

**APPLICATION FOR A
COMPLIANCE ASSISTANCE STATEMENT OF TERMS TEMPLATE**

SUBMITTED BY

BUILD COMMONWEALTH, INC.

22 BATTERYMARCH STREET
SUITE 501
BOSTON, MA 02109

Brief Proposal Summary

Title: Employer-based auto-enrollment program for emergency savings (“Autosave Program” or “Program”)

Commonwealth seeks the issuance of a Compliance Assistance Statement of Terms Template (CAST Template), which would serve as the basis for employers to apply for an Approval covering their particular Autosave Programs.

APPLICANT INFORMATION

1. Please list full name of applicant(s).

- Build Commonwealth, Inc. ("Commonwealth")

2. Please list the mailing address of your Company's headquarters.

Build Commonwealth, Inc.
22 Batterymarch Street
Suite 501
Boston, MA 02109

3. Please list the contact information of the person responsible for communicating with the CFPB.

- Jason Ewas
 - jewas@buildcommonwealth.org

PRODUCT OR SERVICE INFORMATION

4. Describe how your product or service functions, the terms on which it will be offered, and the manner in which it is offered or provided (including any consumer disclosures).

Based on a comprehensive review of accountholder data, one major bank recently concluded that "families need roughly six weeks of take-home income in liquid assets to weather a simultaneous income dip and expenditure spike."¹ Commonwealth intends to work with employers throughout the country to assist them in developing Autosave Programs for their employees, through which a specified percentage of an employee’s pay would be directed into

¹ JPMorgan Chase & Co. Institute, *Weathering Volatility, 2.0* (Oct. 2019), <https://institute.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-volatility-cash-buffer-report.pdf>

an emergency savings product ("Autosave Account") for the employee to access at any time, with costs, fees and other terms that are compatible with the Program's objectives of encouraging savings. Commonwealth anticipates that the percentage designated by the employer would allow employees to address emergency savings needs of approximately six weeks of take-home income, with the specific percentages set by the employers and subject to modification by the employee.

New and existing employees would be permitted to direct their Autosave earnings to an account at the institution of their choice. If an employee does not designate an account, the employer would create an Autosave Account for the employee at an institution designated by the employer.

Autosave Programs would be structured similarly to automatic 401(k) programs, including the use of notice materials that inform employees of their rights and obligations under the Program. In particular, employees would receive notice at least 14 days prior to enrollment in an Autosave Program clearly describing:

- The fact that participating in the Program is not a condition of employment, and that declining to participate will not affect the consumer's employment;
- The right to not participate and how to elect not to participate in the Program;
- The employee's right to select the institution where Autosave earnings will be deposited and how to designate an account at such institution (both initially and at any subsequent time);
- The fact that where the employee does not identify an account to which Autosave funds should be directed, an Autosave Account will be created for the employee at an institution designated by the employer;
- The terms, including any fees and restrictions on access, applicable to the designated Autosave Account;
- The Program's automatic enrollment contribution default percentage rate; and
- How to elect, at any time, to contribute an amount different from the Autosave Program's default percentage rate.

The same notice would also be provided to employees on at least an annual basis. In addition, disclosures required by federal law (including Regulation DD and Regulation E) and applicable state law would be timely provided to each employee in compliance with law.

As reflected above, employees would be given the opportunity to opt out of participation entirely or to change their contribution rate, at any time. Opt-out forms should be made as simple as reasonably possible, with the use of prepopulated fields encouraged. At any time, an employee would be permitted to change the designated account.

Each employer would be required to maintain a written document governing its Autosave Program. In offering an Autosave Program, employers should determine that the default percentage rate and the costs and fees (if any) of the savings product offered by the employer-designated institution are compatible with the Program's objectives of encouraging savings.

5. Describe how your product or service, or the manner in which it is offered or provided to consumers, may further innovation.

In February 2019, BlackRock announced its Emergency Savings Initiative, a \$50 million commitment to help people living on low- to moderate-incomes (“LMI”) gain access to and increase usage of proven savings strategies and tools. BlackRock partnered with industry experts Common Cents Lab, Commonwealth, and the Financial Health Network to give the initiative a comprehensive and multi-layered approach to address the savings crisis.

