



1700 G Street NW, Washington, D.C. 20552

July 17, 2020

Anand S. Raman, Esq.  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Avenue, NW  
Washington, DC 20005

Dear Mr. Raman:

This letter is in response to an application (Application) for a Compliance Assistance Statement of Terms Template (CAST Template), filed with the Consumer Financial Protection Bureau (Bureau) by Build Commonwealth, Inc. (Commonwealth), that could serve as the basis for applications for an Approval by employers that wish to enroll employees in emergency savings programs (Autosave Programs).

The Application describes, *inter alia*, how 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 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. Employees would be permitted to direct their Autosave earnings to an account at the institution of their choice and to change the amount of earnings contributed to the Autosave Account. If an employee does not designate an account, the employer would create an Autosave Account for the employee at a designated institution and direct the employee's earnings under the Autosave Program to the Autosave Account created by the employer. Employees could change the contribution amount, change the account-holding institution, or opt out of the program entirely at any time. 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 Autosave Program.

The Application also explains that a CAST Template is needed for Autosave Programs because of regulatory uncertainty attending the application of the "compulsory use" prohibition in the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693k(2), and Regulation E, 12 C.F.R. § 1005.10(e)(2), to Autosave Programs. The Regulation E provision 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." Comment 10(e)(2)-1 of the Bureau's Official Interpretations clarifies that

“[a]n 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.”

In the 2016 Prepaid Rule, the Bureau explained that this provision requires an employer to provide its employee with a choice regarding how to receive his or her salary, and the Bureau considered whether a default payment method could be consistent with consumer choice. The Bureau recognized that “consumers are sometimes given a choice between two or more payment alternatives, but may fail to indicate their preference,” and that, “[d]epending 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 in this scenario to employ a reasonable default enrollment method.”<sup>1</sup> In the Application, Commonwealth states that the Autosave Program is compliant with Regulation E because it embodies precisely this type of reasonable default enrollment method.

The Bureau has considered and grants Commonwealth’s Application, and accordingly issues this CAST Template pursuant to the Bureau’s Policy on the Compliance Assistance Sandbox (Policy).

The Bureau intends to grant applications from employers for an Approval based on this CAST Template, under Section F.1.a of the Policy, in appropriate cases. In general, such applications should include the information specified in section B of the Policy, but with appropriate adjustments. In particular, such applications should include a statement that the application is based on this CAST Template, the certifications in section A of this Template, and the additional information specified in section B of this Template. Employers may, but are not required to, work with Commonwealth on their programs or applications.

### **A. Guardrail Certifications**

Applications should include the following certifications:

1. Employer will provide notice to each employee before enrolling the employee in an Autosave Program (Notice). The Notice, which will be provided in a separate document from other documents provided to the employee, will clearly describe:

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<sup>1</sup> 81 FR 83934, 83985 (Nov. 22, 2016).

- a. The fact that participating in the Autosave Program is not a condition of employment, and that declining to participate will not affect the consumer's employment;
  - b. The employee's right to not participate and how to elect not to participate in the Autosave Program;
  - c. The employee's right to select the institution where Autosave earnings will be deposited and how to designate the account at such institution (both initially and at any subsequent time);
  - d. 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;
  - e. The terms, including any fees and restrictions on access, applicable to the employer-designated Autosave Account;
  - f. The contribution default percentage rate under the Autosave Program; and
  - g. How to elect, at any time, to contribute an amount different from the Autosave Program's default percentage rate.
2. Employer will provide the Notice at least 14 calendar days before creating an Autosave Account for the employee or making an automatic contribution to an Autosave Account, and on at least an annual basis thereafter.
  3. Employer will not create an Autosave Account on behalf of an employee pursuant to an Autosave Program if an employee has opted out of the Autosave Program or has designated an account at an institution of their choice.
  4. Any Autosave Account created by the employer for an employee will be owned by the employee (and not the employer) and will be liquid.
  5. Disclosures required by federal or state law regarding the Autosave Account, including its terms and conditions, will be timely provided to each employee in compliance with law.

