. In such a case, the payment card network or third party payment service is not directly engaged with the sender to send a transfer of funds to a person in a foreign country; rather, the network or third party payment service is merely providing contemporaneous third-party payment processing and settlement services on behalf of the merchant or the card issuer, rather than on behalf of the sender. In such a case, the card issuer also is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the card issuer provides payment to the merchant. Similarly, where a consumer provides a checking or other account number, or a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services, the merchant is not acting as an intermediary that sends a transfer of funds on behalf of the sender when it submits the payment information for processing.

iii. However, a card issuer or a payment network may offer a service to a sender where the card issuer or a payment network is an intermediary that is directly engaged with the sender to obtain funds using the sender's debit, prepaid or credit card and to send those funds to a recipient's checking account located in a foreign country. In this case, the card issuer or the payment network is an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender, and this transfer of funds is a remittance transfer because it is made to a designated recipient. *See* comment 30(c)–2.ii.

3. *Examples of remittance transfers.*

i. Examples of remittance transfers include:

A. Transfers where the sender provides cash or another method of payment to a money transmitter or financial institution and requests that funds be sent to a specified location or account in a foreign country.

B. Consumer wire transfers, where a financial institution executes a payment order upon a sender's request to wire money from the sender's account to a designated recipient.

C. An addition of funds to a prepaid card by a participant in a prepaid card program, such as a prepaid card issuer or its agent, that is directly engaged with the sender to add these funds, where the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country, even if a person located in a State (including a sender) retains the ability to withdraw such funds.

D. International ACH transactions sent by the sender's financial institution at the sender's request.

E. Online bill payments and other electronic transfers that a sender schedules in advance, including preauthorized remittance transfers, made by the sender's financial institution at the sender's request to a designated recipient.

ii. The term remittance transfer does not include, for example:

A. A consumer's provision of a debit, credit or prepaid card, directly to a foreign merchant as payment for goods or services because the issuer is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the issuer provides payment to the merchant. *See* comment 30(e)–2.

B. A consumer's deposit of funds to a checking or savings account located in a State, because there has not been a transfer of funds to a designated recipient. *See* comment 30(c)–2.ii.

C. Online bill payments and other electronic transfers that senders can schedule in advance, including preauthorized transfers, made through the Web site of a merchant located in a foreign country and via direct provision of a checking account, credit card, debit card or prepaid card number to the merchant, because the financial institution is not directly engaged with the sender to send an electronic transfer of funds to the foreign merchant when the institution provides payment to the merchant. *See* comment 30(e)–2.

30(f) Remittance Transfer Provider

1. *Agents.* A person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

2. *Normal course of business.* i. *General.* Whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. For example, if a financial institution generally does not make remittance transfers available to customers, but sends a couple of such transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes remittance transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers more frequently than on an occasional basis, the institution provides remittance transfers in the normal course of business.

ii. *Safe harbor.* On July 21, 2020, the safe harbor threshold in §1005.30(f)(2)(i) changed from 100 remittance transfers to 500 remittance transfers. Under §1005.30(f)(2)(i), beginning on July 21, 2020, a person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of its business. Accordingly, a person that qualifies for the safe harbor in §1005.30(f)(2)(i) is not a ''remittance transfer provider'' and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor under §1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of ''remittance transfer'' due simply to the safe harbor. In contrast, the number of remittance transfers provided does not include any transfers that are excluded from the definition of ''remittance transfer'' for reasons other than the safe harbor, such as small value transactions or securities and commodities transfers that are excluded from the definition of ''remittance transfer'' by §1005.30(e)(2).

iii. *Transition period.* A person may cease to satisfy the requirements of the safe harbor described in §1005.30(f)(2)(i) if, beginning on July 21, 2020, the person provides in excess of 500 remittance transfers in a calendar year. For example, if a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, the safe harbor applies to the first 500 remittance transfers that the person provides in the current calendar year. For any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of its business, as defined in §1005.30(f)(1), and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. Section 1005.30(f)(2)(ii) provides a reasonable period of time, not to exceed six months, for such a person to begin complying with subpart B, if that person is then providing remittance transfers in the normal course of its business. At the end of that reasonable period of time, such person would be required to comply with subpart B unless, based on the facts and circumstances, the person is not a remittance transfer provider.

iv. *Examples.* A. *Example of safe harbor and transition period for 100-transfer safe harbor threshold effective prior to July 21, 2020.* Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor applied to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provided a 101st transfer on September 5, 2014, the facts and circumstances determine whether the person provided remittance transfers in the normal course of business and was thus a remittance transfer provider for the 101st and any subsequent remittance transfers that it provided in 2014. Furthermore, the person would not have qualified for the safe harbor described in §1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person was then providing remittance transfers for a consumer in the normal course of business, the person had a reasonable period of time, not to exceed six months, to come into compliance with subpart B. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B was not required for remittance transfers made on or before March 5, 2015 (*i.e.,* six months after September 5, 2014). After March 5, 2015, the person was required to comply with subpart B if, based on the facts and circumstances, the person provided remittance transfers in the normal course of business and was thus a remittance transfer provider.

B. *Example of safe harbor for a person that provided 500 or fewer transfers in 2019 and provides 500 or fewer transfers in 2020.* On July 21, 2020, the safe harbor threshold in §1005.30(f)(2)(i) changed from 100 remittance transfers to 500 remittance transfers. Thus, beginning on July 21, 2020, pursuant to §1005.30(f)(2)(i), a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year. If a person provided 500 or fewer transfers in 2019 and provides 500 or fewer remittance transfers in 2020, that person qualifies for the safe harbor threshold in 2020. For example, assume that a person provided 200 remittance transfers in 2019 and 400 remittance transfers in 2020. The safe harbor will apply to the person's transfers in 2020 beginning on July 21, 2020, as well as the person's first 500 transfers in 2021. *See* comment 30(f)-2.iv.C for an example regarding the transition period if the 500-transfer safe harbor is exceeded.

C. *Example of safe harbor and transition period for the 500-transfer safe harbor threshold beginning on July 21, 2020.* Assume that a person provided 490 remittance transfers in 2020 and 490 such transfers in 2021. The safe harbor will apply to the person's transfers in 2021, as well as the person's first 500 remittance transfers in 2022. However, if the person provides a 501st transfer on September 5, 2022, the facts and circumstances determine whether the person provides remittance

transfers in the normal course of business and is thus a remittance transfer provider for the 501st and any subsequent remittance transfers that it provides in 2022. Furthermore, the person would not qualify for the safe harbor described in §1005.30(f)(2)(i) in 2023 because the person did not provide 500 or fewer remittance transfers in 2022. However, for the 501st remittance transfer provided in 2022, as well as additional remittance transfers provided thereafter in 2022 and 2023, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B of Regulation E. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2023 (*i.e.*, six months after September 5, 2022). After March 5, 2023, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

v. *Continued compliance for transfers for which payment was made before a person qualifies for the safe harbor.* Section 1005.30(f)(2)(iii) addresses situations where a person who previously was required to comply with subpart B of Regulation E newly qualifies for the safe harbor in §1005.30(f)(2)(i). That section states that the requirements of EFTA and Regulation E, including those set forth in §§1005.33 and 1005.34 (which address procedures for resolving errors and procedures for cancellation and refund of remittance transfers, respectively), as well as the requirements set forth in §1005.13 (which, in part, governs record retention), continue to apply to transfers for which payment is made prior to the date the person qualifies for the safe harbor in §1005.30(f)(2)(i). Qualifying for the safe harbor in §1005.30(f)(2)(i) likewise does not excuse compliance with any other applicable law or regulation. For example, if a remittance transfer is also an electronic fund transfer, any requirements in subpart A of Regulation E that apply to the transfer continue to apply, regardless of whether the person must comply with subpart B. Relevant requirements in subpart A may include, but are not limited to, those relating to initial disclosures, change-in-terms notices, liability of consumers for unauthorized transfers, and procedures for resolving errors.

3. *Multiple remittance transfer providers.* If the remittance transfer involves more than one remittance transfer provider, only one set of disclosures must be given, and the remittance transfer providers must agree among themselves which provider must take the actions necessary to comply with the requirements that subpart B imposes on any or all of them. Even though the providers must designate one provider to take the actions necessary to comply with the requirements that subpart B imposes on any or all of them, all remittance transfer providers involved in the remittance transfer remain responsible for compliance with the applicable provisions of the EFTA and Regulation E.

30(g) Sender

1. *Determining whether a consumer is located in a State.* Under §1005.30(g), the definition of ''sender'' means a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient. A sender located on a U.S. military installation that is physically located in a foreign country is located in a State. For transfers sent from a prepaid account (other than a prepaid account that is a payroll card account or a government benefit account), whether the consumer is located in a State depends on the location of the consumer. If the provider does not know where the consumer is at the time the consumer requests the transfer from the consumer's prepaid account (other than a prepaid account that is a payroll card account or a government benefit account) the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer. For transfers from all other accounts belonging to a consumer, whether a consumer is located in a State depends on where the consumer's account is located. If the account is located in a State, the consumer will be located in a State for purposes of the definition of ''sender'' in §1005.30(g), notwithstanding comment 3(a)–3. For these accounts, if they are located on a U.S. military installation that is physically located in a foreign country, then these accounts are located in a State. Where a transfer is requested electronically or by telephone and the transfer is not from an account, the provider may make the determination of whether a consumer is located in a State based on information that is provided by the consumer and on any records associated with the consumer that the provider may have, such as an address provided by the consumer.

2. *Personal, family, or household purposes.* Under §1005.30(g), a consumer is a ''sender'' only where he or she requests a transfer primarily for personal, family, or household purposes. A consumer who requests a transfer primarily for other purposes, such as business or commercial purposes, is not a sender under §1005.30(g). For transfers from an account that was established primarily for personal, family, or household purposes,

a remittance transfer provider may generally deem that the transfer is requested primarily for personal, family, or household purposes and the consumer is therefore a ''sender'' under §1005.30(g). But if the consumer indicates that he or she is requesting the transfer primarily for other purposes, such as business or commercial purposes, then the consumer is not a sender under §1005.30(g), even if the consumer is requesting the transfer from an account that is used primarily for personal, family, or household purposes.

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

30(h) Third-Party Fees

1. *Fees imposed on the remittance transfer.* Fees imposed on the remittance transfer by a person other than the remittance transfer provider include only those fees that are charged to the designated recipient and are specifically related to the remittance transfer. For example, overdraft fees that are imposed by a recipient's bank or funds that are garnished from the proceeds of a remittance transfer to satisfy an unrelated debt are not fees imposed on the remittance transfer because these charges are not specifically related to the remittance transfer. Account fees are also not specifically related to a remittance transfer if such fees are merely assessed based on general account activity and not for receiving transfers. Where an incoming remittance transfer results in a balance increase that triggers a monthly maintenance fee, that fee is not specifically related to a remittance transfer. Similarly, fees that banks charge one another for handling a remittance transfer or other fees that do not affect the total amount of the transaction or the amount that will be received by the designated recipient are not fees imposed on the remittance transfer. For example, an interchange fee that is charged to a provider when a sender uses a credit or debit card to pay for a remittance transfer is not a fee imposed upon the remittance transfer. Fees that specifically relate to a remittance transfer may be structured on a flat per-transaction basis, or may be conditioned on other factors (such as account status or the quantity of remittance transfers received) in addition to the remittance transfer itself. For example, where an institution charges an incoming transfer fee on most customers' accounts, but not on preferred accounts, such a fee is nonetheless specifically related to a remittance transfer. Similarly, if the institution assesses a fee for every transfer beyond the fifth received each month, such a fee would be specifically related to the remittance transfer regardless of how many remittance transfers preceded it that month.

2. *Covered third-party fees.* i. Under §1005.30(h)(1), a covered third-party fee means any fee that is imposed on the remittance transfer by a person other than the remittance transfer provider that is not a non-covered third-party fee.

ii. Examples of covered third-party fees include:

A. Fees imposed on a remittance transfer by intermediary institutions in connection with a wire transfer (sometimes referred to as ''lifting fees'').

B. Fees imposed on a remittance transfer by an agent of the provider at pick-up for receiving the transfer.

3. *Non-covered third-party fees.* Under §1005.30(h)(2), a non-covered third-party fee means any fee imposed by the designated recipient's institution for receiving a remittance transfer into an account except if such institution acts as the agent of the remittance transfer provider. For example, a fee imposed by the designated recipient's institution for receiving an incoming transfer into an account is a non-covered third-party fee, provided such institution is not acting as the agent of the remittance transfer provider. *See also* comment 31(b)(1)(viii)–1. Furthermore, designated recipient's account in §1005.30(h)(2) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient's account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

SECTION 1005.31—DISCLOSURES

31(a) General Form of Disclosures

31(a)(1) Clear and Conspicuous

1. *Clear and conspicuous standard.* Disclosures are clear and conspicuous for purposes

of subpart B if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to senders. Oral disclosures as permitted by §1005.31(a)(3), (4), and (5) are clear and conspicuous when they are given at a volume and speed sufficient for a sender to hear and comprehend them.

2. *Abbreviations and symbols.* Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as ''USD'' to indicate currency in U.S. dollars or ''MXN'' to indicate currency in Mexican pesos.