The focus of Commonwealth's efforts has been to recruit partners from a variety of sectors to address the issue of lack of emergency savings. Employers are well-suited to address this issue because their employees include tens of millions of LMI individuals. AARP's Public Policy Institute found that 71% of employees would be likely to participate in a payroll-deduction emergency savings program if their employer offered one.² Establishing a functional system for emergency savings with employers would give millions of people access to emergency savings tools.

In the course of exploring how employers could play a role in helping employees save, Commonwealth looked to well-established automatic 401(k) programs for guidance. Decades of experience with 401(k) accounts has demonstrated that auto-enrollment and auto-contribution are highly effective methods for helping employees build savings for retirement.³ Based on that observation, Commonwealth began to investigate the barriers and opportunities for employers to set up automatic enrollment and automatic contribution into savings products.

In 2019, Commonwealth partnered with the City of Boston in a pilot program to encourage employees to split any amount of their direct deposit paycheck into an emergency savings fund.⁴ Employees who signed up were eligible to win a prize of \$100 or receive a guaranteed \$50 incentive from the City, depending on the department where they worked. This opt-in approach was successful, but required both financial incentives and significant staff time to conduct outreach in order to drive participation in the pilot, which would pose barriers to adoption at scale. Commonwealth believes that an automatic savings program would increase the amount of savings that employees could accumulate, with reduced need for incentives, and would allow more employers to adopt such efforts at scale and enhance innovation in this area.

One critical barrier to automatic savings is a lack of clarity regarding employers' ability to direct an employee's earnings to a designated institution. Permitting employers to designate the institution, in the absence of an election by the employee, would be a significant innovation in promoting employee short-term financial security, as it would permit Autosave Accounts to be

² <https://www.aarp.org/content/dam/aarp/ppi/2018/09/rainy-day-national-survey.pdf>

³ Beshears, John, James J. Choi, David Laibson, and Brigitte C. Madrian. 2009. “The Impact of Employer Matching on Savings Plan Participation under Automatic Enrollment.” In David A. Wise, ed. *Research Findings in the Economics of Aging*. Chicago, IL: University of Chicago Press.
<https://www.nber.org/chapters/c4539.pdf>

⁴ <https://buildcommonwealth.org/news/post/city-of-boston-pilot-program-helps-municipal-employees-build-rainy-day-funds>

created, and Autosave to commence, even in those situations where the employee lacks or has not designated a savings account.

The requested CAST Template would allow employers and financial service providers across the country to initiate the process of developing Autosave Programs and potentially provide a new mechanism to help millions of employees accumulate funds to increase their financial resilience.

REQUESTED DURATION AND SCOPE

6. Describe the requested duration and other parameters of compliance assistance, such as number of transactions, consumers, or geographic scope.

Such parameters would be specified in individual employer applications for an Approval based on the CAST Template.

POTENTIAL CONSUMER BENEFITS

7. Describe the potential consumer benefits associated with your product or service.

There is a critical need for emergency savings in the United States, which would be directly addressed by Autosave Programs. The Federal Reserve estimates that 40% of Americans could not cover a \$400 emergency expense,⁵ while another recent study similarly concludes that only 40% of Americans could pay an unexpected \$1,000 expense.⁶ Yet another study concludes that 78% of Americans are living paycheck to paycheck, meaning that they have no significant savings.⁷

Lack of savings can cascade into additional problems, including lack of housing. One study observes that the amount of rent due in connection with evictions is frequently less than \$600.⁸ Conversely, individuals with as low as \$250 to \$750 in liquid savings have reduced evictions, missed utility payments, and reduced reliance on public assistance.⁹ These issues have only intensified in connection with the COVID-19 pandemic—and even before the

⁵ Federal Reserve, *Report on the Economic Well-Being of U.S. Households in 2018* (May 2019). <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf>

