

## Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) ([15 U.S.C. 1693](#) et seq.) of 1978 is intended to protect individual consumers engaging in electronic fund transfers (EFTs) and remittance transfers. These services include:

- transfers through automated teller machines (ATMs);
- point-of-sale (POS) terminals;
- automated clearinghouse (ACH) systems;
- telephone bill-payment plans in which periodic or recurring transfers are contemplated;
- remote banking programs; and
- remittance transfers.

The EFTA is implemented through Regulation E, which includes official interpretations.

In 2009, the Board of Governors of the Federal Reserve System (Board) amended Regulation E to prohibit institutions from charging overdraft fees for ATM and one-time debit card transactions, unless the consumer opts in or affirmatively consents to the institution's overdraft services (74 Fed. Reg. 59033 (Nov. 17, 2009) and 75 Fed. Reg. 31665 (June 4, 2010)). The Board also amended Regulation E to implement provisions in the Credit Card Accountability Responsibility and Disclosure Act of 2009 that restricted fees and expiration dates on gift cards, and to require that gift card terms be stated clearly (75 Fed. Reg. 16580 (April 1, 2010)).<sup>1</sup>

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) generally transferred rule-making authority under the EFTA from the Board to the Consumer Financial Protection Bureau (CFPB or Bureau).<sup>2 3</sup> The Dodd-Frank Act also amended the

<sup>1</sup> The Board also implemented a legislative extension of time for complying with the gift card disclosure requirements until January 31, 2011. 75 Fed. Reg. 50683 (August 17, 2010).

<sup>2</sup> Dodd-Frank Act §§ 1002(12)(C), 1024(b)-(c), and 1025(b)-(c); 12 U.S.C. 5481(12)(C), 5514(b)-(c), and 5515(b)-(c). Section 1029 of the Dodd-Frank Act generally excludes from this transfer of authority, subject to certain exceptions, any rule making authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. The transfer of authority also did not include Section 920 of EFTA, which concerns debit card interchange fees charged to merchants. Section 920 of EFTA is implemented by Board regulations at 12 CFR Part 235. Section 920 is not addressed here or in the accompanying examination procedures and checklist.

EFTA and created a new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. In December 2011, the CFPB restated the Board's implementing Regulation E at 12 CFR Part 1005 (76 Fed. Reg. 81020) (Dec. 27, 2011). In February 2012, the CFPB added subpart B (Requirements for Remittance Transfers) to Regulation E to implement the new remittance protections set forth in the Dodd-Frank Act (77 Fed. Reg. 6194) (Feb. 7, 2012).<sup>4</sup> Regulation E has since been amended several times to address both substantive and technical issues. See 77 Fed. Reg. 40459 (July 10, 2012); 77 Fed. Reg. 50244 (Aug. 20, 2012); 78 Fed. Reg. 6025 (Jan. 29, 2013); (78 Fed. Reg. 30661) (May 22, 2013); 78 Fed. Reg. 49365 (Aug. 14, 2013); 79 Fed. Reg. 55970 (Sept. 18, 2014); 81 Fed. Reg. 70319 (Oct. 12, 2016); 81 Fed. Reg. 83934 (Nov. 22, 2016); 82 Fed. Reg. 18975 (Apr. 25, 2017); 83 Fed. Reg. 6364 (Feb. 13, 2018).

In March 2013, the CFPB issued a final rule implementing Public Law 112-216, which amended EFTA to remove the requirement, where applicable, for a disclosure "on or at" an ATM where an ATM fee is imposed (78 Fed. Reg. 18221) (March 26, 2013).

In November 2016, the CFPB issued a final rule amending Regulation E as well as Regulation Z, the regulation implementing the Truth in Lending Act (TILA), to extend protections to prepaid accounts. In Regulation E, tailored provisions governing disclosures, limited liability and error resolution, and periodic statements were adopted for prepaid accounts, along with new requirements regarding the posting and submission of prepaid account agreements. In addition, this rulemaking addressed regulation of credit features that may be offered under certain circumstances in conjunction with prepaid accounts. (See TILA discussion for Regulation Z provisions regarding the regulation of credit features offered in conjunction with prepaid accounts.) Together these amendments are known as the Prepaid Accounts Rule (81 Fed. Reg. 83934) (Nov. 22, 2016). Regulation E, along with Regulation Z, was subsequently amended to modify several aspects of the Prepaid Accounts Rule, including error resolution and limited liability protections on unverified prepaid accounts and to establish a new overall effective date of April 1, 2019<sup>5</sup> (83 Fed. Reg. 6364) (Feb. 13, 2018). Information in this narrative is provided for Subpart A and Subpart B in the

<sup>3</sup> The agency responsible for supervising and enforcing compliance with Regulation E will depend on the person subject to the EFTA (e.g., for depository institutions, jurisdiction will depend on the size and charter of the institution).