31(a)(2) Written and Electronic Disclosures

1. *E–Sign Act requirements.* If a sender electronically requests the remittance transfer provider to send a remittance transfer, the disclosures required by §1005.31(b)(1) may be provided to the sender in electronic form without regard to 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.*). If a sender electronically requests the provider to send a remittance transfer, the disclosures required by §1005.31(b)(2) may be provided to the sender in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E–Sign Act. *See* §1005.4(a)(1).

2. *Paper size.* Written disclosures may be provided on any size paper, as long as the disclosures are clear and conspicuous. For example, disclosures may be provided on a register receipt or on an 8.5 inch by 11 inch sheet of paper.

3. *Retainable electronic disclosures.* A remittance transfer provider may satisfy the requirement to provide electronic disclosures in a retainable form if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the sender can bypass the disclosure. A provider is not required to confirm that the sender has read the electronic disclosures.

4. *Pre-payment disclosures to a mobile telephone.* Disclosures provided via mobile application or text message, to the extent permitted by §1005.31(a)(5), need not be retainable. However, disclosures provided electronically to a mobile telephone that are not provided via mobile application or text message must be retainable. For example, disclosures provided via email must be retainable, even if a sender accesses them by mobile telephone.

5. *Disclosures provided by fax.* For purposes of disclosures required to be provided pursuant to §1005.31 or §1005.36, disclosures provided by facsimile transmission (*i.e.*, fax) are considered to be provided in writing for purposes of providing disclosures in writing pursuant to subpart B and are not subject to the requirements for electronic disclosures set forth in §1005.31(a)(2).

31(a)(3) Disclosures for Oral Telephone Transactions

1. *Transactions conducted partially by telephone.* Except as provided in comment 31(a)(3)–2, for transactions conducted partially by telephone, providing the information required by §1005.31(b)(1) to a sender orally does not fulfill the requirement to provide the disclosures required by §1005.31(b)(1). For example, a sender may begin a remittance transfer at a remittance transfer provider's dedicated telephone in a retail store, and then provide payment in person to a store clerk to complete the transaction. In such cases, all disclosures must be provided in writing. A provider complies with this requirement, for example, by providing the written pre-payment disclosure in person prior to the sender's payment for the transaction, and the written receipt when the sender pays for the transaction.

2. *Oral telephone transactions.* Section 1005.31(a)(3) applies to transactions conducted orally and entirely by telephone, such as transactions conducted orally on a landline or mobile telephone. A remittance transfer provider may treat a written or electronic communication as an inquiry when it believes that treating the communication as a request would be impractical. For example, if a sender physically located abroad contacts a U.S. branch of the sender's financial institution and attempts to initiate a remittance transfer by first sending a mailed letter, further communication with the sender by letter may be impractical due to the physical distance and likely mail delays. In such circumstances, a provider may conduct the transaction orally and entirely by telephone pursuant to §1005.31(a)(3) when the provider treats that initial communication as an inquiry and subsequently responds to the consumer's inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to identify and understand a request for a remittance transfer and otherwise conducts the transaction orally and entirely by telephone.

31(a)(5) Disclosures for Mobile Application or Text Message Transactions

1. *Mobile application and text message transactions.* A remittance transfer provider may provide the required pre-payment disclosures orally or via mobile application or text message if the transaction is conducted entirely by telephone via mobile application or text message, the remittance transfer provider complies with the requirements of §1005.31(g)(2), and the provider discloses orally or via mobile application or text message a statement about the rights of the sender

regarding cancellation required by §1005.31(b)(2)(iv) pursuant to the timing requirements in §1005.31(e)(1). For example, if a sender conducts a transaction via text message on a mobile telephone, the remittance transfer provider may call the sender and orally provide the required pre-payment disclosures. Alternatively, the provider may provide the required pre-payment disclosures via text message. Section 1005.31(a)(5) applies only to transactions conducted entirely by mobile telephone via mobile application or text message.

31(b) Disclosure Requirements

1. *Disclosures provided as applicable.* Disclosures required by §1005.31(b) need only be provided to the extent applicable. A remittance transfer provider may choose to omit an item of information required by §1005.31(b) if it is inapplicable to a particular transaction. Alternatively, for disclosures required by §1005.31(b)(1)(i) through (vii), a provider may disclose a term and state that an amount or item is ''not applicable,'' ''N/A,'' or ''None.'' For example, if fees or taxes are not imposed in connection with a particular transaction, the provider need not provide the disclosures about fees and taxes generally required by §1005.31(b)(1)(ii), the disclosures about covered third-party fees generally required by §1005.31(b)(1)(vi), or the disclaimers about non-covered third-party fees and taxes collected by a person other than the provider generally required by §1005.31(b)(1)(viii). Similarly, a Web site need not be disclosed if the provider does not maintain a Web site. A provider need not provide the exchange rate disclosure required by §1005.31(b)(1)(iv) if a recipient receives funds in the currency in which the remittance transfer is funded, or if funds are delivered into an account denominated in the currency in which the remittance transfer is funded. For example, if a sender in the United States sends funds from an account denominated in Euros to an account in France denominated in Euros, no exchange rate would need to be provided. Similarly, if a sender funds a remittance transfer in U.S. dollars and requests that a remittance transfer be delivered to the recipient in U.S. dollars, a provider need not disclose an exchange rate.

2. *Substantially similar terms, language, and notices.* Certain disclosures required by §1005.31(b) must be described using the terms set forth in §1005.31(b) or substantially similar terms. Terms may be more specific than those provided. For example, a remittance transfer provider sending funds may describe fees imposed by an agent at pick-up as ''Pick-up Fees'' in lieu of describing them as ''Other Fees.'' Foreign language disclosures required under §1005.31(g) must contain accurate translations of the terms, language, and notices required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) and §1005.33(h)(3).

31(b)(1) Pre-Payment Disclosures

1. *Fees and taxes.* i. Taxes collected on the remittance transfer by the remittance transfer provider include taxes collected on the remittance transfer by a State or other governmental body. A provider need only disclose fees imposed or taxes collected on the remittance transfer by the provider in §1005.31(b)(1)(ii), as applicable. For example, if no transfer taxes are imposed on a remittance transfer, a provider would only disclose applicable transfer fees. *See* comment 31(b)–1. If both fees and taxes are imposed, the fees and taxes must be disclosed as separate, itemized disclosures. For example, a provider would disclose all transfer fees using the term ''Transfer Fees'' or a substantially similar term and would separately disclose all transfer taxes using the term ''Transfer Taxes'' or a substantially similar term.

ii. The fees and taxes required to be disclosed by §1005.31(b)(1)(ii) include all fees imposed and all taxes collected on the remittance transfer by the provider. For example, a provider must disclose any service fee, any fees imposed by an agent of the provider at the time of the transfer, and any State taxes collected on the remittance transfer at the time of the transfer. Fees imposed on the remittance transfer by the provider required to be disclosed under §1005.31(b)(1)(ii) include only those fees that are charged to the sender and are specifically related to the remittance transfer. *See also* comment 30(h)–1. In contrast, the fees required to be disclosed by §1005.31(b)(1)(vi) are any covered third-party fees as defined in §1005.30(h)(1).

iii. The term used to describe the fees imposed on the remittance transfer by the provider in §1005.31(b)(1)(ii) and the term used to describe covered third-party fees under §1005.31(b)(1)(vi) must differentiate between such fees. For example the terms used to describe fees disclosed under §1005.31(b)(1)(ii) and (vi) may not both be described solely as ''Fees.''

2. *Transfer amount.* Sections 1005.31(b)(1)(i) and (v) require two transfer amount disclosures. First, under §1005.31(b)(1)(i), a provider must disclose the transfer amount in the currency in which the remittance transfer is funded to show the calculation of the total amount of the transaction. Typically, the remittance transfer is funded in U.S. dollars, so the transfer amount would be expressed in U.S. dollars. However, if the remittance transfer is funded, for example, from a Euro-denominated account, the transfer amount would be expressed in Euros. Second, under §1005.31(b)(1)(v), a provider must disclose the transfer amount in the currency in which the funds will be made available to the designated recipient. For example, if the funds

will be picked up by the designated recipient in Japanese yen, the transfer amount would be expressed in Japanese yen. However, this second transfer amount need not be disclosed if covered third-party fees as described under §1005.31(b)(1)(vi) are not imposed on the remittance transfer. The terms used to describe each transfer amount should be the same.

3. *Exchange rate for calculation.* The exchange rate used to calculate the transfer amount in §1005.31(b)(1)(v), the covered third-party fees in §1005.31(b)(1)(vi), the amount received in §1005.31(b)(1)(vii), and the optional disclosures of non-covered third-party fees and other taxes permitted by §1005.31(b)(1)(viii) is the exchange rate in §1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to §1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.9484 Mexican pesos. Similarly, if a provider estimates pursuant to §1005.32 that one U.S. dollar exchanges for 11.9483 Mexican pesos, a provider must calculate these disclosures using this rate, even though the provider may disclose pursuant to §1005.31(b)(1)(iv) that the U.S. dollar exchanges for 11.95 Mexican pesos (Estimated). If an exchange rate need not be rounded, a provider must use that exchange rate to calculate these disclosures. For example, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, a provider must calculate these disclosures using this exchange rate.

31(b)(1)(iv) Exchange Rate

1. *Applicable exchange rate.* If the designated recipient will receive funds in a currency other than the currency in which the remittance transfer is funded, a remittance transfer provider must disclose the exchange rate to be used by the provider for the remittance transfer. An exchange rate that is estimated must be disclosed pursuant to the requirements of §1005.32. A remittance transfer provider may not disclose, for example, that an exchange rate is ''unknown,'' ''floating,'' or ''to be determined.'' If a provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received for purposes of determining whether an exchange rate is applied to the transfer. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider need not disclose an exchange rate, even if the account is actually denominated in Mexican pesos and the funds are converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

2. *Rounding.* The exchange rate disclosed by the provider for the remittance transfer is required to be rounded. The provider may round to two, three, or four decimal places, at its option. For example, if one U.S. dollar exchanges for 11.9483779 Mexican pesos, a provider may disclose that the U.S. dollar exchanges for 11.9484 Mexican pesos. The provider may alternatively disclose, for example, that the U.S. dollar exchanges for 11.948 pesos or 11.95 pesos. On the other hand, if one U.S. dollar exchanges for exactly 11.9 Mexican pesos, the provider may disclose that ''US$1 = 11.9 MXN'' in lieu of, for example, ''US$1 = 11.90 MXN.'' The exchange rate disclosed for the remittance transfer must be rounded consistently for each currency. For example, a provider may not round to two decimal places for some transactions exchanged into Euros and round to four decimal places for other transactions exchanged into Euros.

3. *Exchange rate used.* The exchange rate used by the provider for the remittance transfer need not be set by that provider. For example, an exchange rate set by an intermediary institution and applied to the remittance transfer would be the exchange rate used for the remittance transfer and must be disclosed by the provider.

31(b)(1)(vi) Disclosure of Covered Third-Party Fees

1. *Fees disclosed in the currency in which the funds will be received.* Section 1005.31(b)(1)(vi) requires the disclosure of covered third-party fees in the currency in which the funds will be received by the designated recipient. A covered third-party fee described in §1005.31(b)(1)(vi) may be imposed in one currency, but the funds may be received by the designated recipient in another currency. In such cases, the remittance transfer provider must calculate the fee to be disclosed under §1005.31(b)(1)(vi) in the currency of receipt using the exchange rate in §1005.31(b)(1)(iv), including an estimated exchange rate to the extent permitted by §1005.32, prior to any rounding of the exchange rate. For example, an intermediary institution involved in sending an international wire transfer funded in U.S. dollars may impose a fee in U.S. dollars, but funds are ultimately deposited in the recipient's account in Euros. In this case, the provider would disclose the covered third-party fee to the sender expressed in Euros, calculated using the exchange rate disclosed under §1005.31(b)(1)(iv), prior to any rounding of the exchange rate. For purposes of §1005.31(b)(1)(v), (vi), and (vii), if a provider

does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider may provide the disclosures required in §1005.31(b)(1)(v), (vi), and (vii) in U.S. dollars, even if the account is actually denominated in Mexican pesos and the funds are subsequently converted prior to deposit into the account. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

31(b)(1)(vii) Amount Received

1. Amount received. The remittance transfer provider is required to disclose the amount that will be received by the designated recipient in the currency in which the funds will be received. The amount received must reflect the exchange rate, all fees imposed and all taxes collected on the remittance transfer by the remittance transfer provider, as well as any covered third-party fees required to be disclosed by §1005.31(b)(1)(vi). The disclosed amount received must be reduced by the amount of any fee or tax—except for a non-covered third-party fee or tax collected on the remittance transfer by a person other than the provider—that is imposed on the remittance transfer that affects the amount received even if that amount is imposed or itemized separately from the transaction amount.

31(b)(1)(viii) Statement When Additional Fees and Taxes May Apply

1. *Required disclaimer when non-covered third-party fees and taxes collected by a person other than the provider may apply.* If non-covered third-party fees or taxes collected by a person other than the provider apply to a particular remittance transfer or if a provider does not know if such fees or taxes may apply to a particular remittance transfer, §1005.31(b)(1)(viii) requires the provider to include the disclaimer with respect to such fees and taxes. Required disclosures under §1005.31(b)(1)(viii) may only be provided to the extent applicable. For example, if the designated recipient's institution is an agent of the provider and thus, non-covered third-party fees cannot apply to the transfer, the provider must disclose all fees imposed on the remittance transfer and may not provide the disclaimer regarding non-covered third-party fees. In this scenario, the provider may only provide the disclaimer regarding taxes collected on the remittance transfer by a person other than the provider, as applicable. *See* Model Form A–30(c).