⁶ *Bankrate, January 2019 Financial Security Index*. <https://www.bankrate.com/banking/savings/financial-security-january-2019/>

⁷ <https://www.cnbc.com/2017/08/24/most-americans-live-paycheck-to-paycheck.html>

⁸ <https://www.princeton.edu/news/2018/12/17/eviction-lab-examines-intersection-poverty-and-housing>

⁹ <https://www.urban.org/research/publication/thriving-residents-thriving-cities-family-financial-security-matters-cities>

pandemic, the CFPB had identified the encouragement of small dollar savings as one of its top priorities.¹⁰

8. Provide suggested metrics for evaluating whether such consumer benefits are realized.

Such parameters would be specified in individual employer applications for an Approval based on the CAST Template. Commonwealth believes that the most important metric for evaluating the success of an Autosave Program would be the total amount of savings realized through the Program. Other potential metrics for evaluating the success of the Program include:

- Employee satisfaction with the Program, including the degree to which consumers feel that the Program has helped them to achieve their savings goals.
- Number of employees (i) for whom accounts are opened at the designated institution (after notice and opportunity to opt out); (ii) who identify their own institutions; and (iii) who opt out of the Program entirely.
- Number of employees who maintain their accounts at the designated institution for a minimum period (e.g., one year) compared to those who move their accounts to another institution.

POTENTIAL CONSUMER RISKS AND MITIGATION PLAN

9. Describe the potential consumer risks associated with your product or service.

For the most part, consumer risks associated with Autosave Programs are limited and can be mitigated through the steps described in response to Question 10, below. However, potential risks are:

- **How employees use their savings.** If an employee accumulates a balance in an Autosave Account, they may feel positively about that balance and the security it brings. As a consequence, employees may choose not to use these funds to pay down debt, or may incur debt in order to cover unexpected expenses.
- **Whether employees will review and understand Program materials.** Although disclosures will be required to be written in readily understandable terms, there is a risk that some employees may not review or understand them.

¹⁰ See Press Release, CFPB, *CFPB Announces Start Small, Save Up Initiative* (Feb. 25, 2019) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-start-small-save-initiative/>; CFPB, *Saving for Financial Shocks and Emergencies* https://files.consumerfinance.gov/f/cfpb_fin-ed-digest_saving-for-emergencies.pdf; <https://www.wsj.com/articles/lack-of-savings-worsens-the-pain-of-coronavirus-downturn-11586943001>; <https://www.bankrate.com/surveys/coronavirus-and-financial-regrets/>

- **Whether accounts at the designated institution will be suitable for the employee's needs.** The accounts designated by employers are generally intended to be suitable for a broad range of employees. However, there remains a risk that a designated Autosave Account may not suit an employee's preferences.

10. Describe how you will mitigate the anticipated consumer risks. Include any plans for addressing unanticipated consumer harms

Each Autosave Program would effectively mitigate the anticipated consumer risks as follows:

- **How employees use their savings.** Risks relating to how employees use their Autosave Accounts would be mitigated by permitting employees to withdraw funds at will to meet unexpected expenses or for any other purpose, including paying off debts.
- **Whether employees will review and understand Program materials.** Program materials will be provided to employees at least 14 days before they are enrolled in the Autosave Program, and on at least an annual basis thereafter. These materials will be provided in a separate document from other documents provided to the employee.
- **Whether accounts at the designated institution will be suitable for the employee's needs.** In the event that an employee does not find the employer-designated Autosave Account suitable, the employee may at any time change the account designation or opt out of the Autosave Program entirely.

STATUTORY AND REGULATORY SCOPE

- 11. Describe the aspects of the product or service as to which you seek a CAST Template.**
- 12. Describe the statutory and regulatory provisions as to which you seek the CAST Template and the potential uncertainty or ambiguity it would address.**
- 13. Explain why the requested CAST Template is an appropriate resolution of that uncertainty or ambiguity, and why the described aspect of the product or service complies with the applicable statutory and regulatory provisions.**

In order for Autosave Programs to be effective in helping as many employees as possible achieve emergency savings, employers would create Autosave Accounts for employees at—and electronically transfer funds to—an institution designated by the employer, in the absence of an employee's affirmative selection of an institution or decision to opt out. Commonwealth seeks approval of a CAST Template covering the creation by an employer of emergency savings accounts for its employees at a designated institution, where the employer

permits employees to select the institution of their choice, and where the Autosave Program includes the additional consumer protections described above.

