

Resolution # 8-1

WHEREAS, the Sheriff's Office currently provides access to commissary items to Sangamon County inmates; and,

WHEREAS, Keefe Commissary Network has been selected as the vendor to supply food and other related commissary items and facilitate ordering and payments; and,

WHEREAS, as documented by the approval of this resolution, the Jail Committee has approved the Sheriff's Office request specified and the Committee recommends that the County Board approve of the same, and;

NOW, THEREFORE, BE IT RESOLVED that the Sangamon County Board, in session this 8<sup>th</sup> day of August, 2023, approves the Sheriff's Office to enter into a contract with Keefe to provide these services detailed above. The County Board Chairman or Sheriff are authorized to sign required documents to execute this provision.

\_\_\_\_\_  
Chairman, Sangamon County Board

ATTEST:

\_\_\_\_\_  
County Clerk

Approved by the Jail Committee July 18, 2023

Don J. Keefe Chairman

Attachment: Keefe Contract

**FILED**

AUG 02 2023

Don J. Keefe  
Sangamon County Clerk

**KEEFE COMMISSARY NETWORK, LLC**  
**COMMISSARY SERVICES AGREEMENT**

This Agreement ("Agreement") is made by and between KEEFE COMMISSARY NETWORK, LLC, ("Keefe"), and Sangamon County Sheriff's Department, located at 1 Sheriff's Plaza, Springfield, IL 62701, ("Customer") (collectively, the "Parties").

Keefe is in the business of supplying food and other related commissary items and services to inmate commissary departments of correctional facilities throughout the United States, including the Customer; and,

The Parties wish to enter into a Commissary Services Agreement to facilitate the following services which are detailed herein: the ordering of commissary items by inmates; the operation of and payment for commissary; payments to inmate trust accounts; and an inmate package program; (collectively, "Commissary Services").

Therefore, in consideration of the mutual promises and conditions herein contained, the Parties agree as follows:

1. **OPERATION OF COMMISSARY BY CUSTOMER.** Customer agrees that during the term of this Agreement, it will, at its own expense: (a) provide personnel to operate the Keefe computer equipment ("Computer Equipment") and Keefe proprietary software ("Keefe Software"); (b) manage and reconcile the funds in the Inmate Trust Accounts; (c) and deliver the completed commissary orders to the individual inmates. If the Customer desires to change the scope of commissary operations, including but not limited to, adding Keefe personnel on-site, the Parties agree to negotiate a mutually agreed upon commission rate and/or pricing structure to be implemented at the time of such operational changes.

1.1 **OPERATION OF COMMISSARY BY KEEFE.** Keefe agrees that, on an as-needed basis, it will download all inmate orders for commissary items. Keefe will bag, box, and ship such commissary items to the Customer for distribution to the inmates and invoice Customer for all such purchases in accordance with paragraph 3. In addition, Keefe will keep the Computer Equipment updated with complete information as to commissary items available, pricing, and other terms and conditions of sale. Keefe shall be responsible for ensuring that all out of stock items are removed from the list of available items and that all orders with out of stock items are immediately credited for the out of stock items.

2. **HARDWARE/SOFTWARE.** During the term of this Agreement, Keefe shall supply Customer with the Computer Equipment and Keefe Software necessary to provide the Commissary Services. Customer agrees to return all Computer Equipment and Keefe Software to Keefe in workable order upon contract termination. Keefe hereby grants to Customer a non-exclusive, royalty-free license to use the Keefe Software during the term of this Agreement (software to be available within 30 days of the execution of this contract or a mutually agreed upon date). All software supplied by Keefe is proprietary and shall at all times remain the property of

Keefe with title and all rights vested in and retained by Keefe. Customer hereby agrees that it will not sublicense, disclose, reproduce, transfer, alter, reverse-engineer, decompile or use the Keefe Software and/or documentation for any purpose, other than those specifically allowed by the terms of this Agreement. All hardware installed by Keefe shall remain the property of Keefe unless otherwise expressly agreed to by the Parties in writing.

3. **PAYMENT.** Keefe will invoice Customer on a weekly basis for all commissary items purchased. Customer shall pay such invoices in accordance with Keefe's standard credit terms (NET 30 DAYS). All past due amounts due Keefe will be subject, at the option of Keefe, to a service charge equal to one and one half percent (1.5%) per month of the unpaid balance.

In the event that said amounts set forth in said statements are not paid according to the terms hereof, or in the event that Keefe, in its sole discretion, determines that Customer's credit has become impaired, Keefe shall have the option to: (a) either decline to continue provision of Services hereunder, except on a cash in advance basis, until such time as credit has been re-established to Keefe's satisfaction; or (b) terminate this Agreement without liability whatsoever to Keefe, by giving sixty (60) days prior written notice to Customer.

All costs of collection of past due amounts, including but not limited to reasonable attorney's fees, shall be chargeable to and paid by the Customer.

4. **COMMISSION.** Customer will be paid a commission for the services to be provided under this Agreement equal to **31%** of Adjusted Gross Sales of commissary items. "Adjusted Gross Sales" is defined as gross commissary sales minus the sales of noncommissioned commissary items as listed in Exhibit A of this Agreement. In the event that the inmate's trust account funds available to purchase commissary products are inhibited in any way by a change in policy or law, the commission paid to Customer shall be reduced accordingly by Keefe after negotiation with Customer.

5. **MENU.** Commissary item selection and pricing will be agreed upon by Customer and Keefe. Commissary item menu selection and price adjustments shall be reviewed as needed, but no less than annually, by Keefe. All changes must be approved by Customer. Menu shall be updated as-needed to reflect out of stock items as soon as possible after Keefe becomes aware of the outage.

6. **PAYMENT SERVICES.** This Agreement includes Keefe's Access Corrections® Secure Payment Services, the terms of which are memorialized in Exhibit B, entitled "Payment Services", attached hereto and incorporated herein. Keefe will facilitate payments to Inmate Trust Accounts via website, toll-free phone number, walk-in provider(s) and/or kiosk(s) placed in mutually agreeable site(s) within Customer's facility. Customer will provide electrical power to operate the kiosk(s) and Keefe will provide the network connectivity. Keefe will guarantee all transactions and will send, via ACH, monies to the Customer designated bank account in accordance with the terms and conditions provided for in Exhibit B. Except as provided for herein, no fees for this service will be borne by Customer.

