

**Compliance for Deposit Operations**  
***Regulation E: Subpart A***  
***Electronic Fund Transfers***

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**Pennsylvania Association of Community Bankers**

**November 2020**

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# Table of Contents

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Section 1: Introduction, Background, Authority and Purpose .....	1
Section 2: Definitions .....	2
Section 3: EFT Coverage [12 C.F.R. § 1005.3] .....	8
Section 4: Disclosure Requirements [12 C.F.R. § 1005.4] .....	23
Section 5: Issuance of Access Devices [12 C.F.R. § 1005.5] .....	25
Section 6: Liability of Consumer for Unauthorized Transfers [12 C.F.R. § 1005.6] .....	30
Section 7: Initial Disclosures [12 C.F.R. § 1005.7] .....	41
Section 8: Change in Terms Notice [12 C.F.R. § 1005.8] .....	49
Section 9: Receipts at Electronic Terminals [12 C.F.R. § 1005.9(a) and (e)] .....	52
Section 10: Periodic Statements [12 C.F.R. § 1005.9(b) through (d)] .....	59
Section 11: Preauthorized Transfers [12 C.F.R. § 1005.10] .....	68
Section 12: Error Resolution Procedures [12 C.F.R. § 1005.11] .....	78
Section 13: Relation to Other Laws [12 C.F.R. § 1005.12] .....	93
Section 14: Administrative Enforcement / Record Retention [12 C.F.R. § 1005.13] .....	101
Section 15: Electronic Fund Transfer Service Provider Not Holding Consumer's Account [12 C.F.R. § 1005.14] .....	103
Section 16: Electronic Fund Transfer of Government Benefits [12 C.F.R. § 1005.15] .....	108
Section 17: Disclosures at Automated Teller Machines [12 C.F.R. § 1005.16] .....	110
Section 18: Requirements for Overdraft Services [12 C.F.R. § 1005.17] .....	112
Section 19: Financial Institutions Offering Payroll Card Accounts [12 C.F.R. § 1005.18] .....	131
Section 20: Internet Posting of Prepaid Account Agreements 12 C.F.R. § 1005.19 .....	155
Section 21: Requirements for Gift Cards and Gift Certificates [12 C.F.R. § 1005.20] .....	162

# Section 1:

## Introduction, Background, Authority and Purpose

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### *Introduction*

Our discussion in this manual is limited to Section A of the regulation.

All regulatory text and commentary are included. The use of **bold** is added to help you navigate the Manual. *Italics* is used for the commentary to differentiate it from the regulatory text.

### *Background, Authority, and Purpose [12 CFR § 1005.1]*

Regulation E implements the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 et seq.) and establishes the basic rights, liabilities, and responsibilities of:

- consumers who use Electronic Fund Transfer (EFTs) services and
- financial institutions that offer these services.

The primary objective of the act and the regulation is the protection of individual consumers engaging in EFTs.

### **Regulatory Text**

#### **§1005.1 Authority and purpose.**

- (a) **Authority.** The regulation in this part, known as Regulation E, is issued by the Bureau of Consumer Financial Protection (Bureau) pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and have been assigned OMB No. 3170-0014.
- (b) **Purpose.** This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer and remittance transfer services and of financial institutions or other persons that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers and remittance transfers.

### **Regulatory Commentary**

*None.*

## Section 2: Definitions

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### ***Definitions [12 C.F.R. § 1005.2]***

#### **Regulatory Discussion**

Below is the regulatory text. Only a few of the definitions have commentary, and any commentary that exists appears following the definition and is indented in the appropriate location. The reader should assume that all definitions do not have commentary unless included following the definition.

#### **Regulatory Text and Commentary When Available**

Except as otherwise provided in subpart B, for purposes of this part, the following definitions apply:

(a)

- (1) **“Access device”** means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.
- (2) An access device becomes an **“accepted access device”** when the consumer:
  - (i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;
  - (ii) Requests validation of an access device issued on an unsolicited basis; or
  - (iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

#### ***Regulatory Commentary***

##### ***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.)*

(b)

- (1) **“Account”** means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.
- (2) The term includes a **“payroll card account”** which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person. For rules governing payroll card accounts, see §1005.18.
- (3) The term does not include an account held by a financial institution under a bona fide trust agreement.

### *Regulatory Commentary*

#### **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. Certain employment-related cards not covered.** *The term “payroll card account” does not include a card 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 a card 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 a card 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. However, all transactions involving the transfer of funds to or from a payroll card 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. 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.

(c) “**Act**” means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 *et seq.*).

(d) “**Business day**” means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

**Regulatory Commentary**

**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.

- (e) **“Consumer”** means a natural person.
- (f) **“Credit”** means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefore.
- (g) **“Electronic fund transfer”** is defined in §1005.3.
- (h) **“Electronic terminal”** means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines (ATMs), and cash dispensing machines.

### ***Regulatory Commentary***

#### ***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.

- (i) **“Financial institution”** means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376.

- (j) **“Person”** means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.
- (k) **“Preauthorized electronic fund transfer”** means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

### ***Regulatory Commentary***

#### ***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.

- (l) **“State”** means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the thereof in this paragraph (l).
- (m) **“Unauthorized electronic fund transfer”** means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:
- (1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
  - (2) With fraudulent intent by the consumer or any person acting in concert with the consumer;  
or
  - (3) By the financial institution or its employee.

### ***Regulatory Commentary***

#### ***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 3: EFT Coverage [12 C.F.R. § 1005.3]**

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### ***Accounts Covered [12 C.F.R. § 1005.3(a)]***

The requirements of Regulation E apply only to an account for which an agreement for EFT services to or from the account has been entered into between:

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

### **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.

### **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, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any of their political subdivisions.

### **Regulatory Text**

#### **§1005.3 Coverage.**

- (a) **General.** This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§1005.3(b)(2) and (3), 1005.10(b), (d), and (e), 1005.13, and 1005.20, this part applies to any person, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376. The requirements of subpart B apply to remittance transfer providers.

## Regulatory Commentary

### 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).*

## ***Electronic Fund Transfer In General [12 C.F.R. § 1005.3(b)(1)]***

An electronic fund transfer is any transfer of funds initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

Electronic fund transfers include, but are not limited to, the following:

- Point-of-sale (POS) transfers;
- Automated teller machine (ATM) transfers. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) is also considered an EFT if a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made;
- Direct deposits or withdrawals of funds. For example, Social Security benefits under the U.S. Treasury's direct-deposit program are EFTs, even if the listing of payees and payment amounts reaches the account holding institution by means of a computer printout from a correspondent bank. In addition, a preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape is considered an EFT, even if the financial institution holding the account sends or receives a composite check;
- Transfers initiated by telephone;

- Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. A transfer from the consumer's account resulting from a debit-card transaction at a merchant location is considered an EFT (even if no electronic terminal is involved at the time of the transaction) if the consumer's account is subsequently debited for the amount of the transfer;
- 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;
- 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.

## Regulatory Text

### (b) Electronic fund transfer

- (1) **Definition.** The term "electronic fund transfer" means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. The term includes, but is not limited to:
- (i) Point-of-sale transfers;
  - (ii) Automated teller machine transfers;
  - (iii) Direct deposits or withdrawals of funds;
  - (iv) Transfers initiated by telephone; and
  - (v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

## Regulatory Commentary

### *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.

## ***Electronic Fund Transfer Using Information from a Check [12 C.F.R. § 1005.3(b)(2)]***

The regulation applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.

The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an EFT, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-

time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy or a substantially similar notice, must be provided to the consumer at the time of the transaction.

A person may provide notices that are substantially similar to those set forth in Appendix A-6 of the regulation to comply with the requirements of this section.

## Regulatory Text

(b) \*\*\*

### (2) Electronic fund transfer using information from a check.

- (i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.
- (ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an electronic fund transfer, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.
- (iii) A person may provide notices that are substantially similar to those set forth in appendix A-6 to comply with the requirements of this paragraph (b)(2).

## Regulatory Commentary

### **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.*

### ***Collection of Returned Item Fees via Electronic Fund Transfer [12 C.F.R. § 1005.3(b)(3)]***

The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer's account, must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction. The notice must state that the fee will be collected by means of an

electronic fund transfer from the consumer's account if the payment is returned unpaid and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

If a fee for an electronic fund transfer or check returned unpaid may be collected electronically in connection with a point-of-sale transaction, the person initiating an electronic fund transfer to collect the fee must post the notice described above in a prominent and conspicuous location. The person also must either provide the consumer with a copy of the posted notice (or a substantially similar notice) at the time of the transaction, or mail the copy (or a substantially similar notice) to the consumer's address as soon as reasonably practicable after the person initiates the electronic fund transfer to collect the fee. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but the notice provided to the consumer must state the dollar amount of the fee if the amount can be calculated at the time the notice is provided or mailed to the consumer.

## Regulatory Text

(b) \*\*\*

### (3) Collection of returned item fees via electronic fund transfer

- (i) **General.** The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer's account, must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned unpaid and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii) of this section, the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.
- (ii) **Point-of-sale transactions.** If a fee for an electronic fund transfer or check returned unpaid may be collected electronically in connection with a point-of-sale transaction, the person initiating an electronic fund transfer to collect the fee must post the notice described in paragraph (b)(3)(i) of this section in a prominent and conspicuous location. The person also must either provide the consumer with a copy of the posted notice (or a substantially similar notice) at the time of the transaction, or mail the copy (or a substantially similar notice) to the consumer's address as soon as reasonably practicable after the person initiates the electronic fund transfer to collect the fee. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but the notice provided to the consumer must state the dollar amount of the fee if the amount can be calculated at the time the notice is provided or mailed to the consumer.

## Regulatory Commentary

### **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.*

## ***Exclusions from Coverage [12 C.F.R. § 1005.3(c)]***

Certain types of transfers are excluded from coverage under Regulation E. These types of transfers are not EFTs and are as follows.

### **Checks**

Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal is not considered an EFT. In addition, the electronic re-presentation 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.

### **Check Guarantee or Authorization**

Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account is not considered an EFT. 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.

### **Wire or Other Similar Transfers**

Any transfer of funds through Fedwire or through a similar wire transfer system used primarily for transfers between financial institutions or between businesses is not considered an EFT. 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.

However, if a financial institution makes a fund transfer to a consumer's account after receiving ACH 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.

### **Securities and Commodities Transfers**

Any transfer of funds whose primary purpose is the purchase or sale of a security or commodity is not an EFT if the security or commodity is any of the following:

- Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;
- Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission;

- Held in book-entry form by a Federal Reserve Bank or federal agency.

For example, this exemption applies to a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call. However, the exemption does not apply to a transfer involving the following:

- 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;

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).

### **Automatic Transfers by Account-Holding Institution**

Electronic fund transfers do not include transfers of funds under an agreement between a consumer and a financial institution which provides that the bank will initiate individual transfers without a specific request from the consumer. For instance, the following are not EFTs:

- between a consumer's accounts within the financial institution;
- from a consumer's account to an account of a member of the consumer's family held in the same financial institution; or
- between a consumer's account and an account of the financial institution. However, these types of transfers are still subject to the regulation's prohibition against requiring a consumer to repay a loan by preauthorized EFT (except for overdraft credit plans or credit extended to maintain a specified minimum balance in the consumer's account) and the Electronic Fund Transfer Act's provisions addressing civil and criminal liability.

This exemption from coverage under Regulation E also applies to the following:

- Electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events;
- Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the bank to the insurer;

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

### **Telephone-Initiated Transfers**

Electronic fund transfers do not include any transfer of funds that:

- is initiated by a telephone communication between a consumer and a financial institution making the transfer, and

- does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

A transfer that the consumer initiates by telephone is covered only if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. The following do not, by themselves, indicate that a written plan or agreement exists:

- A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer;
- 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 the Federal Reserve's Regulation D (12 CFR 204);
- An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

When a written plan or agreement is in place, a transfer initiated by a telephone call from a consumer is an EFT even though:

- an employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip);
- the consumer is required to make a separate request for each transfer;
- the consumer uses the plan infrequently;
- the consumer initiates the transfer via a facsimile machine;
- the consumer initiates the transfer using a financial institution's audio-response or voice-response telephone system

### **Small Institutions**

The regulation includes a limited small-bank exemption from coverage. Any preauthorized transfer to or from an account is not an EFT if the assets of the account-holding financial institution were \$100 million or less on the preceding December 31. This exemption is limited to preauthorized transfers. Institutions that offer other EFTs must comply with the applicable sections of the regulation for those services.

However, preauthorized transfers to or from an account are still subject to the regulation's prohibition against requiring a consumer to repay a loan by preauthorized EFT (except for overdraft credit plans or credit extended to maintain a specified minimum balance in the consumer's account) and the EFTA's provisions addressing civil and criminal liability.

If the assets of the account-holding institution subsequently exceed \$100 million, the bank's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed \$100 million.

## Regulatory Text

(c) **Exclusions from coverage.** The term “electronic fund transfer” does not include:

- (1) **Checks.** Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.
- (2) **Check guarantee or authorization.** Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.
- (3) **Wire or other similar transfers.** Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.
- (4) **Securities and commodities transfers.** Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:
  - (i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;
  - (ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or
  - (iii) Held in book-entry form by a Federal Reserve Bank or Federal agency.
- (5) **Automatic transfers by account-holding institution.** Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:
  - (i) Between a consumer's accounts within the financial institution;
  - (ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or
  - (iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.
- (6) **Telephone-initiated transfers.** Any transfer of funds that:
  - (i) Is initiated by a telephone communication between a consumer and a financial institution making the transfer; and
  - (ii) Does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.
- (7) **Small institutions.** Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were \$100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed \$100

million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed \$100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to §1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.

## Regulatory Commentary

### **3(c) Exclusions From Coverage**

#### **3(c)(1) Checks**

1. **Re-presented checks.** *The electronic re-presentation 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 4: Disclosure Requirements**

### **[12 C.F.R. § 1005.4]**

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#### ***General Disclosure Requirements / Jointly Offered Services*** ***[12 C.F.R. § 1005.4]***

##### **Form of Disclosures**

Regulation E disclosures must be clear and readily understandable. They must also be in writing and in a form the consumer may keep. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act)(15 U.S.C. 7001 et seq.). No particular rules govern type size, number of pages, or the relative conspicuousness of various terms.

A financial institution may use commonly accepted or readily understandable abbreviations in its EFT disclosures. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.

Disclosures may be made in languages other than English, provided that they are available in English upon request.

##### **Additional Information/Disclosures Required by Other Laws**

A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act or the Truth in Savings Act) with its Regulation E disclosures.

##### **Multiple Accounts**

A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

##### **Multiple Account Holders**

For joint accounts held by two or more consumers, a financial institution needs to provide only one set of the required disclosures and may provide them to any of the account holders.

##### **Services Offered Jointly**

Financial institutions that provide EFT services jointly may contract among themselves to comply with the regulation's disclosure requirements. An institution needs to make only the required disclosures that are within its knowledge and within the purview of its relationship with the account holder.

## Regulatory Text

### §1005.4 General disclosure requirements; jointly offered services.

(a)

(1) **Form of disclosures.** Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep, except as otherwise provided in this part. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

(2) **Foreign language disclosures.** Disclosures required under this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

(b) **Additional information; disclosures required by other laws.** A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.) with the disclosures required by this part.

(c) **Multiple accounts and account holders**

(1) **Multiple accounts.** A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) **Multiple account holders.** For joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.

(d) **Services offered jointly.** Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by §§1005.7 and 1005.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.

## Regulatory Commentary

### 4(a) Form of Disclosures

1. **General.** *Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. 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 5: Issuance of Access Devices

## [12 C.F.R. § 1005.5]

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### *Introduction*

Regulation E limits the circumstances under which a financial institution may issue an access device to a consumer. Note that making an additional account accessible through an existing access device is equivalent to issuing an access device. The underlying purpose of distinguishing between solicited and unsolicited issuance of an access device defines when a consumer becomes liable for transactions through an access device. In general, a consumer must request (i.e., solicit) or accept (i.e., unsolicited) an access device before the consumer becomes liable for charges.

### **Regulatory Text**

None.

### **Regulatory Commentary**

#### **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.*

### ***Solicited Issuance [12 C.F.R. § 1005.5(a)]***

Generally, a financial institution may issue an access device to a consumer only

- in response to an oral or written request for the device or
- as a renewal of, or in substitution for, an accepted access device, whether issued by the institution or a successor.

A financial institution may issue an access device to each account holder of a joint account if the requesting holder specifically authorizes the institution to do so.

In issuing a renewal or substitute access device, a financial institution may not provide additional devices. For example, only one new card and PIN may replace a card and PIN previously issued. If the replacement device permits either additional or fewer types of EFT services, a change-in-terms notice or new disclosures are required. For purposes of this section and in connection with a renewal or substitution access device issued by a successor institution, such an entity is one 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.

## Regulatory Text

(a) **Solicited issuance.** Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only:

- (1) In response to an oral or written request for the device; or
- (2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

## Regulatory Commentary

### *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.*

## **Unsolicited Issuance [12 C.F.R. § 1005.5(b)]**

A financial institution may distribute an access device to a consumer on an unsolicited basis only if the access device is:

- not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an EFT using the access device;

- accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;
- accompanied by the disclosures describing the consumer's rights and liabilities that will apply if the access device is validated; and
- validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.

For example, a financial institution may issue an unsolicited access device 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 consumer's identity has been verified is not an acceptable procedure.

A consumer has no liability for unauthorized transfers involving an unsolicited access device until the device becomes an "accepted access device." A card and PIN combination may be treated as an accepted access device once the consumer has used it to make a transfer. In addition, issuing a PIN at the consumer's request is an acceptable way of validating the debit card and identifying the consumer (required as a condition of imposing liability for unauthorized transfers).

### **Identity Verification**

Any reasonable means may be used to verify the consumer's identity, such as a:

- Photograph
- Fingerprint
- Personal visit
- Signature comparison
- Personal information about the consumer

Other acceptable ways to identify the consumer include electronic or mechanical confirmation (such as a PIN). When more than one access device is issued for an account, a separate means to identify each user of the account may be used but is not required.

Even if reasonable means to verify a consumer's identity were used, and the bank 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.

### **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 the regulation relating to an unsolicited issuance of an access device.

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 un-validated and that validation will apply to both devices.