2. *Optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.* When a remittance transfer provider knows the non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider that will apply to a particular transaction, §1005.31(b)(1)(viii) permits the provider to disclose the amount of such fees and taxes. Section 1005.32(b)(3) additionally permits a provider to disclose an estimate of such fees and taxes, provided any estimates are based on reasonable source of information. *See* comment 32(b)(3)–1. For example, a provider may know that the designated recipient's institution imposes an incoming wire fee for receiving a transfer. Alternatively, a provider may know that foreign taxes will be collected on the remittance transfer by a person other than the remittance transfer provider. In these examples, the provider may choose, at its option, to disclose the amounts of the relevant recipient institution fee and tax as part of the information disclosed pursuant to §1005.31(b)(1)(viii). The provider must not include that fee or tax in the amount disclosed pursuant to §1005.31(b)(1)(vi) or (b)(1)(vii). Fees and taxes disclosed under §1005.31(b)(1)(viii) must be disclosed in the currency in which the funds will be received. *See* comment 31(b)(1)(vi)–1. Estimates of any non-covered third-party fees and any taxes collected on the remittance transfer by a person other than the provider must be disclosed in accordance with §1005.32(b)(3).

31(b)(2) Receipt

1. *Date funds will be available.* A remittance transfer provider does not comply with the requirements of §1005.31(b)(2)(ii) if it provides a range of dates that the remittance transfer may be available or an estimate of the date on which funds will be available. If a provider does not know the exact date on which funds will be available, the provider may disclose the latest date on which the funds will be available. For example, if funds may be available on January 3, but are not certain to be available until January 10, then a provider complies with §1005.31(b)(2)(ii) if it discloses January 10 as the date funds will be available. However, a remittance transfer provider may also disclose that funds ''may be available sooner'' or use a substantially similar term to inform senders that funds may be available to the designated recipient on a date earlier than the date disclosed. For example, a provider may disclose ''January 10 (may be available sooner).''

2. *Agencies required to be disclosed.* A remittance transfer provider must only disclose information about a State agency that licenses or charters the remittance transfer provider with respect to the remittance

transfer as applicable. For example, if a financial institution is solely regulated by a Federal agency, and not licensed or chartered by a State agency, then the institution need not disclose information about a State agency. A remittance transfer provider must disclose information about the Consumer Financial Protection Bureau, whether or not the Consumer Financial Protection Bureau is the provider's primary Federal regulator.

3. *State agency that licenses or charters a provider.* A remittance transfer provider must only disclose information about one State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer, even if other State agencies also regulate the remittance transfer provider. For example, a provider may disclose information about the State agency which granted its license. If a provider is licensed in multiple States, and the State agency that licenses the provider with respect to the remittance transfer is determined by a sender's location, a provider may make the determination as to the State in which the sender is located based on information that is provided by the sender and on any records associated with the sender. For example, if the State agency that licenses the provider with respect to an online remittance transfer is determined by a sender's location, a provider could rely on the sender's statement regarding the State in which the sender is located and disclose the State agency that licenses the provider in that State. A State-chartered bank must disclose information about the State agency that granted its charter, regardless of the location of the sender.

4. *Web site of the Consumer Financial Protection Bureau.* Section 1005.31(b)(2)(vi) requires a remittance transfer provider to disclose the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau. Providers may satisfy this requirement by disclosing the Web site of the Consumer Financial Protection Bureau's homepage, *www.consumerfinance.gov*, as shown on Model Forms A–32, A–34, A–35, and A–39. Alternatively, providers may, but are not required to, disclose the Bureau's Web site as the address of a page on the Bureau's Web site that provides information for consumers about remittance transfers, currently, *consumerfinance.gov/sending-money*, as shown on Model Form A–31. In addition, providers making disclosures in a language other than English pursuant to §1005.31(g) may, but are not required to, disclose the Bureau's Web site as a page on the Bureau's Web site that provides information for consumers about remittance transfers in the relevant language, if such Web site exists. For example, a provider that is making disclosures in Spanish under §1005.31(g) may, but is not required to, disclose the Bureau's Web site on Spanish-language disclosures as the page on the Bureau's Web site that provides information regarding remittance transfers in Spanish, currently *consumerfinance.gov/envios*. This optional disclosure is shown on Model A–40. The Bureau will publish a list of any other foreign language Web sites that provide information regarding remittance transfers.

5. *Date of transfer on receipt.* Where applicable, §1005.31(b)(2)(vii) requires disclosure of the date of transfer for the remittance transfer that is the subject of a receipt required by §1005.31(b)(2), including a receipt that is provided in accordance with the timing requirements in §1005.36(a). For any subsequent preauthorized remittance transfer subject to §1005.36(d)(2)(ii), the future date of transfer must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers, or where permitted, or disclosed as permitted by §1005.31(a)(3) and (a)(5), in accordance with §1005.36(a)(1)(i).

6. *Transfer date disclosures.* The following example demonstrates how the information required by §1005.31(b)(2)(vii) and §1005.36(d)(1) should be disclosed on receipts: On July 1, a sender instructs the provider to send a preauthorized remittance transfer of US$100 each week to a designated recipient. The sender requests that first transfer in the series be sent on July 15. On the receipt, the remittance transfer provider discloses an estimated exchange rate to the sender pursuant to §1005.32(b)(2). In accordance with §1005.31(b)(2)(vii), the provider should disclose the date of transfer for that particular transaction (*i.e.*, July 15) on the receipt provided when payment is made for the transfer pursuant to the timing requirements in §1005.36(a)(1)(i). The second receipt, which §1005.36(a)(1)(ii) requires to be provided within one business day after the date of the transfer or, for transfers from the sender's account held by the provider, on the next regularly scheduled periodic statement or within 30 days after payment is made if a periodic statement is not provided, is also required to include the date of transfer. If the provider discloses on either receipt the cancellation period applicable to and dates of subsequent preauthorized remittance transfers in accordance with §1005.36(d)(2), the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to any date of transfer on the receipt.

7. *Cancellation disclosure.* Remittance transfer providers that offer remittance transfers scheduled three or more business days before the date of the transfer, as well as remittance transfers scheduled fewer than three business days before the date of the transfer, may meet the cancellation disclosure requirements in §1005.31(b)(2)(iv) by describing the three-business-day and 30-minute cancellation periods on the same disclosure and

using a checkbox or other method to clearly designate the applicable cancellation period. The provider may use a number of methods to indicate which cancellation period applies to the transaction including, but not limited to, a statement to that effect, use of a checkbox, highlighting, circling, and the like. For transfers scheduled three business days before the date of the transfer, the cancellation disclosures provided pursuant to §1005.31(b)(2)(iv) should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt.

31(b)(3) Combined Disclosure

1. *Proof of payment.* If a sender initiating a remittance transfer receives a combined disclosure provided under §1005.31(b)(3) and then completes the transaction, the remittance transfer provider must provide the sender with proof of payment. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form. The combined disclosure must be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer, pursuant to §1005.31(e)(1), and the proof of payment must be provided when payment is made for the remittance transfer. The proof of payment for the transaction may be provided on the same piece of paper as the combined disclosure or on a separate piece of paper. For example, a provider may feed a combined disclosure through a computer printer when payment is made to add the date and time of the transaction, a confirmation code, and an indication that the transfer was paid in full. A provider may also provide this additional information to a sender on a separate piece of paper when payment is made. A remittance transfer provider does not comply with the requirements of §1005.31(b)(3) by providing a combined disclosure with no further indication that payment has been received.

2. *Confirmation of scheduling.* As discussed in comment 31(e)–2, payment is considered to be made when payment is authorized for purposes of various timing requirements in subpart B, including with regard to the timing requirement for provision of the proof of payment described in §1005.31(b)(3)(i). However, where a transfer (whether a one-time remittance transfer or the first in a series of preauthorized remittance transfers) is scheduled before the date of transfer and the provider does not intend to process payment until at or near the date of transfer, the provider may provide a confirmation of scheduling in lieu of the proof of payment required by §1005.31(b)(3)(i). No further proof of payment is required when payment is later processed.

31(c) Specific Format Requirements

31(c)(1) Grouping

1. *Grouping.* Information is grouped together for purposes of subpart B if multiple disclosures are in close proximity to one another and a sender can reasonably calculate the total amount of the transaction and the amount that will be received by the designated recipient. Model Forms A–30(a)–(d) through A–35 in Appendix A illustrate how information may be grouped to comply with the rule, but a remittance transfer provider may group the information in another manner. For example, a provider could provide the grouped information as a horizontal, rather than a vertical, calculation. A provider could also send multiple text messages sequentially to provide the full disclosure.

31(c)(4) Segregation

1. *Segregation.* Disclosures may be segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may appear on the front of a page where other information appears on the back of that page. The disclosures may be set off from other information on a notice by outlining them in a box or series of boxes, with bold print dividing lines or a different color background, or by using other means.

2. *Directly related.* For purposes of §1005.31(c)(4), the following is directly related information:

i. The date and time of the transaction;

ii. The sender's name and contact information;

iii. The location at which the designated recipient may pick up the funds;

iv. The confirmation or other identification code;

v. A company name and logo;

vi. An indication that a disclosure is or is not a receipt or other indicia of proof of payment;

vii. A designated area for signatures or initials;

viii. A statement that funds may be available sooner, as permitted by §1005.31(b)(2)(ii);

ix. Instructions regarding the retrieval of funds, such as the number of days the funds will be available to the recipient before they are returned to the sender; and

x. A statement that the provider makes money from foreign currency exchange.

xi. Disclosure of any non-covered third-party fees and any taxes collected by a person other than the provider pursuant to §1005.31(b)(1)(viii).

31(d) Estimates

1. *Terms.* A remittance transfer provider may provide estimates of the amounts required by §1005.31(b), to the extent permitted by §1005.32. An estimate must be described

using the term ''Estimated'' or a substantially similar term in close proximity to the term or terms described. For example, a remittance transfer provider could describe an estimated disclosure as ''Estimated Transfer Amount,'' ''Other Estimated Fees and Taxes,'' or ''Total to Recipient (Est.).''

31(e) Timing

1. *Request to send a remittance transfer.* Except as provided in §1005.36(a), pre-payment and combined disclosures are required to be provided to the sender when the sender requests the remittance transfer, but prior to payment for the transfer. Whether a consumer has requested a remittance transfer depends on the facts and circumstances. A sender that asks a provider to send a remittance transfer, and provides transaction-specific information to the provider in order to send funds to a designated recipient, has requested a remittance transfer. A sender that has sent an email, fax, mailed letter, or similar written or electronic communication has not requested a remittance transfer if the provider believes that it is impractical for the provider to treat that communication as a request and if the provider treats the communication as an inquiry and subsequently responds to that inquiry by calling the consumer on a telephone and orally gathering or confirming the information needed to process a request for a remittance transfer. *See* comment 31(a)(3)–2. Likewise, a consumer who solely inquires about that day's rates and fees to send to Mexico has not requested the provider to send a remittance transfer. Conversely, a sender who asks the provider at an agent location to send money to a recipient in Mexico and provides the sender and recipient information to the provider has requested a remittance transfer.

2. *When payment is made.* Except as provided in §1005.36(a), a receipt required by §1005.31(b)(2) must be provided to the sender when payment is made for the remittance transfer. For example, a remittance transfer provider could give the sender the disclosures after the sender pays for the remittance transfer, but before the sender leaves the counter. A provider could also give the sender the disclosures immediately before the sender pays for the transaction. For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

3. *Telephone transfer from an account.* A sender may transfer funds from his or her account, as defined by §1005.2(b), that is held by the remittance transfer provider. For example, a financial institution may send an international wire transfer for a sender using funds from the sender's account with the institution. Except as provided in §1005.36(a), if the sender conducts such a transfer entirely by telephone, the institution may provide a receipt required by §1005.31(b)(2) on or with the sender's next regularly scheduled periodic statement for that account or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

4. *Mobile application and text message transactions.* If a transaction is conducted entirely by telephone via mobile application or text message, a receipt required by §1005.31(b)(2) may be mailed or delivered to the sender pursuant to the timing requirements in §1005.31(e)(2). For example, if a sender conducts a transfer entirely by telephone via mobile application, a remittance transfer provider may mail or deliver the disclosures to a sender pursuant to the timing requirements in §1005.31(e)(2).

5. *Statement about cancellation rights.* The statement about the rights of the sender regarding cancellation required by §1005.31(b)(2)(iv) may, but need not, be disclosed pursuant to the timing requirements of §1005.31(e)(2) if a provider discloses this information pursuant to §1005.31(a)(3)(iii) or (a)(5)(iii). The statement about the rights of the sender regarding error resolution required by §1005.31(b)(2)(iv), however, must be disclosed pursuant to the timing requirements of §1005.31(e)(2).

31(f) Accurate When Payment Is Made

1. *No guarantee of disclosures provided before payment.* Except as provided in §1005.36(b), disclosures required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) must be accurate when a sender makes payment for the remittance transfer. A remittance transfer provider is not required to guarantee the terms of the remittance transfer in the disclosures required or permitted by §1005.31(b) for any specific period of time. However, if any of the disclosures required by §1005.31(b) or permitted by §1005.31(b)(1)(viii) are not accurate when a sender makes payment for the remittance transfer, a provider must give new disclosures before accepting payment.