7. **PACKAGE PROGRAM.** This Agreement includes Keefe’s Access Securepak® Inmate Package Program Service. Keefe shall process and deliver orders placed through its Access Securepak website on the terms and conditions provided therein. Customer will be paid a commission for this service equal to **31%** of all final Securepak sales made on behalf of inmates at Customer's facility minus any sales tax, returns, processing fee, refunds and/or chargebacks resulting from or arising out of the sales. Keefe shall deliver Securepak orders to Customer’s facility once per week. Customer agrees that Keefe may charge a processing fee for each order which may be amended by Keefe from time to time, preferably annually, with approval from the customer.

8. **RELEASE PAY SERVICE.** This Agreement includes Keefe’s Release Pay™ Service, the terms of which are memorialized in Exhibit C, entitled “Release Pay™ Prepaid Debit Card Release”, attached hereto and incorporated herein. Except as provided for herein, no fees for this service will be borne by Customer.

9. **MATERIAL CHANGES.** In the event of material cost changes in federal, state, or local taxes including, but not limited to, social security taxes, unemployment taxes or payroll based taxes or an increase in the minimum wage rate or the implementing regulations or the enactment or application of any “living wage”, “prevailing wage” or similar laws by any governmental entity; and/or an increase in employee benefits whether as a result of a change in federal, state, or local laws or a federal, state, or local legislative or regulatory mandate or otherwise, it is agreed that the parties shall adjust the commission paid to Customer to reflect said increases. If other material conditions change due to causes beyond Keefe’s control including, but not limited to, a change in the scope of services, menu changes requested by Customer, material decreases in inmate population or changes in federal, state or local standards or regulations or other unforeseen conditions beyond Keefe’s control, it is agreed that the parties shall adjust the commission paid to Customer and/or adjust the commissary items offered to reflect the impact of the material change in circumstances.

10. **TERM & TERMINATION.** This Agreement shall become effective \_\_\_\_\_, and shall continue in effect for a period of \_\_\_\_\_ years through \_\_\_\_\_ (the “Base Term”). The Agreement will automatically renew for successive one-year terms thereafter, unless either party to this Agreement gives notice in writing to the other party no less than ninety (90) days prior to the expiration of any term or extended term that the party so giving notice does not wish to extend this Agreement. If either party shall materially breach any of the terms or conditions of this Agreement for any reason other than Excused Performance reasons defined herein, the party claiming such material breach shall give the other party a written notice of such breach. If within thirty (30) days from such notice the material breach has not been cured, or the material breach is such that it may not be cured within thirty (30) days and the party in breach has not commenced the cure within thirty (30) days and continuously pursued the cure, then the injured party may cancel the Agreement. Within thirty (30) days after termination of this Agreement, Customer shall, at Keefe’s option, return all Computer Equipment and Keefe Software, and certify such removal and return in writing to Keefe. All monies due the Parties at the time of termination shall be paid to the respective party within thirty (30) days after the effective date of the termination of services.

Keefe shall have the right to terminate this Agreement for convenience without cause or for cause, including but not limited to any change to or enactment of any federal, state or local law, rule, regulation, or regulatory guidance, or published change in the interpretation thereof by any federal, state, or local regulatory agency or other governmental agency having jurisdiction over this Agreement, which would have a material adverse effect upon: (i) the subject matter hereof; (ii) Keefe's ability to perform its obligations hereunder; or (iii) Keefe's expected risks or benefits under this Agreement; provided that the parties, after good faith discussions, cannot find a mutually agreeable solution after the parties have negotiated in good faith for a period not exceeding thirty (30) days, which negotiation period the parties can mutually agree to extend. The Customer will have the same rights herein to terminate this Agreement for convenience without or for cause after 1 year from the execution of the contract.

11. **EXCUSED PERFORMANCE.** In case performance of any term or provision herein (other than payment of money) shall be delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority, either local, state, federal, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, labor shortages, fires, floods, pandemics, epidemics, or other similar health scenarios, Acts of God, or any other reason whatsoever that is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend, without liability, the performance of its obligations hereunder during the period such cause continues, and extend the term of this Agreement for the period of such suspension of the performance of duties thereunder.

12. **CUSTOMER'S RESPONSIBILITIES.** Customer shall promptly notify Keefe of any changes in Customer's hardware systems, software or operating procedures that interact in any fashion with Keefe's supplied hardware, software or its operating procedures. Customer shall not, during the term of this Agreement nor for one (1) year following its termination or expiration, solicit to hire, hire, or contract with any employee or former employee of Keefe, or its parent or subsidiaries, direct or indirect. In the event that Customer breaches its covenant not to hire an employee or former employee, Customer agrees to pay Keefe an amount equal to the annual salary of such employee.

13. **GOVERNING LAW.** Both parties to this Agreement irrevocably: (i) consent and submit exclusively to the jurisdiction of the courts of the State of Illinois, County of Sangamon, or if it has or can acquire jurisdiction, the United States District Court for Illinois within Sangamon County, (ii) and agree that this Agreement shall be governed by, interpreted and construed in accordance with, the laws of the State of Illinois, without regard to any conflicts of law.

14. **ENTIRE AGREEMENT-WAIVER.** This Agreement and its Exhibits constitute the entire Agreement between the Parties with respect to the provision of Commissary (and Payment, where applicable) Services, and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of the Agreement and no waiver of any provision shall be valid unless in writing and signed by the duly authorized officers of both Keefe and Customer. This Agreement supersedes all other agreements,

negotiations, conversations and representations between the Parties for the provision of Commissary (and Payment, where applicable) Services.

15. **ASSIGNMENT.** Except in the case of a merger, reorganization, change in control, or sale of all or substantially all assets or equity, neither Party shall have the right to assign or otherwise transfer its rights and obligations under this Agreement except with the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

16. **INDEMNIFICATION.** Keefe shall indemnify Customer against any claim, action, suit, demand, damage, liability, loss, or judgment, including reasonable attorney’s fees and costs, which arise out of, relate to or result from Keefe’s negligent performance of its obligations under this Agreement, except to the extent such claims, actions, suits, demands, damages, liabilities, losses or judgments are due to the negligent or unlawful conduct, or the willful misconduct of Customer, its agents or employees. Customer shall indemnify Keefe against any claim, action, suit, demand, damage, liability, loss or judgment, including reasonable attorney’s fees and costs, which arise out of, relate to or result from Customer’s negligent, intentional or willful acts or omissions, except to the extent such claims, actions, suits, demands, damages, liabilities, losses or judgments are due to the negligent or unlawful conduct, or the willful misconduct of Keefe. Each party agrees to provide the other party with reasonable and timely notice of any claim, action, suit, demand, damage, liability, loss or judgment made or brought against the other party arising out of or relating to the Agreement and for which the notifying party is seeking indemnification hereunder. The indemnifying party shall have the right to defend any such claim at its sole cost and expense. Each party will promptly advise the other party of any proposed agreement to compromise or settle any claims and the other party will have ten (10) days to respond to such proposal. These indemnities and remedies shall survive the expiration or other termination of the Agreement.

17. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED OR EXEMPLARY DAMAGES (INCLUDING LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT OR OUT OF ANY OF THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT.

18. **RELATIONSHIP OF THE PARTIES.** Each Party is an independent contractor and is not an employee, employer, agent, partner, joint venture or joint employer of or with the other Party. Nothing in this Agreement shall be construed to give either Party: (a) the power to direct or control the day-to-day activities of the other, (b) the power to create or assume any obligation on behalf of the other, or (c) the power to bind the other in any manner whatsoever.

19. **CONSENT.** Where the consent of either party is required, it shall not be unreasonably withheld or delayed.

20. **CONFIDENTIALITY.** “Confidential Information” includes any non-public, confidential or proprietary information furnished by a Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) including, but not limited to, information relating to the Disclosing Party’s business, product designs, product plans, data, software and technology, financial information, marketing plans, business opportunities, pricing information, menus, discounts, inventions and know-how. Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in violation of this Agreement, (ii) was in the Receiving Party’s possession prior to the disclosure of the Confidential Information pursuant to this Agreement without an obligation of confidentiality, (iii) becomes available to the Receiving Party on a non-confidential basis from a third party, provided that the Receiving Party did not know, or have reason to believe, after reasonable investigation, that such source was subject to an obligation not to disclose such information, or (iv) is required to be disclosed by any applicable law or regulation or by order of any governing body or court of competent jurisdiction; provided, however, the Receiving Party must promptly notify the Disclosing Party of the demand for such disclosure so that the Disclosing Party may, in its sole discretion, seek a protective order or take such other appropriate steps to resist or narrow the scope of the disclosure sought by such request. If a protective order or other remedy is not obtained, the Receiving Party may make such disclosure without liability under this Agreement, provided that the Receiving Party furnish only that portion of the Confidential Information which is legally required to be disclosed.

21. **EXCLUSIVITY.** Customer hereby agrees that Keefe has the exclusive right to provide the Commissary Services for Customer.

22. **NOTICES.** All notices to be given under this Agreement shall be in writing and served either personally, by deposit with an overnight courier with charges prepaid, or by deposit in the US mail, first-class postage prepaid by registered or certified mail, addressed to the parties at the addresses stated on the signature page, or at any other address as designated by one party upon notice to the other party. All such notices shall be deemed to have been given (a) upon the first business day following personal delivery, (b) one business day after deposit with an overnight courier, or (c) three business days after deposit in the US mail.

23. **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION.** The Parties warrant and represent that they shall comply with all federal, state and local laws as required, including but not limited to, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans’ Readjustment Act of 1974, as amended. The Parties hereby incorporate the requirements of 41 C.F.R. 60-1.4(a)(7), 60-250.5 and 60-741.5, if applicable.

24. **MISCELLANEOUS.** This Agreement may be executed in two or more counterparts, and each such counterpart and any copies thereof shall be deemed an original. The headings in this Agreement are intended solely for convenience and shall not affect the rights of the Parties under the Agreement. In the event any provision(s) of this Agreement is in conflict with any law, statutory provision or otherwise, such term(s) shall be deemed stricken from this Agreement, but any such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement, and the Agreement shall continue in full force and effect. This Agreement will

apply to, be binding on, and inure to the benefit of the successors and permitted assigns of the Parties.

25. **AUTHORITY.** The undersigned representative of each Party warrants that he/she has the full authority to execute this Agreement and bind the Party on whose behalf he/she is executing the Agreement.

26. **EXHIBITS.** This Agreement includes the following Exhibits, attached hereto and incorporated into this Agreement.

- Exhibit A – Noncommissioned Items
- Exhibit B – Payment Services
- Exhibit C – Release Pay Services

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the year and date written below.

**Sangamon County Sheriff’s Department**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Address for Notice:  
Sangamon County Sheriff’s Department  
1 Sheriff’s Plaza  
Springfield, IL 62701

**Keefe Commissary Network, LLC**

By: \_\_\_\_\_  
Name: John Puricelli  
Title: Executive Vice President  
Date: \_\_\_\_\_  
Address for Notice:  
10880 Lin Page Place, St. Louis, MO 63132

With a copy to:  
General Counsel, TKC Holdings, Inc.  
1260 Andes Blvd., St. Louis MO 63132



**Exhibit A**  
**Noncommissioned Items**

Stamped envelopes

Postage stamps

Indigent Kits

Admission Kits

On-site, special commissary item sales sold by Customer

Refunded items

**Exhibit B**  
**Payment Services**

1. **Services.** Keefe will provide cash handling services and payment processing services for payments made through kiosks, walk-in retailers, online websites and/or mobile sites, call centers or applications operated by Keefe or such other methods ("**Transactions**") for crediting account balances held by Customer on behalf of the recipients of funds (the "**Services**"). Keefe provides the Services in its capacity as a licensed money services business. Keefe represents and warrants to Customer that Keefe is duly licensed to provide the Services and will do so in compliance with applicable laws and regulations.
2. **Authorization.** Customer authorizes Keefe to act on its behalf in handling cash and to submit Transactions initiated by individuals through the Services to the credit card networks or otherwise for authorization, processing and settlement to Customer for the benefit of designated recipients.
3. **Responsibilities of Keefe.**
  - a. Keefe will receive payments from the public, directed to recipients by way of the Services.
  - b. Keefe will transfer payment files to Customer on a daily basis. Keefe will deliver payments to Customer by the second business day following (but not including) the day of the transaction by means of an electronic funds transfer ("**EFT**") to Customer's designated bank account; provided, however, Keefe, in its sole discretion, reserves the right to delay its acceptance of any transaction that Keefe determines to be suspicious and warrants further investigation. Customer acknowledges and agrees that Keefe may reject, terminate or cancel any proposed transaction should Keefe determine the transaction is being made for an improper or illegal purpose.
  - c. Keefe will provide Customer with daily payment information by way of the Keefe Customer interface.
  - d. Keefe will be responsible for responding to and resolving inquiries and complaints from senders of funds arising out of Keefe's failure to timely transmit any payment to Customer.
  - e. Keefe will provide sufficient promotional material to be posted by Customer.
  - f. Keefe, upon receipt of written notice from Customer, shall place limitations on transactions. The limitations will be implemented by Keefe as soon as is reasonably practicable.
  - g. Keefe may contract with a third-party service provider to remove cash from kiosks, to replace receipt paper and to assume responsibility for the funds until deposited into the designated bank account.
4. **Responsibilities of Customer.**
  - a. Customer will provide Keefe with the required bank account information for transmission of an EFT. Customer agrees to notify Keefe, in writing, giving fourteen (14) days' notice, of any changes to the bank account information.
  - b. Customer will, upon receipt of written documentation of overpayment, promptly, but in no event more than ten (10) business days, refund any overpayment made by Keefe, for any reason. This is to include, but not be limited to, duplicate payments, payments refunded to