## Regulatory Text

- (b) **Unsolicited issuance.** A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:
- (1) Not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;
  - (2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;
  - (3) Accompanied by the disclosures required by §1005.7, of the consumer's rights and liabilities that will apply if the access device is validated; and
  - (4) Validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.

## Regulatory Commentary

### **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 6: Liability of Consumer for Unauthorized Transfers [12 C.F.R. § 1005.6]

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### *Conditions for Liability [12 C.F.R. § 1005.6(a)]*

A consumer may be held liable for an unauthorized electronic fund transfer involving the consumer's account only if the following disclosures were provided:

- A summary of the consumer's liability for unauthorized EFTs under Regulation E or under any state or other applicable law or agreement;
- The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made; and
- The financial institution's business days.

In addition, if the unauthorized transfer involved an access device, it must:

- be an accepted access device, and
- the financial institution must have adequately identified the consumer to whom it was issued.

### **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:

- Electronic or mechanical confirmation (such as a PIN).
- Comparison of the consumer's signature, fingerprint, or photograph.

### **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.

### **Regulatory Text**

(a) **Conditions for liability.** A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by §1005.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

## Regulatory Commentary

### 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.*

### Limitations on Amount of Liability [12 C.F.R. § 1005.6(b)]

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.

The liability may depend 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. *Section 1005.6 Liability of Consumer for Unauthorized Transfers*

## Regulatory Text

None.

## Regulatory Commentary

### 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.*

## ***Liability for Access Device Related Losses [12 C.F.R. § 1005.6(b)(1)]***

### **Timely Notice Given**

If the consumer notifies the financial institution within two business days after learning of the loss or theft of an access device, the consumer's liability is limited to \$50 or the amount of unauthorized transfers that occur before notice to the financial institution is given, whichever is less.

For example, a 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.

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 does not, in itself, provide conclusive evidence that the consumer had this knowledge.

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.

### **Regulatory Text**

(b) **Limitations on amount of liability.** A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

- (1) **Timely notice given.** If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notice to the financial institution.

### **Regulatory Commentary**

#### ***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.*

## ***Liability for Access Device Related Losses [12 C.F.R. § 1005.6(b)(2)]***

### **Timely Notice Not Given**

If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability is limited to the lesser of \$500 or the sum of:

- \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and
- the amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided that it can be established that these transfers would not have occurred had the consumer notified the bank within that two-day period.

For example, a 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 that 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).

## Regulatory Text

(b) **Limitations on amount of liability.** A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

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- (2) **Timely notice not given.** If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of:
- (i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and
  - (ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

## Regulatory Commentary

### **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).*

## **Periodic Statement – Timely Notice Not Given [12 C.F.R. § 1005.6(b)(3)]**

A consumer is required to report an unauthorized EFT that appears on a periodic statement within 60 days of the transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability is unlimited for all unauthorized transfers that occur after the close of the 60 days and before notice to the institution if the bank can establish

that the unauthorized transfers would not have occurred had the consumer notified the bank within the 60-day period.

### Transfers Involving Access Device

. This 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 addressed above. 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.
- Up to \$500 if the consumer notifies the institution after two business days of learning of the loss or theft.
- Unlimited liability for all amounts made after the 60 day period.

### 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 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.

**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.

### Regulatory Text

(b) **Limitations on amount of liability.** A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

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(3) **Periodic statement; timely notice not given.** A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the

financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

## Regulatory Commentary

### **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.*

### **Extension of Time Limits [12 C.F.R. § 1005.6(b)(4)]**

If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the times specified above must be extended to a reasonable period. Examples of circumstances that require extension of the notification periods are a consumer's extended travel or hospitalization.

## Regulatory Text

**(b) Limitations on amount of liability.** A consumer's liability for an unauthorized electronic

fund transfer or a series of related unauthorized transfers shall be determined as follows:

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- (4) **Extension of time limits.** If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

## Regulatory Commentary

### *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.*

## ***Notice to Financial Institution [12 C.F.R. § 1005.6(b)(5)]***

A consumer may notify the bank of an unauthorized transfer in person, by telephone, or in writing. Written notice is given at the time the consumer mails the notice or delivers it for transmission to the bank by any other usual means. In addition, notice is given when the bank becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

Notification of an unauthorized transfer is given by a consumer when the consumer takes steps reasonably necessary to provide the bank with the pertinent account information, whether or not a particular employee or agent of the institution actually receives the 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.

Notice is considered given even if the consumer notifies the bank but uses an address or telephone number other than the one specified by the bank for this purpose.

Notification by a third-party is also acceptable. 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.

## Regulatory Text

- (b) **Limitations on amount of liability.** A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

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**(5) Notice to financial institution.**

- (i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.
- (ii) The consumer may notify the institution in person, by telephone, or in writing.
- (iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

**Regulatory Commentary****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.*

**Limits on Liability [12 C.F.R. § 1005.6(b)(6)]**

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, 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.

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 or the occurrence of an unauthorized transfer. No agreement between the consumer and a bank may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

State laws or agreements between the consumer and the financial institution that impose less liability than Regulation E (for instance, Visa and/or MasterCard liability limits) supersede the liability limitations of the regulation.

### **Regulatory Text**

(b) **Limitations on amount of liability.** A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

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(6) **Liability under state law or agreement.** If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or agreement.

### **Regulatory Commentary**

*None.*

<b>Consumer Liability for Unauthorized Transfers</b>		
<b>Event</b>	<b>Timing of Consumer Notice to Financial Institution</b>	<b>Maximum Liability</b>
Loss or theft of access device	Within 2 business days after learning of loss or theft.	Lesser of \$50 OR total amount of unauthorized transfers.
Loss or theft of access device	More than 2 business days after learning of loss or theft up to 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	Lesser of \$500 OR the sum of: \$50 or the total amount of unauthorized transfers occurring in the first 2 business days, whichever is less; AND The amount of unauthorized transfers occurring after 2 business days and before notice to the financial institution.
Loss or theft of access device	More than 60 calendar days after transmittal of statement showing that unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of \$500 OR the sum of: Lesser of \$50 or the amount of unauthorized transfers in first 2 business days; AND The amount of unauthorized transfers occurring after 2 business days. For transfers occurring after the 60-day period, unlimited liability (until the financial institution is notified).
Unauthorized transfer(s) not involving loss or theft of an access device	Within 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	No liability
Unauthorized transfer(s) not involving loss or theft or an access device	More than 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	Unlimited liability for unauthorized transfers occurring 60 calendar days after the periodic statement and before notice to the financial institution.

## **Section 7: Initial Disclosures [12 C.F.R. § 1005.7]**

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### ***Timing of Disclosures [12 C.F.R. § 1005.7(a)]***

Initial disclosures must be delivered at the time a consumer contracts for an electronic fund transfer service or before the first EFT is made involving the consumer's account.

For purposes of providing the required disclosures on a bank's Web site, this should equate to the consumer viewing the disclosures before executing the request for the EFT service. In addition, the Web site delivery needs to be programmed in a manner to prompt the consumer to accept the delivery of the disclosures before proceeding with the account request. Suggested verbiage might be:

"I hereby acknowledge I have read and understand the Electronic Fund Transfers Act disclosure for this product."
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### **Early Disclosures**

Disclosures given earlier than the regulation requires (for example, when the consumer opens a checking account) do not need to be repeated when the consumer later enters into an agreement with a third-party who will initiate preauthorized transfers to or from the consumer's account. The disclosures must be redelivered only if the terms and conditions will differ from those previously disclosed by the bank.

On the other hand, if an agreement is made directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure. For example, re-disclosure should be made when a consumer contracts for a new service with the account-holding bank.

### **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.

In some instances, before direct deposit of government payments such as Social Security takes place, the consumer and the financial institution both will complete Form 1199A (or a comparable form providing notice to the institution) or some other authorization form. Regulation E disclosures may be delivered at that time.

### **Addition of New Accounts**

If a consumer opens a new account permitting EFTs and has already received Regulation E disclosures for another account, the bank needs to disclose only the terms and conditions that differ from those previously given.

If an EFT service is added to a consumer's account and is subject to terms and conditions that differ from those described in the initial disclosures, disclosures for the new service are required. For example, one-time EFTs initiated using information from a consumer's check are a new type of transfer requiring new disclosures, as applicable. The disclosures must be provided when the consumer contracts for the new service or before the first EFT is made using the new service.

### **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.

### **Disclosures Covering all EFT Services Offered**

A financial institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services available.

### **Regulatory Text**

- (a) **Timing of disclosures.** A financial institution shall make the disclosures required by this section 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.

### **Regulatory Commentary**

#### **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.*

## **Content of Disclosures [12 C.F.R. § 1005.7(b)]**

The information required in initial EFT disclosures must include the following disclosures, as applicable.

1. **Liability of Consumer.** A summary of the consumer's liability under Regulation E or under state or other applicable law or agreement for unauthorized EFTs must be disclosed. The summary of the consumer's liability may, but need not, include advice on promptly reporting unauthorized transfers or the loss or theft of an access device.

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 this liability on the consumer, an institution is required to disclose this potential liability and the telephone number and address for reporting unauthorized transfers.

If a financial institution chooses to impose no liability for unauthorized EFTs, it does not need to provide the liability disclosures. If it later decides to impose liability, however, it must first provide the disclosures.

2. **Telephone Number and Address.** The disclosure must contain the telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made.

The same or different telephone numbers in the disclosures may be used for the following:

- a. Reporting the loss or theft of an access device or possible unauthorized transfers;
- b. Inquiring about the receipt of a preauthorized credit;
- c. Stopping payment of a preauthorized debit;
- d. Giving notice of an error.

The telephone number itself does not have to be incorporated into the text of the disclosure. For example: 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." may be inserted instead. However, a specific telephone number and address must be provided, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

3. **Business Days.** The financial institution's business days must be disclosed.
4. **Types of Transfers and Transfer Limitations.** The disclosure must list the types of EFTs that the consumer may make and any limitations on the frequency and dollar amount of transfers. In addition, one-time EFTs initiated using information from a consumer's check are

among the types of transfers that a consumer can make and must be disclosed. The regulation does not require the listing of preauthorized transfers among the types of transfers that a consumer can make.

However, 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 an EFT 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. It does not need to disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line).

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 (12 CFR 204) restricts the number of payments to third-parties that may be made from a money market deposit account. A bank that does not execute fund transfers in excess of those limits must disclose this restriction as a limitation on the frequency of EFTs.

- 5. Fees.** Any and all fees imposed by the bank for EFTs or for the right to make EFT transfers must be disclosed. Other fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may be, but are not required to be, disclosed by Regulation E. In addition, fees for inquiries made at an ATM are not required to be disclosed by Regulation E, since no transfer of funds is involved.

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.

Fees paid by the account-holding institution to the operator of a shared or interchange ATM system do not need to be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly to the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) also do not need to be disclosed.

- 6. Documentation.** The disclosure must contain a summary of the consumer's right to documentation of EFT on receipts and periodic statements and the consumer's right to notices regarding preauthorized transfers.
- 7. Stop Payment.** The disclosure must contain a summary of the consumer's right to stop payment of a preauthorized EFT and the proper procedure for placing a stop-payment order.
- 8. Liability of Institution.** A summary of the financial institution's liability to the consumer for failure to make or to stop certain transfers must be disclosed.
- 9. Confidentiality.** The circumstances must be disclosed under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third-parties. A bank 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.

**10. Error Resolution.** An error resolution notice that is substantially similar to the initial Model Form A-3 of Appendix A. Different wording may be used as long as the substance of the notice remains the same. In addition, inapplicable items (for example, the requirement for written confirmation of an oral notification) may be deleted and state law requirements affording greater consumer protection than Regulation E may be substituted for the protections described in the model notice.

To take advantage of the longer time periods for resolving errors (for new accounts as defined in Regulation CC, transfers initiated outside the United States, or transfers resulting from POS debit-card transactions), a bank must disclose these longer time periods.

**11. ATM Fees.** A notice that a fee may be imposed by an ATM operator, when the consumer initiates an EFT or makes a balance inquiry, and by any network used to complete the transaction.

## Regulatory Text

- (b) **Content of disclosures.** A financial institution shall provide the following disclosures, as applicable:
- (1) **Liability of consumer.** A summary of the consumer's liability, under §1005.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers.
  - (2) **Telephone number and address.** The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.
  - (3) **Business days.** The financial institution's business days.
  - (4) **Types of transfers; limitations.** The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.
  - (5) **Fees.** Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.
  - (6) **Documentation.** A summary of the consumer's right to receipts and periodic statements, as provided in §1005.9 of this part, and notices regarding preauthorized transfers as provided in §1005.10(a) and (d).
  - (7) **Stop payment.** A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in §1005.10(c).
  - (8) **Liability of institution.** A summary of the financial institution's liability to the consumer under section 910 of the Act for failure to make or to stop certain transfers.
  - (9) **Confidentiality.** The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) **Error resolution.** A notice that is substantially similar to Model Form A-3 as set out in appendix A of this part concerning error resolution.

(11) **ATM fees.** A notice that a fee may be imposed by an automated teller machine operator as defined in §1005.16(a), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

## **Regulatory Commentary**

### **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.*

### **Addition of electronic fund transfer services [12 C.F.R. § 1005.7(c)]**

If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required

#### **Regulatory Text**

- (c) Addition of electronic fund transfer services. If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

#### **Regulatory Commentary**

##### **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 8: Change in Terms Notice**

### **[12 C.F.R. § 1005.8]**

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#### ***Prior Notice Required [12 C.F.R. § 1005.8(a)]***

Written notice must be mailed or delivered to a consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed in the initial disclosures if the change results in any of the following:

- Increased fees for the consumer;
- Increased liability for the consumer;
- Fewer types of available EFTs;
- Stricter limitations on the frequency or dollar amount of transfers.

If 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 bank imposes liability on the consumer for unauthorized transfers.

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

#### **Prior Notice Exceptions**

The following changes do not require prior notification:

- Closing some of the bank's ATMs;
- Cancellation of an access device.

In addition, prior notice does not need to be provided if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If such a change becomes permanent and disclosure would not jeopardize the security of the account or system, the consumer must be notified in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

If the initial Regulation E disclosures omit details about limitations on EFT transfers because secrecy is essential to the security of the account or system, a subsequent increase in those limitations does not need to be disclosed if secrecy is still essential. If, however, no limits were in place when the initial disclosures were given and the institution now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted.

#### **Regulatory Text**

##### **(a) Change in terms notice**

- (1) **Prior notice required.** A financial institution shall mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition required to be disclosed under §1005.7(b) of this part if the change would result in:
  - (i) Increased fees for the consumer;
  - (ii) Increased liability for the consumer;
  - (iii) Fewer types of available electronic fund transfers; or
  - (iv) Stricter limitations on the frequency or dollar amount of transfers.
- (2) **Prior notice exception.** A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

## Regulatory Commentary

### **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.*

### **Error Resolution Notice [12 C.F.R. § 1005.8(b)]**

An error resolution notice substantially similar to Model Form A-3 in Appendix A of the regulation must be mailed or delivered to the consumer at least once each calendar year for accounts to or from which EFTs can be made.

Alternatively, an institution may include an abbreviated form of this notice on or with each periodic statement.

If a bank 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 was sent under the old method.

For new accounts, disclosure of the longer error resolution time periods 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.

## **Regulatory Text**

(b) **Error resolution notice.** For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to the model form set forth in appendix A of this part (Model Form A-3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error resolution notice set forth in appendix A of this part (Model Form A-3), on or with each periodic statement required by §1005.9(b).

## **Regulatory 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 9: Receipts at Electronic Terminals**

### **[12 C.F.R. § 1005.9(a) and (e)]**

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#### ***Receipts at Electronic Terminals Delivery [12 C.F.R. § 1005.9(a) and (e)]***

A receipt must be made available to a consumer at the time an EFT is initiated at an electronic terminal.

#### **Receipts Furnished Only on Request**

The regulation requires only 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.

#### **Third-Party Providing Receipt**

An account-holding institution may make terminal receipts available through third-parties such as merchants or other financial institutions.

#### **Promotional Material**

Promotional material may be included 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.

#### **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).

#### **Inadvertent Errors**

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.

#### **Multiple Transfers**

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

## Receipt Contents

Receipts made available to a consumer at the time an EFT is initiated at an electronic terminal must contain the following information, as applicable:

- 1. Amount.** The amount of the transfer must be given. A transaction fee may be included in this amount, provided that the amount of the fee is disclosed on the receipt and is displayed on or at the terminal. 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 consumers are given the option to cancel the transaction after receiving notice of a fee.
- 2. Date.** The date the consumer initiates the transfer must be shown. 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.
- 3. Type.** The receipt must show the type of transfer and the type of the consumer's account(s) to or from which funds are transferred. 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."

The identification of the type of 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. This exception to account type identification is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

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."

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."

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 does not need to differentiate the transaction from one involving the purchase of goods.

- 4. Identification.** A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer, must be given. The number or code does not need to exceed four digits or letters to comply with this identification requirement.
- 5. Terminal Location.** The receipt must show the location of the terminal where the transfer is initiated or identification such as a code or terminal number. A code or terminal number

identifying the terminal where the transfer is initiated may be given as part of a transaction code.

Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it must include the city and state or foreign country and one of the following:

- a. The 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;
- b. A generally accepted name for the specific location. Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport;
- c. The name of the owner or operator of the terminal if other than the account-holding institution. Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

The city identification may be omitted from the receipt if the generally accepted name (such as a branch name) contains the city name. The 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.

Both the city and state may be omitted from the location information on the receipt 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.

6. **Third-Party Transfer.** The name of any third-party to or from whom funds are transferred must be given. The receipt does not need to 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. Properly documented receipts of EFTs to a third-party at an electronic terminal constitute prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit. The regulation does not require a financial institution to identify third-parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

A financial institution is not subject to the requirement to make available a receipt if the amount of the transfer is \$15 or less.

## Regulatory Text

- (a) **Receipts at electronic terminals - General.** Except as provided in paragraph (e) of this section, a financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

- (1) **Amount.** The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.
- (2) **Date.** The date the consumer initiates the transfer.
- (3) **Type.** The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.
- (4) **Identification.** A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).
- (5) **Terminal location.** The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:
  - (i) The street address; or
  - (ii) A generally accepted name for the specific location; or
  - (iii) The name of the owner or operator of the terminal if other than the account-holding institution.
- (6) **Third party transfer.** The name of any third party to or from whom funds are transferred.