<sup>4</sup> The amendment designated 12 CFR 1005.1 through 1005.20 as subpart A.

<sup>5</sup> This was the second effective date delay for the Prepaid Accounts Rule. The first had extended the general effective date of the rule to April 1, 2018. 82 Fed. Reg. 18975 (Apr. 25, 2017).



































- Report the results of its investigation within three business days after completing its investigation.
- Correct the error within one business day after determining that an error has occurred (12 CFR 1005.11(c)(1)).

The financial institution may take up to 45 days (12 CFR 1005.11(c)(2)) to complete its investigation provided it:

- Provisionally credits the funds (including interest, where applicable) to the consumer’s account within the 10 business-day period.
- Advises the consumer within two business days of the provisional crediting.
- Gives the consumer full use of the funds during the investigation.

A financial institution need not provisionally credit the account to take up to 45 days to complete its investigation if the consumer fails to provide the required written confirmation of an oral notice of error within 10 business days, or if the notice of error involves an account subject to the margin requirements or other aspects of Regulation T (Securities Credit by Brokers and Dealers, 12 CFR Part 220) (12 CFR 1005.11(c)(2)(i)).

However, where an error involves an unauthorized EFT, the financial institution must comply with the requirements of the provisions relating to unauthorized EFTs before holding the consumer liable, even if the consumer does not provide a notice of error within the time limits in 12 CFR 1005.11(b) (Comment 11(b)(1)-7).

When investigating a claim of error, the financial institution need only review its own records if the alleged error concerns a transfer to or from a third party, and there is no agreement between the financial institution and the third party for the type of EFT involved (12 CFR 1005.11(c)(4)). However, the financial institution may not limit its investigation solely to the payment instructions where other information within the financial institution’s records pertaining to a particular account may help to resolve a consumer’s claim (Comment 11(c)(4)-5).

If, after investigating the alleged error, the financial institution determines that an error has occurred, it must promptly (within one business day after such determination) correct the error, including the crediting of interest if applicable. The financial institution must provide within three business days of the completed investigation an oral or written report of the correction to the consumer and, as applicable, notify the consumer that the provisional credit has been made final (12 CFR 1005.11(c)(1) and (2)(iii) and (iv)).

If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the financial institution must mail or deliver a written explanation of its findings within three business days after concluding its investigation. The explanation must include a notice of the consumer’s rights to request the documents upon which the financial institution relied in making its determination (12 CFR 1005.11(d)).

Upon debiting a provisionally credited amount, the financial institution must notify the consumer of the date and amount of the debit and of the fact that the financial institution will honor (without charge) checks, drafts, or similar paper instruments payable to third parties and preauthorized debits for five business days after transmittal of the notice. The financial institution need honor only items that it would have paid if the provisionally credited funds had not been debited (12 CFR 1005.11(d)(2)). Upon request from the consumer, the financial institution must promptly mail or deliver to the consumer copies of documents upon which it relied in making its determination (12 CFR 1005.11(d)(1)).

If a notice involves an error that occurred within 30 days after the first deposit to the account was made, the time periods are extended from 10 and 45 days, to 20 and 90 days, respectively. If the notice of error involves a transaction that was not initiated in a state or resulted from a point-of-sale debit card transaction, the 45-day period is extended to 90 days (12 CFR 1005.11(c)(3)).

If a financial institution has fully complied with the investigation requirements, it generally does not need to reinvestigate if a consumer later reasserts the same error. However, it must investigate a claim of error asserted by a consumer following receipt of information provided pursuant to 12 CFR 1005.11(a)(1)(vii) and 12 CFR 1005.11(e).

## VI. Receipts and Periodic Statements

### Documentation of Transfers - 12 CFR 1005.9

#### *Electronic terminal receipts*

Receipts must be made available at the time a consumer initiates an EFT at an electronic terminal (12 CFR 1005.9(a)). Financial institutions may provide receipts only to consumers who request one (Comment 9(a)-1). The receipt must include, as applicable:

- **Amount of the transfer** — a charge for making the transfer may be included in the amount, provided the charge is disclosed on the receipt and on a sign posted on or at the terminal.
- **Date** — the date the consumer initiates the transfer.