customers by Keefe and any incorrect payments. At Keefe's sole option and in lieu of the foregoing, Keefe may offset any such overpayments from future payment amounts transmitted by Keefe to Customer and notify Customer of any such offset.

- c. Upon implementation of the Services, Customer agrees that it will not accept payments designated for recipient accounts. Customer shall be allowed to accept, on an as needed basis, checks or money order for deposit onto inmate trust accounts. Customer will not accept any window or in-person payments within sixty (60) days of kiosk implementation.
  - d. Customer will promptly report receipt of each payment to the designated account or recipient in accordance with the Customer's policy.
  - e. Customer agrees that it shall, to the full extent allowed by law, assume all liability, responsibility and risk of loss associated with its breach of any of the terms or conditions within this Exhibit B and/or its negligence in the performance of its duties hereunder.
  - f. Keefe will provide all labor necessary for and will guarantee the workmanship of the installation of a lobby kiosk including, but not limited to, material handling within the facility and all costs associated with the networking, internet connectivity and electrical enhancements required to install a kiosk at the Customer's location.
  - g. Customer agrees that Keefe may determine, in its sole discretion, to suspend, terminate or place restrictions on one or more individual's ability to use the Services.
- 5. Rates.** The Services shall be provided at no cost to Customer. Keefe shall charge persons initiating a Transaction a service fee in accordance with its rate schedule which the Customer acknowledges may be amended by Keefe in its sole discretion from time to time, preferably annually, with approval from the Customer.
- 6. Exclusivity.** Keefe has the exclusive right to provide the Services for the Customer and the exclusive right to collect and receive money handling fees associated with the Services which fees will belong to Keefe.
- 7. Termination.** The Services may be immediately terminated by either Party, in its sole discretion, in the event a Party has not cured a breach of the terms or conditions contained in this Exhibit B within thirty (30) days of written notice of such purported breach from the non-terminating Party. Termination of the Services does not affect either Party's rights or obligations as to any transaction submitted for processing prior to termination.
- 8. Refunds/Chargebacks.**
- a. The Parties acknowledge that once Keefe accepts a transaction submitted to the applicable payment network or otherwise for processing, Keefe cannot cancel or change the transaction. Except to the extent required by applicable law, payments processed by Keefe are non-refundable to the individual by Keefe. Individuals may have additional refund or chargeback rights under their cardholder agreement with the card issuer or applicable law.
  - b. In the case of chargebacks or returned funds, Keefe will be responsible for pursuing the chargeback through the card association's dispute resolution processes, if appropriate in Keefe's sole discretion. Upon written request from Keefe, Customer agrees to provide requested information needed to pursue the chargeback.
  - c. If an individual requests a refund, Keefe will not be responsible for making those funds available if they have been already settled to a designated account by Keefe or are beyond Keefe's control.

- d. If Customer and sender of funds issue inconsistent instructions or requests to Keefe, Customer's instructions will control and Customer will reimburse, defend, indemnify and hold Keefe harmless from any and all losses, costs and expenses (including reasonable attorneys' fees) as a result of complying with Customer's instructions.

- 9. Damages Cap; No Other Warranty.** OTHER THAN KEEFE'S OBLIGATION FOR ANY FUNDS RECEIVED FROM INDIVIDUALS, IN NO EVENT SHALL KEEFE'S AGGREGATE LIABILITY IN TOTAL FOR ALL CLAIMS ARISING FROM OR RELATING TO THE SERVICES PROVIDED FOR IN THIS EXHIBIT B, EXCEED THE AMOUNT OF SERVICE FEES PAID TO KEEFE FOR THE TRANSACTIONS RELATING TO THE CLAIM. THE FOREGOING LIMITATION APPLIES REGARDLESS OF THE NATURE OF THE CLAIM OR THE FORM OF THE ACTION EMPLOYED, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THE SERVICES ARE PROVIDED "AS IS." EXCEPT AS EXPRESSLY STATED IN THIS EXHIBIT B, NEITHER PARTY MAKES, AND EACH PARTY EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES FOR THE SERVICES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR IMPLIED WARRANTIES ARISING FROM THE COURSE OF DEALING OR COURSE OF PERFORMANCE.

#### Fees Schedule

	Deposit Range	Fee
Kiosk - Cash Fee	\$0.01 - \$300.00	\$0.00
Kiosk - Credit Fee	\$0.01 - \$19.99	N/A
Kiosk - Credit Fee	\$20.00 - \$99.99	N/A
Kiosk - Credit Fee	\$100.00 - \$199.99	N/A
Kiosk - Credit Fee	\$200.00 - \$300.00	N/A
Web - Credit Fee	\$0.01 - \$19.99	\$4.00
Web - Credit Fee	\$20.00 - \$99.99	\$4.00
Web - Credit Fee	\$100.00 - \$199.99	\$4.00
Web - Credit Fee	\$200.00 - \$300.00	\$4.00
Phone - Credit Fee	\$0.01 - \$19.99	\$7.95
Phone - Credit Fee	\$20.00 - \$99.99	\$7.95
Phone - Credit Fee	\$100.00 - \$199.99	\$7.95
Phone - Credit Fee	\$200.00 - \$300.00	\$7.95

## Exhibit C

### Release Pay™ Prepaid Debit Card Release

#### With Government Fund “Gate Money” added to Prepaid Debit Card

1. **Keefe Services.** Keefe shall provide technical support and coordination for the following release Services for processing inmate trust fund balances to Customer inmates at time of release from the Customer:

***Prepaid Debit Cards*** (“Cards”): described as, a debit card which may be used for ATM withdraws and/or pin-based and signature purchases after inmate validation. Funds will be held by Axiom Bank N.A. (“Sponsor Bank”) from Maitland, FL. Axiom Bank will also be responsible for card issuances to the Customer. All transactions are processed by a third-party processor - Rapid Financial Solutions, LLC (“Processor”).