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- (e) **Exception for receipts in small-value transfers.** A financial institution is not subject to the requirement to make available a receipt under paragraph (a) of this section if the amount of the transfer is \$15 or less.

## Regulatory Commentary

### **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.*

## **Section 10: Periodic Statements**

### **[12 C.F.R. § 1005.9(b) through (d)]**

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#### ***General Timing and Content Requirements [12 C.F.R. § 1005.9(b)]***

Periodic statements are another means of providing documentation of electronic fund transfers to consumers. For an account to or from which EFTs can be made, a financial institution is required to send a periodic statement for each monthly cycle in which an EFT has occurred. On these types of accounts (accounts to or from which EFTs can be made), a financial institution is required to send a periodic statement at least quarterly if no transfer has occurred.

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, they do not vary by more than four days from the regular cycle. This 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.

#### **Interim Statements**

Generally, periodic statements must be provided 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 a bank issues a quarterly statement 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 the periodic statement disclosure requirements of Truth in Savings: Regulation DD (12 CFR 1030.6).

#### **Inactive Accounts**

Periodic statements do not need to be sent to consumers whose accounts are inactive as defined by the institution.

#### **Consumer Pickup**

A financial institution may permit, but may not require, consumers to call for their periodic statements.

#### **Content Requirements**

Similar to receipts issued at electronic terminals, certain information is required to be provided on periodic statements. To meet the documentation requirements for periodic statements, a financial institution may:

- Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;
- Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;
- Use codes for names of third-parties or terminal locations and explain the information to which the codes relate on an accompanying document.

Specifically, periodic statements are required to contain the following information, as applicable.

### Transaction Information

For each EFT occurring during the cycle the following transaction information must be provided:

1. **Amount of the transfer.** If a financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, it is not required to 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 bank's adjustment.
2. **Date the transfer.** The date the transfer was credited or debited to the consumer's account.
3. **Type of transfer and type of account.** The transfer type and account type to or from which funds were transferred. 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.
4. **Terminal Location.** For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described on the receipt issued at the time the transfer occurred. An institution does not have to list 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.
5. **Third-Party Name.** The name of any third-party to or from whom funds were transferred. 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.
  - a. The third-party name for recurring payments from Federal, state, or local governments does not need to list the particular agency. For example, "U.S. gov't" or "N.Y. sal" will suffice.
  - b. If a consumer makes an EFT to another consumer, the recipient must be identified by name (not just by an account number, for example).
  - c. 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.”

- d. 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.
  - e. 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.
6. **Account Number.** The number of the account for which the statement was issued must be listed on the statement.
  7. **Fees.** The periodic statement must include the amount of any fees assessed against the account during the statement period for EFTs, for the right to make transfers, or for account maintenance. The fees disclosed may include fees for EFTs and for other non-electronic services and include both fixed fees and per-item fees. They may be given as a total or may be itemized in part or in full.
  8. 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 do not need to be separately disclosed on the periodic statement.
  9. Finance charges imposed on the account during the statement period are not required by Regulation E to be included on the periodic statement.
  10. **Account Balances.** The periodic statement must disclose the balance in the account at the beginning and at the close of the statement period. The opening and closing balances must reflect both EFTs and other account activity.
  11. **Address and Telephone Number for Inquiries.** The address and telephone number to be used for inquiries or notice of errors, preceded by “Direct inquiries to” or similar language are to be included on the periodic statement. The address and telephone number provided on an abbreviated error resolution notice given on or with the statement satisfies this requirement.
  12. **Telephone Number for Preauthorized Transfers.** A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer’s account have occurred is required, if this (telephone-notice) option has been selected to provide notice to a consumer of the occurrence of a preauthorized transfer.
  13. A single telephone number, preceded by the “direct inquiries to” language, is an acceptable means of providing a telephone number for both inquiries and preauthorized transfers.

## Regulatory Text

- (b) **Periodic statements.** For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:
- (1) **Transaction information.** For each electronic fund transfer occurring during the cycle:
    - (i) The amount of the transfer;
    - (ii) The date the transfer was credited or debited to the consumer's account;
    - (iii) The type of transfer and type of account to or from which funds were transferred;
    - (iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and
    - (v) The name of any third party to or from whom funds were transferred.
  - (2) **Account number.** The number of the account.
  - (3) **Fees.** The amount of any fees assessed against the account during the statement period for electronic fund transfers, the right to make transfers, or account maintenance.
  - (4) **Account balances.** The balance in the account at the beginning and at the close of the statement period.
  - (5) **Address and telephone number for inquiries.** The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error resolution notice under §1005.8(b) given on or with the statement satisfies this requirement.
  - (6) **Telephone number for preauthorized transfers.** A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under §1005.10(a)(1)(iii).

## Regulatory Commentary

### 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.*

## ***Exceptions to the Periodic Statement Requirement for Certain Accounts [12 C.F.R. § 1005.9(c)]***

### **Preauthorized Transfers to Accounts**

For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

1. **Passbook accounts.** If a passbook account may be accessed only by preauthorized transfers to the account (for example, direct deposits), periodic statements need not be provided if:
  - a. the passbook is updated upon presentation, or
  - b. the consumer is provided a separate document with the amount and date of each EFT since the passbook was last presented.
2. **Other accounts.** Periodic statements must be provided at least quarterly for types of accounts other than passbook accounts that may be accessed only by preauthorized transfers to the account.

### **Intra-institutional Transfers**

The regulation provides an exception from the periodic statement requirement for certain intra-institutional transfers between a consumer’s accounts. In cases where electronic fund transfers initiated by the consumer are between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the regulation’s periodic statement requirement.

However, compliance with the applicable periodic statement requirements for any other EFTs to or from the account is still necessary. 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.

## Preauthorized Transfers to Accounts/Intra-institutional Transfers

Accounts whose EFT activity is restricted to preauthorized transfers to the account and to EFTs initiated by the consumer between two accounts of the consumer in the same institution must be provided a periodic statement at least quarterly. If EFT activity on a passbook account is restricted to these two types of transfers, a periodic statement is not required as long as the bank updates the passbook upon presentation or provides the consumer a separate document with the amount and date of each EFT since the passbook was last presented.

### Regulatory Text

#### (c) Exceptions to the periodic statement requirement for certain accounts

- (1) **Preauthorized transfers to accounts.** For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:
  - (i) **Passbook accounts.** For passbook accounts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.
  - (ii) **Other accounts.** For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.
- (2) **Intra-institutional transfers.** For an electronic fund transfer initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the periodic statement requirement.
- (3) **Relationship between paragraphs (c)(1) and (2) of this section.** An account that is accessed by preauthorized transfers to the account described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section.

### Regulatory Commentary

#### *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.*

## ***Documentation for Foreign-Initiated Transfers [12 C.F.R. § 1005.9(d)]***

The requirement to provide a terminal receipt for an EFT or to document the transfer on a periodic statement is waived if a transfer is not initiated within a state and inquiries for clarification or documentation are treated as notices of an error.

However, an institution is still required to make a good faith effort to provide all of the required information for foreign-initiated transfers. For example, even if the bank is not able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

### **Regulatory Text**

- (d) ***Documentation for foreign-initiated transfers.*** The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this part if:
  - (1) The transfer is not initiated within a state; and
  - (2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with §1005.11.

### **Regulatory Commentary**

#### ***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 11: Preauthorized Transfers

## [12 C.F.R. § 1005.10]

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### *Preauthorized Transfers to Consumer's Account [12 C.F.R. § 1005.10(a)]*

**Notice by Financial Institution.** When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding financial institution is required to provide notice to the consumer by one of the following three methods:

1. **Positive notice** – providing oral or written notice of the transfer within two business days after the transfer occurs. A periodic statement sent within two business days after the scheduled transfer, showing the transfer, can serve as notice of receipt.
2. **Negative notice** – providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur. The absence of a deposit entry (on a periodic statement sent within two business days after the scheduled transfer date) can serve as negative notice.
3. **Readily available telephone line** – providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement. If a financial institution uses the telephone notice option, it should be able, in most instances, to verify during a consumer's initial call whether a transfer was received. The bank must respond within two business days to any inquiry not answered immediately.

No specific language is required for notices regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not. In addition, a bank may use different methods of notice for various types or series of preauthorized transfers and it does not need to offer consumers a choice of notice methods.

Any reasonable means necessary may be used to provide the telephone number to consumers with passbook accounts that can be accessed only by preauthorized credits and that do not receive periodic statements. For example, a bank may print the telephone number in the passbook or include the number with the annual error resolution notice.

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

#### **Notice by Payor**

A financial institution is not required to provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

## Crediting

A financial institution that receives preauthorized EFTs to a consumer's account initiated by a person at least once every 60 days must credit the amount of the transfer as of the date the funds for the transfer are received.

## Regulatory Text

### (a) Preauthorized transfers to consumer's account

- (1) **Notice by financial institution.** When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding financial institution shall provide notice to the consumer by:
  - (i) **Positive notice.** Providing oral or written notice of the transfer within two business days after the transfer occurs; or
  - (ii) **Negative notice.** Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or
  - (iii) **Readily-available telephone line.** Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.
- (2) **Notice by payor.** A financial institution need not provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.
- (3) **Crediting.** A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the date the funds for the transfer are received.

## Regulatory Commentary

### *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.*

### **Written Authorization for Preauthorized Transfers from a Consumer's Account [12 C.F.R. § 1005.10(b)]**

Preauthorized EFTs from a consumer's account must be authorized in writing and signed by the consumer or similarly authenticated by the consumer. The person that obtains the authorization must provide a copy to the consumer.

#### **Preexisting Authorizations**

A financial institution does not need to 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.

#### **Authorization Obtained by Third-party**

The account-holding financial institution is not in violation of 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.

#### **Written Authorization for Preauthorized Transfers from an Account**

The requirement that preauthorized EFTs must 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. A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also is not considered written authorization.

## Use of a Confirmation Form

Various methods may be used to comply with the requirement that preauthorized transfers from a consumer's account must be authorized by the consumer in writing. 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.

## Similarly Authenticated

The "similarly authenticated" standard permits signed, written authorization to be provided electronically. The writing and signature requirements are satisfied by complying with the E-Sign Act 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.

## Requirements of an Authorization

An authorization is valid if it is readily identifiable as an authorization for preauthorized electronic fund transfer(s) from a consumer's account and the terms of the preauthorized transfer(s) are clear and readily understandable.

## Regulatory Text

- (b) Written authorization for preauthorized transfers from consumer's account. Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

## Regulatory Commentary

### ***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.*

## **Consumer’s Right to Stop Payment [12 C.F.R. § 1005.10(c)]**

### **Notice**

A consumer may stop payment of a preauthorized EFT from the consumer’s account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

A 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).

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. The institution may not wait for the payee/originator to terminate the automatic debits. A bank 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 after an oral notification). If an institution requires but does not receive written confirmation within the 14 day period, it may honor subsequent debits to the account.

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.

## Written Confirmation

A financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days after an oral notification. An institution that requires written confirmation must inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

## Regulatory Text

### (c) Consumer's right to stop payment

- (1) **Notice.** A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.
- (2) **Written confirmation.** The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

## Regulatory Commentary

### *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.*

## ***Preauthorized Transfers Varying in Amount [12 C.F.R. § 1005.10(d)]***

### **Notice**

When a preauthorized EFT from the consumer's account varies in amount from the previous transfer under the same authorization or from the preauthorized amount, written notice of the amount and date of the transfer must be provided to the consumer by the designated payee or the financial institution at least 10 days before the scheduled date of transfer.

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

### **Range**

The designated payee or the institution must inform the consumer of the right to receive notice of all varying transfers. It may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

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.

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.

## Regulatory Text

### (d) Notice of transfers varying in amount

- (1) **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, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of transfer.
- (2) **Range.** The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

## Regulatory Commentary

### *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.*

## ***Compulsory Use [12 C.F.R. § 1005.10(e)]***

### **Credit**

No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized EFTs, except for credit extended under an overdraft credit plan or credit extended to maintain a specified minimum balance in the consumer's account.

Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis. However, a creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include the following:

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

A financial institution may require the automatic repayment of an overdraft credit plan 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.

### **Employment or Government Benefit**

No financial institution or other person may require a consumer to establish an account for receipt of EFTs with a particular institution as a condition of employment or receipt of a government benefit.

A financial institution (as an employer) must not require its employees to receive their salary by direct deposit to that same institution or to any other 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, or receiving their salary by check or cash.

### **Regulatory Text**

#### **(e) Compulsory use**

- (1) **Credit.** No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. This exception does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61.

- (2) **Employment or government benefit.** No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

## Regulatory Commentary

### *10(e) Compulsory Use*

#### *10(e)(1) Credit*

1. **Loan payments.** *Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis. 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.*
2. **Overdraft.** *A financial institution may require the automatic repayment of an overdraft credit plan 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.*

#### *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.*

# Section 12: Error Resolution Procedures

## [12 C.F.R. § 1005.11]

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### ***Definition of Error [12 C.F.R. § 1005.11(a)]***

#### **Types of Transfers or Inquiries Covered**

The term “error” means:

- An unauthorized EFT;
- An incorrect EFT to or from the consumer’s account;
- The omission of an EFT from a periodic statement;
- A computational or bookkeeping error made by the financial institution relating to an EFT;
- The consumer’s receipt of an incorrect amount of money from an electronic terminal;
- An EFT not properly identified on timely receipts, periodic statements, or notices of varying amounts of preauthorized transfers;
- The consumer’s request for documentation required on receipts, periodic statements, or notices of varying amounts of preauthorized transfers or for additional information or clarification concerning an EFT. This includes a request the consumer makes to determine whether an “error” exists.

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

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.

A financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

#### **Types of Inquiries Not Covered**

The term “error” does not include the following:

- A routine inquiry about the consumer’s account balance;
- A request for information for tax or other recordkeeping purposes;
- A request for duplicate copies of documentation.

If the consumer merely calls to ascertain 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.

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 recordkeeping purposes.

## Regulatory Text

### (a) Definition of error

(1) **Types of transfers or inquiries covered.** The term “error” means:

- (i) An unauthorized electronic fund transfer;
- (ii) An incorrect electronic fund transfer to or from the consumer's account;
- (iii) The omission of an electronic fund transfer from a periodic statement;
- (iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;
- (v) The consumer's receipt of an incorrect amount of money from an electronic terminal;
- (vi) An electronic fund transfer not identified in accordance with §1005.9 or §1005.10(a); or
- (vii) The consumer's request for documentation required by §1005.9 or §1005.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2) **Types of inquiries not covered.** The term “error” does not include:

- (i) A routine inquiry about the consumer's account balance;
- (ii) A request for information for tax or other recordkeeping purposes; or
- (iii) A request for duplicate copies of documentation.

## Regulatory Commentary

### 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).

## ***Notice of Error from Consumer [12 C.F.R. § 1005.11(b)]***

### **Timing and Content Requirements**

The error resolution procedures apply to any oral or written notice of error from the consumer that meets the following criteria:

- Is received by an institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation on which the alleged error is first reflected;
- Enables an institution to identify the consumer's name and account number;
- Indicates why the consumer believes an error exists and includes, to the extent possible, the type, date, and amount of the error (except for requests for documentation required on receipts, periodic statements, or notices of varying amounts of preauthorized transfers or for additional information or clarification concerning an EFT made to determine whether an "error" exists).

The notice of error is effective even if it does not contain the consumer's account number, as long as a 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.

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

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.

When a financial institution fails to provide the consumer with a periodic statement, a request for a copy must meet the error resolution procedure requirements if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

The error resolution procedures apply when a notice of error is received from the consumer and not when a financial institution itself discovers and corrects an error.

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

If the notification from the consumer occurs after the 60-day period, a financial institution need not comply with the error resolution timing requirements. It is, however, required to comply with the liability requirements outlined in §1005.6.

### **Written Confirmation**

A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation must inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

If the consumer sends a written confirmation of error to the wrong address, a financial institution must process the confirmation through normal procedures. However, the bank does not need to 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.

### **Request for Documentation or Clarifications**

When a notice of error is based on documentation or clarification that the consumer requested, the consumer's notice of error is considered timely if it was received by the financial institution no later than 60 days after the bank sends the information requested.

### **Regulatory Text**

#### **(b) Notice of error from consumer**

- (1) **Timing; contents.** A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:
  - (i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by §1005.9, on which the alleged error is first reflected;
  - (ii) Enables the institution to identify the consumer's name and account number; and
  - (iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.
- (2) **Written confirmation.** A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide

the address where confirmation must be sent when the consumer gives the oral notification.

- (3) **Request for documentation or clarifications.** When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

## Regulatory Commentary

### **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.*

## ***Error Resolution Time Limits [12 C.F.R. § 1005.11(c)]***

### **Ten-Day Period (Business Days)**

Errors must be investigated promptly. This includes promptly investigating an error upon receipt of an oral notice. A financial institution may not delay the investigation until it has received written confirmation of an oral error notice.

A financial institution is required to determine whether an error occurred within 10 business days after receiving a notice of error. The results of the investigation must be reported (either orally or in writing) to the consumer within three business days after completing an investigation.

The notice of correction may be included on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day (discussed below) time limits and that clearly identifies the correction to the consumer's account. The mailing or delivery must also be prompt enough to satisfy the three-business-day notification timing requirements, taking into account the specific facts involved.

Errors must be corrected within one business day after a bank determines that an error occurred. If the bank determines an error occurred (within either the 10-day or 45-day period), it must correct the error (adhering to the consumer liability limitations) including, where applicable, the crediting of interest and the refunding of any fees imposed by the bank. In a combined credit/EFT transaction, for example, an institution must refund any finance charges incurred as a result of the error. The bank does not need to refund fees that would have been imposed whether or not the error occurred.

If a billing error occurred, whether as alleged or in a different amount or manner, a financial institution must not charge the consumer for any aspect of the error-resolution process (including charges for documentation or investigation). Since the Electronic Fund Transfer Act grants consumers error-resolution rights, an 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.

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. This correction must meet the error resolution timing requirements, and proper and timely consumer notification must be provided.