31(g) Foreign Language Disclosures

1. *Number of foreign languages used in written disclosure.* Section 1005.31(g)(1) does not limit the number of languages that may be used on a single document, but such disclosures must be clear and conspicuous pursuant to §1005.31(a)(1). Under §1005.31(g)(1), a remittance transfer provider may, but need not, provide the sender with a written or electronic disclosure that is in English and, if applicable, in each foreign language that the remittance transfer provider principally uses to advertise, solicit, or market either orally, in writing, or electronically, at the office in which a sender conducts a transaction or asserts an error, respectively. Alternatively, the remittance transfer provider

may provide the disclosure solely in English and, if applicable, the foreign language primarily used by the sender with the remittance transfer provider to conduct the transaction or assert an error, provided such language is principally used by the remittance transfer provider to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively. If the remittance transfer provider chooses the alternative method, it may provide disclosures in a single document with both languages or in two separate documents with one document in English and the other document in the applicable foreign language. The following examples illustrate this concept.

i. A remittance transfer provider principally uses only Spanish and Vietnamese to advertise, solicit, or market remittance transfer services at a particular office. The remittance transfer provider may provide all senders with disclosures in English, Spanish, and Vietnamese, regardless of the language the sender uses with the remittance transfer provider to conduct the transaction or assert an error.

ii. Same facts as i. If a sender primarily uses Spanish with the remittance transfer provider to conduct a transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure in English and Spanish, whether in a single document or two separate documents. If the sender primarily uses English with the remittance transfer provider to conduct the transaction or assert an error, the remittance transfer provider may provide a written or electronic disclosure solely in English. If the sender primarily uses a foreign language with the remittance transfer provider to conduct the transaction or assert an error that the remittance transfer provider does not use to advertise, solicit, or market either orally, in writing, or electronically, at the office in which the sender conducts the transaction or asserts the error, respectively, the remittance transfer provider may provide a written or electronic disclosure solely in English.

2. *Primarily used.* The language primarily used by the sender with the remittance transfer provider to conduct the transaction is the primary language used by the sender with the remittance transfer provider to convey the information necessary to complete the transaction. Similarly, the language primarily used by the sender with the remittance transfer provider to assert the error is the primary language used by the sender with the remittance transfer provider to provide the information required by §1005.33(b) to assert an error. For example:

i. A sender initiates a conversation with a remittance transfer provider with a greeting in English and expresses interest in sending a remittance transfer to Mexico in English. If the remittance transfer provider thereafter communicates with the sender in Spanish and the sender conveys the other information needed to complete the transaction, including the designated recipient's information and the amount and funding source of the transfer, in Spanish, then Spanish is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

ii. A sender initiates a conversation with the remittance transfer provider with a greeting in English and states in English that there was a problem with a prior remittance transfer to Vietnam. If the remittance transfer provider thereafter communicates with the sender in Vietnamese and the sender uses Vietnamese to convey the information required by §1005.33(b) to assert an error, then Vietnamese is the language primarily used by the sender with the remittance transfer provider to assert the error.

iii. A sender accesses the Web site of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors. The Web site is offered in English and French. If the sender uses the French version of the Web site to conduct the remittance transfer, then French is the language primarily used by the sender with the remittance transfer provider to conduct the transaction.

31(g)(1) General

1. *Principally used.* i. All relevant facts and circumstances determine whether a foreign language is principally used by the remittance transfer provider to advertise, solicit, or market under §1005.31(g)(1). Generally, whether a foreign language is considered to be principally used by the remittance transfer provider to advertise, solicit, or market is based on:

A. The frequency with which the foreign language is used in advertising, soliciting, or marketing of remittance transfer services at that office;

B. The prominence of the advertising, soliciting, or marketing of remittance transfer services in that foreign language at that office; and

C. The specific foreign language terms used in the advertising soliciting, or marketing of remittance transfer service at that office.

ii. For example, if a remittance transfer provider posts several prominent advertisements in a foreign language for remittance transfer services, including rate and fee information, on a consistent basis in an office, the provider is creating an expectation that a consumer could receive information on remittance transfer services in the foreign language used in the advertisements. The foreign language used in such advertisements would be considered to be principally used at

that office based on the frequency and prominence of the advertising. In contrast, an advertisement for remittance transfer services, including rate and fee information, that is featured prominently at an office and is entirely in English, except for a greeting in a foreign language, does not create an expectation that a consumer could receive information on remittance transfer services in the foreign language used for such greeting. The foreign language used in such an advertisement is not considered to be principally used at that office based on the incidental specific foreign language term used.

2. *Advertise, solicit, or market.* i. Any commercial message in a foreign language, appearing in any medium, that promotes directly or indirectly the availability of remittance transfer services constitutes advertising, soliciting, or marketing in such foreign language for purposes of §1005.31(g)(1). Examples illustrating when a foreign language is used to advertise, solicit, or market include:

A. Messages in a foreign language in a leaflet or promotional flyer at an office.

B. Announcements in a foreign language on a public address system at an office.

C. On-line messages in a foreign language, such as on the internet.

D. Printed material in a foreign language on any exterior or interior sign at an office.

E. Point-of-sale displays in a foreign language at an office.

F. Telephone solicitations in a foreign language.

ii. Examples illustrating use of a foreign language for purposes other than to advertise, solicit, or market include:

A. Communicating in a foreign language (whether by telephone, electronically, or otherwise) about remittance transfer services in response to a consumer-initiated inquiry.

B. Making disclosures in a foreign language that are required by Federal or other applicable law.

3. *Office.* An office includes any physical location, telephone number, or Web site of a remittance transfer provider where a sender may conduct a remittance transfer or assert an error for a remittance transfer. The location need not exclusively offer remittance transfer services. For example, if an agent of a remittance transfer provider is located in a grocery store, the grocery store is considered an office for purposes of §1005.31(g)(1). Because a consumer must be located in a State in order to be considered a ''sender'' under §1005.30(g), a Web site is not an office for purposes of §1005.31(g)(1), even if the Web site can be accessed by consumers that are located in the United States, unless a sender may conduct a remittance transfer on the Web site or may assert an error for a remittance transfer on the Web site.

4. *At the office.* Any advertisement, solicitation, or marketing is considered to be made at the office in which a sender conducts a transaction or asserts an error if such advertisement, solicitation, or marketing is posted, provided, or made: at a physical office of a remittance transfer provider; on a Web site of a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; during a telephone call with a remittance transfer provider that may be used by senders to conduct remittance transfers or assert errors; or via mobile application or text message by a remittance transfer provider if the mobile application or text message may be used by senders to conduct remittance transfers or assert errors. An advertisement, solicitation, or marketing that is considered to be made at an office does not include general advertisements, solicitations, or marketing that are not intended to be made at a particular office. For example, if an advertisement for remittance transfers in Chinese appears in a Chinese newspaper that is being distributed at a grocery store in which the agent of a remittance transfer provider is located, such advertisement would not be considered to be made at that office. For disclosures provided pursuant to §1005.31, the relevant office is the office in which the sender conducts the transaction. For disclosures provided pursuant to §1005.33 for error resolution purposes, the relevant office is the office in which the sender first asserts the error, not the office where the transaction was conducted.

SECTION 1005.32—ESTIMATES

1. *Disclosures where estimates can be used.* Sections 1005.32(a) and (b)(1), (b)(4), and (b)(5) permit estimates to be used in certain circumstances for disclosures described in §§1005.31(b)(1) through (3) and 1005.36(a)(1) and (2). To the extent permitted in §1005.32(a) and (b)(1), (b)(4), and (b)(5), estimates may be used in the pre-payment disclosure described in §1005.31(b)(1), the receipt disclosure described in §1005.31(b)(2), the combined disclosure described in §1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in §1005.36(a)(1) and (2). Section 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in §1005.36(a)(1)(i) and (a)(2)(i).

32(a) Temporary Exception for Insured Institutions

32(a)(1) General

1. *Control.* For purposes of this section, an insured institution cannot determine exact amounts ''for reasons beyond its control'' when a person other than the insured institution or with which the insured institution has no correspondent relationship sets the exchange rate required to be disclosed under §1005.31(b)(1)(iv) or imposes a covered third-party fee required to be disclosed under §1005.31(b)(1)(vi). For example, if an insured institution has a correspondent relationship with an intermediary financial institution in another country and that intermediary institution sets the exchange rate or imposes a fee for remittance transfers sent from the insured institution to the intermediary institution, then the insured institution must determine exact amounts for the disclosures required under §1005.31(b)(1)(iv) or (vi), because the determination of those amounts are not beyond the insured institution's control.

2. *Examples of scenarios that qualify for the temporary exception.* The following examples illustrate when an insured institution cannot determine an exact amount ''for reasons beyond its control'' and thus would qualify for the temporary exception.

i. *Exchange rate.* An insured institution cannot determine the exact exchange rate to disclose under §1005.31(b)(1)(iv) for an international wire transfer if the insured institution does not set the exchange rate, and the rate is set when the funds are deposited into the recipient's account by the designated recipient's institution with which the insured institution does not have a correspondent relationship. The insured institution will not know the exchange rate that the recipient institution will apply when the funds are deposited into the recipient's account.

ii. *Covered third-party fees.* An insured institution cannot determine the exact covered third-party fees to disclose under §1005.31(b)(1)(vi) if an intermediary institution with which the insured institution does not have a correspondent relationship, imposes a transfer or conversion fee.

3. *Examples of scenarios that do not qualify for the temporary exception.* The following examples illustrate when an insured institution can determine exact amounts and thus would not qualify for the temporary exception.

i. *Exchange rate.* An insured institution can determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) if it converts the funds into the local currency to be received by the designated recipient using an exchange rate that it sets. The determination of the exchange rate is in the insured institution's control even if there is no correspondent relationship with an intermediary institution in the transmittal route or the designated recipient's institution.

ii. *Covered third-party fees.* An insured institution can determine the exact covered third-party fees required to be disclosed under §1005.31(b)(1)(vi) if it has agreed upon the specific fees with an intermediary correspondent institution, and this correspondent institution is the only institution in the transmittal route to the designated recipient's institution.

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1. *Laws of the recipient country.* The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is:

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2. *Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.*

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. *Method by which transactions are made in the recipient country.* The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer.

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the §1005.32(a) temporary exception or the exception set forth in §1005.32(b)(4).

iii. A remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under §1005.32(b)(1)(ii), a remittance transfer provider may provide estimates of the amounts to be disclosed under §1005.31(b)(1)(iv) through (vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under §1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or the method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. *Reliance on Bureau list of countries.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under §1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau's list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau's list legally permits the provider to determine exact disclosure amounts.

7. *Change in laws of recipient country.*

i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under §1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

2. *Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.*

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. *Method by which transactions are made in the recipient country.* The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer.

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the §1005.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the §1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under §1005.32(b)(1)(ii), a remittance transfer provider may provide estimates of the amounts to be disclosed under §1005.31(b)(1)(iv) through (b)(1)(vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under §1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. *Reliance on Bureau list of countries.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under §1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau's list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau's list legally permits the provider to determine exact disclosure amounts.

7. *Change in laws of recipient country.* i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under §1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

32(b)(2) Permanent Exceptions for Transfers Scheduled Before the Date of Transfer

1. *Fixed amount of foreign currency.* The following is an example of when and how a remittance transfer provider may disclose estimates for remittance transfers scheduled five or more business days before the date of transfer where the provider agrees to the sender's request to fix the amount to be transferred in a currency in which the transfer will be received and not the currency in which it was funded. If on February 1, a sender schedules a 1000 Euro wire transfer to be sent from the sender's bank account denominated in U.S. dollars to a designated recipient on February 15, §1005.32(b)(2) allows the provider to estimate the amount that will be transferred to the designated recipient (*i.e.*, the amount described in §1005.31(b)(1)(i)), any fees imposed or taxes collected on the remittance transfer by the provider (if based on the amount transferred) (*i.e.*, the amount described in §1005.31(b)(1)(ii)), and the total amount of the transaction (*i.e.*, the amount described in §1005.31(b)(1)(iii)). The provider may also estimate any covered third-party fees if the exchange rate is also estimated and the estimated exchange rate affects the amount of fees (as allowed by §1005.32(b)(2)(ii)).

2. *Relationship to §1005.10(d).* To the extent §1005.10(d) requires, for an electronic fund transfer that is also a remittance transfer, notice when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, that provision applies even if subpart B would not otherwise require notice before the date of transfer. However, insofar as §1005.10(d) does not specify the form of such notice, a notice sent pursuant to §1005.36(a)(2)(i) will satisfy §1005.10(d) as long as the timing requirements of §1005.10(d) are satisfied.

32(b)(3) Permanent Exception for Optional Disclosure of Non-Covered Third-Party Fees and Taxes Collected on the Remittance Transfer by a Person Other Than the Provider

1. *Reasonable sources of information.* Pursuant to §1005.32(b)(3) a remittance transfer provider may estimate applicable non-covered third-party fees and taxes collected on the remittance transfer by a person other than the provider using reasonable sources of information. Reasonable sources of information may include, for example: information obtained from recent transfers to the same institution or the same country or region; fee schedules from the recipient institution; fee schedules from the recipient institution's competitors; surveys of recipient institution

fees in the same country or region as the recipient institution; information provided or surveys of recipient institutions' regulators or taxing authorities; commercially or publicly available databases, services or sources; and information or resources developed by international nongovernmental organizations or intergovernmental organizations.