\* Additional Release Services may be made available to the Customer throughout the term of this Agreement and shall become part of this Agreement with the Customer’s acceptance. No Release Services shall be implemented without Customer approval. Another Card Brand, Issuing Bank or Program Manager may be substituted during the term of this agreement at Keefe’s discretion and shall not constitute an “Additional Release Service.” The Customer will be notified in writing of any such change.

2. **Designated Account.** Customer hereby agrees that neither the Processor nor Sponsor Bank control the inputs affecting the amount that is to be paid to the recipients. Therefore, as with all financial processes, Customer agrees to take full responsibility for maintaining a sufficient balance in the Customer’s Designated Bank Account for making payments.
3. **Responsibilities of the Customer.** Card storage responsibilities of the Customer are outlined in the attached “Security Requirements for the Storage of Prepaid Cards”, “Exhibit C-1” of this Agreement. Keefe reserves the right to modify “Security Requirements for the Storage of Prepaid Cards”, “Exhibit C-1” of this Agreement. Keefe shall notify the Customer of any such change in writing at least 30 days prior to the change being implemented.
4. **Representation and Warranty of Customer.** The parties hereby state that, based upon their understanding of the applicable laws and regulations, the terms of this Agreement are allowable.
5. **Fees and Charges.** Keefe shall charge a fee for its role in setting up the bank account with the bank issuing the Cards and for coordinating third party processing services. “Coordination Fees” are in accordance with the fee structure located in “Exhibit C-3” for non-Gate Money and Gate Money programs. All fees shall be assessed to the card holder/inmate.
6. **Payment Choice Requirement.** Regulators, Processor and Sponsor Bank require all Keefe Customers providing Gate Money as a Government Benefit to offer in all circumstances and to all persons a choice of payment other than Debit Cards (the “Payment Choice Requirement”), and Customer shall be responsible for ensuring compliance with the Payment Choice Requirement. Keefe reserves the right to request written certification the Payment Choice Requirement is being followed by Customer, a copy of which shall be promptly provided upon request. For the avoidance of doubt, any Keefe Customer’s noncompliance with the Payment Choice Requirement, shall constitute a material breach of this Agreement by Customer, which, among other things, shall give Keefe the right to terminate this Agreement and entitle Keefe, Processor and Sponsor Bank to any lawful indemnification by Customer pursuant to this Agreement. Keefe or its vendor agrees to provide a Payment Choice Option in the loading interface within its software within 60 days of installation. Customers not providing gate money as a Government Benefit shall have the option to offer all persons a choice of payment other than Debit Cards (the “Payment Choice Requirement”), In the event Processor notifies Customer that Customer is required by law, rule, regulatory authority, judicial or governmental order, Customer shall offer in all circumstances and to all persons a choice of payment other than Debit Cards (the

“Payment Choice Requirement”), and Customer shall require compliance with the Payment Choice Requirement. Customer acknowledges Keefe has informed Customer of the CFPB guidance found in 12 CFR Part 1005, Bulletin 2022-02, as attached.

7. Customer shall indicate below the type of Release Pay™ program that will be provided under this Agreement.

\_\_\_\_\_ Release Pay™ without “Gate Money” funds (The inmate will receive the funds remaining on the inmate’s trust account for commissary services at the time of the inmate’s release from the Customer’s facility.)

\_\_\_\_\_ Release Pay™ with “Gate Money” funds program (“Gate Money” means the inmate being released will receive funds from the Customer or another Government funded source, in addition to the funds remaining on the inmate’s trust account for commissary services at the time of the inmate’s release from the Customer’s facility.) The facility must give a payment choice to the released inmate. The payment choice must be recorded by the facility and made available upon request.

The fees for the non-Gate Money and with Gate Money programs are attached as Exhibit C-3.

8. **Taxes.** Each party shall be responsible for calculating, collecting and remitting their own Federal, state and/or local taxes, associated with the release services.

**\*Taxes should not be levied on the issuance of a Card unless Customer’s laws dictate such.**

9. **Equipment.** Upon expiration or termination of this Agreement, Customer agrees that all equipment and materials remain the property of Keefe and upon expiration or termination of this Agreement Keefe agrees to promptly remove all equipment and materials from the above-mentioned Customer. Customer shall be responsible for any unusual wear and tear, lost or stolen equipment as well as any lost, stolen or improperly funded Cards during the term of this Agreement.

10. **Confidentiality.** Keefe agrees to keep all information about inmates confidential and to make no disclosure thereof to any third party, except as may otherwise be required by law or necessary to provide the Service specified in this Agreement. Keefe agrees to give Customer prompt notice of any such disclosure.

11. **Exclusivity.** Customer acknowledges that based on this Agreement, Keefe has the sole and exclusive right and authority to provide the services contemplated by this Agreement for all inmate accounts under the Customer’s control and Customer shall not, throughout the term of the Agreement, engage the services of any other company to provide such services.

12. **Compliance.** Keefe and the Customer shall comply with all laws, orders, rules and regulations applicable to it that are associated with the performance of its duties and obligations under this Agreement.

13. **Fiduciary Responsibility.** Customer agrees that it shall, to the full extent allowed by law, assume all liability for any Customer related job functions that lead to discrepancies/deficiencies associated with any funding, Card loss, improper storage, etc. expressly attributed to the loading, inventorying and distribution of the Cards to the Customer inmates.

14. **Indemnification.** To the extent permitted by law, each party shall indemnify and hold the officers, directors, agents, employees, representatives, subsidiaries, parent company, affiliates, and customers harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this Agreement, provided that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such

claims at its own expense. The other party shall provide, at the indemnifying party's expense, such assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this Agreement

**15. Force Majeure.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**16. Termination.** In the event that either party believes that the other party has materially breached any obligations under this Agreement, or if either party believes that the other party has exceeded the scope of the Agreement, such party shall so notify the breaching party in writing. The breaching party shall have 30 days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the 30 days, the non-breaching party shall have the right to terminate the Agreement without further notice. Keefe reserves the right to terminate this Agreement if the Customer, or its representatives' actions, breach the Customers responsibilities listed in this Agreement including all Attachments and Exhibits.