### **Forty-Five Day Period (Calendar Days)**

If a financial institution is unable to complete its investigation within 10 business days, it may take up to 45 calendar days from receipt of a notice of error to investigate and determine whether an error occurred if it takes the following four steps:

4. It provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days after receiving the error notice. If the bank has a reasonable basis for believing that an unauthorized EFT has occurred and it has provided proper disclosure of consumer liability, it may withhold a maximum of \$50 from the amount credited. An institution is not required to provisionally credit the consumer's account if:
  - a. the bank requires but does not receive written confirmation within 10 business days of an oral notice of error, or
  - b. the alleged error involves an account that is subject to Regulation T (Securities Credit by Brokers and Dealers, 12 CFR § 220).
5. It informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation.
6. It corrects the error, if any, within one business day after determining that an error occurred.
7. It reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

#### **Extension of Time Periods - Point-of-Sale and Foreign-Related Transfers**

The time frames under Regulation E for resolving claims of error relating to point-of-sale (POS) transfers and foreign-related transfers is the same as for other electronic funds transfers – 10 business days.

It should be noted that if a claim of POS error occurs within the first 30 days after an account is opened (a “new account”), a bank may take up to 20 business days to investigate the error.

If the financial institution needs more time to investigate a POS and foreign-related error, the extended investigation time limit is 90 calendar days instead of the usual 45 calendar days.

<b>Error Resolution</b>		
	<b>ATM</b>	<b>POS</b>
Bank to determine if error occurred	within 10 business days	within 10 business days
	new acct: within 20 business days	new acct: within 20 business days
Corrections made if error is determined	within 1 business day	within 1 business day
Report results of investigation to consumer	within 3 business days of determination	within 3 business days of determination
If bank unable to determine if an error occurred within 10 business days	45 calendar days to investigate provided Provisional Credit step followed	90 calendar days to investigate provided Provisional Credit steps followed

## **Extent of Investigation**

A financial institution's review of its own records regarding an alleged error is considered an acceptable investigation if:

- the alleged error concerns a transfer to or from a third-party, and
- there is no agreement between the institution and the third-party for the type of EFT involved.

## **Agreements**

An agreement that a third-party will honor an access device is considered an "agreement between the institution and the third-party for the type of electronic fund transfer involved." However, a financial institution does not have an "agreement" 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 it agrees to be bound by the rules of such an arrangement.

## **No 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:

- The ACH transaction records for the transfer;
- The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;
- Whether the check number of the transaction in question is notably out-of-sequence;
- The location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;
- 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
- Any other information appropriate to resolve the claim.

## **Third-Parties**

If applicable, error resolution requirements can be satisfied by advising the consumer (within the specified time periods) that the information or documentation requested by the consumer is in the possession of a third-party with whom a financial institution does not have an agreement.

## Bill-Payment Plans

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

## POS Transfers

When a consumer alleges an error involving a transfer to a merchant via a POS terminal, an institution must verify the information previously transmitted when executing the transfer. For example, a 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.

## Regulatory Text

### (c) Time limits and extent of investigation

- (1) **Ten-day period.** A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.
- (2) **Forty-five day period.** If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:
  - (i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of §1005.6(a), the institution may withhold a maximum of \$50 from the amount credited. An institution need not provisionally credit the consumer's account if:
    - (A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error;
    - (B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220); or
    - (C) The alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not completed its consumer identification and verification process, as set forth in §1005.18(e)(3)(ii).
  - (ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;

- (iii) Corrects the error, if any, within one business day after determining that an error occurred; and
  - (iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).
- (3) **Extension of time periods.** The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:
- (i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.
  - (ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:
    - (A) Was not initiated within a state;
    - (B) Resulted from a point-of-sale debit card transaction; or
    - (C) Occurred within 30 days after the first deposit to the account was made.
- (4) **Investigation.** With the exception of transfers covered by §1005.14 of this part, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:
- (i) The alleged error concerns a transfer to or from a third party; and
  - (ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

## Regulatory Commentary

### *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.*

### ***Procedures if Financial Institution Determines No Error or Different Error Occurred [12 C.F.R. § 1005.11(d)]***

Additional action is required if a financial institution determines that no error occurred, or that an error occurred in a manner or amount that differs from that described by the consumer. In addition to following the above error resolution procedures, a financial institution must adhere to the following procedures in such situations.

#### **Written Explanation**

An institution's report of the results of its investigation must include a written explanation of

its findings and must note the consumer’s right to request the documents on which the institution relied in making its determination. A bank must promptly provide copies of the documents upon request.

When a consumer requests copies of documents, they must be provided 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).

**Debiting Provisional Credit**

When debiting a provisionally credited amount, a financial institution must do the following:

- Notify the consumer of the date and amount of the debiting.
- Notify the consumer that the bank will honor checks, drafts, or similar instruments payable to third-parties and preauthorized transfers from the consumer’s account (without charge to the consumer as a result of an overdraft) for five business days after the notification. The bank must honor items as specified in the notice, but needs to honor only items that it would have paid if the provisionally credited funds had not been debited.

Overdraft fees may not be imposed for items the bank is required to honor. However, any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting may be imposed. If the account is still overdrawn after five business days, an institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

As an alternative, an institution may notify the consumer that the consumer’s account will be debited five business days from the transmittal of the notification and specify the calendar date on which the debiting will occur.

<b>Provisional Credit Requirements</b>
<p>A bank may take up to 45 days to investigate an error (90 days for POS) if the following steps are all followed:</p> <ul style="list-style-type: none"> <li>• The consumer’s account is given provisional credit within 10 business days of the bank’s receipt of notice of an error. The bank may withhold a maximum of \$50 from the credit if there is a reasonable belief that an unauthorized electronic fund transfer has occurred.</li> <li>• The bank informs the consumer within 2 business days of the provisional credit and gives him full use of the funds.</li> <li>• The bank corrects the error within 1 business day of determining that an error occurred.</li> <li>• The bank reports the results of the investigation to the consumer within 3 business days of completing the investigation.</li> </ul>

**Regulatory Text**

**(d) Procedures if financial institution determines no error or different error occurred.**

In addition to following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer:

- (1) **Written explanation.** The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents.
- (2) **Debiting provisional credit.** Upon debiting a provisionally credited amount, the financial institution shall:
  - (i) Notify the consumer of the date and amount of the debiting;
  - (ii) Notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notification. The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

## Regulatory Commentary

### ***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.

## ***Reassertion of Error [12 C.F.R. § 1005.11(e)]***

A financial institution that has fully complied with the error resolution requirements has no further responsibilities should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of additional documentation, information, or clarification requested by the consumer.

In addition, a 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.

### **Regulatory Text**

(e) **Reassertion of error.** A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

### **Regulatory Commentary**

#### ***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 13: Relation to Other Laws**

### **[12 C.F.R. § 1005.12]**

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#### ***Relation to Other Laws [12 C.F.R. § 1005.12(a)]***

##### **Relation to Truth in Lending (Regulation Z)**

The Electronic Fund Transfer Act and Regulation E apply to the following:

- The addition to an accepted credit card of the capability to initiate EFTs;
- The issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account or under an overdraft service;
- The addition of an overdraft service to an accepted access device; and
- A consumer's liability for an unauthorized EFT and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service.

The Truth in Lending Act and Regulation Z (12 CFR 1026), which prohibit the unsolicited issuance of credit cards, apply to the following:

- The addition of a credit feature to an accepted access device; and
- The issuance of a credit card that is also an access device, unless the access device permits credit extensions (under a preexisting agreement between a consumer and a financial institution), only when the consumer's account is overdrawn, or to maintain a specified minimum balance in the consumer's account or under an overdraft service.

##### **Determining Applicable Regulation**

For transactions involving access devices that also constitute credit cards, determining whether either applies – Regulation E or Regulation Z – depends on the nature of the transaction. For example:

- If the transaction is purely an extension of credit and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply.
- If the transaction only debits a checking account (with no credit extended), the provisions of Regulation E apply.
- If the transaction debits a checking account but also draws on an overdraft line of credit, the Regulation E provisions apply, as well as Sections 1026.13 (d) and (g) of Regulation Z.

In such a transaction, the consumer might be liable for up to \$50 under Regulation Z and, in addition, for \$50, \$500, or an unlimited amount under Regulation E.

<b>Regulation Z and Regulation E Applicability</b>		
<b>Scenario</b>	<b>Regulation Z Applies?</b>	<b>Regulation E Applies?</b>
A consumer has a card that can be used either as a credit card or a debit card. When used as a debit card, the card draws on the consumer's checking account. When used as a credit card, the card draws only on a separate line of credit. If the card is stolen and used as a credit card to make purchases or get cash advances at an ATM from the line of credit, which regulation applies?	The liability limits and error resolution provisions apply	Does not apply
In the same situation as above, if the card is stolen and is used as a debit card to make purchases or get cash from an ATM from the checking account, which regulation applies?	Does not apply	The liability limits and error resolution provisions apply
In the same situation, assume the card is stolen and used both as a debit card and as a credit card; for example, the thief makes some purchases using the card as a debit card and other purchases using the card as a credit card. Which regulation applies?	The liability limits and error resolution provisions apply to the unauthorized transactions in which the card was used as a credit card	The liability limits and error resolution provisions apply to the unauthorized transactions in which the card was used as a debit card
Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft line of credit attached to the checking account. There is no separate line of credit, only the overdraft line, associated with the card. In this situation, if the card is stolen and used, which regulation applies?	If the use of the card has resulted in accessing the overdraft line of credit, the error resolution provisions of §1026.13(d) and (g) apply, but not other error resolution provisions	The liability limits and error resolution provisions apply

## Issuance Rules

For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance).

Regulation Z 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).

## Regulatory Text

### (a) Relation to Truth in Lending.

(1) The Electronic Fund Transfer Act and this part govern:

- (i) The addition to an accepted credit card, as defined in Regulation Z (12 CFR 1026.12, comment 12-2), of the capability to initiate electronic fund transfers;
- (ii) The issuance of an access device (other than an access device for a prepaid account) that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in §1005.17(a) of this part;
- (iii) The addition of an overdraft service, as defined in §1005.17(a), to an accepted access device; and
- (iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving:
  - (A) Except with respect to a prepaid account, an extension of credit that is incident to an electronic fund transfer that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in §1005.17(a);
  - (B) With respect to transactions that involve 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, an extension of credit that is incident to an electronic fund transfer that occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction;
  - (C) 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); and
  - (D) With respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in Regulation Z, 12 CFR 1026.61, transactions that access the prepaid account, as applicable.

- (2) The Truth in Lending Act and Regulation Z (12 CFR part 1026), which prohibit the unsolicited issuance of credit cards, govern:
- (i) The addition of a credit feature or plan to an accepted access device, including an access device for a prepaid account, that would make the access device into a credit card under Regulation Z (12 CFR part 1026);
  - (ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device; and
  - (iii) 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 consumer's liability for unauthorized use and the investigation of errors involving transactions that access the non-covered separate credit feature, as applicable.

## Regulatory Commentary

### **12(a) Relation to Truth in Lending**

#### **1. Determining applicable regulation.**

- i. *For transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z (12 CFR part 1026) applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E's liability limitations apply, in addition to §§1026.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the checking account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply.*
- ii. *The following examples illustrate these principles:*
  - A. *A consumer has a card that can be used either as a credit card or a debit card. When used as a debit card, the card draws on the consumer's checking account. When used as a credit card, the card draws only on a separate line of credit. 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 a debit card 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 a debit card and as a credit card; for example, the thief makes some purchases using the card as a debit card, 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 a debit card, 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 line of credit attached to the checking account. There is no separate line of credit, only the overdraft line, associated with the card. In this situation, if the card is stolen and used, the liability limits and the error resolution provisions of Regulation E apply. In addition, if the use of the card has resulted in accessing the overdraft line of credit, the error resolution provisions of §§1026.13(d) and (g) of Regulation Z also apply, but not the other error resolution provisions of Regulation Z.*

- 2. **Issuance rules.** For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) 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.*
- 3. **Overdraft service.** 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).*

## ***Preemption of Inconsistent State Laws [12 C.F.R. § 1005.12(b)]***

The Consumer Financial Protection Bureau (CFPB) determines, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the EFTA and Regulation E preempt state law relating to electronic fund transfers, or dormancy, inactivity, or service fees, or expiration dates in the case of gift certificates, store gift cards, or general-use prepaid cards.

### **Standards for Determination**

State law is inconsistent with the requirements of the EFTA and Regulation E if it:

- Requires or permits a practice or act prohibited by the Federal law;
- Provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the Federal law;
- Allows longer time periods than the Federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with Regulation E; or

- Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the Federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the Federal law.

## Regulatory Text

### (b) Preemption of inconsistent state laws

- (1) **Inconsistent requirements.** The Bureau shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the Act and this part preempt state law relating to electronic fund transfers, or dormancy, inactivity, or service fees, or expiration dates in the case of gift certificates, store gift cards, or general-use prepaid cards.
- (2) **Standards for determination.** State law is inconsistent with the requirements of the Act and this part if state law:
  - (i) Requires or permits a practice or act prohibited by the Federal law;
  - (ii) Provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the Federal law;
  - (iii) Allows longer time periods than the Federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with §1005.11(c)(2)(i) of this part; or
  - (iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the Federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the Federal law.

## Regulatory Commentary

### *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 determination.** 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. The Board of Governors 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 5(4) 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 14 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 15 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 17 and 18 are preempted because they are inconsistent with §1005.9. 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.

### **State Exemptions [12 C.F.R. § 1005.12(c)]**

Any state may apply for an exemption from the requirements of the EFTA and Regulation E for any class of electronic fund transfers within the state. The CFPB shall grant an exemption if it determines that:

- Under state law the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Federal law; and
- There is adequate provision for state enforcement.

To assure that the Federal and state courts continue to have concurrent jurisdiction, and to aid in implementing the EFTA:

- No exemption shall extend to the civil liability provisions of section 915 of the EFTA; and
- When the CFPB grants an exemption, the state law requirements shall constitute the requirements of the Federal law for purposes of section 915 of the EFTA, except for state law requirements not imposed by the Federal law.

### **Regulatory Text**

#### **(c) State exemptions**

- (1) **General rule.** Any state may apply for an exemption from the requirements of the Act or this part for any class of electronic fund transfers within the state. The Bureau shall grant an exemption if it determines that:

- (i) Under state law the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Federal law; and
  - (ii) There is adequate provision for state enforcement.
- (2) **Exception.** To assure that the Federal and state courts continue to have concurrent jurisdiction, and to aid in implementing the Act:
- (i) No exemption shall extend to the civil liability provisions of section 916 of the Act; and
  - (ii) When the Bureau grants an exemption, the state law requirements shall constitute the requirements of the Federal law for purposes of section 916 of the Act, except for state law requirements not imposed by the Federal law.

### Regulatory Commentary

*None.*

## **Section 14: Administrative Enforcement / Record Retention [12 C.F.R. § 1005.13]**

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### ***Administrative Enforcement [12 C.F.R. § 1005.13(a)]***

Federal banking regulatory agencies are authorized to enforce EFTA and Regulation E.

#### **Regulatory Text**

- (a) **Enforcement by Federal agencies.** Compliance with this part is enforced in accordance with section 918 of the Act.

#### **Regulatory Commentary**

*None.*

### ***Record Retention [12 C.F.R. § 1005.13(b)]***

Evidence of compliance must be retained for at least two years from the date disclosures are required to be made or an action is required to be taken. A bank does not need to retain records that it has given disclosures and documentation to each consumer. However, it should retain evidence demonstrating that its procedures reasonably assure the consumers' receipt of required disclosures and documentation.

If subject to an investigation, enforcement proceeding, or legal action, applicable records must be retained until final disposition of the matter unless an earlier time is allowed by court or agency order.

#### **Regulatory Text**

##### **(b) Record retention.**

- (1) Any person subject to the Act and this part shall retain evidence of compliance with the requirements imposed by the Act and this part for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.
- (2) Any person subject to the Act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 916, or 917(a) of the Act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

## Regulatory Commentary

### **(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 15: Electronic Fund Transfer Service Provider Not Holding Consumer's Account

## [12 C.F.R. § 1005.14]

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### *Service Provider of Electronic Fund Service [12 C.F.R. § 1005.14(a)]*

#### **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 apply. 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, this section 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.

#### **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.

#### **Regulatory Text**

(a) **Provider of electronic fund transfer service.** A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer's account is subject to all requirements of this part if the person:

- (1) Issues a debit card (or other access device) that the consumer can use to access the consumer's account held by a financial institution; and
- (2) Has no agreement with the account-holding institution regarding such access.

#### **Regulatory Commentary**

##### ***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.*

## ***Compliance by Service Provider [12 C.F.R. § 1005.14(b)]***

In addition to the general requirements of Regulation E, service providers must comply with the following special rules.

### **Disclosures and Documentation**

The service provider must give all of the required disclosures and documentation within the purview of its relationship with the consumer.

The service provider does not need to furnish periodic statements if the following conditions are met:

- The debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error.
- The consumer receives a proper error resolution (a notice concerning use of the debit card that is substantially similar to the notice contained in Model Form A-4 in Appendix A of the regulation).
- The consumer receives, on or with terminal receipts, the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card.
- The service provider transmits to the account-holding institution the transaction information required on the periodic statement in the format prescribed by the ACH system used to clear the fund transfers.
- The service provider (a) extends the time period for notice of loss or theft of a debit card from two business days to four business days after the consumer learns of the loss or theft, and (b) extends the time periods for reporting unauthorized transfers or errors from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

### **Error Resolution**

A service provider must extend, by a reasonable time, the period in which notice of an error must be received if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.

A service provider must also disclose to the consumer the date on which it initiates a transfer to effect a provisional credit during the error resolution process.

If a service provider determines that an error occurred, it must transfer funds to or from the consumer's account in the appropriate amount and within the applicable time periods. 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.

If funds were provisionally credited and a service provider determines that no error occurred, it may reverse the credit. The service provider must notify the account-holding institution of the period during which the account-holding institution must honor debits to the account. If an overdraft results, the service provider must promptly reimburse the account-holding institution in the amount of the overdraft.

## Regulatory Text

(b) **Compliance by service provider.** In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) **Disclosures and documentation.** The service provider shall give the disclosures and documentation required by §§1005.7, 1005.8, and 1005.9 of this part that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by §1005.9(b) if the following conditions are met:

- (i) The debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error;
- (ii) The consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in appendix A of this part;
- (iii) The consumer receives, on or with the receipts required by §1005.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;
- (iv) The service provider transmits to the account-holding institution the information specified in §1005.9(b)(1), in the format prescribed by the automated clearinghouse (ACH) system used to clear the fund transfers;
- (v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in §1005.6(b)(1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in §§1005.6(b)(3) and 1005.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) **Error resolution.**

- (i) The service provider shall extend by a reasonable time the period in which notice of an error must be received, specified in §1005.11(b)(1)(i), if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.