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- **Type of transfer and type of account** — descriptions such as “withdrawal from checking” or “transfer from savings to checking” are appropriate. This is true even if the accounts are only similar in function to a checking account (such as a share draft or NOW account) or a savings account (such as a share account). If the access device used can only access one account, the type of account may be omitted (Comments 9(a)(3)-1; 9(3)-2; 9(3)-4; and 9(3)-5).
- Number or code identifying the consumer’s account(s) or the access device used to initiate the transfer — the number and code need not exceed four digits or letters.
- **Location of the terminal** — the location of the terminal where the transfer is initiated or an identification, such as a code or terminal number. If the location is disclosed, except in limited circumstances where all terminals are located in the same city or state, the receipt must include the city and state or foreign country and one of the following:
  - Street address of the terminal;
  - Generally accepted name for the location of the terminal (such as an airport, shopping center, or branch of a financial institution); or
  - Name of the entity (if other than the financial institution providing the statement) at whose place of business the terminal is located, such as a store, and the city, state, or foreign country (12 CFR 1005.9(a)(5)).
- **Third party** — name of any third party to or from whom funds are transferred — a code may be used to identify the party if the code is explained on the receipt. This requirement does not apply if the name of the party is provided by the consumer in a manner the terminal cannot duplicate on the receipt, such as on a payment stub (12 CFR 1005.9(a)(6) and Comment 9(a)(6)-1).

Receipts are not required for EFTs of \$15 or less (12 CFR 1005.9(e)).

### **Periodic statements**

Periodic statements must be sent for each monthly cycle in which an EFT has occurred, and at least quarterly if no EFT has occurred (12 CFR 1005.9(b)). For each EFT made during the cycle, the statement must include, as applicable:

- Amount of the transfer — if a charge was imposed at an electronic terminal by the owner or operator of the terminal, that charge may be included in the amount.
- Date the transfer was posted to the account.

- Type of transfer(s) and type of account(s) to or from which funds were transferred.
- For each transfer (except deposits of cash, or a check, draft or similar paper instrument to the consumer’s account) initiated at an electronic terminal, the terminal location as required for the receipt under 12 CFR 1005.9(a)(5).
- Name of any third party payee or payor.
- Account number(s).
- Total amount of any fees and charges, other than a finance charge as defined by Regulation Z, assessed during the period for making EFTs, the right to make EFTs, or for account maintenance (Comment 9(b)(3)).
- Balance in the account at the beginning and close of the statement period.
- Address and telephone number to be used by the consumer for inquiries or notice of errors. If the financial institution has elected to send the abbreviated error notice with every periodic statement, the address and telephone number may appear on that document.
- If the financial institution has provided a telephone number which the consumer can use to find out whether or not a preauthorized transfer has taken place, that telephone number.

### **Exceptions to the Periodic Statement Requirement for Certain Accounts**

- **Passbook accounts.** Where a consumer’s passbook may not be accessed by an EFT other than preauthorized transfers to the account, a periodic statement need not be sent, provided that the financial institution updates the consumer’s passbook or provides the required information on a separate document at the consumer’s request. To update the passbook, the amount and date of each EFT made since the passbook was last presented must be listed (12 CFR 1005.9(c)(1)(i)). For other accounts that may be accessed only by preauthorized transfers to the account, the financial institution must send a periodic statement at least quarterly (12 CFR 1005.9(c)(1)(ii)).
- **Transfers between accounts.** If a transfer occurs between two accounts of the consumer at the same financial institution, the transfer need only be documented for one of the two accounts (12 CFR 1005.9(c)(2)). A preauthorized transfer between two accounts of the consumer at the same financial institution is subject to the 12 CFR 1005.9(c)(1) rule on preauthorized transfers and

not the 12 CFR 1005.9(c)(2) rule on intra-institutional transfers (12 CFR 1005.9(c)(3)).

- **Documentation for Foreign-initiated transfers.** If an EFT is initiated outside the United States, the financial institution need not provide a receipt or a periodic statement reflecting the transfer if it treats an inquiry for clarification or documentation as a notice of error (12 CFR 1005.9(d)).

#### **Alternatives to Periodic Statements for Financial Institutions Offering Prepaid Accounts - 12 CFR 1005.15 and 1005.18**

12 CFR 1005.18 provides an alternative to providing periodic statements for prepaid accounts if financial institutions make account information available to consumers by specific means. In addition, 12 CFR 1005.18 clarifies how financial institutions that do not provide periodic statements for prepaid accounts can comply with the subpart A requirements relating to initial disclosures, the annual error resolution notice, liability limits, and error resolution procedures.

Typically, employers and third-party service providers do not meet the definition of a “financial institution” subject to the regulation because they neither (i) hold prepaid accounts (including payroll card accounts) nor (ii) 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 (Comment 18(a)-2).