The Electronic Funds Transfer Act (EFTA), 15 U.S.C. 1693k(2), states:

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

Similarly, Regulation E, 12 C.F.R. § 1005.10(e)(2), states in relevant part:

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.

The Consumer Financial Protection Bureau's ("CFPB" or "Bureau") Official Interpretation of this provision states:

An employer . . . 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.

Neither the Statute nor the Regulation nor the Official Interpretation of the Regulation defines what it means for an employee to "choose" the institution or whether an opt-out approach constitutes an appropriate degree of employee choice. Accordingly, it is not clear whether, under the EFTA and Regulation E, an employer may create an Autosave Account for an employee at a designated institution following a reasonable period for the employee to select the institution of their choice or opt out of the Program entirely. Employers will be hesitant to participate in Autosave Programs without clarity regarding what it means to choose the institution where emergency savings funds would be deposited.

In the 2016 Prepaid Rule, which addressed the use of prepaid cards for receipt of employment earnings, the Bureau stated that a default enrollment method may comply with Regulation E, depending on the facts and circumstances:

Depending on the facts and circumstances—for example, the date by which the consumer has to be paid her wages under State law—it may be

reasonable for a financial institution or other person...to employ a reasonable default enrollment method.”¹¹

In this rulemaking, however, the CFPB did not commit to a bright-line rule for defining consumer choice under Regulation E, stating, instead, that:

The Bureau does not at this time and on this record believe it would be appropriate to set a bright-line test based solely on amount of time or whether the consumer agrees to the preferred payment method in writing...”¹²

The absence of clear guidance in the Regulation regarding the meaning of consumer choice creates an ambiguity as to when and how reasonable default enrollment methods are acceptable under Regulation E. However, as shown above, the CFPB has stated in the context of the Prepaid Rule that a "reasonable default enrollment method" may be appropriate depending on the facts and circumstances, suggesting that it may be appropriate in some circumstances for an employer to open an account at a designated institution by default, subject to the employee's right to designate the institution of their choice.

Commonwealth believes that the Autosave Program is compliant with Regulation E, because it embodies precisely this type of reasonable default enrollment method. Accordingly, Commonwealth seeks a CAST Template pursuant to the CFPB's Policy on the Compliance Assistance Sandbox that could serve as the basis for employer applications for approval covering their respective versions of an Autosave Program. Such an approval, which would be based on the EFTA's safe harbor provision (15 U.S.C. 1693m(d)), would affirm that the Autosave Program complies with 15 U.S.C. § 1693k(2) and 12 C.F.R. § 1005.10(e)(2).

DATA SHARING

- 14. Describe data associated with your product or service you possess or intend to develop that will be shared with the CFPB if the application is granted.**
- 15. Describe the proposed schedule for sharing the data with the CFPB.**

Each employer would describe the data that it proposes to share with the CFPB and the proposed schedule for doing so in its application for an Approval based on the CAST Template. See “Suggested Metrics for Evaluating Whether Consumer Benefits Are Realized,” above.

¹¹ 83 Fed. Reg. 83,985 (Nov. 22, 2016).

¹² *Id.*

CONFIDENTIALITY

- 16. If the applicant wishes to request confidential treatment for certain information or data, the applicant should identify this information or data and the basis for such treatment as specifically as possible.**

Commonwealth does not request confidential treatment for this CAST Template submission. It is anticipated that each employer will describe the information that it proposes to share with the CFPB, and any confidentiality requests associated with such information, in its individual application for an Approval based on the CAST Template.

REGULATORY COORDINATION

- 17. If the applicant would like the CFPB to coordinate with other regulators on this application, please identify those regulators and provide their contact information, if available.**

None requested.