- (ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with §1005.11(c)(2)(ii).
- (iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with §1005.11(c)(2)(i).
- (iv) If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with §1005.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

## Regulatory Commentary

### ***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.*

## ***Compliance by Account-Holding Institution [12 C.F.R. § 1005.14(c)]***

The account-holding institution is required to comply only with the following requirements of the regulation.

### **Documentation**

The account-holding institution must provide a periodic statement that includes the required transaction information for each EFT initiated by the consumer with the access device issued by the service provider. An account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information.

## **Error Resolution**

Upon request, the account-holding institution must provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. If funds were provisionally credited and the service provider determines that no error occurred, the account-holding institution must follow the regulation's guidelines for debiting a provisionally credited amount.

## **Regulatory Text**

- (c) **Compliance by account-holding institution.** The account-holding institution need not comply with the requirements of the Act and this part with respect to electronic fund transfers initiated through the service provider except as follows:
- (1) **Documentation.** The account-holding institution shall provide a periodic statement that describes each electronic fund transfer initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information; and
  - (2) **Error resolution.** Upon request, the account-holding institution shall provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with §1005.11(d)(2)(ii).

## **Regulatory Commentary**

### ***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 16: Electronic Fund Transfer of Government Benefits

[12 C.F.R. § 1005.15]

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## *Introduction [12 C.F.R. § 1005.15]*

This section does not apply to financial institutions. It is included for “full disclosure” of Section A of the regulation. We have limited the presentation to the regulatory text and commentary.

### **Regulatory Text**

#### **(a) Government agency subject to regulation.**

(1) A government agency is deemed to be a financial institution for purposes of the Act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the Act and this part, except as provided in this section.

(2) For purposes of this section, the term “account” means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

**(b) Issuance of access devices.** For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

**(c) Alternative to periodic statement.** A government agency need not furnish the periodic statement required by §1005.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

**(d) Modified requirements.** A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:

- (1) **Initial disclosures.** The agency shall modify the disclosures under §1005.7(b) by disclosing:
  - (i) **Account balance.** The means by which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A-5 in appendix A of this part.
  - (ii) **Written account history.** A summary of the consumer's right to receive a written account history upon request, in place of the periodic statement required by §1005.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A-5 in appendix A of this part.
  - (iii) **Error resolution.** A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in appendix A of this part, in place of the notice required by §1005.7(b)(10).
- (2) **Annual error resolution notice.** The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in appendix A, in place of the notice required by §1005.8(b).
- (3) **Limitations on liability.** For purposes of §1005.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.
- (4) **Error resolution.** The agency shall comply with the requirements of §1005.11 of this part in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

## Regulatory Commentary

*None.*

## Section 17: Disclosures at Automated Teller Machines [12 C.F.R. § 1005.16]

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### *Definition and General [12 C.F.R. § 1005.16(a) and (b)]*

An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry must both:

- Provide notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry, and
- Disclose the amount of the fee.

An “automated teller machine operator” is any person that operates an ATM at which a consumer initiates an EFT or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

An ATM operator that imposes a fee for a specific type of transaction, such as for a cash withdrawal, but not for a balance inquiry, or for some cash withdrawals, but not for others (such as where the card was issued by a foreign bank or by a card issuer that has entered into a special contractual relationship with the ATM operator regarding surcharges), may provide a notice on or at the ATM that a fee will be imposed or a notice that a fee may be imposed for providing EFT services or may specify the type of EFT for which a fee is imposed. If, however, a fee will be imposed in all instances, the notice must state that a fee will be imposed.

### **Regulatory Text**

- a) **Definition.** “Automated teller machine operator” means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.
- (b) **General.** An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry must provide a notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry that discloses the amount of the fee.

### **Regulatory Commentary**

*None.*

### ***Notice requirement [12 C.F.R. § 1005.16(c)]***

An automated teller machine operator must provide the notice described above either by showing it on the ATM screen or by providing it on paper, before the consumer is committed to paying a fee.

#### **Regulatory Text**

(c) **Notice requirement.** An automated teller machine operator must provide the notice required by paragraph (b) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

#### **Regulatory Commentary**

*None.*

### ***Imposition of Fee [12 C.F.R. § 1005.16(d)]***

An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if both of the following conditions are met:

- The consumer is provided the required notice (that a fee will be imposed and its amount), and
- The consumer elects to continue the transaction or inquiry after receiving such notice.

#### **Regulatory Text**

(d) **Imposition of fee.** An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if:

- (1) The consumer is provided the notice required under paragraph (c) of this section, and
- (2) The consumer elects to continue the transaction or inquiry after receiving such notice.

#### **Regulatory Commentary**

*None.*

# Section 18: Requirements for Overdraft Services

## [12 C.F.R. § 1005.17]

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### *Definition of Overdraft Service [12 C.F.R. § 1005.17(a)]*

The term “overdraft service” means “a service under which a financial institution assesses a fee or charge on a consumer’s account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account.”

The term “overdraft service” does not include any payment of overdrafts through:

- A line of credit subject to Regulation Z, including transfers from a credit card account, home equity line of credit, or overdraft line of credit;
- A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or
- A line of credit or other transaction exempt from Regulation Z (typically commercial lines of credit).

### **Regulatory Text**

(a) **Definition.** For purposes of this section, the term “overdraft service” means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term “overdraft service” does not include any payment of overdrafts pursuant to:

- (1) A line of credit subject to Regulation Z (12 CFR part 1026), including transfers from a credit card account, home equity line of credit, or overdraft line of credit;
- (2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account;
- (3) A line of credit or other transaction exempt from Regulation Z (12 CFR part 1026) pursuant to 12 CFR 1026.3(d); or
- (4) A covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61; or credit extended through a negative balance on the asset feature of the prepaid account that meets the conditions of 12 CFR 1026.61(a)(4).

### **Regulatory Commentary**

#### *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.*

### ***Opt-In Requirement [12 C.F.R. § 1005.17(b)]***

With limited exceptions, a bank cannot assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction under the bank's overdraft service, unless the bank does the following:

- Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the bank's overdraft service;
- Provides a reasonable opportunity for the consumer to affirmatively consent, or opt-in, to the service for ATM and one-time debit card transactions;
- Obtains the consumer's affirmative consent, or opt-in, to the bank's payment of ATM or one-time debit card transactions; and
- Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

This section 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 bank. The vast majority of ATM and debit cards are covered by this rule.

To comply with the rule, a bank must adapt its systems to identify debit card transactions as either one-time or recurring. If it does so, the bank 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.

The opt-in rule applies to any one-time debit card transaction, whether the card is used, for example, at a point-of-sale, in an on-line transaction, or in a telephone transaction.

### **Requirements for Affirmative Consent**

A consumer's affirmative consent, or opt-in, to a bank's overdraft service must be obtained separately from other consents or acknowledgements obtained by the bank, including a consent to receive disclosures electronically.

A bank 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. However, the signature line or check box may only be used for the purpose of evidencing the consumer's opt-in choice and not for other purposes.

A bank cannot 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. Pre-selected check boxes are also prohibited.

## Written Confirmation of Affirmative Consent

A bank may give the consumer a written confirmation of their affirmative consent by:

- Mailing or delivering to the consumer a copy of the consumer's completed opt-in form, or
- Mailing or delivering a letter or notice to the consumer acknowledging that the consumer has elected to opt into the bank's service.

The confirmation must be provided in writing or electronically, if the consumer agrees, and must include a statement informing the consumer of his or her right to revoke the opt-in at any time. If the bank complies with this requirement by providing a copy of the completed opt-in form, the bank may include the statement about revocation on the initial opt-in notice. The bank complies with the regulation 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.

## No Affirmative Consent

A bank may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the bank's overdraft service. However, if the bank pays an overdraft without the consumer's affirmative consent, no fee or charge may be imposed. These provisions do not limit the bank's ability to debit the consumer's account for the amount overdrawn if the institution is permitted to do so under applicable law.

## No Requirement to Permit Overdrafts

The regulation does not require a bank to authorize or pay an overdraft on an ATM or one-time debit card transaction even if the consumer has affirmatively consented to the bank's overdraft service for such transactions.

## Reasonable Opportunity to Provide Affirmative Consent

A bank 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. The commentary to the regulation offers the following as reasonable methods:

- **By mail.** The bank provides a form for the consumer to fill out and mail to affirmatively consent to the service.
- **By telephone.** The bank provides a readily-available telephone line that consumers may call to provide affirmative consent.
- **By electronic means.** The bank provides an electronic means for the consumer to affirmatively consent. For example, the bank 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.

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

### Account Opening Techniques

A bank may provide notice regarding its overdraft service prior to or at account opening. A bank 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 bank's overdraft service.

For example, the bank could require the consumer, at account opening, to sign a signature line or check a box on a form indicating whether or not the consumer affirmatively consents at account opening. If the consumer does not check any box or provide a signature, the bank must assume that the consumer does not opt-in.

Another alternative would be for the bank to 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 bank's overdraft service and an account that permits the payment of such overdrafts. If this method is chosen, the bank and consumer are still subject to the terms of the regulation. The result of this approach may just simplify the opt-in process.

### Conditioning Payment of Overdrafts Prohibited

A bank cannot:

- Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the bank's payment of ATM and one-time debit card transactions pursuant to the bank's overdraft service; or
- Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the bank's overdraft service for ATM and one-time debit card transactions.

This prohibition generally requires a bank to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, regardless of the opt-in decision of the consumer. For example, if a bank's normal criteria would lead the bank to pay a check overdraft if the consumer had affirmatively consented to the bank'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.

The prohibition on conditioning does not require a bank to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. Rather, the rule simply prohibits banks 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.

### Same Account Terms

A bank must provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms,

conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions. These variations would include:

- Interest rates paid and fees assessed;
- 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;
- Minimum balance requirements; or
- Account features such as on-line bill payment services.

This does not prohibit banks 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, the regulation does not prohibit a bank 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.

### **Outstanding Negative Balance**

If a fee or charge is based on the amount of the outstanding negative balance, a bank 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 in. The rule does not prohibit a bank 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 opt-in requirements.

### **Daily or Sustained Overdraft, Negative Balance, or Similar Fee or Charge**

If a consumer has not opted into the bank's overdraft service for ATM or one-time debit card transactions, the regulation 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. The rule does not prohibit a bank 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 regulation. 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.

### **Examples**

The following examples illustrate how a bank complies with the fee prohibition. For each example, assume the following:

- The consumer has not opted into the payment of ATM or onetime debit card overdrafts;

- 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;
- Under the account agreement, the bank 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;
- The bank posts ATM and debit card transactions before other transactions; and
- The bank allocates deposits to account debits in the same order in which it posts debits.

### **Alternative Approach**

For a consumer who does not opt into the bank's overdraft service for ATM and one-time debit card transactions, a bank may also comply with the regulation 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 regulation while that negative balance remains outstanding. In such case, the bank 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, a bank complies with the regulation if it does not assess a sustained overdraft fee while that negative balance remains outstanding.

### **Exception to Notice and Opt-in Requirements**

The regulation's requirements do not apply to a bank that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the bank has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. Banks may apply this exception on an account-by-account basis.

The regulation's requirements do not apply to a bank that does not assess overdraft fees for paying ATM or one-time debit card transactions that overdraw the consumer's account. Assume a bank 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 bank is not permitted to assess an overdraft fee or charge for paying that transaction.

### **Regulatory Text**

#### **(b) Opt-in requirement**

- (1) **General.** Except as provided under paragraph (c) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:
  - (i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service;

- (ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;
  - (iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and
  - (iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.
- (2) **Conditioning payment of other overdrafts on consumer's affirmative consent.** A financial institution shall not:
- (i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's overdraft service; or
  - (ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.
- (3) **Same account terms, conditions, and features.** A financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

## Regulatory Commentary

### 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 posts 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.

### **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.

## ***Timing [12 C.F.R. § 1005.17(c)]***

The regulation is very clear on this issue, and much of the regulatory text is now in the past, so we have elected to refer the reader to the regulatory information below.

### **Regulatory Text**

#### **(c) Timing**

- (1) **Existing account holders.** For accounts opened prior to July 1, 2010, the financial institution must not assess any fees or charges on a consumer's account on or after August 15, 2010, for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with §1005.17(b)(1) and obtained the consumer's affirmative consent.
- (2) **New account holders.** For accounts opened on or after July 1, 2010, the financial institution must comply with §1005.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

### **Regulatory Commentary**

#### ***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.*

## ***Opt-In Notice [12 C.F.R. § 1005.17(d)]***

The opt-in notice required by the regulation must be substantially similar to Model Form A-9 set forth in Appendix A of the regulation (see below), include all applicable items listed below, and may not contain any information not specified in or otherwise permitted. The notice must include:

- A brief description of the bank's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions. The description 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 bank'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 bank also should indicate that it pays overdrafts at its discretion, and should briefly explain that if the bank does not authorize and pay an overdraft, it may decline the transaction;

- The dollar amount of any fees or charges assessed by the bank for paying an ATM or one-time debit card transaction under the bank's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the bank must disclose the maximum fee that may be imposed. If the amount of a fee may vary from transaction to transaction, the bank may indicate that the consumer may be assessed a fee "up to" the maximum fee. The bank must disclose all applicable overdraft fees, including but not limited to:
  - Per item or per transaction fees;
  - Daily overdraft fees;
  - 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
  - Negative balance fees.
- The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit;
- An explanation of the consumer's right to affirmatively consent to the bank's payment of overdrafts for ATM and one-time debit card transactions pursuant to the bank's overdraft service, including the methods by which the consumer may consent to the service; and
- If the bank offers a line of credit subject to the Regulation Z, or a service that transfers funds from another account of the consumer held at the bank to cover overdrafts, the bank must state that fact. A bank may, but is not required to, list additional alternatives for the payment of overdrafts.

The bank may modify the content of the notice as follows:

- To indicate that the consumer has the right to opt into, or opt out of, the payment of overdrafts under the bank's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments;
- To provide a means for the consumer to exercise this choice. The bank must include the methods by which the consumer may consent to the overdraft service for ATM and one-time debit card transactions. The bank may modify the notice to the methods offered to consumers for affirmatively consenting to the service. For example, a bank need not provide the tear-off portion of the notice if it is only permitting consumers to opt-in telephonically or electronically. Banks 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.; and
- To disclose the associated returned item fee and that additional merchant fees may apply.
- The bank may also disclose the consumer's right to revoke consent.

### **Identification of Consumer's Account**

A bank may use any reasonable method to identify the account for which the notice applies. For example, the bank may include a line for a printed name and an account number. Or, the bank may print a bar code or use other tracking information.

## **Alternative Plans for Covering Overdrafts**

If the bank offers both a line of credit subject to Regulation Z and a service that transfers funds from another account of the consumer to cover overdrafts, the bank must state in its 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 bank offers one, but not the other, it must state the plan that it offers. If the bank does not offer either plan, it should omit the reference to the plans.

## ***Notice Example – Model Form A-9***

The following page has the official “opt in” format as set forth in the regulation.

## A-9 Model Consent Form for Overdraft Services § 1005.17

### What You Need to Know about Overdrafts and Overdraft Fees

An **overdraft** occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have **standard overdraft practices** that come with your account.
2. We also offer **overdraft protection plans**, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, see the actual terms plan.

**This notice applies to all [Institution Name] accounts.**

**What are the overdraft protection plans that come with my account?**

We do not authorize and pay overdrafts for the following categories of transactions:

- ATM transactions that are not part of an overdraft protection plan
- Automatic bill payments

We do not authorize and pay overdrafts for the following general transactions unless you tell us to: **below.**

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

**What fees will I be charged if [Institution Name] pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is **no limit** on the total fees we can charge you for overdrawing your account.

**What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?**

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [website], or complete the form below and [present it at a branch][mail it to:

\_\_\_\_\_ I **do not** want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

\_\_\_\_\_ I **want** [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

[Account Number]: \_\_\_\_\_

## Regulatory Text

- (d) **Content and format.** The notice required by paragraph (b)(1)(i) of this section shall be substantially similar to Model Form A-9 set forth in appendix A of this part, include all applicable items in this paragraph, and may not contain any information not specified in or otherwise permitted by this paragraph.
- (1) **Overdraft service.** A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.
  - (2) **Fees imposed.** The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.
  - (3) **Limits on fees charged.** The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.
  - (4) **Disclosure of opt-in right.** An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service; and
  - (5) **Alternative plans for covering overdrafts.** If the institution offers a line of credit subject to Regulation Z (12 CFR part 1026) or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.
  - (6) **Permitted modifications and additional content.** If applicable, the institution may modify the content required by §1005.17(d) to indicate that the consumer has the right to opt into, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent. For notices provided to consumers who have opened accounts prior to July 1, 2010, the financial institution may describe the institution's overdraft service with respect to ATM and one-time debit card transactions with a statement such as "After August 15, 2010, we will not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below)."

## Regulatory Commentary

### *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.

## **Joint Relationships [12 C.F.R. § 1005.17(e)]**

If two or more consumers jointly hold an account, the bank must treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the bank shall treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

## Regulatory Text

- (e) **Joint relationships.** If two or more consumers jointly hold an account, the financial institution shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the financial institution shall treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

## Regulatory Commentary

*None.*

## ***Continuing Right to Opt-In or Opt-Out [12 C.F.R. § 1005.17(f)]***

A consumer may affirmatively consent to the bank's overdraft service at any time in the manner described in the notice. A consumer may also revoke consent at any time in the same manner. Banks must implement a consumer's revocation of consent as soon as reasonably practicable.

A consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the bank to waive or reverse any overdraft fees assessed on the consumer's account prior to the bank's implementation of the consumer's revocation request.

A consumer's affirmative consent to the bank's overdraft service is effective until revoked by the consumer, or until the bank terminates the service. A bank may, for example, terminate the overdraft service when the consumer makes excessive use of the service.

## Regulatory Text

- (f) **Continuing right to opt in or to revoke the opt-in.** A consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. A consumer may also revoke consent at any time in the manner made available to the consumer for providing consent. A financial institution must implement a consumer's revocation of consent as soon as reasonably practicable.

## Regulatory Commentary

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

- 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.

## ***Duration and Revocation of Opt-In [12 C.F.R. § 1005.17(g)]***

The opt-in is valid unless the consumer revokes it or the institution no longer offers the program.