32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

1. *Determining the exact exchange rate.* For purposes of §1005.32(b)(4)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact exchange rate required to be disclosed under §1005.31(b)(1)(iv) for a remittance transfer to a particular country where the designated recipient of the transfer will receive funds in the country's local currency if a person other than the insured institution sets the exchange rate for that transfer, except where that person has a correspondent relationship with the insured institution, that person is a service provider for the insured institution, or that person acts as an agent of the insured institution.

i. *Example where an insured institution cannot determine the exact exchange rate.* The following example illustrates when an insured institution cannot determine an exact exchange rate under §1005.32(b)(4)(i)(B) for a remittance transfer:

A. An insured institution or its service provider does not set the exchange rate required to be disclosed under §1005.31(b)(1)(iv), and the rate is set when the funds are deposited into the recipient's account by the designated recipient's institution that does not have a correspondent relationship with, and does not act as an agent of, the insured institution.

ii. *Examples where an insured institution can determine the exact exchange rate.* The following examples illustrate when an insured institution can determine an exact exchange rate under §1005.32(b)(4)(i)(B) for a remittance transfer, and thus the insured institution may not use the exception in §1005.32(b)(4) to estimate the disclosures required under §1005.31(b)(1)(iv) through (vii) for the remittance transfer:

A. An insured institution has a correspondent relationship with an intermediary financial institution (or the intermediary financial institution acts as an agent of the insured institution) and that intermediary financial institution sets the exchange rate required to be disclosed under §1005.31(b)(1)(iv) for a remittance transfer.

B. An insured institution or its service provider converts the funds into the local currency to be received by the designated recipient for a remittance transfer using an exchange rate that the insured institution or its service provider sets. The insured institution can determine the exact exchange rate for purposes of §1005.32(b)(4)(i)(B) for the remittance transfer even if the insured institution does not have a correspondent relationship with an intermediary financial institution in the transmittal route or the designated recipient's institution, and an intermediary financial institution in the transmittal route or the designed recipient's institution does not act as an agent of the insured institution.

2. *Threshold.* For purposes of determining whether an insured institution made 1,000 or fewer remittance transfers in the prior calendar year to a particular country pursuant to §1005.32(b)(4)(i)(C):

i. The number of remittance transfers provided includes transfers in the prior calendar year to that country when the designated recipients of those transfers received funds in the country's local currency regardless of whether the exchange rate was estimated for those transfers. For example, an insured institution exceeds the 1,000-transfer threshold in the prior calendar year if the insured institution provided 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency when the exchange rate was estimated for those transfers and also sends 400 remittance transfers to the same country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and the exchange rate for those transfers was not estimated.

ii. The number of remittance transfers does not include remittance transfers to a country in the prior calendar year when the designated recipients of those transfers did not receive the funds in the country's local currency. For example, an insured institution does not exceed the 1,000-transfer threshold in the prior calendar year if the insured institution provides 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same country in the prior calendar year when the designated recipients of those transfers did not receive funds in the country's local currency.

3. *Transition period.* If an insured institution in the prior calendar year did not exceed the 1,000-transfer threshold to a particular country pursuant to §1005.32(b)(4)(i)(C), but does exceed the 1,000-transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 1,000-transfer threshold to begin providing exact exchange rates in disclosures (assuming it cannot rely on another exception in §1005.32 to estimate the exchange rate). The reasonable amount of time must not exceed the later of six months after exceeding the 1,000-transfer threshold in the

current calendar year or January 1 of the next year. For example, assume an insured institution did not exceed the 1,000-transfer threshold to a particular country pursuant to §1005.32(b)(4)(i)(C) in 2020, but does exceed the 1,000-transfer threshold on December 1, 2021. The insured institution would have a reasonable amount of time after December 1, 2021 to begin providing exact exchange rates in disclosures (assuming it cannot rely on another exception in §1005.32 to estimate the exchange rate). In this case, the reasonable amount of time must not exceed June 1, 2022 (which is six months after the insured institution exceeds the 1,000-transfer threshold in the previous year).

32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

1. *Insured institution cannot determine the exact covered third-party fees.* For purposes of §1005.32(b)(5)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact covered third-party fees required to be disclosed under §1005.31(b)(1)(vi) for a remittance transfer to a designated recipient's institution when all of the following conditions are met:

i. The insured institution does not have a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution does not act as an agent of the insured institution;

iii. The insured institution does not have an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer (*e.g.*, an agreement whereby the designated recipient's institution agrees to charge back any covered third-party fees to the insured institution rather than impose the fees on the remittance transfer); and

iv. The insured institution does not know at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

2. *Insured institution can determine the exact covered third-party fees.* For purposes of §1005.32(b)(5)(i)(B), an insured institution can determine, at the time it must provide the applicable disclosures, exact covered third-party fees, and thus the insured institution may not use the exception in §1005.32(b)(5) to estimate the disclosures required under §1005.31(b)(1)(vi) or (vii) for the transfer, if any of the following conditions are met:

i. An insured institution has a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution acts as an agent of the insured institution;

iii. An insured institution has an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer; or

iv. An insured institution knows at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

3. *Threshold.* For purposes of determining whether an insured institution made 500 or fewer remittance transfers in the prior calendar year to a particular designated recipient's institution pursuant to §1005.32(b)(5)(i)(C):

i. The number of remittance transfers provided includes remittance transfers in the prior calendar year to that designated recipient's institution regardless of whether the covered third-party fees were estimated for those transfers. For example, an insured institution exceeds the 500-transfer threshold in the prior calendar year if an insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the covered third-party fees were estimated for those transfers and also sends 400 remittance transfers to the designated recipient's institution in the prior calendar year and the covered third-party fees for those transfers were not estimated.

ii. The number of remittance transfers includes remittance transfers provided to the designated recipient's institution in the prior calendar year regardless of whether the designated recipients received the funds in the country's local currency or in another currency. For example, an insured institution exceeds the 500-transfer threshold in the prior calendar year if the insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same designated recipient's institution in the prior calendar year when the designated recipients of those transfers did not receive funds in the country's local currency.

iii. The number of remittance transfers includes remittance transfers provided to the designated recipient's institution and any of its branches in the country to which the particular transfer described in §1005.32(b)(5) is being sent. For example, if the particular remittance transfer described in §1005.32(b)(5) is being sent to the designated recipient's institution Bank XYZ in Nigeria, the number

of remittance transfers for purposes of the 500-transfer threshold would include remittances transfers in the previous calendar year that were sent to Bank XYZ, or to its branches, in Nigeria. The 500-transfer threshold would not include remittance transfers that were sent to branches of Bank XYZ that were located in any country other than Nigeria.

4. *United States Federal statute or regulation.* An insured institution can still use §1005.32(b)(5) to provide estimates of covered third-party fees for a remittance transfer sent to a particular designated recipient's institution even if the insured institution sent more than 500 transfers to the designated recipient's institution in the prior calendar year if a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees required to be disclosed under §1005.31(b)(1)(vi) for the remittance transfer and the insured institution meets the other conditions set forth in §1005.32(b)(5). A United States Federal statute or regulation specifically prohibits the insured institution from being able to determine the exact covered third-party fees for the remittance transfer if the United States Federal statute or regulation:

i. Prohibits the insured institution from disclosing exact covered third-party fees in disclosures for transfers to a designated recipient's institution; or

ii. Makes it infeasible for the insured institution to form a relationship with the designated recipient's institution and that relationship is necessary for the insured institution to be able to determine, at the time it must provide the applicable disclosures, exact covered third-party fees.

5. *Transition period.* If an insured institution in the prior calendar year did not exceed the 500-transfer threshold to a particular designated recipient's institution pursuant to §1005.32(b)(5)(i)(C), but does exceed the 500-transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 500-transfer threshold to begin providing exact covered third-party fees in disclosures (assuming that a United States Federal statute or regulation does not prohibit the insured institution from being able to determine the exact covered third-party fees, or the insured institution cannot rely on another exception in §1005.32 to estimate covered third-party fees). The reasonable amount of time must not exceed the later of six months after exceeding the 500-transfer threshold in the current calendar year or January 1 of the next year. For example, assume an insured institution did not exceed the 500-transfer threshold to a particular designated recipient's institution pursuant to §1005.32(b)(5)(i)(C) in 2020, but does exceed the 500-transfer threshold on December 1, 2021. The insured institution would have a reasonable amount of time after December 1, 2021 to begin providing exact covered third-party fees in disclosures (assuming that a United States Federal statute or regulation does not prohibit the insured institution from being able to determine the exact covered third-party fees, or the insured institution cannot rely on another exception in §1005.32 to estimate covered third-party fees). In this case, the reasonable amount of time must not exceed June 1, 2022 (which is six months after the insured institution exceeds the 500-transfer threshold in the previous year).

32(c) Bases for Estimates

32(c)(1) Exchange Rate

1. Most recent exchange rate for qualifying international ACH transfers. If the exchange rate for a remittance transfer sent via international ACH that qualifies for the §1005.32(b)(1)(i)(B) exception is set the following business day, the most recent exchange rate available for a transfer is the exchange rate set for the day that the disclosure is provided, *i.e.,* the current business day's exchange rate.

2. *Publicly available.* Examples of publicly available sources of information containing the most recent wholesale exchange rate for a currency include U.S. news services, such as Bloomberg, the Wall Street Journal, and the New York Times; a recipient country's national news services, and a recipient country's central bank or other government agency.

3. *Spread.* An estimate for disclosing the exchange rate based on the most recent publicly available wholesale exchange rate must also reflect any spread the remittance transfer provider typically applies to the wholesale exchange rate for remittance transfers for a particular currency.

4. *Most recent.* For the purposes of §1005.32(c)(1)(ii) and (iii), if the exchange rate with respect to a particular currency is published or provided multiple times throughout the day because the exchange rate fluctuates throughout the day, a remittance transfer provider may use any exchange rate available on that day to determine the most recent exchange rate.

32(c)(3) Covered Third-Party Fees

1. *Potential transmittal routes.* A remittance transfer from the sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under §1005.31(b)(1)(vi) pursuant to the §1005.32(a) temporary exception or the exception under §1005.32(b)(5), an insured institution may rely upon the representations

of the designated recipient's institution and the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1. *In general.* When providing an estimate pursuant to §1005.32(b)(2), §1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize an exception permitting the provision of estimates in §1005.32(a) or (b)(1), or (4), the provider may provide estimates based on a methodology permitted under §1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance transfer provider could not send any remittance transfer until the next day (for reasons such as the provider's deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer requested that day that could not be sent until the following day.

SECTION 1005.33—PROCEDURES FOR RESOLVING ERRORS

33(a) Definition of Error

1. *Incorrect amount of currency paid by sender.* Section 1005.33(a)(1)(i) covers circumstances in which a sender pays an amount that differs from the total amount of the transaction, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided under §1005.31(b)(2) or (3). Such error may be asserted by a sender regardless of the form or method of payment provided, including when a debit, credit, or prepaid card is used to fund the transfer and an excess amount is paid. For example, if a remittance transfer provider incorrectly charged a sender's credit card account for US$150, and US$120 was sent, plus a transfer fee of US$10, the sender could assert an error with the remittance transfer provider for the incorrect charge under §1005.33(a)(1)(i).

2. *Incorrect amount of currency received—coverage.* Section 1005.33(a)(1)(iii) covers circumstances in which the designated recipient receives an amount of currency that differs from the amount of currency identified on the disclosures provided to the sender, except where the disclosure stated an estimate of the amount of currency to be received in accordance with §1005.32 and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amounts, or the failure was caused by circumstances outside the remittance transfer provider's control. A designated recipient may receive an amount of currency that differs from the amount of currency disclosed, for example, if an exchange rate other than the disclosed rate is applied to the remittance transfer, or if the provider fails to account for fees or taxes that may be imposed by the provider or a third party before the transfer is picked up by the designated recipient or deposited into the recipient's account in the foreign country. However, if the provider rounds the exchange rate used to calculate the amount received consistent with §1005.31(b)(1)(iv) and comment 31(b)(1)(iv)–2 for the disclosed rate, there is no error if the designated recipient receives an amount of currency that results from applying the exchange rate used, prior to any rounding of the exchange rate, to calculate fees, taxes, or the amount received rather than the disclosed rate. Section 1005.33(a)(1)(iii) also covers circumstances in which the remittance transfer provider transmits an amount that differs from the amount requested by the sender.