**17. Assignment.** This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors of interest, except that Customer may not assign this Agreement to any person or entity without the written consent of Keefe.

**18. Notices.** All notices given pursuant to this Agreement shall be in writing and may be hand delivered or shall be deemed received within 10 days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile or email, confirmation copies must be sent by mail or hand delivery to the addresses listed above.

## **Exhibit C-1**

### **Security Requirements for the Storage of Prepaid Cards**

The security requirements in this document are based on policies and guidelines developed by the Payment Networks and industry best practices. These requirements must be implemented at all locations that store and distribute instant-issue card products.

#### Card Ordering

Card orders will be shipped to the designated locations by Rapid or its assignees by bonded and approved carrier. Card orders must be signed for upon arrival. All cards must be placed at the time of receipt into inventory in a secured storage area. An employee designated by management should be appointed to ensure the physical and procedural security policies are implemented.

#### Card Inventory

Physical security of the cards in inventory must be maintained at all times. Cards must be stored in a controlled environment, such as a safe or locked storage device, with access limited to employees who have successfully passed background screening checks.

An inventory log must account for the number of cards received, cards used, cards spoiled (cards that cannot be used due to damage, tampering or expiration) and remaining cards that should balance to the number of cards on hand at any time. An explanation of spoilage should be included on the log. Any inventory discrepancy must be reported to Rapid as soon as detected.

#### Card Destruction

Rapid may request return of unused cards in inventory for destruction for any of the reasons listed below.

1. Cards are compromised or tampered with;
2. Card stock expired;
3. Cards are damaged or defective;
4. Program is terminated.

Cards to be returned should be securely packaged. A copy of the inventory log should be included in the shipment. A second copy of the inventory log should be transmitted to Rapid electronically.

Alternatively, the location may destroy any defective or damaged card and certify its destruction by maintaining a detailed inventory log, and destroying the cards using a cross cut shredder that creates pieces no larger than ¼ " by ½" in size. A certified report of destruction outlined in Exhibit C-2, attached hereto and incorporated herein by this reference must be submitted to Rapid on a monthly cycle even if no cards were destroyed in that period.

The remainder of this page intentionally left blank.





## Exhibit C-3

## Inmate Release Card Program Fees

Cardholder Fees Associated with the Inmate Release Program

	Charge
Card Activation Fee	No Charge
Support Calls Fee	No Charge
PIN Change Fee	No Charge
Point of Sale (POS) Transactions (PIN & Signature)	No Charge
Cash Back Option with POS purchase	No Charge
POS Declines	No Charge
Card to Bank ACH Transfer	No Charge
Cash Out at any Principal MasterCard Member Institution	No Charge
Monthly Maintenance Fee*	\$3.95
ATM Account Inquiry Fee	\$1.50
Inactivity Fee**	\$3.95
ATM Fees***	\$2.95
ATM Decline for Non-Sufficient Funds Fee	\$2.95
Replacement of lost or stolen card	No Charge
Account Closure Fee/Request for Balance by Check	No Charge

\* After 15 days of the card being validated (used for a transaction) the card starts incurring a monthly maintenance fee. Once the card has been validated the inactivity fees no longer apply. Both fees will never be charged together.

\*\* If after 100 days the card has not been validated (used for a transaction) the card will be charged an inactivity fee of \$3.95 per month. The fee is charged until the card has been validated (used for a transaction).

\*\*\*Fees may also be imposed by the local ATM provider or financial institution in addition to card fees. For a listing of surcharge-free ATM's, visit <http://www.moneypass.com/>.

\*\*\*\*\*Cardholder fees are subject to change. Thirty (30) day prior written notice of a change in fees will be given. The changes will be posted on the Card website at [www.release.com](http://www.release.com). You will be deemed to have proper notice thirty days (30) after the amendments are posted.

Customer Service / Servicio Al Customers:  
Toll Free from U.S.A. – (877) 287-2448  
[www.releasepay.com](http://www.releasepay.com)

(The CFPB Compliance Bulletin is provided for information only)

**Consumer Financial Protection Bureau (“CFPB”) Compliance Bulletin  
Regarding Payment Choice**

**BILLING CODE: 4810-AM-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1005**

**Bulletin 2022-02: Compliance Bulletin on the Electronic Fund Transfer Act’s Compulsory  
Use Prohibition and Government Benefit Accounts**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Compliance bulletin.

**SUMMARY:** The Electronic Fund Transfer Act (EFTA) provides, among other things, that 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 receipt of a government benefit. The Bureau of Consumer Financial Protection (Bureau) is issuing this Compliance Bulletin to reiterate that this prohibition in EFTA applies to government benefit accounts.

**DATES:** This bulletin is applicable on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Elliott C. Ponte, Counsel, or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please [contact CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Discussion**

Section 913 of EFTA provides, among other things, that no person may require a consumer to establish an account for receipt of electronic fund transfers (EFTs) with a particular

financial institution as a condition of employment or receipt of a government benefit.<sup>1</sup> This provision, often referred to as the compulsory use prohibition, is implemented in § 1005.10(e)(2) of Regulation E. The Bureau is issuing this Compliance Bulletin to reiterate that the compulsory use prohibition in EFTA applies to government benefit accounts.

*A. Background*

Congress enacted EFTA in 1978 with the purpose of “provid[ing] a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.”<sup>2</sup> EFTA’s primary objective is “the provision of individual consumer rights.”<sup>3</sup> Congress also empowered the Board of Governors of the Federal Reserve System (Board) to promulgate regulations implementing EFTA. With the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), authority to implement most of EFTA transferred to the Bureau.<sup>4</sup>

The regulations first promulgated by the Board to implement EFTA now reside in subpart A of Regulation E.<sup>5</sup> These rules provide a broad suite of protections to consumers who make EFTs, and for accounts from which consumers can make EFTs. An EFT 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 a

---

<sup>1</sup> 15 U.S.C. 1693k.

<sup>2</sup> Public Law 95-630, 92 Stat. 3728 (1978).

<sup>3</sup> 15 U.S.C. 1693b.

<sup>4</sup> Public Law 111-203, tit. X, section 1084, 124 Stat. 1376, 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*). *See also* Dodd-Frank Act section 1061(b), 124 Stat. 2036 (codified at 12 U.S.C. 5581(b)).