### **Regulatory Text**

(g) **Duration and revocation of opt-in.** A consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or unless the financial institution terminates the service.

### **Regulatory Commentary**

#### ***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 19: Financial Institutions Offering Payroll Card Accounts [12 C.F.R. § 1005.18]**

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### ***Payroll Card Account***

A payroll card account is defined as an account directly or indirectly established through an employer to which transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis.

Payroll card accounts are assigned to an identifiable consumer and represent a recurring stream of payments that is likely the primary source of the consumer's income. They are replenished on a recurring basis and designed for ongoing use at multiple locations and for multiple purposes. Payroll card accounts utilize the same kinds of access devices, electronic terminals, and networks as do other EFT services historically covered by EFTA.

Payroll card accounts include:

- Card accounts for seasonal workers;
- Card accounts for employees that are paid on a commission basis; and
- Short-term accounts, as long as the employer intended to make recurring payments to the payroll card account.

Payroll card accounts DO NOT include:

- A card used solely to disburse bonuses or other incentive-based payments;
- Cards exclusively used to disburse payments other than compensation, such as petty cash or travel expenses;
- Payments made by a card in isolated instances (for example, in final-payment situations or in emergency situations when other payment methods are unavailable);
- Accounts directly established by a consumer at a depository institution without the involvement of an employer, even if the depository institution limits the account to receiving direct deposits of recurring payments of salary or other compensation;
- Gift cards issued by merchants that can be used to purchase items in the merchant's store;
- General spending cards to which a consumer might transfer by direct deposit some portion of the consumer's wages; and
- Cards used solely for health-related expenses, such as cards linked to flexible spending accounts, health savings accounts, or health reimbursement arrangements.

A payroll card account is covered under the final rule whether the underlying funds are held in individual employee accounts or in a pooled account with some form of "sub-accounting" maintained by a depository institution (or by a third-party) to enable determination of the amounts of money owed or attributed to particular employees.

As most banks do not participate in these types of product, we have limited the presentation to the regulatory text and commentary, as applicable.

## ***Coverage [12 C.F.R. § 1005.18(a)]***

### **Regulatory Text**

- (a) **Coverage.** A financial institution shall comply with all applicable requirements of the Act and this part with respect to prepaid accounts except as modified by this section. For rules governing government benefit accounts, see §1005.15.

### **Regulatory Commentary**

#### ***18(a) Coverage***

1. ***Issuance of access device.*** Consistent with §1005.5(a), 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.
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 payroll card accounts nor issue payroll cards and agree with consumers to provide EFT services in connection with payroll card 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.

## ***Pre-Acquisition Disclosures [12 C.F.R. § 1005.18(b)]***

### **Regulatory Text**

#### **(b) Pre-acquisition disclosure requirements**

##### **(1) Timing of disclosure**

- (i) **General.** Except as provided in paragraphs (b)(1)(ii) or (iii) of this section, a financial institution shall provide the disclosures required by paragraph (b) of this section before a consumer acquires a prepaid account.
- (ii) **Disclosures for prepaid accounts acquired in retail locations.** A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section before a consumer acquires a prepaid account in person at a retail location if the following conditions are met:
  - (A) The prepaid account access device is contained inside the packaging material.
  - (B) The disclosures required by paragraph (b)(2) of this section are provided on or are visible through an outward-facing, external surface of a prepaid account access device's packaging material.

- (C) The disclosures required by paragraph (b)(2) of this section include the information set forth in paragraph (b)(2)(xiii) of this section that allows a consumer to access the information required to be disclosed by paragraph (b)(4) of this section by telephone and via a Web site.
- (D) The long form disclosures required by paragraph (b)(4) of this section are provided after the consumer acquires the prepaid account.
- (iii) **Disclosures for prepaid accounts acquired orally by telephone.** A financial institution is not required to provide the long form disclosures required by paragraph (b)(4) of this section before a consumer acquires a prepaid account orally by telephone if the following conditions are met:
- (A) The financial institution communicates to the consumer orally, before the consumer acquires the prepaid account, that the information required to be disclosed by paragraph (b)(4) of this section is available both by telephone and on a Web site.
- (B) The financial institution makes the information required to be disclosed by paragraph (b)(4) of this section available both by telephone and on a Web site.
- (C) The long form disclosures required by paragraph (b)(4) of this section are provided after the consumer acquires the prepaid account.
- (2) **Short form disclosure content.** In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:
- (i) **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.
- (ii) **Per purchase fee.** The fee for making a purchase using the prepaid account, using the term “Per purchase” or a substantially similar term.
- (iii) **ATM withdrawal fees.** Two fees for using 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, using the term “ATM withdrawal” or a substantially similar term, and “in-network” or “out-of-network,” respectively, or substantially similar terms.
- (iv) **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.
- (v) **ATM balance inquiry fees.** Two fees for using 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, using the term “ATM balance inquiry” or a substantially similar term, and “in-network” or “out-of-network,” respectively, or substantially similar terms.
- (vi) **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 paragraph (b)(6)(iii)(B)(2) of this section, 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.

(vii) **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.

(viii) **Statements regarding additional fee types**

(A) **Statement regarding number of additional fee types charged.** 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:

- (1) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section; and
- (2) 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.

(B) **Statement directing consumers to disclosure of additional fee types.** If a financial institution makes a disclosure pursuant to paragraph (b)(2)(ix) of this section, 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 paragraph (b)(2)(viii)(A) of this section, using the following clause or a substantially similar clause: “Here are some of them.”

(ix) **Disclosure of additional fee types**

(A) **Determination of which additional fee types to disclose.** The two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in paragraphs (b)(2)(ix)(D) and (E) of this section, excluding:

- (1) Fees required to be disclosed pursuant to paragraphs (b)(2)(i) through (vii) and (b)(5) of this section;
- (2) 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 paragraphs (b)(2)(ix)(D) and (E) of this section; and
- (3) 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.

- (B) **Disclosure of fewer than two additional fee types.** A financial institution that has only one additional fee type that satisfies the criteria in paragraph (b)(2)(ix)(A) of this section must disclose that one additional fee type; it may, but is not required to, also disclose another additional fee type of its choice. A financial institution that has no additional fee types that satisfy the criteria in paragraph (b)(2)(ix)(A) of this section is not required to make a disclosure under this paragraph (b)(2)(ix); it may, but is not required to, disclose one or two fee types of its choice.
- (C) **Fee variations in additional fee types.** If an additional fee type required to be disclosed pursuant to paragraph (b)(2)(ix)(A) of this section has more than two fee variations, or when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with paragraph (b)(3)(i) of this section. Except when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraph (b)(7)(ii)(B)(1) of this section. If a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section, except that the financial institution would disclose only the one fee variation name and fee amount instead of two.
- (D) **Timing of initial assessment of additional fee type disclosure**
- (1) **Existing prepaid account programs as of April 1, 2018.** For a prepaid account program in effect as of April 1, 2018, the financial institution must disclose the additional fee types based on revenue for a 24-month period that begins no earlier than April 1, 2014.
  - (2) **Existing prepaid account programs as of April 1, 2018 with unavailable data.** 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, 2018, 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, 2018.
  - (3) **New prepaid account programs created on or after April 1, 2018.** For a prepaid account program created on or after April 1, 2018 the financial institution must disclose the additional fee types based on revenue it reasonably anticipates the prepaid account program will generate over the first 24 months of the program.
- (E) **Timing of periodic reassessment and update of additional fee types disclosure**

- (1) **General.** A financial institution must reassess its additional fee types disclosure periodically as described in paragraph (b)(2)(ix)(E)(2) of this section and upon a fee schedule change as described in paragraph (b)(2)(ix)(E)(3) of this section. The financial institution must update its additional fee types disclosure if the previous disclosure no longer complies with the requirements of this paragraph (b)(2)(ix).
  - (2) **Periodic reassessment.** A financial institution must reassess whether its previously disclosed additional fee types continue to comply with the requirements of this paragraph (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 disclosures, if applicable, within three months of the end of the 24-month period, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(4) of this section. A financial institution may, but is not required to, carry out this reassessment and update, if applicable, more frequently than every 24 months, at which time a new 24-month period commences.
  - (3) **Fee schedule change.** 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 this paragraph (b)(2)(ix) for the 24 months 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 this paragraph (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 paragraph (b)(2)(ix)(E)(4) of this section. If an immediate change in terms and conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system as described in §1005.8(a)(2) and that change affects the prepaid account program's fee schedule, the financial institution must complete its reassessment and update its disclosures, if applicable, within three months of the date it makes the change permanent, except as provided in the update printing exception in paragraph (b)(2)(ix)(E)(4) of this section.
  - (4) **Update printing exception.** Notwithstanding the requirements to update additional fee types disclosures in paragraph (b)(2)(ix)(E) of this section, 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 paragraph (b)(2)(ix)(E)(2) of this section or prior to a fee schedule change pursuant to paragraph (b)(2)(ix)(E)(3) of this section.
- (x) **Statement regarding overdraft credit features.** 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, a statement that overdraft/credit may be offered, the time period after which it may be offered, and that fees would apply, using the following clause or a substantially similar clause: “You may be offered overdraft/credit after [x] days. Fees would apply.” If no such credit feature will be offered at any point to a consumer in connection with the prepaid

account, a statement that no overdraft credit feature is offered, using the following clause or a substantially similar clause: “No overdraft/credit feature.”

(xi) **Statement regarding registration and FDIC or NCUA 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, as follows:

(A) **Account is insurance eligible and does not have pre-acquisition customer identification/verification.** If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: “Register your card for [FDIC insurance eligibility] [NCUA insurance, if eligible,] and other protections.”

(B) **Account is not insurance eligible and does not have pre-acquisition customer identification/verification.** If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification does not occur before the account is opened, using the following clause or a substantially similar clause: “Not [FDIC] [NCUA] insured. Register your card for other protections.”

(C) **Account is insurance eligible and has pre-acquisition customer identification/verification.** If a prepaid account program is set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid program before the account is opened, using the following clause or a substantially similar clause: “Your funds are [eligible for FDIC insurance] [NCUA insured, if eligible].”

(D) **Account is not insurance eligible and has pre-acquisition customer identification/verification.** If a prepaid account program is not set up to be eligible for FDIC deposit or NCUA share insurance, and customer identification and verification occurs for all prepaid accounts within the prepaid account program before the account is opened, using the following clause or a substantially similar clause: “Your funds are not [FDIC] [NCUA] insured.”

(E) **No customer identification/verification.** If a prepaid account program is set up such that there is no customer identification and verification process for any prepaid accounts within the prepaid account program, using the following clause or a substantially similar clause: “Treat this card like cash. Not [FDIC] [NCUA] insured.”

(xii) **Statement regarding CFPB Web site.** A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau ([cfpb.gov/prepaid](http://cfpb.gov/prepaid)) for general information about prepaid accounts, using the following clause or a substantially similar clause: “For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid).”

(xiii) **Statement regarding information on all fees and services.** A statement directing the consumer to the location of the long form disclosure required by paragraph (b)(4) of this section to find details and conditions for all fees and services. For a

financial institution offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, this statement must also include a telephone number and a Web site URL that a consumer may use to directly access, respectively, an oral and an electronic version of the long form disclosure required under paragraph (b)(4) of this section. The disclosure required by this paragraph must be made using the following clause or a substantially similar clause: “Find details and conditions for all fees and services in [location]” or, for prepaid accounts offered at retail locations pursuant to paragraph (b)(1)(ii) of this section, made using the following clause or a substantially similar clause: “Find details and conditions for all fees and services inside the package, or call [telephone number] or visit [Web site].” The Web site URL may not exceed 22 characters and must be meaningfully named. A financial institution may, but is not required to, disclose an SMS code at the end of the statement disclosing the telephone number and Web site URL, if the SMS code can be accommodated on the same line of text as the statement required by this paragraph.

(xiv) **Additional content for payroll card accounts**

(A) **Statement regarding wage or salary payment options.** For payroll card accounts, 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 from the employer instead of receiving them via the payroll card account using the following clause or a substantially similar clause: “You do not have to accept this payroll card. Ask your employer about other ways to receive your wages.” Alternatively, a financial institution 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 using the following clause or a substantially similar clause: “You have several options to receive your wages: [list of options available to the consumer]; or this payroll card. Tell your employer which option you choose.” This statement must be located above the information required by paragraphs (b)(2)(i) through (iv).

(B) **Statement regarding state-required information or other fee discounts and waivers.** For payroll card accounts, a financial institution may, but is not required to, include a statement in 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. This statement must be located directly below any statements disclosed pursuant to paragraphs (b)(3)(i) and (ii) of this section, or, if no such statements are disclosed, above the statement required by paragraph (b)(2)(x) of this section.

(3) **Short form disclosure of variable fees and third-party fees and prohibition on disclosure of finance charges**

(i) **General disclosure of variable fees.** If the amount of any fee that is required to be disclosed in the short form disclosure pursuant to paragraphs (b)(2)(i) through (vii) and (ix) of this section could vary, a financial institution shall disclose the highest amount it may impose for that fee, 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, using the following clause or a substantially similar clause: “This fee can be lower depending on how and where this card is used.” Except as provided in paragraph (b)(3)(ii) of this section, a financial institution must use the same symbol and statement for all fees that could vary. The linked statement must be located above the statement required by paragraph (b)(2)(x) of this section.

- (ii) **Disclosure of variable periodic fee.** If the amount of the periodic fee disclosed in the short form disclosure pursuant to paragraph (b)(2)(i) of this section could vary, as an alternative to the disclosure required by paragraph (b)(3)(i) of this section, the financial institution may disclose the highest amount it may impose for the periodic fee, followed by a symbol, such as a dagger, that is different from the symbol the financial institution uses pursuant to paragraph (b)(3)(i) of this section, to indicate that a waiver of the fee or a lower fee might apply, linked to a statement in one additional line of text disclosing the waiver or reduced fee amount and explaining the circumstances under which the fee waiver or reduction may occur. The linked statement must be located directly above or in place of the linked statement required by paragraph (b)(3)(i) of this section, as applicable.
  - (iii) **Single disclosure for like fees.** As an alternative to the two-tier fee disclosure required by paragraphs (b)(2)(iii), (v), and (vi) of this section and any two-tier fee required by paragraph (b)(2)(ix) of this section, a financial institution may disclose a single fee amount when the amount is the same for both fees.
  - (iv) **Third-party fees in general.** Except as provided in paragraph (b)(3)(v) of this section, a financial institution may not include any third-party fees in a disclosure made pursuant to paragraph (b)(2) of this section.
  - (v) **Third-party cash reload fees.** Any third-party fee included in the cash reload fee disclosed in the short form pursuant to paragraph (b)(2)(iv) of this section must be the highest fee known by the financial institution at the time it prints, or otherwise prepares, the short form disclosure required by paragraph (b)(2) of this section. 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.
  - (vi) **Prohibition on disclosure of finance charges.** A financial institution may not include in a disclosure made pursuant to paragraphs (b)(2)(i) through (ix) of this section 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.
- (4) **Long form disclosure content.** In accordance with paragraph (b)(1) of this section, a financial institution shall provide a disclosure setting forth the following fees and information for a prepaid account, as applicable:
- (i) **Title for long form disclosure.** 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.
  - (ii) **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. A financial institution may not use any symbols, such as an asterisk, to explain conditions under which any fee may be imposed. A financial institution may, but is not required to, include in the long form disclosure any service or feature it provides or offers at no charge to the consumer. The financial institution must also disclose any third-party fee amounts known to the financial institution that may apply. For any such third-party fee disclosed, the 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. If a third-party fee may apply but the amount of that fee is not known by the financial institution, it must include a statement indicating that the third-party fee may apply without specifying the fee amount. A financial institution is not required to revise the long form disclosure required by paragraph (b)(4) of this section to reflect a 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 long form disclosure.

- (iii) **Statement regarding registration and FDIC or NCUA insurance.** The statement required by paragraph (b)(2)(xi) of this section, 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.
- (iv) **Statement regarding overdraft credit features.** The statement required by paragraph (b)(2)(x) of this section.
- (v) **Statement regarding financial institution contact information.** A statement directing the consumer to a telephone number, mailing address, and Web site URL of the person or office that a consumer may contact to learn about the terms and conditions of the prepaid account, to obtain prepaid account balance information, to request a copy of transaction history pursuant to paragraph (c)(1)(iii) of this section 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 occurred as required by §1005.7(b)(2) and paragraph (d)(1)(ii) of this section.
- (vi) **Statement regarding CFPB Web site and telephone number.** A statement directing the consumer to a Web site URL of the Consumer Financial Protection Bureau ([cfpb.gov/prepaid](http://cfpb.gov/prepaid)) for general information about prepaid accounts, and a statement directing the consumer to a Consumer Financial Protection Bureau telephone number (1-855-411-2372) and Web site URL ([cfpb.gov/complaint](http://cfpb.gov/complaint)) to submit a complaint about a prepaid account, using the following clause or a substantially similar clause: “For general information about prepaid accounts, visit [cfpb.gov/prepaid](http://cfpb.gov/prepaid). If you have a complaint about a prepaid account, call the Consumer Financial Protection Bureau at 1-855-411-2372 or visit [cfpb.gov/complaint](http://cfpb.gov/complaint).”
- (vii) **Regulation Z disclosures for overdraft credit features.** 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 12 CFR 1026.61, may be offered in connection with the prepaid account. A financial institution may, but is not required to, include above the Regulation Z disclosures required by this paragraph a heading and other explanatory information introducing the overdraft credit feature.

A financial institution is not required to revise the disclosure required by this 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.

(5) **Disclosure requirements outside the short form disclosure.** At the time a financial institution provides the short form disclosure, it must also disclose the following information: 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 in 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 close proximity to the prepaid account access device's packaging material.

(6) **Form of pre-acquisition disclosures**

(i) **General**

(A) **Written disclosures.** Except as provided in paragraphs (b)(6)(i)(B) and (C) of this section, disclosures required by paragraph (b) of this section must be in writing.