12 CFR 1005.15 contains similar provisions for government benefit accounts, as defined in 12 CFR 1005.15(a)(2). A government agency is deemed to be a “financial institution” subject to the regulation if it directly or indirectly issues an access device to a consumer for use in initiating an EFT of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency (12 CFR 1005.15(a)(1)).

#### **Alternative to Periodic Statements**

A financial institution (which may include government agencies as defined by 12 CFR 1005.15(a)(1)) need not furnish periodic statements required by 12 CFR 1005.9(b) if the financial institution makes available to the consumer the following<sup>23</sup>:

The account balance, through a readily available telephone line, and for government benefit accounts only, also at a terminal.

An electronic history of account transactions, such as through a website, covering at least 12 months preceding the date the consumer electronically accesses the account; and

A written history of account transactions provided promptly in response to an oral or written request and covering at least 24 months preceding the date the financial institution receives the consumer’s request (12 CFR 1005.15(d)(1) and 1005.18(c)(1)).

The 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 pursuant to 12 CFR 1005.18(c)(1)(iii) for any such account for which the financial institution has not completed its consumer identification and verification process (12 CFR 1005.18(c)(2)).

The electronic and written histories of account transactions must include the same information required on periodic statements under 12 CFR 1005.9(b) (12 CFR 1005.15(d)(2) and 1005.18(c)(3)).

#### **Modifications to Other Regulation E Requirements**

If a financial institution provides an alternative to periodic statements under 12 CFR 1005.18(c)(1) (or government agency provides an alternative to periodic statements under 12 CFR 1005.15(d)(1)), it must comply with the following pursuant to 12 CFR 1005.18(d) and 1005.15(e):

- Modify the initial disclosures under 12 CFR 1005.7(b) by disclosing:
  - A telephone number that the consumer may call to obtain the account balance; the means by which the consumer can obtain an electronic account history, such as the address of a website; and a summary of the consumer’s right to receive a written account transaction history upon request (in place of the summary of the right to receive a periodic statement required by 12 CFR 1005.7(b)(6)), including a telephone number to call to request a history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A-7(a) in Appendix A. For government

<sup>23</sup> If, on April 1, 2019, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history or to provide 24 months of written account transaction history upon request, 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 those requirements (12 CFR 1005.18(h)(3)(i)).

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benefit accounts, the disclosure required by 12 CFR 1005.15(e)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A-5(a) in Appendix A.

- A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in Appendix A, or paragraph A-5(b) in Appendix A for government benefit accounts, in place of the notice required by 12 CFR 1005.7(b)(10). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, a description of the financial institution's error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, a statement that there are no such protections (12 CFR 1005.18(d)(1)(ii)).
- Provide an annual error resolution notice that is substantially similar to the notice contained in paragraph A-7(b) in Appendix A, in place of the notice required by 12 CFR 1005.8(b). Alternatively, a financial institution (which may include government agencies as defined by 12 CFR 1005.15(a)(1)) may include on or with each electronic and written account transaction history provided in accordance with 12 CFR 1005.18(c)(1), or 12 CFR 1005.15(d)(1) for government benefit accounts, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A-3(b) in Appendix A, modified as necessary to reflect the error resolution provisions set forth in 12 CFR 1005.18(e) or 1005.15(e)(3).
  - Comply with modified timing provisions for limited liability requirements as follows:
    - For purposes of 12 CFR 1005.6(b)(3), the 60-day period for reporting any unauthorized transfer begins on the earlier of (12 CFR 1005.18(e)(1)(i) and 1005.15(e)(3)(i)):
    - The date the consumer electronically accesses the consumer's account under 12 CFR 1005.18(c)(1)(ii), or under 12 CFR 1005.15(d)(1)(ii) for a government benefit account, provided that the electronic account transaction history made available to the consumer reflects the unauthorized transfer; or
    - The date the financial institution (including an agency) sends a written history of the consumer's account transactions requested by the consumer under 12 CFR 1005.18(c)(1)(iii), or under 12 CFR 1005.15(d)(1)(iii) for a government benefit account, in which the unauthorized transfer is first

reflected.