3. *Incorrect amount of currency received—examples.* For purposes of the following examples illustrating the error for an incorrect amount of currency received under §1005.33(a)(1)(iii), assume that none of the circumstances permitting an estimate under §1005.32 apply (unless otherwise stated).

i. A consumer requests to send funds to a relative in Mexico to be received in local currency. Upon receiving the sender's payment, the remittance transfer provider provides a receipt indicating that the amount of currency that will be received by the designated recipient will be 1180 Mexican pesos, after fees and taxes are applied. However, when the relative picks up the transfer in Mexico a day later, he only receives 1150 Mexican pesos because the exchange rate applied by the recipient agent in Mexico was lower than the exchange rate used by the provider, prior to any rounding of the exchange rate, to disclose the amount of currency to be received by the designated recipient on the receipt. Because the designated recipient has received less than the amount of currency disclosed on the receipt, an error has occurred.

ii. A consumer requests to send funds to a relative in Colombia to be received in local currency. The remittance transfer provider provides the sender a receipt stating an

amount of currency that will be received by the designated recipient, which does not reflect the additional foreign taxes that will be collected in Colombia on the transfer but does include the statement required by §1005.31(b)(1)(viii). If the designated recipient will receive less than the amount of currency disclosed on the receipt due solely to the additional foreign taxes that the provider was not required to disclose, no error has occurred.

iii. Same facts as in ii., except that the receipt provided by the remittance transfer provider does not reflect additional fees that are imposed by the receiving agent in Colombia on the transfer. Because the designated recipient will receive less than the amount of currency disclosed in the receipt due to the additional covered third-party fees, an error has occurred.

iv. A consumer requests to send US$250 to a relative in India to a U.S. dollar-denominated account held by the relative at an Indian bank. Instead of the US$250 disclosed on the receipt as the amount to be sent, the remittance transfer provider sends US$200, resulting in a smaller deposit to the designated recipient's account than was disclosed as the amount to be received after fees and taxes. Because the designated recipient received less than the amount of currency that was disclosed, an error has occurred.

v. A consumer requests to send US$100 to a relative in a foreign country to be received in local currency. The remittance transfer provider provides the sender a receipt that discloses an estimated exchange rate, other taxes, and amount of currency that will be received due to the law in the foreign country requiring that the exchange rate be set by the foreign country's central bank. When the relative picks up the remittance transfer, the relative receives less currency than the estimated amount disclosed to the sender on the receipt due to application of the actual exchange rate, fees, and taxes, rather than any estimated amounts. Because §1005.32(b) permits the remittance transfer provider to disclose an estimate of the amount of currency to be received, no error has occurred unless the estimate was not based on an approach set forth under §1005.32(c).

vi. A sender requests that his bank send US$120 to a designated recipient's account at an institution in a foreign country. The foreign institution is not an agent of the provider. Only US$100 is deposited into the designated recipient's account because the recipient institution imposed a US$20 incoming wire fee and deducted the fee from the amount transferred. Because this fee is a non-covered third-party fee that the provider is not required to disclose under §1005.31(b)(1)(vi), no error has occurred if the provider provided the disclosure required by §1005.31(b)(1)(viii).

4. *Incorrect amount of currency received—extraordinary circumstances.* Under §1005.33(a)(1)(iii)(B), a remittance transfer provider's failure to make available to a designated recipient the amount of currency disclosed pursuant to §1005.31(b)(1)(vii) and stated in the disclosure provided pursuant to §1005.31(b)(2) or (3) for the remittance transfer is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under §1005.33(a)(1)(iii)(B) include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of some of the funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls or foreign taxes unknown at the time the receipt or combined disclosure is provided under §1005.31(b)(2) or (3).

5. *Failure to make funds available by disclosed date of availability—coverage.* Section 1005.33(a)(1)(iv) generally covers disputes about the failure to make funds available in connection with a remittance transfer to a designated recipient by the disclosed date of availability. If only a portion of the funds were made available by the disclosed date of availability, then §1005.33(a)(1)(iv) does not apply, but §1005.33(a)(1)(iii) may apply instead. The following are examples of errors for failure to make funds available by the disclosed date of availability (assuming that none of the exceptions in §1005.33(a)(1)(iv)(A), (B), or (C) apply).

i. Late or non-delivery of a remittance transfer;

ii. Delivery of funds to the wrong account;

iii. The fraudulent pick-up of a remittance transfer in a foreign country by a person other than the designated recipient;

iv. The recipient agent or institution's retention of the remittance transfer, instead of making the funds available to the designated recipient.

6. *Failure to make funds available by disclosed date of availability—extraordinary circumstances.* Under §1005.33(a)(1)(iv)(A), a remittance transfer provider's failure to deliver or transmit a remittance transfer by the disclosed date of availability is not an error if such failure was caused by extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated. Examples of extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated under §1005.33(a)(1)(iv)(A) include circumstances such as war or civil unrest, natural disaster, garnishment or attachment of

funds after the transfer is sent, and government actions or restrictions that could not have been reasonably anticipated by the remittance transfer provider, such as the imposition of foreign currency controls.

7. *Failure to make funds available by disclosed date of availability—fraud and other screening procedures.* Under §1005.33(a)(1)(iv)(B), a remittance transfer provider's failure to deliver funds by the disclosed date of availability is not an error if such delay is related to the provider's or any third party's investigation necessary to address potentially suspicious, blocked or prohibited activity, and the provider did not and could not have reasonably foreseen the delay so as to enable it to timely disclose an accurate date of availability when providing the sender with a receipt or combined disclosure. For example, no error occurs if delivery of funds is delayed because, after the receipt is provided, the provider's fraud screening system flags a remittance transfer because the designated recipient has a name similar to the name of a blocked person under a sanctions program and further investigation is needed to determine that the designated recipient is not actually a blocked person. Similarly, no error occurs where, after disclosing a date of availability to the sender, a remittance transfer provider receives specific law enforcement information indicating that the characteristics of a remittance transfer match a pattern of fraudulent activity, and as a result, the provider deems it necessary to delay delivery of the funds to allow for further investigation. However, if a delay could have been reasonably foreseen, the exception in §1005.33(a)(1)(iv)(B) would not apply. For example, if a provider knows in time to make a disclosure that all remittance transfers to a certain geographic area must undergo screening procedures that routinely delay such transfers by two days, the provider's failure to include the additional two days in its disclosure of the date of availability constitutes an error if delivery of the funds is indeed delayed beyond the disclosed date of availability.

8. *Sender account number or recipient institution identifier error.* The exception in §1005.33(a)(1)(iv)(D) applies where a sender gives the remittance transfer provider an incorrect account number or recipient institution identifier and all five conditions in §1005.33(h) are satisfied. The exception does not apply, however, where the failure to make funds available is the result of a mistake by a provider or a third party or due to incorrect or insufficient information provided by the sender other than an incorrect account number or recipient institution identifier, such as an incorrect name of the recipient institution.

9. *Account number or recipient institution identifier.* For purposes of the exception in §1005.33(a)(1)(iv)(D), the terms account number and recipient institution identifier refer to alphanumerical account or institution identifiers other than names or addresses, such as account numbers, routing numbers, Canadian transit numbers, International Bank Account Numbers (IBANs), Business Identifier Codes (BICs) and other similar account or institution identifiers used to route a transaction. In addition and for purposes of this exception, the term designated recipient's account in §1005.33(a)(1)(iv)(D) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient's account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

10. *Recipient-requested changes.* Under §1005.33(a)(2)(iii), a change requested by the designated recipient that the remittance transfer provider or others involved in the remittance transfer decide to accommodate is not considered an error. The exception under §1005.33(a)(2)(iii) is available only if the change is made solely because the designated recipient requested the change. For example, if a sender requests to send US$100 to a designated recipient at a designated location, but the designated recipient requests the amount in a different currency (either at the sender-designated location or another location requested by the recipient) and the remittance transfer provider accommodates the recipient's request, the change does not constitute an error.

11. *Change from disclosure made in reliance on sender information.* Under the commentary accompanying §1005.31, the remittance transfer provider may rely on the sender's representations in making certain disclosures. *See, e.g.,* comments 31(b)(1)(iv)–1 and 31(b)(1)(vi)–1. For example, suppose a sender requests U.S. dollars to be deposited into an account of the designated recipient and represents that the account is U.S. dollar-denominated. If the designated recipient's account is actually denominated in local currency and the recipient account-holding institution must convert the remittance transfer into local currency in order to deposit the funds and complete the transfer, the change in currency does not constitute an error pursuant to §1005.33(a)(2)(iv).

33(b) Notice of Error From Sender

1. *Person asserting or discovering error.* The error resolution procedures of this section apply only when a notice of error is received from the sender, and not when a notice of error is received from the designated recipient or when the remittance transfer provider itself discovers and corrects an error.

2. *Content of error notice.* The notice of error is effective so long as the remittance transfer provider is able to identify the elements in §1005.33(b)(1)(ii). For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer, or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the sender (and contact information), designated recipient, and the transfer in question. For an account-based remittance transfer, the notice of error is effective even if it does not contain the sender's account number, so long as the remittance transfer provider is able to identify the account and the transfer in question.

3. *Address on notice of error.* A remittance transfer provider may request, or a sender may provide, the sender's or designated recipient's email address, as applicable, instead of a physical address, on a notice of error.

4. *Effect of late notice.* A remittance transfer provider is not required to comply with the requirements of this section for any notice of error from a sender that is received by the provider more than 180 days from the disclosed date of availability of the remittance transfer to which the notice of error applies or, if applicable, more than 60 days after a provider sent documentation, additional information, or clarification requested by the sender, provided such date is later than 180 days after the disclosed date of availability.

5. *Notice of error provided to agent.* A notice of error provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under §1005.33(b)(1)(i) when received by the agent.

6. *Consumer notice of error resolution rights.* Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the consumer's error resolution rights on the receipt or combined notice provided under §1005.31(b)(2) or (3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the sender's error resolution rights, using language set forth in Appendix A of this part (Model Form A–36) or substantially similar language.

33(c) Time Limits and Extent of Investigation

1. *Notice to sender of finding of error.* If the remittance transfer provider determines during its investigation that an error occurred as described by the sender, the remittance provider may inform the sender of its findings either orally or in writing. However, if the provider determines that no error or a different error occurred, the provider must provide a written explanation of its findings under §1005.33(d)(1).

2. *Incorrect or insufficient information provided for transfer.* The remedy in §1005.33(c)(2)(iii) applies if a remittance transfer provider's failure to make funds in connection with a remittance transfer available to a designated recipient by the disclosed date of availability occurred because the sender provided incorrect or insufficient information in connection with the transfer, such as by erroneously identifying the designated recipient's address or by providing insufficient information such that the entity distributing the funds cannot identify the correct designated recipient. A sender is not considered to have provided incorrect or insufficient information for purposes of §1005.33(c)(2)(iii) if the provider discloses the incorrect location where the transfer may be picked up, gives the wrong confirmation number/code for the transfer, or otherwise miscommunicates information necessary for the designated recipient to pick-up the transfer. The remedies in §1005.33(c)(2)(iii) do not apply if the sender provided an incorrect account number or recipient institution identifier and the provider has met the requirements of §1005.33(h) because under §1005.33(a)(1)(iv)(D) no error would have occurred. *See* §1005.33(a)(1)(iv)(D) and comment 33(a)–7.

3. *Designation of requested remedy.* Under §1005.33(c)(2)(ii), the sender may generally choose to obtain a refund of funds that were not properly transmitted or delivered to the designated recipient or, request redelivery of the amount appropriate to correct the error at no additional cost unless the error is determined to have occurred because the sender provided incorrect or insufficient information. Upon receiving the sender's request, the remittance transfer provider shall correct the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided under §1005.31(b)(2) or (3), if the sender requests delivery of the amount appropriate to correct the error and the error did not occur because the sender provided incorrect or insufficient information. The provider may also request that the sender indicate the preferred remedy at the time the sender provides notice of the error although if provider does so, it should indicate that the if the sender chooses a resend at the time, the remedy may be unavailable if the error occurred because the sender provided incorrect or insufficient information. However, if the sender does not indicate the desired remedy at the time of providing notice of error, the remittance transfer provider must notify the sender of any available remedies in the report provided under §1005.33(c)(1) or (d)(1) if the provider determines an error occurred.

4. *Default remedy.* Unless the sender provided incorrect or insufficient information and §1005.33(c)(2)(iii) applies, the remittance

transfer provider may set a default remedy that the provider will provide if the sender does not designate a remedy within a reasonable time after the sender receives the report provided under §1005.33(c)(1). A provider that permits a sender to designate a remedy within 10 days after the provider has sent the report provided under §1005.33(c)(1) or (d)(1) before imposing the default remedy is deemed to have provided the sender with a reasonable time to designate a remedy. In the case a default remedy is provided, the provider must correct the error within one business day, or as soon as reasonably practicable, after the reasonable time for the sender to designate the remedy has passed, consistent with §1005.33(c)(2).

5. *Amount appropriate to resolve the error.* For purposes of the remedies set forth in §1005.33(c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii)(A)(*1*), and (c)(2)(i)(A)(*2*) the amount appropriate to resolve the error is the specific amount of transferred funds that should have been received if the remittance transfer had been effected without error. The amount appropriate to resolve the error does not include consequential damages. For example, when the amount that was disclosed pursuant to §1005.31(b)(1)(vii) was received by the designated recipient before the provider must determine the appropriate remedy for an error under §1005.33(a)(1)(iv), no additional amounts are required to resolve the error after the remittance transfer provider refunds the appropriate fees and taxes paid by the sender pursuant to §1005.33(c)(2)(ii)(B) or (c)(2)(iii), as applicable.

6. *Form of refund.* For a refund provided under §1005.33(c)(2)(i)(A), (c)(2)(ii)(A)(*1*), (c)(2)(ii)(B), or (c)(2)(iii), a remittance transfer provider may generally, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the appropriate amount. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

7. *Remedies for incorrect amount paid.* If an error under §1005.33(a)(1)(i) occurred, the sender may request the remittance transfer provider refund the amount necessary to resolve the error under §1005.33(c)(2)(i)(A) or that the remittance transfer provider make the amount necessary to resolve the error available to the designated recipient at no additional cost under §1005.33(c)(2)(i)(B).