<sup>5</sup> These provisions were originally adopted as 12 CFR part 205 but, upon transfer of authority in the Dodd-Frank Act to implement Regulation E to the Bureau, were renumbered as 12 CFR part 1005. 76 FR 81020 (Dec. 27, 2011).

consumer’s account.<sup>6</sup> In its initial rulemaking to implement EFTA, the Board developed a broad definition of “account,” which closely mirrored the definition of “account” in EFTA.<sup>7</sup> The definition provides that, subject to certain specific exceptions, an account is 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.<sup>8</sup>

In 1994, the Board amended Regulation E to extend Regulation E’s protections to accounts used for the electronic distribution of government benefits (1994 EBT Rule).<sup>9</sup> After the Board finalized the 1994 EBT Rule, Congress amended EFTA to exempt “needs-tested” State and local electronic benefit transfer (EBT) programs.<sup>10</sup> The Board subsequently adopted a rule exempting EBT programs established or administered by State or local government agencies from Regulation E. However, all accounts used to distribute benefits for federally administered programs (including Federal needs-tested programs) as well as non-needs tested State and local government benefit programs remained covered by Regulation E.<sup>11</sup>

On October 5, 2016, the Bureau issued a final rule titled “Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)”

---

<sup>6</sup> 12 CFR 1005.3(b)(1).  
<sup>7</sup> 44 FR 18468, 18480 (Mar. 28, 1979).  
<sup>8</sup> 12 CFR 1005.2(b)(1).  
<sup>9</sup> 59 FR 10678 (Mar. 7, 1994).  
<sup>10</sup> Public Law 104-193, 110 Stat. 2105 (1996).  
<sup>11</sup> 62 FR 43467 (Aug. 14, 1997).

(2016 Final Rule).<sup>12</sup> The 2016 Final Rule, as subsequently amended,<sup>13</sup> is referred to herein as the Prepaid Accounts Rule. The Prepaid Accounts Rule, among other things, extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts. The definition of “prepaid account” in the Prepaid Accounts Rule includes government benefit accounts (as defined in § 1005.15(a)(2)), which were already covered by Regulation E since the mid-1990s. The Prepaid Accounts Rule generally maintained the existing provisions specific to government benefit accounts, while adding certain new requirements such as pre-acquisition disclosures. The Prepaid Accounts Rule did not change the compulsory use prohibition in § 1005.10(e) of Regulation E, but did add commentary to clarify the compulsory use prohibition’s application to government benefits (comment 10(e)(2)-2), which is in line with preexisting commentary regarding payroll card accounts (comment 10(e)(2)-1).

#### *B. Compulsory Use Prohibition*

As mentioned above, the compulsory use prohibition of EFTA, as implemented by Regulation E, provides that no person may require a consumer to establish an account for receipt of EFT with a particular financial institution as a condition of receipt of a government benefit.<sup>14</sup> Person, for the purposes of Regulation E and the compulsory use prohibition, means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.<sup>15</sup> The compulsory use prohibition applies to all

---

<sup>12</sup> 81 FR 83934 (Nov. 22, 2016).

<sup>13</sup> See 82 FR 18975 (Apr. 25, 2017) and 83 FR 6364 (Feb. 13, 2018). These amendments, among other things, extended the effective date of the Prepaid Accounts Rule to April 1, 2019.

<sup>14</sup> 12 CFR 1005.10(e).

<sup>15</sup> 12 CFR 1005.2(j).

persons, not just financial institutions as defined in Regulation E.<sup>16</sup> The compulsory use prohibition applies to “government benefit accounts,” which is defined as an account established by a government agency for distributing government benefits to a consumer electronically. However, for purposes of Regulation E, including the compulsory use prohibition, a government benefit account 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.<sup>17</sup>

The term “needs-tested” is not defined in EFTA or Regulation E. In the preamble to its 2016 Final Rule, the Bureau identified examples of needs-tested government benefit programs that *are not* “government benefit accounts” subject to the compulsory use prohibition, such as those used to distribute funds related to Temporary Assistance for Needy Families (TANF), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and the Supplemental Nutrition Assistance Program (SNAP).<sup>18</sup> Accounts established under programs administered by State or local agencies for benefits that are not needs-tested *are* “government benefit accounts” subject to the compulsory use prohibition. Examples of government benefit accounts administered by State or local agencies that are subject to the compulsory use prohibition because they are not needs-tested include accounts used to distribute unemployment insurance, child support, certain prison and jail “gate money” benefits, and pension plan payments.<sup>19</sup>

---

<sup>16</sup> 12 CFR 1005.3(a).

<sup>17</sup> 12 CFR 1005.15(a)(2).

<sup>18</sup> *See* 81 FR 83934, 83942 (Nov. 22, 2016). While these accounts do not constitute “government benefit accounts” as defined in § 1005.15(a)(2), the Bureau notes that they may still be “prepaid accounts” under one of the other prongs of that definition in § 1005.2(b)(3). To the extent that they are prepaid accounts, the requirements of the Prepaid Accounts Rule apply.

<sup>19</sup> *See* 81 FR 83934, 83995 (Nov. 22, 2016); *In re JPay, LLC*, File No. 2021-CFPB-0006 (Oct. 19, 2021), [www.consumerfinance.gov/enforcement/actions/jpay-llc/](https://www.consumerfinance.gov/enforcement/actions/jpay-llc/).

In addition, all accounts used to distribute funds under federally administered benefits programs (even if those benefits are needs-tested) are “government benefit accounts” subject to the compulsory use prohibition; for example, accounts used to distribute Social Security, Social Security Disability Insurance, and Supplemental Security Income (SSI) payments; or Federal tax credits like the Earned Income Tax Credit (EITC) or the Child Tax Credit (CTC) are subject to the compulsory use prohibition.<sup>20</sup>

The compulsory use prohibition ensures that consumers receiving the government benefits described above have a choice with respect to how they receive their funds. Government agencies, financial institutions, and other persons have several options available to them to ensure consumers are provided a choice.<sup>21</sup> For example, a government agency that requires consumers to receive benefits through direct deposit will not violate the compulsory use prohibition if it allows consumers to choose the financial institution they want to use in receiving the direct deposit.<sup>22</sup> Alternatively, a government agency may give a consumer the choice of having their benefits deposited at a particular institution (designated by the government agency) so long as the consumer is able to receive their benefits by another means.<sup>23</sup>

As the Bureau explained in the 2016 Final Rule, the Bureau believes that consumers are not provided a choice when a consumer is required to receive the *first* payment of government

---

<sup>20</sup> See *id.* at 83995, 84320.