- Alternatively, a financial institution (including an agency) may limit the consumer's liability for an unauthorized transfer as provided under 12 CFR 1005.6(b)(3) for transfers reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account (12 CFR 1005.15(e)(3)(ii) and 1005.18(e)(1)(ii)).
  - Comply with modified timing provisions for error resolution requirements as follows:
    - A written or oral error notice is considered timely, and the financial institution (including an agency) must comply with the requirements of 12 CFR 1005.11, if the financial institution receives notice from the consumer by the earlier of (12 CFR 1005.18(e)(2)(i) and 1005.15(e)(4)(i)):
      - 60 days after the date the consumer electronically accesses the consumer's account under 12 CFR 1005.18(c)(1)(ii), or 12 CFR 1005.15(d)(1)(ii) for a government benefit account, provided that the electronic history made available to the consumer reflects the alleged error; or
      - 60 days after the date the financial institution (including an agency) sends a written history of the consumer's account transactions requested by the consumer under 12 CFR 1005.18(c)(1)(iii), or under 12 CFR 1005.15(d)(1)(iii) for a government benefit account, in which the alleged error is first reflected.
- Alternatively, a financial institution (including an agency) complies with the error resolution requirements in 12 CFR 1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the financial institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account (12 CFR 1005.15(e)(4)(ii) and 1005.18(e)(2)(ii)).
- Regardless of whether periodic statements are provided or the alternative followed: once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account (other than payroll card accounts or government benefit accounts), the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occur following verification in accordance with 12 CFR 1005.6 or 1005.11, or the modified timing requirements in 12 CFR 1005.18(e), as applicable (12 CFR 1005.18(e)(3)(iii)).

**Summary Totals of Fees - 12 CFR 1005.15 and 1005.18**

A financial institution (including an agency) must disclose the amount of any fees assessed against the account, whether for EFTs or otherwise, on any periodic statement provided pursuant to 12 CFR 1005.9(b) and on any history of account transactions provided or made available by the financial institution (12 CFR 1005.15(d)(2) and 1005.18(c)(4)).

A financial institution (including an agency) must display a summary total of the amount of all fees assessed by the financial institution against the consumer's prepaid account for the prior calendar month and for the calendar year to date on any periodic statement provided pursuant to 12 CFR 1005.9(b) and on any history of account transactions provided or made available by the financial institution (12 CFR 1005.15(d)(2) and 1005.18(c)(5)).<sup>24</sup>

**VII. Gift Cards — 12 CFR 1005.20**

A gift card is a type of prepaid card that is designed to be purchased by one consumer and given to another consumer as a present or expression of appreciation or recognition. When provided in the form of a plastic card, a user of a gift card is able to access and spend the value associated with the device by swiping the card at a POS terminal, much as a person would use a debit card.

***Scope of the gift card rule***

The rule is generally limited to gift certificates, store gift cards, or general-use prepaid cards sold or issued to consumers primarily for personal, family, or household purposes. It generally does not apply to cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate and loyalty, award, and promotional gift cards. See also the exclusions from the gift card definitions, described above.

***Restrictions on Dormancy, Inactivity, or Service Fees - 12 CFR 1005.20(d)***

No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless three conditions are satisfied:

- There has been no activity with respect to the certificate or card within the one-year period prior to the imposition of the fee;

- Only one such fee is assessed in a given calendar month; and
- Disclosures regarding dormancy, inactivity, or service fees are clearly and conspicuously stated on the certificate or card, and the person issuing or selling the certificate or card has provided these disclosures to the purchaser before the certificate or card is purchased. See the disclosure section, above, for additional information.

***Expiration Date Restrictions - 12 CFR 1005.20(e)***

A gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date of the funds underlying the certificate or card is no less than five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, information regarding whether funds underlying a certificate or card may expire must be clearly and conspicuously stated on the certificate or card and disclosed prior to purchase.

No person may sell or issue a certificate or card with an expiration date unless the person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card that has an expiration date that is at least five years from the date of purchase. A person who has established policies and procedures to prevent the sale of a certificate or card with less than five years from the date of purchase satisfies this requirement (Comment 20(e)-1).

A certificate or card generally must include a disclosure alerting consumers to the difference between the certificate or card expiration date and the funds expiration date, if any, and that the consumer may contact the issuer for a replacement card. This disclosure must be stated with equal prominence and in close proximity to the certificate or card expiration date. Non-reloadable certificates or cards that bear an expiration date on the certificate or card that is at least seven years from the date of manufacture need not include this disclosure. See the disclosure section, above, for additional information.

To ensure that consumers are able to access the underlying funds for the full five-year period, fees may not be imposed for replacing an expired certificate or card if the underlying funds remain valid (unless the card has been lost or stolen). In lieu of sending a replacement certificate or card, issuers may remit, without charge, the remaining balance of funds to the consumer.

**VIII. Requirements for Financial Institutions Offering Prepaid Accounts - 12 CFR 1005.18**

<sup>24</sup> If the financial institution on April 1, 2019, does not have readily accessible the data necessary to calculate the summary totals 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 pursuant to 12 CFR 1005.18(c)(5), the financial institution may display the summary totals using the data it has until the financial institution has accumulated the data necessary to display the summary totals as required by 12 CFR 1005.18(c)(5). See 12 CFR 1005.18(h)(3)(ii).