8. *Correction of an error if funds not available by disclosed date.* If the remittance transfer provider determines an error of failure to make funds available by the disclosed date occurred under §1005.33(a)(1)(iv), it must correct the error in accordance with §1005.33(c)(2)(ii)(A), as applicable, and refund any fees imposed for the transfer (unless the sender provided incorrect or insufficient information to the remittance transfer provider in connection with the remittance transfer), whether the fee was imposed by the provider or a third party involved in sending the transfer, such as an intermediary bank involved in sending a wire transfer or the institution from which the funds are picked up in accordance with §1005.33(c)(2)(ii)(B).

9. *Charges for error resolution.* If an error occurred, whether as alleged or in a different amount or manner, the remittance transfer provider may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation).

10. *Correction without investigation.* A remittance transfer provider may correct an error, without investigation, in the amount or manner alleged by the sender, or otherwise determined, to be in error, but must comply with all other applicable requirements of §1005.33.

11. *Procedure for sending a new remittance transfer after a sender provides incorrect or insufficient information.* Section 1005.33(c)(2)(iii) generally requires a remittance transfer provider to refund the transfer amount to the sender even if the sender's previously designated remedy was a resend or if the provider's default remedy in other circumstances is a resend. However, if before the refund is processed, the sender receives notice pursuant to §1005.33(c)(1) or (d)(1) that an error occurred because the sender provided incorrect or insufficient information and then requests that the provider send the remittance transfer again, and the provider agrees to that request, §1005.33(c)(2)(iii) requires that the request be treated as a new remittance transfer and the provider must provide new disclosures in accordance with §1005.31 and all other applicable provisions of subpart B. However, §1005.33(c)(2)(iii) does not obligate the provider to agree to a sender's request to send a new remittance transfer.

12. *Determining amount of refund.* Section 1005.33(c)(2)(iii) permits the provider to deduct from the amount refunded, or applied towards a new transfer, any fees or taxes actually deducted from the transfer amount by a person other than the provider as part of the first unsuccessful remittance transfer attempt or that were deducted in the course of returning the transfer amount to the provider following a failed delivery. However, a provider may not deduct those fees and taxes that will ultimately be refunded to the provider. When the provider deducts fees or taxes from the amount refunded pursuant to

§1005.33(c)(2)(iii), the provider must inform the sender of the deduction as part of the notice required by either §1005.33(c)(1) or (d)(1) and the reason for the deduction. The following examples illustrate these concepts.

i. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in local currency, for which the provider charges a transfer fee of US$10 (and thus the sender pays the provider $110). The provider's correspondent imposes a fee of US$15 that it deducts from the amount of the transfer. The sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer as requested. Once the provider determines that an error occurred because the sender provided incorrect or insufficient information, the provider must provide the report required by §1005.33(c)(1) or (d)(1) and inform the sender, pursuant to §1005.33(c)(1) or (d)(1), that it will refund US$95 to the sender within three business days, unless the sender chooses to apply the US$95 towards a new remittance transfer and the provider agrees. Of the $95 that is refunded to the sender, $10 reflects the refund of the provider's transfer fee, and $85 reflects the refund of the amount of funds provided by the sender in connection with the transfer which was not properly transmitted. The provider is not required to refund the US$15 fee imposed by the correspondent (unless the $15 will be refunded to the provider by the correspondent).

ii. A sender instructs a remittance transfer provider to send US$100 to a designated recipient in a foreign country, for which the provider charges a transfer fee of US$10 (and thus the sender pays the provider US$110) and an intermediary institution charges a lifting fee of US$5, such that the designated recipient is expected to receive only US$95, as indicated in the receipt. If an error occurs because the sender provides incorrect or insufficient information that results in non-delivery of the remittance transfer by the date of availability stated in the disclosure provided to the sender for the remittance transfer under §1005.31(b)(2) or (3), the provider is required to refund, or reapply if requested and the provider agrees, $105 unless the intermediary institution refunds to the provider the US$5 fee. If the sender requests to have the transfer amount applied to a new remittance transfer pursuant to §1005.33(c)(2)(iii) and provides the corrected or additional information, and the remittance transfer provider agrees to a resend remedy, the remittance transfer provider may charge the sender another transfer fee of US$10 to send the remittance transfer again with the corrected or additional information necessary to complete the transfer. Insofar as the resend is an entirely new remittance transfer, the provider must provide a prepayment disclosure and receipt or combined disclosure in accordance with, among other provisions, the timing requirements of §1005.31(f) and the cancellation provision of §1005.34(a).

iii. In connection with a remittance transfer, a provider imposes a $15 tax that it then remits to a State taxing authority. An error occurs because the sender provided incorrect or insufficient information that resulted in non-delivery of the transfer to the designated recipient. The provider may deduct $15 from the amount it refunds to the sender pursuant to §1005.33(c)(2)(iii) unless the relevant tax law will result in the $15 tax being refunded to the provider by the State taxing authority because the transfer was not completed.

33(d) Procedures if Remittance Transfer Provider Determines No Error or Different Error Occurred

1. *Error different from that alleged.* When a remittance transfer provider determines that an error occurred in a manner or amount different from that described by the sender, it must comply with the requirements of both §1005.33(c) and (d), as applicable. The provider may give the notice of correction and the explanation separately or in a combined form.

33(e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The remittance transfer provider has no further error resolution responsibilities if the sender voluntarily withdraws the notice alleging an error. A sender who has withdrawn an allegation of error has the right to reassert the allegation unless the remittance transfer provider had already complied with all of the error resolution requirements before the allegation was withdrawn. The sender must do so, however, within the original 180-day period from the disclosed date of availability or, if applicable, the 60-day period for a notice of error asserted pursuant to §1005.33(b)(2).

33(f) Relation to Other Laws

1. *Concurrent error obligations.* A financial institution that is also the remittance transfer provider may have error obligations under both §§1005.11 and 1005.33. For example, if a sender asserts an error under §1005.11 with a remittance transfer provider that holds the sender's account, and the error is not also an error under §1005.33 (such as the omission of an EFT on a periodic statement), then the error-resolution provisions of §1005.11 exclusively apply to the error. However, if a sender asserts an error under §1005.33 with a remittance transfer provider that holds the sender's account, and the error is also an error under §1005.11 (such as when the amount the sender requested to be deducted from the sender's account and sent for the remittance transfer differs from the

amount that was actually deducted from the account and sent), then the error-resolution provisions of §1005.33 exclusively apply to the error.

2. *Holder in due course.* Nothing in this section limits a sender's rights to assert claims and defenses against a card issuer concerning property or services purchased with a credit card under Regulation Z, 12 CFR 1026.12(c)(1), as applicable.

3. *Assertion of same error with multiple parties.* If a sender receives credit to correct an error of an incorrect amount paid in connection with a remittance transfer from either the remittance transfer provider or account-holding institution (or creditor), and subsequently asserts the same error with another party, that party has no further responsibilities to investigate the error if the error has been corrected. For example, assume that a sender initially asserts an error with a remittance transfer provider with respect to a remittance transfer alleging that US$130 was debited from his checking account, but the sender only requested a remittance transfer for US$100, plus a US$10 transfer fee. If the remittance transfer provider refunds US$20 to the sender to correct the error, and the sender subsequently asserts the same error with his account-holding institution, the account-holding institution has no error resolution responsibilities under Regulation E because the error has been fully corrected. In addition, nothing in this section prevents an account-holding institution or creditor from reversing amounts it has previously credited to correct an error if a sender receives more than one credit to correct the same error. For example, assume that a sender concurrently asserts an error with his or her account-holding institution and remittance transfer provider for the same error, and the sender receives credit from the account-holding institution for the error within 45 days of the notice of error. If the remittance transfer provider subsequently provides a credit of the same amount to the sender for the same error, the account-holding institution may reverse the amounts it had previously credited to the consumer's account, even after the 45-day error resolution period under §1005.11.

33(g) Error Resolution Standards and Recordkeeping Requirements

1. *Record retention requirements.* As noted in §1005.33(g)(2), remittance transfer providers are subject to the record retention requirements under §1005.13. Therefore, remittance transfer providers must retain documentation, including documentation related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider. A remittance transfer provider need not maintain records of individual disclosures that it has provided to each sender; it need only retain evidence demonstrating that its procedures reasonably ensure the sender's receipt of required disclosures and documentation.

33(h) Incorrect Account Number Supplied

1. *Reasonable methods of verification.* When a sender provides an incorrect recipient institution identifier, §1005.33(h)(2) limits the exception in §1005.33(a)(1)(iv)(D) to situations where the provider used reasonably available means to verify that the recipient institution identifier provided by the sender did correspond to the recipient institution name provided by the sender. Reasonably available means may include accessing a directory of Business Identifier Codes and verifying that the code provided by the sender matches the provided institution name, and, if possible, the specific branch or location provided by the sender. Providers may also rely on other commercially available databases or directories to check other recipient institution identifiers. If reasonable verification means fail to identify that the recipient institution identifier is incorrect, the exception in §1005.33(a)(1)(iv)(D) will apply, assuming that the provider can satisfy the other conditions in §1005.33(h). Similarly, if no reasonably available means exist to verify the accuracy of the recipient institution identifier, §1005.33(h)(2) would be satisfied and thus the exception in §1005.33(a)(1)(iv)(D) also will apply, again assuming the provider can satisfy the other conditions in §1005.33(h). However, where a provider does not employ reasonably available means to verify a recipient institution identifier, §1005.33(h)(2) is not satisfied and the exception in §1005.33(a)(1)(iv)(D) will not apply.

2. *Reasonable efforts.* Section 1005.33(h)(5) requires a remittance transfer provider to use reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider has used reasonable efforts does not depend on whether the provider is ultimately successful in recovering the amount that was to be received by the designated recipient. Under §1005.33(h)(5), if the remittance transfer provider is requested to provide documentation or other supporting information in order for the pertinent institution or authority to obtain the proper authorization for the return of the incorrectly credited amount, reasonable efforts to recover the amount include timely providing any such documentation to the extent that it is available and permissible under law. The following are examples of reasonable efforts:

i. The remittance transfer provider promptly calls or otherwise contacts the institution that received the transfer, either

directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

ii. The remittance transfer provider promptly uses a messaging service through a funds transfer system to contact institution that received the transfer, either directly or indirectly through any correspondent(s) or other intermediaries or service providers used for the particular transfer, to request that the amount that was to be received by the designated recipient be returned, in accordance with the messaging service's rules and protocol, and if required by law or contract, by requesting that the recipient institution obtain a debit authorization from the holder of the incorrectly credited account.

3. *Promptness of Reasonable Efforts.* Section 1005.33(h)(5) requires that a remittance transfer provider act promptly in using reasonable efforts to recover the amount that was to be received by the designated recipient. Whether a provider acts promptly to use reasonable efforts depends on the facts and circumstances. For example, if, before the date of availability disclosed pursuant to §1005.31(b)(2)(ii), the sender informs the provider that the sender provided a mistaken account number, the provider will have acted promptly if it attempts to contact the recipient's institution before the date of availability.

SECTION 1005.34—PROCEDURES FOR CANCELLATION AND REFUND OF REMITTANCE TRANSFERS

34(a) Sender Right of Cancellation and Refund

1. *Content of cancellation request.* A request to cancel a remittance transfer is valid so long as the remittance transfer provider is able to identify the remittance transfer in question. For example, the sender could provide the confirmation number or code that would be used by the designated recipient to pick up the transfer or other identification number or code supplied by the remittance transfer provider in connection with the transfer, if such number or code is sufficient for the remittance transfer provider to identify the transfer. A remittance transfer provider may also request, or the sender may provide, the sender's email address instead of a physical address, so long as the remittance transfer provider is able to identify the transfer to which the request to cancel applies.

2. *Notice of cancellation right.* Section 1005.31 requires a remittance transfer provider to include an abbreviated notice of the sender's right to cancel a remittance transfer on the receipt or combined disclosure given under §1005.31(b)(2) or (3). In addition, the remittance transfer provider must make available to a sender upon request, a notice providing a full description of the right to cancel a remittance transfer using language that is set forth in Model Form A–36 of Appendix A to this part or substantially similar language.

3. *Thirty-minute cancellation right.* A remittance transfer provider must comply with the cancellation and refund requirements of §1005.34 if the cancellation request is received by the provider no later than 30 minutes after the sender makes payment. The provider may, at its option, provide a longer time period for cancellation. A provider must provide the 30-minute cancellation right regardless of the provider's normal business hours. For example, if an agent closes less than 30 minutes after the sender makes payment, the provider could opt to take cancellation requests through the telephone number disclosed on the receipt. The provider could also set a cutoff time after which the provider will not accept requests to send a remittance transfer. For example, a financial institution that closes at 5:00 p.m. could stop accepting payment for remittance transfers after 4:30 p.m.

4. *Cancellation request provided to agent.* A cancellation request provided by a sender to an agent of the remittance transfer provider is deemed to be received by the provider under §1005.34(a) when received by the agent.

5. *Payment made.* For purposes of subpart B, payment is made, for example, when a sender provides cash to the remittance transfer provider or when payment is authorized.

34(b) Time Limits and Refund Requirements

1. *Form of refund.* At its discretion, a remittance transfer provider generally may issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer. For example, if the sender originally provided a credit card as payment for the transfer, the remittance transfer provider may issue a credit to the sender's credit card account in the amount of the payment. However, if a sender initially provided cash for the remittance transfer, a provider may issue a refund by check. For example, if the sender originally provided cash as payment for the transfer, the provider may mail a check to the sender in the amount of the payment.