<sup>21</sup> In 2013, the Bureau issued a Compliance Bulletin on Payroll Card Accounts (Payroll Card Bulletin) to, among other things, reiterate that the compulsory use provision of EFTA and Regulation E prohibits employers, financial institutions, and other persons from mandating that employees receive wages only on a payroll card at a particular institution. As explained in the Payroll Card Bulletin, payroll card accounts are accounts that are established directly or indirectly through an employer, and to which transfers of the consumer’s salary, wages, or other employee compensation are made on a recurring basis. See *CFPB Bulletin 2013-10* (Sept. 12, 2013), [www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-payroll-card-accounts/](http://www.consumerfinance.gov/compliance/supervisory-guidance/bulletin-payroll-card-accounts/).

<sup>22</sup> 12 CFR 1005.10(e)(2) and comment 10(e)(2)-2.

<sup>23</sup> See *id.*



benefits on a prepaid card (or otherwise at a particular institution), even if the consumer can later re-direct the payment to an account of their choice.<sup>24</sup> In such a scenario, the consumer does not have a choice with respect to how to receive the first payment of the government benefit; rather, with respect to that first payment, the consumer was required to establish an account with the financial institution that issued the prepaid card as a condition of receiving the funds.<sup>25</sup>

In addition to having a choice with respect to how consumers receive their government benefits, Regulation E requires that a statement of the consumer's payment options be included in disclosures provided before a consumer acquires a government benefit account. Specifically, that statement must disclose that (1) the consumer has several options to receive benefit payments, followed by a list of the options available to the consumer, and a statement directing the consumer to tell the agency which option the consumer chooses; or (2) the consumer does not have to accept the government benefit account and directing the consumer to ask about other ways to receive government benefit payments.<sup>26</sup> As discussed more below, government benefit accounts are entitled to additional protections and disclosures under Regulation E.

### *C. Additional Regulation E Protections for Government Benefit Accounts*

As mentioned above, government benefit accounts are entitled to the protections of EFTA generally, and Regulation E's provisions applicable to prepaid accounts specifically. The protections in Regulation E for consumers who receive government benefits include the following:

---

<sup>24</sup> 81 FR 83934, 83985 (Nov. 22, 2016).

<sup>25</sup> *Id.*

<sup>26</sup> 12 CFR 1005.15(c)(2)(i).

- **Disclosures.** Under Regulation E, consumers are entitled to three types of disclosures for government benefit accounts: pre-acquisition disclosures, disclosures on the access device or entry point, and initial disclosures.

*Pre-acquisition disclosures* for a government benefit account must set forth key information about the account that includes, as mentioned above, a statement regarding the consumer's payment options.<sup>27</sup> A government agency must provide the consumer with pre-acquisition disclosures before the consumer acquires a government benefit account.<sup>28</sup>

*Disclosures on the access device or entry point* for a government benefit account must contain the name of the financial institution that directly holds the account or issues the access device as well as a website and phone number that the consumer can use to contact that financial institution about the government benefit account.<sup>29</sup> These disclosures must be included on the access device or, if there is no physical access device, on a website, mobile application, or other entry point a consumer must visit to access the government benefit account electronically.<sup>30</sup>

*Initial disclosures* must set forth comprehensive fee information that may be imposed in connection with the account as well as the information required to be included in the initial disclosures for other accounts subject to Regulation E, which include, among other things, disclosures regarding a consumer's liability for unauthorized EFTs, an error

---

<sup>27</sup> 12 CFR 1005.15(c)(2).

<sup>28</sup> 12 CFR 1005.15(c)(1).

<sup>29</sup> 12 CFR 1005.15(f), 1005.18(f).

<sup>30</sup> 12 CFR 1005.15(f), 1005.18(f)(3).

resolution notice, contact information for the financial institution providing the account, the types of transfers a consumer may make and any limitations on the frequency and dollar amount of transfers, and the fees associated with making.<sup>31</sup> Initial disclosures must be made at account opening or before the first EFT occurs.<sup>32</sup>

- **Change-in-Terms Notices.** Change-in-terms notices are required when a term or condition required to be disclosed in the initial disclosures changes or the change results in an increased fee, increased liability for the consumer, fewer types of available EFTs, or stricter limitations on the frequency or dollar amount of EFTs.<sup>33</sup>

- **Access to Account History.** Government agencies must either provide a periodic statement as required by Regulation E generally, or must make available to the consumer (1) the consumer's account balance, by telephone; (2) an electronic history, such as through an website, of the consumer's account transactions covering at least 12 months preceding the date the consumer electronically accesses the account; and (3) written account transaction histories provided upon request must cover at least the 24 months preceding the date on which the government agency receives the consumer's request for the account transaction history.<sup>34</sup>

- **Limited Liability for Unauthorized Transfers and Error Resolution Rights.** With limited modifications regarding the period within which an unauthorized transfer must be

---

<sup>31</sup> 12 CFR 1005.15(e)(1) and (f), 1005.18(h)(2)(ii)(A) and (iv). *See generally* 12 CFR 1005.7(b).

<sup>32</sup> 12 CFR 1005.7(a).

<sup>33</sup> 12 CFR 1005.8(a)(1); 1005.15(f); 1005.18(f), (h)(2)(ii)(A), (iii), and (iv).

<sup>34</sup> 12 CFR 1005.9(b); 1005.15(d)(1); and 1005.18(h)(3)(i).

reported, Regulation E’s limited liability protections and error resolution rights fully apply to government benefit accounts.

**II. Conclusion**

The Bureau is issuing this Compliance Bulletin to reiterate that the compulsory use prohibition in EFTA applies to government benefit accounts, as defined in Regulation E. The Bureau notes that it is authorized, subject to certain exceptions, to enforce EFTA and Regulation E against any person subject to EFTA and Regulation E, including financial institutions.<sup>35</sup> In addition, subject to certain exceptions, the Bureau has enforcement authority over covered persons offering or providing certain consumer financial products or services—including government benefit accounts—under the Consumer Financial Protection Act of 2010.<sup>36</sup>

/s/ Rohit Chopra

\_\_\_\_\_  
**Rohit Chopra,**  
*Director, Consumer Financial Protection Bureau.*

<sup>35</sup> 15 U.S.C. 1693o(a)(5).

<sup>36</sup> Public Law 111-203, tit. X, 124 Stat. 1955 (2010) (12 U.S.C. 5561 through 5567).

8-29