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Prepaid accounts (as defined in 12 CFR 1005.2(b)(3)(i)) include several types of products: payroll card accounts and government benefit accounts that were subject to Regulation E prior to the Prepaid Accounts Rule; accounts that are marketed or labeled as “prepaid” that are redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that are usable at ATMs; and other accounts (other than checking accounts, share draft accounts, and negotiable order of withdrawal accounts) that are issued on a prepaid basis in a specified amount or not issued on a prepaid basis but capable of being loaded with funds thereafter, and whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, or at ATMs, or to conduct person-to-person transfers. For exclusions from the term “prepaid account,” see 12 CFR 1005.2(b)(3)(ii).

Financial institutions must comply with all applicable requirements of the EFTA and Regulation E with respect to prepaid accounts, except as modified by 12 CFR 1005.18 (12 CFR 1005.18(a)). This section of the manual discusses certain provisions specifically applicable to prepaid accounts; other provisions are addressed elsewhere in this manual.

### *Scope*

12 CFR 1005.18 applies to prepaid accounts other than government benefit accounts. Although government benefit cards are defined as prepaid accounts, slightly different rules apply in certain circumstances, which can be found in 12 CFR 1005.15.

### **Pre-Acquisition Disclosure Requirements - 12 CFR 1005.18(b)**

#### *Timing of Disclosures*

Generally, a financial institution must provide the required short and long form disclosures before a consumer acquires a prepaid account.

However, a financial institution need not provide the long form disclosures prior to acquisition at a retail location or orally by telephone, if certain conditions are met. See 12 CFR 1005.18(b)(1)(ii) and (b)(1)(iii). Further, when a prepaid account is used for disbursing funds to a consumer and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, those disclosures may be provided at the time the consumer receives the prepaid account (12 CFR 1005.18(b)(1)(i)).

#### *Content of Short Form Disclosures*

12 CFR 1005.18(b)(2) requires a financial institution to disclose the following fees and information on its short form disclosure:

- **Periodic fee.** The periodic fee charged for holding the prepaid account, assessed on a monthly or other periodic basis, using the term “Monthly fee,” “Annual fee,” or a substantially similar term.
- **Per purchase fee.** The fee for making a purchase using the prepaid account, using the term “Per purchase” or a substantially similar term.
- **ATM withdrawal fees.** Two fees for using an ATM 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, using the term “ATM withdrawal” or a substantially similar term, and “in-network” or “out-of-network,” respectively, or substantially similar terms.
- **Cash reload fee.** The fee for reloading cash into the prepaid account using the term “Cash reload” or a substantially similar term. The fee disclosed must be the total of all charges from the financial institution and any third parties for a cash reload.
- **ATM balance inquiry fees.** Two fees for using an ATM 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, using the term “ATM balance inquiry” or a substantially similar term, and “in-network” or “out-of-network,” respectively, or substantially similar terms.
- **Customer service fees.** Two fees for calling the financial institution about the prepaid account, both for calling an interactive voice response system and a live customer service agent, using the term “Customer service” or a substantially similar term, and “automated” or “live agent,” or substantially similar terms, respectively, and “per call” or a substantially similar term. When providing a short form disclosure for multiple service plans pursuant to 12 CFR 1005.18(b)(6)(iii)(B)(2), the financial institution must disclose only the fee for calling the live agent customer service about the prepaid account, using the term “Live customer service” or a substantially similar term and “per call” or a substantially similar term.
- **Inactivity fee.** The fee for non-use, dormancy, or inactivity of the prepaid account, using the term “Inactivity” or a substantially similar term, as well as the conditions that trigger the financial institution to impose that fee.
- **Additional fee types.** A statement disclosing the number of additional fee types (AFTs) the financial institution

may charge consumers with respect to the prepaid account, a statement directing consumers to the disclosure of the AFTs, and, if applicable, disclosure of up to two AFTs. A financial institution must use the language provided in the rule or substantially similar language in making these statements, and must follow specific guidelines in determining which AFTs to disclose, including (with certain exceptions) the disclosure of the two fee types that generate the highest revenue from consumers, over a specified time period, for the prepaid account program or across prepaid account programs that share the same fee schedule. See 12 CFR 1005.18(b)(2)(viii) and (ix).

NOTE: A financial institution must reassess its AFTs disclosure periodically, and, under certain circumstances, when the institution changes its fee schedule. See 12 CFR 1005.18(b)(2)(ix)(E)(2) and (3) for specific requirements.