## **B. Additional Information**

Applications should also include the following information:

1. How the Notice and any required disclosures will be distributed to employees (*e.g.*, electronically and/or in paper form by the employer and/or the institution).
2. The contribution default percentage rate and the costs and fees (if any) of the Autosave Account designated by the employer.
3. The specific methods by which employees may opt out of participation in the Autosave Program (*e.g.*, pre-populated electronic or paper forms and/or telephone).

## **C. CAST Template Limitations and Conditions**

1. This CAST Template is based on the factual representations made in the Application.
2. This CAST Template is non-operative and non-binding on the Bureau.<sup>2</sup>
3. This CAST Template does not constitute the Bureau's endorsement of any services, conduct, agreements, etc. described above.
4. This CAST Template and a copy of the Application will be published on the Bureau's website.

## **D. CAST Based on the CAST Template**

The Bureau anticipates that a CAST issued to an employer in response to an application based on this CAST Template would state that, subject to good faith compliance with the CAST, the Bureau approves<sup>3</sup> the employer's Autosave Program under the Electronic Funds Transfer Act (EFTA), 15 U.S.C. 1693k(2) and Regulation E, 12 CFR 1005.10(e)(2)), explain the Bureau's basis for issuing the Approval,<sup>4</sup> and:

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<sup>2</sup> In particular, under section F.1.a of the Policy, the Bureau may modify this CAST Template in light of the additional information provided in an application for a CAST based on this CAST Template.

<sup>3</sup> See 15 U.S.C. 1693m(d) ("No provision of this section or section 1693n of this title imposing any liability shall apply to—(1) any act done or omitted in good faith . . . in conformity with any . . . *approval* by an official or employee of the Bureau of Consumer Financial Protection or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor.") (emphasis added).

<sup>4</sup> See section D.8 of the Policy.

1. Identify the employer;<sup>5</sup>
2. Specify the subject matter scope of the CAST, *i.e.*, the employer's Autosave Program;<sup>6</sup>
3. State that the CAST and the Approval:
  - a. Is limited to the employer, and does not apply to any other persons or entities;
  - b. Is limited to the employer's Autosave Program, and does not apply to any other products, services, or conduct of the employer;
  - c. Is based on the factual representations made in the application; and
  - d. Does not constitute the Bureau's endorsement of the Autosave Program that is the subject of the CAST, or any other product or service offered or provided by the employer.<sup>7</sup>
4. Require the employer to inform the Bureau of: (a) material changes to information included in the application; and (b) material information indicating that the employer's Autosave Program is not performing as anticipated in the application;<sup>8</sup>
5. Require the employer to report information about the effects of the Autosave Program on its employees, including with respect to complaint patterns or similar metrics that will enable the Bureau to identify material increase in any risk of injury to employees;<sup>9</sup>
6. Specify any other terms and conditions, including the duration of the CAST and the Approval, the nature and extent of the employer's data-sharing, and the extent to which the Bureau intends to publicly disclose information about the CAST and the Approval;<sup>10</sup> and

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<sup>5</sup> See section D.1 of the Policy.

<sup>6</sup> See section D.2 of the Policy.

<sup>7</sup> See section D.3 of the Policy.

<sup>8</sup> See section D.4 of the Policy.

<sup>9</sup> See section D.5 of the Policy.

<sup>10</sup> See section D.7 of the Policy

7. State that: (a) the recipient may reasonably rely on any Bureau commitments made in the CAST; and (b) the Bureau may terminate the Approval described in the CAST if: (i) the recipient fails to substantially comply in good faith with the specified terms and conditions of the CAST; (ii) the employer's Autosave Program does not perform as anticipated in the application; or (iii) a statutory change or Federal judicial holding causes the Bureau to conclude that the employer can no longer rely in good faith on the Bureau's Approval as the applicable safe harbor provision<sup>11</sup> requires.<sup>12</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Watkins", with a horizontal line extending to the right from the end of the signature.

Paul Watkins  
Assistant Director, Office of Innovation  
Consumer Financial Protection Bureau

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<sup>11</sup> See EFTA, 15 U.S.C. 1693m(d).

<sup>12</sup> See section D.9 of the Policy.