(B) **Electronic disclosures.** The disclosures required by paragraph (b) of this section must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a Web site when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section. Electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via Web browsers or mobile applications, as applicable, and via screen readers. Electronic disclosures provided pursuant to paragraph (b) of this section need not meet the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

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

(ii) **Retainable form.** Pursuant to §1005.4(a)(1), disclosures required by paragraph (b) of this section must be made in a form that a consumer may keep, except for disclosures provided orally pursuant to paragraphs (b)(1)(ii) or (iii) of this section, long form disclosures provided via SMS as permitted by paragraph (b)(2)(xiii) of this section for a prepaid account sold at retail locations pursuant to the retail location exception in paragraph (b)(1)(ii) of this section, and the disclosure of a purchase price pursuant to paragraph (b)(5) of this section 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 paragraph (b)(1)(ii) of this section.

**(iii) Tabular format**

(A) **General.** When a short form disclosure is provided in writing or electronically, the information required by paragraphs (b)(2)(i) through (ix) of this section shall be provided in the form of a table. Except as provided in paragraph (b)(6)(iii)(B) of this section, the short form disclosures required by paragraph (b)(2) of this section shall be provided in a form substantially similar to Model Forms A-10(a) through (d) in appendix A of this part, as applicable. When a long form disclosure is provided in writing or electronically, the information required by paragraph (b)(4)(ii) of this section shall be provided in the form of a table. Sample Form A-10(f) in appendix A of this part provides an example of the long form disclosure required by paragraph (b)(4) of this section when the financial institution does not offer multiple service plans.

**(B) Multiple service plans**

- (1) **Short form disclosure for default service plan.** 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 paragraphs (b)(2)(i) through (ix) of this section may be provided in the tabular format described in paragraph (b)(6)(iii)(A) of this section for the service plan in which a consumer is initially enrolled by default upon acquiring the prepaid account.
- (2) **Short form disclosure for multiple service plans.** As an alternative to disclosing the default service plan pursuant to paragraph (b)(6)(iii)(B)(1) of this section, when a financial institution offers multiple service plans within a particular prepaid account program and each plan has a different fee schedule, fee disclosures required by paragraphs (b)(2)(i) through (vii) and (ix) of this section may be provided in the form of a table with separate columns for each service plan, in a form substantially similar to Model Form A-10(e) in appendix A of this part. Column headings must describe each service plan included in the table, using the terms “Pay-as-you-go plan,” “Monthly plan,” “Annual plan,” or substantially similar terms; or, for multiple service plans offering preferred rates or fees for the prepaid accounts of consumers who also use another non-prepaid service, column headings must describe each service plan included in the table for the preferred- and non-preferred service plans, as applicable.
- (3) **Long form disclosure.** The information in the long form disclosure required by paragraph (b)(4)(ii) of this section must be presented in the form of a table for all service plans.

**(7) Specific formatting requirements for pre-acquisition disclosures****(i) Grouping**

(A) **Short form disclosure.** The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must be grouped together and provided in that order. The information required by paragraphs (b)(2)(v) through (ix) of this section must be generally grouped together and provided in that order. The information required by paragraphs (b)(3)(i) and (ii) of this section, as applicable, must be generally grouped together and in the location described by paragraphs (b)(3)(i) and (ii) of this section. The information required by paragraphs

(b)(2)(x) through (xiii) of this section must be generally grouped together and provided in that order. The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section must be located above the information required by paragraphs (b)(2)(i) through (iv) of this section, as described in paragraph (b)(2)(xiv)(A) of this section. The statement regarding state-required information or other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section, when applicable, must appear in the location described by paragraph (b)(2)(xiv)(B) of this section.

(B) **Long form disclosure.** The information required by paragraph (b)(4)(i) of this section must be located in the first line of the long form disclosure. The information required by paragraph (b)(4)(ii) of this section must be generally grouped together and organized under subheadings by the categories of function for which a financial institution may impose the fee. Text describing the conditions under which a fee may be imposed must appear in the table required by paragraph (b)(6)(iii)(A) of this section in close proximity to the fee amount. The information in the long form disclosure required by paragraphs (b)(4)(iii) through (vi) of this section must be generally grouped together, provided in that order, and appear below the information required by paragraph (b)(4)(ii) of this section. If, pursuant to §1005.18(b)(4)(vii), the financial institution includes the disclosures described in Regulation Z, 12 CFR 1026.60(e)(1), such disclosures must appear below the disclosures required by paragraph (b)(4)(vi) of this section.

(C) **Multiple service plan disclosure.** When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, in lieu of the requirements in paragraph (b)(7)(i)(A) of this section for grouping of the disclosures required by paragraphs (b)(2)(i) through (iv) and (v) through (ix) of this section, the information required by paragraphs (b)(2)(i) through (ix) of this section must be grouped together and provided in that order.

(ii) **Prominence and size**

(A) **General.** All text used to disclose information in the short form or in the long form disclosure pursuant to paragraphs (b)(2), (b)(3)(i) and (ii), and (b)(4) of this section 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.

(B) **Short form disclosure**

(1) **Fees and other information.** The information required in the short form disclosure by paragraphs (b)(2)(i) through (iv) of this section must appear as follows: Fee amounts in bold-faced type; single fee amounts in a minimum type size of 15 points (or 21 pixels); two-tier fee amounts for ATM withdrawal in a minimum type size of 11 points (or 16 pixels) and in no larger a type size than what is used for the single fee amounts; and fee headings in a minimum type size of eight points (or 11 pixels) and in no larger a type size than what is used for the single fee amounts. The information required by paragraphs (b)(2)(v) through (ix) of this section must appear in a minimum type size of eight points (or 11 pixels) and appear in the same or a smaller type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The information required by paragraphs (b)(2)(x) through (xiii) of this section

must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required to be disclosed by paragraphs (b)(2)(v) through (ix) of this section. Additionally, the statements disclosed pursuant to paragraphs (b)(2)(viii)(A) and (b)(2)(x) of this section and the telephone number and URL disclosed pursuant to paragraph (b)(2)(xiii) of this section, where applicable, must appear in bold-faced type. The following information must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size that what is used for the information required by paragraphs (b)(2)(x) through (xiii) of this section: text used to distinguish each of the two-tier fees pursuant to paragraphs (b)(2)(iii), (v), (vi), and (ix) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies “per call,” where applicable; and text used to explain the conditions that trigger an inactivity fee and that the fee applies monthly or for the applicable time period, pursuant to paragraph (b)(2)(vii) of this section.

- (2) **Variable fees.** The symbols and corresponding statements regarding variable fees disclosed in the short form pursuant to paragraphs (b)(3)(i) and (ii) of this section, when applicable, must appear in a minimum type size of seven points (or nine pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(x) through (xiii) of this section. A symbol required next to the fee amount pursuant to paragraphs (b)(3)(i) and (ii) of this section must appear in the same type size or pixel size as what is used for the corresponding fee amount.
- (3) **Payroll card account additional content.** The statement regarding wage or salary payment options for payroll card accounts required by paragraph (b)(2)(xiv)(A) of this section, when applicable, must appear in a minimum type size of eight points (or 11 pixels) and appear in no larger a type size than what is used for the fee headings required by paragraphs (b)(2)(i) through (iv) of this section. The statement regarding state-required information and other fee discounts or waivers permitted by paragraph (b)(2)(xiv)(B) of this section must appear in the same type size used to disclose variable fee information pursuant to paragraph (b)(3)(i) and (ii) of this section, or, if none, the same type size used for the information required by paragraphs (b)(2)(x) through (xiii) of this section.
- (C) **Long form disclosure.** Long form disclosures required by paragraph (b)(4) of this section must appear in a minimum type size of eight points (or 11 pixels).
- (D) **Multiple service plan short form disclosure.** When providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(2) of this section, the fee headings required by paragraphs (b)(2)(i) through (iv) of this section must appear in bold-faced type. The information required by paragraphs (b)(2)(i) through (xiii) of this section must appear in a minimum type size of seven points (or nine pixels), except the following must appear in a minimum type size of six points (or eight pixels) and appear in no larger a type size than what is used for the information required by paragraphs (b)(2)(i) through (xiii) of this section: Text used to distinguish each of the two-tier fees required by paragraphs (b)(2)(iii) and (v) of this section; text used to explain that the fee required by paragraph (b)(2)(vi) of this section applies “per call,” where applicable; text used to explain the conditions that trigger an inactivity fee pursuant to paragraph (b)(2)(vii) of this section; and text

used to distinguish that fees required by paragraphs (b)(2)(i) and (vii) of this section apply monthly or for the applicable time period.

(iii) **Segregation.** Short form and long form disclosures required by paragraphs (b)(2) and (4) of this section must be segregated from other information and must contain only information that is required or permitted for those disclosures by paragraph (b) of this section.

(8) **Terminology of pre-acquisition disclosures.** Fee names and other terms must be used consistently within and across the disclosures required by paragraph (b) of this section.

(9) **Prepaid accounts acquired in foreign languages**

(i) **General.** A financial institution must provide the pre-acquisition disclosures required by paragraph (b) of this section in a foreign language, if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in the following circumstances:

(A) The financial institution principally uses a foreign language on the prepaid account packaging material;

(B) The financial institution principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language.

(ii) **Long form disclosures in English upon request.** A financial institution required to provide pre-acquisition disclosures in a foreign language pursuant to paragraph (b)(9)(i) of this section must also provide the information required to be disclosed in its pre-acquisition long form disclosure pursuant to paragraph (b)(4) of this section in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language.

## Regulatory Commentary

### *18(b) Alternative to Periodic Statements*

1. **Posted transactions.** *A history of transactions provided under §§1005.18(b)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an 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(b)(1)(ii) must be provided 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, an institution satisfies the requirement if it provides a history at a Web site in a format that is capable of being printed or stored electronically using a web browser.*

## ***Access to Prepaid Account Information [12 C.F.R. § 1005.18(c)]***

### **Regulatory Text**

#### **(c) Access to prepaid account information**

- (1) **Periodic statement alternative.** A financial institution need not furnish periodic statements required by §1005.9(b) if the financial institution makes available to the consumer:
  - (i) The consumer's account balance, through a readily available telephone line;
  - (ii) An electronic history of the consumer's account transactions, such as through a Web site, that covers at least 12 months preceding the date the consumer electronically accesses the account; and
  - (iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 24 months preceding the date the financial institution receives the consumer's request.
- (2) **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 pursuant to paragraph (c)(1)(iii) of this section for any prepaid account for which the financial institution has not completed its consumer identification and verification process as described in paragraph (e)(3)(i)(A) through (C) of this section.
- (3) **Information included on electronic or written histories.** The history of account transactions provided under paragraphs (c)(1)(ii) and (iii) of this section must include the information set forth in §1005.9(b).
- (4) **Inclusion of all fees charged.** A financial institution must disclose the amount of any fees assessed against the account, whether for electronic fund transfers or otherwise, on any periodic statement provided pursuant to §1005.9(b) and on any history of account transactions provided or made available by the financial institution.
- (5) **Summary totals of fees.** A financial institution 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 §1005.9(b) and on any history of account transactions provided or made available by the financial institution.

### **Regulatory Commentary**

#### ***18(c) Modified 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 Form in appendix A-7). Specifically, an institution may disclose to payroll card 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 payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. 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.
3. **Untimely notice of error.** An institution that provides a transaction history under §1005.18(b)(1) is not required to comply with the requirements of §1005.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in §1005.18(c)(4)(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 before it may impose any liability on the consumer.

## **Modified Disclosure Requirements [12 C.F.R. § 1005.18(d)]**

### **Regulatory Text**

- (d) **Modified disclosure requirements.** A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:
  - (1) **Initial disclosures.** The financial institution shall modify the disclosures under §1005.7(b) by disclosing:
    - (i) **Access to account information.** A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account transaction history, such as the address of a Web site, 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 §1005.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph may be made by providing a notice substantially similar to the notice contained in paragraph (a) of appendix A-7 of this part.
    - (ii) **Error resolution.** A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A-7 of this part, in place of the notice required by §1005.7(b)(10).

- (2) **Annual error resolution notice.** The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A-7 of this part, in place of the notice required by §1005.8(b). Alternatively, a financial institution may include on or with each electronic and written account transaction history provided in accordance with paragraph (c)(1) of this section, a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph (b) of appendix A-3 of this part, modified as necessary to reflect the error resolution provisions set forth in paragraph (e) of this section.

## Regulatory Commentary

*None.*

## ***Modified Limitations on Liability and Error Resolution Requirements [12 C.F.R. § 1005.18(e)]***

### Regulatory Text

#### (e) **Modified limitations on liability and error resolution requirements**

- (1) **Modified limitations on liability requirements.** A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:
- (i) For purposes of §1005.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:
    - (A) The date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic account transaction history made available to the consumer reflects the unauthorized transfer; or
    - (B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the unauthorized transfer is first reflected.
  - (ii) A financial institution may comply with paragraph (e)(1)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under §1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.
- (2) **Modified error resolution requirements.** A financial institution that provides information under paragraph (c)(1) of this section shall comply with the following:
- (i) The financial institution shall comply with the requirements of §1005.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:
    - (A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (c)(1)(ii) of this section, provided that the electronic

account transaction history made available to the consumer reflects the alleged error; or

(B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (c)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (e)(2)(i) of this section, a financial institution complies with the requirements for resolving errors in §1005.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

### (3) **Error resolution for unverified accounts**

(i) **Provisional credit for errors on accounts that have not been verified.** As set forth in §1005.11(c)(2)(i)(C), for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution may take up to the maximum length of time permitted under §1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting a consumer's account if the financial institution has not completed its consumer identification and verification process with respect to that prepaid account.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not completed its consumer identification and verification process where:

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

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

(C) It does not have a consumer identification and verification process by which the consumer can register the prepaid account.

(iii) **Resolution of pre-verification errors.** If a consumer's account has been verified, the financial institution must comply with the provisions set forth in §1005.11(c) in full with respect to any errors that satisfy the timing requirements of §1005.11, or the modified timing requirements in this paragraph (e), as applicable, including with respect to errors that occurred prior to verification.

(A) Notwithstanding paragraph (e)(3)(iii) of this section, if, at the time the financial institution was required to provisionally credit the account (pursuant to §1005.11(c)(2)(i) or (c)(3)(ii), as applicable), the financial institution has not yet completed its identification and verification process with respect to that account, the financial institution may take up to the maximum length of time permitted under §1005.11(c)(2)(i) or (c)(3)(ii), as applicable, to investigate and determine whether an error occurred without provisionally crediting the account.

## Regulatory Commentary

*None.*

## ***Disclosure of Fees and Other Information [12 C.F.R. § 1005.18(f)]***

### Regulatory Text

#### **(f) Disclosure of fees and other information**

- (1) **Initial disclosure of fees and other information.** A financial institution must 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 paragraph (b)(4) of this section.
- (2) **Change-in-terms notice.** The change-in-terms notice provisions in §1005.8(a) apply to any change in a term or condition that is required to be disclosed under §1005.7 or paragraph (f)(1) of this section. If a financial institution discloses the amount of a third-party fee in its pre-acquisition long form disclosure pursuant to paragraph (b)(4)(ii) of this section and initial disclosures pursuant to paragraph (f)(1) of this section, the financial institution is not required to provide a change-in-terms notice solely to reflect a change in that fee amount imposed by the third party. If a financial institution provides pursuant to paragraph (f)(1) of this section the Regulation Z disclosures required by paragraph (b)(4)(vii) of this section 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.
- (3) **Disclosures on prepaid account access devices.** 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. If a financial institution does not provide a physical access device in connection with a prepaid account, the disclosure must appear on the Web site, mobile application, or other entry point a consumer must visit to access the prepaid account electronically.

## Regulatory Commentary

*None.*

## ***Prepaid Accounts Accessible by Hybrid Prepaid-Credit Cards [12 C.F.R. § 1005.18(g)]***

### **Regulatory Text**

#### **(g) Prepaid accounts accessible by hybrid prepaid-credit cards**

- (1) **In general.** Except as provided in paragraph (g)(2) of this section, 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, 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.
- (2) **Exception for higher fees or charges.** A financial institution is not prohibited under paragraph (g)(1) of this section 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.

### **Regulatory Commentary**

*None.*

## ***Effective Date and Special Transition Rules for Disclosure Provisions [12 C.F.R. § 1005.18(h)]***

### **Regulatory Text**

#### **(h) Effective date and special transition rules for disclosure provisions**

- (1) **Effective date generally.** Except as provided in paragraphs (h)(2) and (3) of this section, the requirements of this subpart, as modified by this section, apply to prepaid accounts as defined in §1005.2(b)(3), including government benefit accounts subject to §1005.15, beginning April 1, 2018.
- (2) **Early disclosures**
  - (i) **Exception for disclosures on existing prepaid account access devices and prepaid account packaging materials.** The disclosure requirements of this subpart, as modified by this section, shall 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, 2018.

- (ii) **Disclosures for prepaid accounts acquired on or after April 1, 2018.** This paragraph applies to prepaid accounts acquired by consumers on or after April 1, 2018 via packaging materials that were manufactured, printed, or otherwise produced prior to April 1, 2018.
    - (A) **Notices of certain changes.** If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been required under §1005.8(a) or paragraph (f)(2) of this section for existing customers, the financial institution must provide to the consumer a notice of the change within 30 days of obtaining the consumer's contact information.
    - (B) **Initial disclosures.** The financial institution must mail or deliver to the consumer initial disclosures pursuant to §1005.7 and paragraph (f)(1) of this section that have been updated as a result of paragraph (h)(1) of this section taking effect, within 30 days of obtaining the consumer's contact information.
  - (iii) **Disclosures for prepaid accounts acquired before April 1, 2018.** This paragraph applies to prepaid accounts acquired by consumers before April 1, 2018. If a financial institution has changed a prepaid account's terms and conditions as a result of paragraph (h)(1) of this section taking effect such that a change-in-terms notice would have been required under §1005.8(a) or paragraph (f)(2) of this section for existing customers, the financial institution must provide to the consumer a notice of the change at least 21 days in advance of the change becoming effective, provided the financial institution has the consumer's contact information. If the financial institution obtains the consumer's contact information less than 30 days in advance of the change becoming effective or after it has become effective, the financial institution is permitted instead to notify the consumer of the change in accordance with the timing requirements set forth in paragraph (h)(2)(ii)(A) of this section.
  - (iv) **Method of providing notice to consumers.** With respect to prepaid accounts governed by paragraph (h)(2)(ii) or (iii) of this section, if a financial institution has not obtained a consumer's consent to provide disclosures in electronic form pursuant to the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.), or is not otherwise already mailing or delivering to the consumer written account-related communications within the respective time periods specified in paragraphs (h)(2)(ii) or (iii) of this section, the financial institution may provide to the consumer a notice of a change in terms and conditions pursuant to paragraph (h)(2)(ii) or (iii) of this section or required or voluntary updated initial disclosures as a result of paragraph (h)(1) of this section taking effect in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act.
- (3) **Account information not available on April 1, 2018**
- (i) **Electronic and written account transaction history.** If, on April 1, 2018, a financial institution does not have readily accessible the data necessary to make available 12 months of electronic account transaction history pursuant to paragraph (c)(1)(ii) of this section or to provide 24 months of written account transaction history upon request pursuant to paragraph (c)(1)(iii) of this section, 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 paragraphs (c)(1)(ii) and (iii) of this section.