- **Overdraft credit features.** A statement that no overdraft credit feature is offered, or, if such a feature may be offered at any point, language about the feature and applicable fees. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(x).
- **Registration and insurance.** 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. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xi).
- **Bureau website.** A statement directing the consumer to the Bureau's website for general information about prepaid accounts. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xii).
- **Information on all fees and services.** A statement directing the consumer to the location of the long form disclosure to find details and conditions for all fees and services. In certain circumstances, this statement must include a telephone number and a website URL that the consumer may use to directly access the long form disclosure. A financial institution must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xiii).

#### **Additional content for payroll card accounts**

The short form disclosure must contain a statement that the consumer does not have to accept the payroll card account, and directing the consumer to ask about other ways to receive

wages or salary. Alternatively, a financial institution or agency may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the consumer chooses. A financial institution or agency must use the language provided in the rule or substantially similar language in making this statement. See 12 CFR 1005.18(b)(2)(xiv).

A financial institution or agency may, but is not required to, include a statement in one additional line of text in the short form disclosure for information on ways the consumer may access government benefit account funds and balance information for free or for a reduced fee. 12 CFR 1005.15(c)(2)(ii).

#### **Variable fees, including periodic fees**

Additional disclosure requirements apply when a disclosed fee can vary; there are two alternatives if the periodic fee can vary. See 12 CFR 1005.18(b)(3)(i) and (b)(3)(ii).

#### **Single disclosure for like fees**

Where the rule requires disclosure of two fees (12 CFR 1005.18(b)(2)(iii), (v), (vi), and (ix)), a financial institution may disclose a single fee amount when the amount is the same for both fees. See 12 CFR 1005.18(b)(3)(iii).

#### **Third-party fees**

A financial institution may not include any third-party fees in the required short form disclosure, except for the cash reload fee, which must be the total of all charges from the financial institution and any third parties. See 12 CFR 1005.18(b)(3)(iv) and (v) and (b)(2)(iv).

#### **Prohibition on disclosure of finance charges**

A financial institution may not include any finance charges imposed in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card (*i.e.*, an overdraft credit feature) in its disclosures pursuant to 12 CFR 1005.18(b)(2)(i) through (xi). See 12 CFR 1005.18(b)(3)(vi).

#### **Additional information outside the short form**

At the time a financial institution provides the short form disclosure, it must also disclose the following information outside of the short form disclosure: the name of the financial institution; the name of the prepaid account program; the purchase price for the prepaid account, if any; and the fee for activating the prepaid account, if any. In a setting other than a retail location, this information must be disclosed in close proximity to the short form. In a retail location, this information, other than the purchase price, must be disclosed on the exterior of the access device's packaging material. In a retail location, the purchase price must be disclosed either on the exterior of or in

## VI. Deposits — EFTA

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close proximity to the prepaid account access device's packaging material. See 12 CFR 1005.18(b)(5).

### Content of Long Form Disclosures

12 CFR 1005.18(b)(4) requires that a financial institution disclose the following fees and information on its long form disclosure:

- **Title.** A heading stating the name of the prepaid account program and that the long form disclosure contains a list of all fees for that particular prepaid account program.
- **Fees.** All fees that may be imposed in connection with a prepaid account. For each fee, the financial institution must disclose the amount of the fee and the conditions, if any, under which the fee may be imposed, waived, or reduced. See 12 CFR 1005.18(b)(4)(ii) for specific requirements.
- **Statement regarding registration and FDIC or NCUA insurance.** The statement regarding the prepaid account program's eligibility for deposit or share insurance and directing the consumer to register the prepaid account for insurance and other protections that is required on 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. See 12 CFR 1005.18(b)(2)(xi) and 12 CFR 1005.18(b)(4)(iii).
- **Statement regarding overdraft credit features.** The statement required on the short-form disclosures by 12 CFR 1005.18(b)(2)(x).
- **Statement regarding financial institution contact information.** See 12 CFR 1005.18(b)(4)(v).
- **Statement regarding Bureau website and telephone number.** See 12 CFR 1005.18(b)(4)(vi).
- **Regulation Z disclosures for overdraft credit features.** See 12 CFR 1005.18(b)(4)(vii).

### Disclosures for Prepaid Accounts Acquired in Retail Location

A financial institution is not required to provide the long form disclosure required by 12 CFR 1005.18(b)(4) before a consumer acquires a prepaid account in person at a retail location or orally by telephone, if certain conditions are met. See 12 CFR 1005.18(b)(1)(ii) and (iii) for the specific conditions.

### Form of Pre-Acquisition Disclosures

Disclosures generally must be in writing (12 CFR 1005.18(b)(6)(i)(A)). For exceptions regarding where

disclosures may be made electronically or orally, see 12 CFR 1005.18(b)(6)(i)(B) and (C).