2. *Fees and taxes refunded.* If a sender provides a timely request to cancel a remittance transfer, a remittance transfer provider must refund all funds provided by the sender in connection with the remittance transfer, including any fees and, to the extent not prohibited by law, taxes that have been imposed for the transfer, whether the fee or tax was assessed by the provider or a

third party, such as an intermediary institution, the agent or bank in the recipient country, or a State or other governmental body.

SECTION 1005.35—ACTS OF AGENTS

1. *General.* Remittance transfer providers must comply with the requirements of subpart B, including, but not limited to, providing the disclosures set forth in §1005.31 and providing any remedies as set forth in §1005.33, even if an agent or other person performs functions for the remittance transfer provider, and regardless of whether the provider has an agreement with a third party that transfers or otherwise makes funds available to a designated recipient.

SECTION 1005.36—TRANSFERS SCHEDULED BEFORE THE DATE OF TRANSFER

1. *Applicability of subpart B.* The requirements set forth in subpart B apply to remittance transfers subject to §1005.36, to the extent that §1005.36 does not modify those requirements. For example, the foreign language disclosure requirements in §1005.31(g) and related commentary continue to apply to disclosures provided in accordance with §1005.36(a)(2).

36(a) Timing

36(a)(2) Subsequent Preauthorized Remittance Transfers

1. *Changes in Disclosures.* When a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, §1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in §1005.31(e). While certain information in those disclosures is expressly permitted to be estimated (see §1005.32(b)(2)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by §1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by §1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with §1005.31(b)(2) and which discloses, among the other disclosures required by §1005.31(b)(2), the changed terms. For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is $20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax collected by the provider increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, §1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted by §1005.32(b)(2), changes.

2. *Clearly and conspicuously.* In order to indicate clearly and conspicuously that the provider's fee has changed as required by §1005.36(a)(2)(i), the provider could, for example, state on the receipt: ''Transfer Fees (UPDATED) * * * $30.'' To the extent that other figures on the receipt must be revised because of the new fee, the receipt should also indicate that those figures are updated.

3. *Reasonable time.* If a disclosure required by §1005.36(a)(2)(i) or (d)(1) is mailed, the disclosure would be considered to be received by the sender five business days after it is posted in the mail. If hand delivered or provided electronically, the receipt would be considered to be received by the sender at the time of delivery. Thus, if the provider mails a disclosure required by §1005.36(a)(2)(i) or (d)(1) not later than ten business days before the scheduled date of the transfer, or hand or electronically delivers a disclosure not later than five business days before the scheduled date of the transfer, the provider would be deemed to have provided the disclosure within a reasonable time prior to the scheduled date of the subsequent preauthorized remittance transfer.

36(b) Accuracy

1. *Use of estimates.* In providing the disclosures described in §1005.36(a)(1)(i) or (a)(2)(i), remittance transfer providers may use estimates to the extent permitted by any of the exceptions in §1005.32. When estimates are permitted, however, they must be disclosed in accordance with §1005.31(d).

2. *Subsequent preauthorized remittance transfers.* For a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to §1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by §1005.31(b)(2)(ii) (Date

Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to §1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made.

3. *Receipts.* A receipt required by §1005.36(a)(1)(ii) or (a)(2)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to §1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by §1005.32(a) or (b)(1), (4), or (5). In providing receipts pursuant to §1005.36(a)(1)(ii) or (a)(2)(ii), §1005.36(b)(2) and (3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to §1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to §1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to §1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to §1005.32(b)(2), the second receipt provided pursuant to §1005.36(a)(1)(ii) must also disclose the fee as $10.

36(c) Cancellation

1. *Scheduled remittance transfer.* Section 1005.36(c) applies when a remittance transfer is scheduled by the sender at least three business days before the date of the transfer, whether the sender schedules a preauthorized remittance transfer or a one-time transfer. A remittance transfer is scheduled if it will require no further action by the sender to send the transfer after the sender requests the transfer. For example, a remittance transfer is scheduled at least three business days before the date of the transfer, and §1005.36(c) applies, where a sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 15, if it will require no further action by the sender to send the transfer after the sender requests the transfer. A remittance transfer is not scheduled, and §1005.36(c) does not apply, where a transfer occurs more than three days after the date the sender requests the transfer solely due to the provider's processing time. The following are examples of when a sender has not scheduled a remittance transfer at least three business days before the date of the remittance transfer, such that the cancellation rule in §1005.34 applies.

i. A sender on March 1 requests a remittance transfer provider to send a wire transfer to pay a bill in a foreign country on March 3.

ii. A sender on March 1 requests that a remittance transfer provider send a remittance transfer on March 15, but the provider requires the sender to confirm the request on March 14 in order to send the transfer.

iii. A sender on March 1 requests that a remittance transfer provider send an ACH transfer, and that transfer is sent on March 2, but due to the time required for processing, funds will not be deducted from the sender's account until March 5.

2. *Cancelled preauthorized remittance transfers.* For preauthorized remittance transfers, the provider must assume the request to cancel applies to all future preauthorized remittance transfers, unless the sender specifically indicates that it should apply only to the next scheduled remittance transfer.

3. *Concurrent cancellation obligations.* A financial institution that is also a remittance transfer provider may have both stop payment obligations under §1005.10 and cancellation obligations under §1005.36. If a sender cancels a remittance transfer under §1005.36 with a remittance transfer provider that holds the sender's account, and the transfer is a preauthorized transfer under §1005.10, then the cancellation provisions of §1005.36 exclusively apply.

36(d) Date of Transfer for Subsequent Preauthorized Remittance Transfers

1. *General.* Section 1005.36(d)(2)(i) permits remittance transfer providers some flexibility in determining how and when the disclosures required by §1005.36(d)(1) may be provided to senders. The disclosure described in §1005.36(d)(1) may be provided as a separate disclosure, or on or with any other disclosure required by this subpart B related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in §1005.36(d)(2) and other applicable provisions in subpart B are satisfied. For example, the required disclosures may be made on or with a receipt provided pursuant to §1005.36(a)(1)(i); a receipt provided pursuant to §1005.36(a)(2); or in a separate disclosure created by the provider. Thus, for example, a remittance transfer provider complies with §1005.36(d)(1) for a period of one year if it provides in the receipt provided to the sender when payment is made for the initial preauthorized remittance transfer, a schedule or summary of the dates of transfer of all the subsequent preauthorized remittance transfers in the series scheduled to occur over the next 12 months (and the applicable cancellation requirements and contact information).

2. *Delivery of disclosure.* Section 1005.36(d)(2)(i) requires that the sender receive disclosure of the date of transfer, applicable cancellation requirements, and the provider's contact information no more than

12 months, and no less than 5 business days prior to the date of transfer of the subsequent preauthorized remittance transfer. For purposes of determining when a disclosure required by §1005.36(d)(1) is received by the sender, refer to comment 36(a)(2)–3.

3. *Disclosure of the date of transfer.* The date of transfer of a subsequent preauthorized remittance transfer may be disclosed as a specific date (*e.g.,* July 19, 2013) or by using a method that clearly permits identification of the date of the transfer, such as periodic intervals (*e.g.,* the third Monday of every month, or the 15th of every month). If the future dates of transfer are disclosed as occurring periodically and there is a break in the sequence, or the date of transfer does not otherwise conform to the described period, *e.g.,* if a holiday or weekend causes the provider to deviate from the normal schedule, the remittance transfer provider should disclose the specific date of transfer for the affected transfer.

4. *Accuracy requirements.* Section 1005.36(d)(4) sets forth accuracy requirements for disclosures required for subsequent preauthorized remittance transfers under §1005.36(d)(1). If any of the information provided in these disclosures change, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made, pursuant to §1005.36(d)(2).

APPENDIX A—MODEL DISCLOSURE CLAUSES AND FORMS

1. *Review of forms.* The Bureau will not review or approve disclosure forms or statements for financial institutions. However, the Bureau has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions and remittance transfer providers to facilitate compliance with the disclosure requirements of §§1005.5(b)(2) and (3), 1005.6(a), 1005.7, 1005.8(b), 1005.14(b)(1)(ii), 1005.15(c), 1005.15(e)(1) and (2), 1005.18(b)(2), (3), (6) and (7), 1005.18(d)(1) and (2), 1005.31, 1005.32 and 1005.36. The use of appropriate clauses in making disclosures will protect a financial institution and a remittance transfer provider from liability under sections 916 and 917 of the act provided the clauses accurately reflect the institution's EFT services and the provider's remittance transfer services, respectively.

3. *Altering the clauses.* Unless otherwise expressly addressed in the rule, the following applies. Financial institutions may use clauses of their own design in conjunction with the Bureau's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word ''card,'' deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

4. *Model forms for remittance transfers.* The Bureau will not review or approve disclosure forms for remittance transfer providers. However, this appendix contains 15 model forms for use in connection with remittance transfers. These model forms are intended to demonstrate several formats a remittance transfer provider may use to comply with the requirements of §1005.31(b). Model Forms A–30 through A–32 demonstrate how a provider could provide the required disclosures for a remittance transfer exchanged into local currency. Model Forms A–30(a), (b), (c), and (d) demonstrate four options regarding model language related to the required disclaimer, where applicable, of non-covered third-party fees and taxes on the remittance transfer collected by a person other than the provider under §1005.31(b)(1)(viii). Model forms 30(b) through (d) also include language that may be used if a provider elects to estimate either these non-covered third-party fees or taxes collected by a person other than the provider as part of the disclaimer. Model Forms A–33 through A–35 demonstrate how a provider could provide the required disclosures for dollar-to-dollar remittance transfers. These forms also demonstrate disclosure of the required content, in accordance with the grouping and proximity requirements of §1005.31(c)(1) and (2), in both a register receipt format and an 8.5 inch by 11 inch format. Model Form A–36 provides long form model error resolution and cancellation disclosures required by §1005.31(b)(4), and Model Form A–37 provides short form model error resolution and cancellation disclosures required by §1005.31(b)(2)(iv) and (vi). Model Forms A–38 through A–41 provide language for Spanish language disclosures.

i. The model forms contain information that is not required by subpart B, including a confirmation code, the sender's name and contact information, and the optional disclosure of the estimated amount of these non-covered third-party fees and taxes collected by a person other than the provider as part of the disclaimer. Additional information not required by subpart B may be presented on the model forms as permitted by §1005.31(b)(1)(viii) and (c)(4). Any additional information must be presented consistent

with a remittance transfer provider's obligation to provide required disclosures in a clear and conspicuous manner.

ii. Use of the model forms is optional. A remittance transfer provider may change the forms by rearranging the format or by making modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any rearrangement or modification of the format of the model forms must be consistent with the form, grouping, proximity, and other requirements of §1005.31(a) and (c). Providers making revisions that do not comply with this section will lose the benefit of the safe harbor for appropriate use of Model Forms A–30 to A–41.

iii. Permissible changes to the language and format of the model forms include, for example:

A. Substituting the information contained in the model forms that is intended to demonstrate how to complete the information in the model forms—such as names, addresses, and Web sites; dates; numbers; and State-specific contact information—with information applicable to the remittance transfer. In addition, if the applicable non-covered third-party fees are imposed by an institution other than a bank, a provider could modify the disclaimer accordingly.

B. Eliminating disclosures that are not applicable to the transfer, as described under §1005.31(b). For example, if only covered third-party fees are imposed, a provider would not use a disclaimer related to additional fees that may apply because all applicable fees are covered and included in the disclosure as required under §1005.31(b)(1)(vi).

C. Correcting or updating telephone numbers, mailing addresses, or Web site addresses that may change over time.

D. Providing the disclosures on a paper size that is different from a register receipt and 8.5 inch by 11 inch formats.

E. Adding a term substantially similar to ''estimated'' in close proximity to the specified terms in §1005.31(b)(1) and (2), as required under §1005.31(d).

F. Providing the disclosures in a foreign language, or multiple foreign languages, subject to the requirements of §1005.31(g).

G. Substituting cancellation language to reflect the right to a cancellation made pursuant to the requirements of §1005.36(c).

iv. Changes to the model forms that are not permissible include, for example, adding information that is not segregated from the required disclosures, other than as permitted by §1005.31(c)(4).

[76 FR 81023, Dec. 27, 2011, as amended at 78 FR 18224, Mar. 26, 2013; 77 FR 6297, Feb. 7, 2012; 77 FR 50285; 77 FR 50285, Aug. 20, 2012; 78 FR 30714, May 22, 2013; 78 FR 49366, Aug. 14, 2013; 79 FR 55993, Sept. 18, 2014; 81 FR 70320, Oct. 12, 2016; 81 FR 84345, Nov. 22, 2016; 83 FR 6420, Feb. 13, 2018; 85 FR 34905, June 5, 2020]

PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)

Subpart A—General

Sec.

Subpart B—Rules for FDCPA Debt Collectors

Subpart C [Reserved]

Subpart D—Miscellaneous

AUTHORITY: 12 U.S.C. 5512, 5514(b), 5532; 15 U.S.C. 1692*l*(d), 1692o, 7004.

SOURCE: 85 FR 76887, Nov. 30, 2020, unless otherwise noted.

Subpart A—General

§1006.1 Authority, purpose, and coverage.

(a) *Authority.* This part, known as Regulation F, is issued by the Bureau