- (ii) **Summary totals of fees.** If, on April 1, 2018, the financial institution 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 to date pursuant to paragraph (c)(5) of this section, 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 paragraph (c)(5) of this section.

## Regulatory Commentary

*None.*

## ***A-7: Model Clauses for Financial Institutions Offering Payroll Card Accounts [§ 1005.18(c)]***

### **Disclosure by Financial Institutions of Information about Obtaining Account Information for Payroll Card Accounts [§ 1005.18(c)(1)]**

“You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along with a 60-day history of account transactions, is also available online at [Internet address].

You also have the right to obtain a 60-day written history of account transactions by calling [telephone number] or by writing us at [address].”

### **Disclosure of Error-Resolution Procedures for Financial Institutions that Provide Alternative Means of Obtaining Payroll Card Account Information [§ 1005.18(c)(1)(ii) and (c)(2)]**

“In Case of Errors or Questions About Your Payroll Card Account Telephone us at [telephone number] or Write us at [address] [or e-mail us at [email address]] as soon as you can, if you think an error has occurred in your payroll card account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

- Your name and [payroll card account] number
- Why you believe there is an error and the dollar amount involved
- Approximately when the error took place

If you tell us orally, we may require that you send us your complaint or question in writing within ten business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above]] [or visit [Internet address]].”

## Section 20: Internet Posting of Prepaid Account Agreements 12 C.F.R. § 1005.19

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### *Introduction*

As very few, if any, attendees will need this information, we have limited our presentation to the regulatory text and commentary.

### *Definitions [12 C.F.R. § 1005.19(a)]*

#### **Regulatory Text**

##### **(a) Definitions**

- (1) **Agreement.** For purposes of this section, “agreement” or “prepaid account 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. “Agreement” or “prepaid account agreement” also includes fee information, as defined in paragraph (a)(3) of this section.
- (2) **Amends.** For purposes of this section, an issuer “amends” an agreement if it makes a substantive change (an “amendment”) to the agreement. A change is substantive if it alters the rights or obligations of the issuer or the consumer under the agreement. Any change in the fee information, as defined in paragraph (a)(3) of this section, is deemed to be substantive.
- (3) **Fee information.** For purposes of this section, “fee information” means the short form disclosure for the prepaid account pursuant to §1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to §1005.18(b)(4).
- (4) **Issuer.** For purposes of this section, “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.
- (5) **Offers.** For purposes of this section, 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.
- (6) **Offers to the general public.** For purposes of this section, an issuer “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.

- (7) **Open account.** For purposes of this section, a prepaid account is an “open account” or “open prepaid account” if: There is an outstanding balance in the account; the consumer can load funds to the account even if the account does not currently hold a balance; or 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.”
- (8) **Prepaid account.** For purposes of this section, “prepaid account” means a prepaid account as defined in §1005.2(b)(3).

## Regulatory Commentary

*None.*

## *Submission of Agreements to the Bureau [12 C.F.R. § 1005.19(b)]*

### Regulatory Text

#### (b) Submission of agreements to the Bureau

- (1) **Submissions on a rolling basis.** An issuer must make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Rolling submissions must be sent to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer any prepaid account agreement as described in paragraphs (b)(1)(ii) through (iv) of this section. Each submission must contain:
- (i) Identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), the effective date of the prepaid account agreement, the name of the program manager, if any, and the names of other relevant parties, if applicable (such as the employer for a payroll card program or the agency for a government benefit program);
  - (ii) Any prepaid account agreement offered by the issuer that has not been previously submitted to the Bureau;
  - (iii) Any prepaid account agreement previously submitted to the Bureau that has been amended, as described in paragraph (b)(2) of this section; and
  - (iv) Notification regarding any prepaid account agreement previously submitted to the Bureau that the issuer is withdrawing, as described in paragraphs (b)(3), (b)(4)(ii), and (b)(5)(ii) of this section.
- (2) **Amended agreements.** If a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change comes effective.

(3) **Withdrawal of agreements no longer offered.** If an issuer no longer offers a prepaid account agreement that was previously submitted to the Bureau, the issuer must notify the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the issuer ceases to offer the agreement, that it is withdrawing the agreement.

(4) **De minimis exception.**

(i) An issuer is not required to submit any prepaid account agreements to the Bureau if the issuer has fewer than 3,000 open prepaid accounts. If the issuer has 3,000 or more open prepaid accounts as of the last day of the calendar quarter, the issuer must submit to the Bureau its prepaid account agreements no later than 30 days after the last day of that calendar quarter.

(ii) 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 submissions to the Bureau on a rolling basis until the issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau.

(5) **Product testing exception.**

(i) An issuer is not required to submit a prepaid account agreement to the Bureau if the agreement meets the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section. If the agreement fails to meet the criteria set forth in paragraphs (b)(5)(i)(A) through (C) of this section as of the last day of the calendar quarter, the issuer must submit to the Bureau that prepaid account agreement no later than 30 days after the last day of that calendar quarter. An agreement qualifies for the product testing exception if the agreement:

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 3,000 open prepaid accounts; and

(C) Is not offered other than in connection with such a product test.

(ii) If an agreement that did not previously qualify for the product testing exception newly qualifies for the exception, the issuer must continue to make submissions to the Bureau on a rolling basis with respect to that agreement until the issuer notifies the Bureau that the issuer is withdrawing the agreement.

(6) **Form and content of agreements submitted to the Bureau**

(i) **Form and content generally.**

(A) Each agreement must contain the provisions of the agreement and the fee information currently in effect.

(B) Agreements must not include any personally identifiable information relating to any consumer, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of this section, and therefore are not required to be included in submissions to the Bureau:

- (1) Ancillary disclosures required by state or Federal law, such as affiliate marketing notices, privacy policies, or disclosures under the E-Sign Act;
  - (2) Solicitation or marketing materials;
  - (3) Periodic statements; and
  - (4) Documents that may be sent to the consumer along with the prepaid account or prepaid account agreement such as a cover letter, a validation sticker on the card, or other information about card security.
- (D) Agreements must be presented in a clear and legible font.
- (ii) **Fee information.** Fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. The agreement or addendum thereto must contain all of the fee information, as defined by paragraph (a)(3) of this section.
  - (iii) **Integrated agreement.** An issuer may not provide provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addendum). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addendum, as appropriate.

### **Regulatory Commentary**

*None.*

## ***Posting of Agreements Offered to the General Public [12 C.F.R. § 1005.19(c)]***

### **Regulatory Text**

#### **(c) Posting of agreements offered to the general public.**

- (1) An issuer must post and maintain on its publicly available Web site any prepaid account agreements offered to the general public that the issuer is required to submit to the Bureau under paragraph (b) of this section.
- (2) Agreements posted pursuant to this paragraph (c) must conform to the form and content requirements for agreements submitted to the Bureau set forth in paragraph (b)(6) of this section.
- (3) The issuer must post and update the agreements posted on its Web site pursuant to this paragraph (c) as frequently as the issuer is required to submit new or amended agreements to the Bureau pursuant to paragraph (b)(2) of this section.
- (4) Agreements posted pursuant to this paragraph (c) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that

is prominent and readily accessible to the public and must be accessible without submission of personally identifiable information.

### Regulatory Commentary

*None.*

## ***Agreements for all Open Accounts [12 C.F.R. § 1005.19(d)]***

### Regulatory Text

#### (d) Agreements for all open accounts

(1) **Availability of an individual consumer's prepaid account agreement.** With respect to any open prepaid account, an issuer must either:

(i) Post and maintain the consumer's agreement on its Web site; or

(ii) Promptly provide a copy of the consumer's agreement to the consumer upon the consumer's request. If the issuer makes an agreement available upon request, the issuer must provide the consumer with the ability to request a copy of the agreement by telephone. The issuer must send to the consumer a copy of the consumer's prepaid account agreement no later than five business days after the issuer receives the consumer's request.

(2) **Form and content of agreements.**

(i) Except as provided in this paragraph (d), agreements posted on the issuer's Web site pursuant to paragraph (d)(1)(i) of this section or sent to the consumer upon the consumer's request pursuant to paragraph (d)(1)(ii) of this section must conform to the form and content requirements for agreements submitted to the Bureau as set forth in paragraph (b)(6) of this section.

(ii) If the issuer posts an agreement on its Web site under paragraph (d)(1)(i) of this section, the agreement may be posted in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the consumer.

(iii) Agreements posted or otherwise provided pursuant to this paragraph (d) may contain personally identifiable information relating to the consumer, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the consumer or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to this paragraph (d) must set forth the specific provisions and fee information applicable to the particular consumer.

- (v) Agreements posted pursuant to paragraph (d)(1)(i) of this section must be updated as frequently as the issuer is required to submit amended agreements to the Bureau pursuant to paragraph (b)(2) of this section. Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be accurate as of the date the agreement is sent to the consumer.
- (vi) Agreements provided upon consumer request pursuant to paragraph (d)(1)(ii) of this section must be provided by the issuer in paper form, unless the consumer agrees to receive the agreement electronically.

### **Regulatory Commentary**

*None.*

## ***E-Sign Act Requirements [12 C.F.R. § 1005.19(e)]***

### **Regulatory Text**

- (e) **E-Sign Act requirements.** Except as otherwise provided in this section, issuers may provide prepaid account agreements in electronic form under paragraphs (c) and (d) of this section without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

### **Regulatory Commentary**

*None.*

## ***Effective Date [12 C.F.R. § 1005.19(f)]***

### **Regulatory Text**

#### **(f) Effective date**

- (1) **Effective date generally.** Except as provided in paragraph (f)(2) of this section, the requirements of this section apply to prepaid accounts beginning on April 1, 2018.
- (2) **Delayed effective date for the agreement submission requirement.** The requirement to submit prepaid account agreements to the Bureau on a rolling basis pursuant to paragraph (b) of this section is delayed until April 1, 2018. An issuer must submit to the Bureau no later than April 31, 2018 all prepaid account agreements it offers as of April 1, 2018.

- (3) **Requirements to post and provide consumers agreements.** Nothing in paragraph (f)(2) of this section shall affect the requirements to post prepaid account agreements on an issuer's Web site pursuant to paragraphs (c) and (d) of this section or the requirement to provide a copy of the consumer's agreement to the consumer upon request pursuant to paragraph (d) of this section.

**Regulatory Commentary**

*None.*

# Section 21: Requirements for Gift Cards and Gift Certificates [12 C.F.R. § 1005.20]

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## *Introduction*

This section of the manual is included for reference only. Most community banks are not issuers of gift cards and/or gift certificates, but may act as a reseller of these types of products.

## *Introductory Commentary*

### *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.*

## ***Definitions [12 C.F.R. § 1005.20(a)]***

The definitions are in the regulatory text. We have elected to insert the regulatory text, and have added any regulatory commentary in the appropriate location, indented and in *italics*.

## Regulatory Text

(a) **Definitions.** For purposes of this section, except as excluded under paragraph (b), the following definitions apply:

(1) **“Gift certificate”** means a card, code, or other device that is:

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and
- (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(2) **“Store gift card”** means a card, code, or other device that is:

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
- (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

### **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.*

(3) “**General-use prepaid card**” means a card, code, or other device that is:

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
- (ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

**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.*

(4) “**Loyalty, award, or promotional gift card**” means a card, code, or other device that:

- (i) Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;
- (ii) Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and
- (iii) Sets forth the following disclosures, as applicable:
  - (A) A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;
  - (B) The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;
  - (C) The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and
  - (D) A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

## **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.*
- (5) **Dormancy or inactivity fee.** The terms "dormancy fee" and "inactivity fee" mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card.
- (6) **Service fee.** The term "service fee" means 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.

**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.*
- (7) **Activity.** The term “activity” means any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction.

**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.*

**Exclusions [12 C.F.R. § 1005.20(b)]**

Certain items are excluded from the regulation. These items are generally not offered by banking organizations. Please see the regulatory text and commentary for additional information.

**Regulatory Text**

- (b) **Exclusions.** The terms “gift certificate,” “store gift card,” and “general-use prepaid card”, as defined in paragraph (a) of this section, do not include any card, code, or other device that is:
- (1) Useable solely for telephone services;

- (2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this paragraph (b)(2), the term “reloadable” includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;
- (3) A loyalty, award, or promotional gift card;
- (4) Not marketed to the general public;
- (5) Issued in paper form only; or
- (6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, either at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

## Regulatory Commentary

### **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.

## ***Form of Disclosures and Format [12 C.F.R. § 1005.20(c)(1) and (2)]***

### **Regulatory Text**

#### **(c) Form of disclosures**

- (1) **Clear and conspicuous.** Disclosures made under this section must be clear and conspicuous. The disclosures may contain commonly accepted or readily understandable abbreviations or symbols.
- (2) **Format.** Disclosures made under this section generally must be provided to the consumer in written or electronic form. Except for the disclosures in paragraphs (c)(3) and (h)(2) of this section, written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraphs (c)(3) and (h)(2) may be given orally.

### **Regulatory Commentary**

#### ***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.*

## **Disclosures Prior to Purchase [12 C.F.R. § 1005.20(c)(3)]**

### **Regulatory Text**

(c) \*\*\*

(3) **Disclosures prior to purchase.** Before a gift certificate, store gift card, or general-use prepaid card is purchased, a person that issues or sells such certificate or card must disclose to the consumer the information required by paragraphs (d)(2), (e)(3), and (f)(1) of this section. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

### **Regulatory Commentary**

#### **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).*

### ***Disclosures on the Certificate or Card [12 C.F.R. § 1005.20(c)(4)]***

When a disclosure is required to be made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device, a disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card.

For an electronic certificate or card, disclosures must be provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation.

#### **Regulatory Text**

(c) \*\*\*

- (4) **Disclosures on the certificate or card.** Disclosures required by paragraphs (a)(4)(iii), (d)(2), (e)(3), and (f)(2) of this section must be made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device. A disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card. For an electronic certificate or card, disclosures must be provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation.

#### **Regulatory Commentary**

##### ***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.<sup>2</sup> 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.

### ***Prohibition on Imposition of Fees or Charges [12 C.F.R. § 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:

- There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;
- The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:
  - The amount of any dormancy, inactivity, or service fee that may be charged;
  - How often such fee may be assessed; and
  - That such fee may be assessed for inactivity; and
- Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

#### **Regulatory Text**

(d) **Prohibition on imposition of fees or charges.** 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:

- (1) There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;
- (2) The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:
  - (i) The amount of any dormancy, inactivity, or service fee that may be charged;
  - (ii) How often such fee may be assessed; and
  - (iii) That such fee may be assessed for inactivity; and
- (3) Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

#### **Regulatory Commentary**

##### ***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.*

## ***Prohibition on Sale of Gift Certificates or Cards with Expiration Dates [12 C.F.R. § 1005.20(e)]***

### **Regulatory Text**

- (e) **Prohibition on sale of gift certificates or cards with expiration dates.** No person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless:
- (1) The person has established policies and procedures 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;
  - (2) The expiration date for the underlying funds is at least the later of:
    - (i) Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or
    - (ii) The certificate or card expiration date, if any;
  - (3) The following disclosures are provided on the certificate or card, as applicable:
    - (i) The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;
    - (ii) A toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and
    - (iii) Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:
      - (A) The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and;

(B) The consumer may contact the issuer for a replacement card; and

- (4) No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

## Regulatory Commentary

### ***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 non-reloadable 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.

## ***Additional Disclosure Requirements for Gift Certificates, Store Gift Cards, or General-Use Prepaid Cards [12 C.F.R. § 1005.20(f)]***

### **Regulatory Text**

- (f) **Additional disclosure requirements for gift certificates or cards.** The following disclosures must be provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable:
- (1) **Fee disclosures.** For each type of fee that may be imposed in connection with the certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under paragraph (d)(2) of this section), the following information must be provided on or with the certificate or card:
    - (i) The type of fee;
    - (ii) The amount of the fee (or an explanation of how the fee will be determined); and
    - (iii) The conditions under which the fee may be imposed.
  - (2) **Telephone number for fee information.** A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain information about fees described in paragraphs (d)(2) and (f)(1) of this section must be disclosed on the certificate or card.

### **Regulatory Commentary**

#### ***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.*

## ***Effective Dates [12 C.F.R. § 1005.20(g)]***

### **Regulatory Text**

#### **(g) Compliance dates**

- (1) **Effective date for gift certificates, store gift cards, and general-use prepaid cards.** Except as provided in paragraph (h) of this section, the requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.
- (2) **Effective date for loyalty, award, or promotional gift cards.** The requirements in paragraph (a)(4)(iii) of this section apply to any card, code, or other device provided to a consumer in connection with a loyalty, award, or promotional program if the period of eligibility for such program began on or after August 22, 2010.

### **Regulatory Commentary**

#### **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.*

## ***Temporary Exemption [12 C.F.R. § 1005.20(g)]***

### **Regulatory Text**

#### **(h) Temporary exemption**

- (1) **Delayed mandatory compliance date.** For any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the mandatory compliance date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card:

  - (i) Complies with all other provisions of this section;
  - (ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;
  - (iii) At the consumer's request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and
  - (iv) Satisfies the requirements of paragraph (h)(2) of this section.
- (2) **Additional disclosures.** Issuers relying on the delayed effective date in §1005.20(h)(1) must disclose through in-store signage, messages during customer service calls, Web sites, and general advertising, that:

  - (i) The underlying funds of such certificate or card do not expire;
  - (ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, which must be accompanied by the packaging and materials typically associated with such certificate or card; and
  - (iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with section 916 of the Act.
- (3) **Expiration of additional disclosure requirements.** The disclosures in paragraph (h)(2) of this section:

  - (i) Are not required to be provided on or after January 31, 2011, with respect to in-store signage and general advertising.
  - (ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.

### **Regulatory Commentary**

#### ***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.