- **Retainable form.** Disclosures must generally be made in a form that a consumer may keep, except as provided in 12 CFR 1005.18(b)(6)(ii).
- **Tabular format.** When provided in writing or electronically, fee and certain other information required in the short form disclosures and fee information required in long form disclosures must be provided in the form of a table. See 12 CFR 1005.18(b)(6)(iii) and Model Forms A-10(A) through (F).

### Other requirements for pre-acquisition disclosures

- **Specific formatting requirements.** Requirements regarding the grouping and ordering of information, prominence and size of the text, and segregation of the disclosures from other information. See 12 CFR 1005.18(b)(7).
- **Terminology.** Fee names and other terms must be used consistently within and across disclosures. See 12 CFR 1005.18(b)(8).
- **Prepaid accounts acquired in foreign languages.** Generally, a financial institution must provide the required pre-acquisition disclosures in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. For exceptions, See 12 CFR 1005.18(b)(9).

### Other Disclosure Requirements - 12 CFR 1005.18(f)

#### Initial disclosure of fees and other information

A financial institution must include, as part of the initial disclosures given pursuant to 12 CFR 1005.7, all of the information required to be disclosed in its pre-acquisition long form disclosure. See 12 CFR 1005.18(f)(1).

#### Change-in-terms notice

The change-in-terms notice provisions in 12 CFR 1005.8(a) apply to changes in terms and conditions that are required to be disclosed pursuant to 12 CFR 1005.7 or 12 CFR 1005.18(f)(1) in most circumstances, with some exceptions. See 12 CFR 1005.18(f)(2).

#### Disclosures on prepaid account access devices

The name of the financial institution and the website 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 (with specific rules when



physical access devices are not provided in connection with prepaid accounts). See 12 CFR 1005.18(f)(3).

### Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards - 12 CFR 1005.18(g)

The following rules apply 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:

- A financial institution must provide to any prepaid account without a covered separate credit feature the same account terms, conditions, and features that it provides on prepaid accounts in the same prepaid account program that have such a credit feature (12 CFR 1005.18(g)(1)).
- A financial institution is not prohibited from imposing 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 that it imposes on any prepaid account in the same prepaid account program that does not have such a credit feature (12 CFR 1005.18(g)(2)).

## IX. Internet Posting of Prepaid Account Agreements - 12 CFR 1005.19

### Definitions

12 CFR 1005.19(a) provides the following supplemental definitions for purposes of 12 CFR 1005.19:

- **Agreement.** means 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. It also includes “fee information” as defined below.
- **Amends.** An issuer “amends” an agreement if it makes a substantive change (“amendment”) to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined below, is substantive.
- **Fee information.** The short form disclosure for the prepaid account (see 12 CFR 1005.18(b)(2)) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to 12 CFR 1005.18(b)(4).
- **Issuer.** The entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a prepaid account agreement.

- **Offers.** An issuer “offers” an agreement if the issuer markets, solicits applications for, or otherwise makes available a prepaid account that would be subject to that agreement, regardless of whether the issuer offers the prepaid account to the general public.
- **Offers to the general public.** An agreement if the issuer markets, solicits applications for, or otherwise makes available to the general public a prepaid account that would be subject to that agreement.
- **Open account.** A prepaid account is an “open account” or “open prepaid account” if: (i) there is an outstanding balance in the account; (ii) the consumer can load funds to the account even if the account does not currently hold a balance; or (iii) the consumer can access credit 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 the account. A prepaid account that has been suspended temporarily (for example, due to a report by the consumer of unauthorized use of the card) is considered an “open account” or “open prepaid account.”
- **Prepaid account.** A prepaid account as defined in 12 CFR 1005.2(b)(3).

### Submission of Agreements to the Bureau

An issuer must make submissions of prepaid account agreements to the CFPB on a rolling basis, in the form and manner specified by the CFPB, no later than 30 days after the issuer offers, amends, or ceases to offer any prepaid account agreement. See 12 CFR 1005.19(b)(1) regarding the content of each submission.

### Amended agreements

If a prepaid account agreement previously submitted to the CFPB is amended, the issuer must submit the entire amended agreement to the CFPB, in the form and manner specified by the CFPB, no later than 30 days after the change becomes effective. Additionally, if other previously submitted identifying information about the issuer and its agreements changes, the issuer must submit an update no later than 30 days after the change becomes effective. However, the issuer can delay submitting changes to the list of names of other relevant parties to a particular agreement until the earlier of (i) when it submits an amended agreement or changes to other identifying information about the issuer and its submitted agreements, or (ii) May 1 of each year. See 12 CFR 1005.19(b)(2)(ii) for more specific requirements.

### Withdrawal of agreements no longer offered



























































































































































