

1 Jo Ann Niemi (SBN 020873)
2 **ANAPOL WEISS**
3 8700 E. Vista Bonita Drive, Suite 268
4 Scottsdale, Arizona 85255
5 Telephone: (480) 515-4745
6 Facsimile: (480) 515-4744
7 lcoben@anapolweiss.com
8 jniemi@anapolweiss.com
9 Minute Entries: ME@anapolweiss.com

10 *Attorneys for Plaintiffs*

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 DARIA BRILL, ANDREA MORALES,
14 and GALE ZYLSTRA, on Behalf of
15 Themselves and All Others Similarly
16 Situated,

17 Plaintiffs,

18 vs.

19 BANK OF AMERICA, N.A., and
20 DOES 1-10,

21 Defendants.

CASE NO. _____

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

22
23
24 **CLASS ACTION COMPLAINT**

25 Plaintiffs, Daria Brill, Andrea Morales, and Gale Zylstra, by and through
26 undersigned counsel, on behalf of themselves and all persons similarly situated,
27 complain and allege as follows on personal knowledge, investigation of counsel, and
28 information and belief:

1 **NATURE OF THE CASE**

2 1. This is a civil action seeking monetary damages, restitution, declaratory
3 relief, and injunctive relief from Bank of America, N.A. (“BofA”) arising out of BofA’s
4 deceptive, fraudulent, and illegal scheme to exploit one of the most vulnerable groups
5 imaginable – releasees from Arizona corrections facilities.

6 2. If these individuals want *their own* money after they are released from
7 prison, they are forced to accept a “consumer relationship” with BofA. As a result of
8 this relationship, BofA issues these individuals a debit card, in connection with which
9 BofA charges them exorbitant and unusual fees once they are released from an Arizona
10 corrections facility. BofA refers to this card as the BofA CashPay Debit Card. The fee
11 structure for the BofA CashPay Debit Card, and other features devised by BofA, by
12 turns dissuades and disincentivizes Arizona releasees from accessing their own money,
13 and penalizes them with excessive or unusual fees when they do.

14 3. BofA is the exclusive provider of debit cards issued to Arizona inmates
15 upon their release from an Arizona corrections facility. At the time of release, an
16 Arizona releasee with a balance in her inmate account is forced to receive funds on a
17 non-reloadable BofA debit card, the BofA CashPay Debit Card.

18 4. When an Arizona inmate is released, they are supposed to receive a one-
19 page form with a BofA CashPay Debit Card attached. The one-page form simply
20 contains instructions on how to activate the card. The form does not describe any of the
21 fees, or other terms and conditions, that govern the debit card’s use. Arizona releasees
22 are never given an opportunity to review or agree to any terms and conditions governing
23 the debit card’s use prior to receiving it. There is no period allowing for the withdrawal
24 of funds so that releasees can enter into alternative banking or commercial arrangements
25 that might be more favorable to releasees.

26 5. If Arizona releasees want to use the BofA CashPay Debit Card to access
27 their own money, they risk incurring numerous fees that ordinary consumers would
28 never be charged. For instance, there is a \$15.00 fee *per transaction* at a bank teller

1 window. There also is a \$2.50 fee to speak with a customer service agent over the
2 telephone. If an Arizona releasee wishes to withdraw money at an ATM, there is a
3 \$1.50 charge by BofA for each withdrawal, even at an in-network ATM withdrawal (i.e.,
4 it costs \$1.50 to withdraw money at a BofA ATM). Not only do these and other fees
5 dissuade or disincentivize Arizona releasees from using their debit cards (and accessing
6 their own money), but to the extent these fees exceed the balance on a releasee's BofA
7 CashPay Debit Card, the fees constructively prohibit unfettered access to one's own
8 money. For example, to "cash out" a balance in an amount that cannot be dispensed at
9 an ATM machine, a releasee would incur a \$15.00 window teller fee that could
10 substantially diminish, or even exceed, the remaining balance on the card.

11 6. The terms and conditions governing the above fees and other fees are not
12 fully or adequately disclosed to Arizona releasees. The fee schedule, in fact, is not
13 disclosed on the activation instruction sheet that is supposed to accompany the BofA
14 CashPay Debit Card.

15 7. Further, confusingly, BofA's publicly available FAQ about CashPay Debit
16 Cards issued to non-releasee consumers conflicts with the fees and other terms associated
17 with CashPay Debit Cards issued to Arizona releasees. For instance, BofA's publicly
18 available FAQ states that cardholders may use their BofA CashPay Debit Cards
19 "everywhere Visa debit cards are accepted . . . and at ATMs for any portion of your
20 available balance as often as you like." *See* Ex. A. But, BofA neglects to mention that
21 both in-network (and out-of-network) ATM withdrawals will incur a fee for Arizona
22 releasees (unlike other consumers) attempting to use their BofA CashPay Debit Cards.
23 BofA also neglects to mention that not all ATMs can dispense below certain amounts,
24 requiring the releasee to make a teller-assisted transaction and incur the window fee. BofA
25 also publicly claims that you can call the number on the back of the BofA CashPay Debit
26 Card to ask questions, *see id.*, but fails to note that Arizona releasees (unlike other
27 consumers) who do so will incur a fee. Finally, the terms and conditions on BofA's
28 publicly available website are not the same as the terms that purportedly govern Arizona
releasees' CashPay Debit Cards.

1 8. Arizona releasees are at the greatest risk and in the greatest need of support
2 upon their release, as they re-acclimate themselves to living in society. Every cent
3 counts for releasees who are coming out of prison without an immediate means of
4 income, or sometimes even a place to go. BofA’s array of unilaterally-imposed,
5 undisclosed and/or inadequately disclosed, and unusual fees unfairly depletes Arizona
6 releasees’ funds for simple, routine transactions, at the exact time when these individuals
7 need their money the most; indeed, BofA’s scheme even dissuades Arizona releasees
8 from accessing their own funds altogether.

9 9. In sum, BofA’s interference with Arizona releasees’ possessory interest in
10 their own money deprives Arizona releasees from their own money to which they are
11 rightfully entitled.

12 **JURISDICTION AND VENUE**

13 10. This Court has original jurisdiction of this action under the Class Action
14 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has
15 original jurisdiction because the aggregate claims of the putative Class exceed
16 \$5 million, exclusive of interest and costs, and at least one of the members of the
17 proposed classes is a citizen of a different state than BofA.

18 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
19 BofA is subject to personal jurisdiction here and regularly conducts business in this
20 District, and because a substantial part of the events or omissions giving rise to the
21 claims asserted herein occurred in Arizona and in this District.

22 **THE PARTIES**

23 12. Plaintiffs Daria Brill, Andrea Morales, and Gale Zylstra are residents of
24 Arizona.

25 13. Defendant Bank of America, N.A. (“BofA”) maintains its headquarters
26 and principal place of business in Charlotte, NC. BofA regularly and systematically
27 conducts business throughout Arizona and this District, among elsewhere. Among other
28 things, BofA is engaged in the business of providing retail banking services, including

1 the issuance of debit cards, to millions of consumers, including Plaintiffs and members
2 of the Class.

3 14. Defendant Does 1-10, upon information and belief, are corporations,
4 associations, individuals, or other legal entities that are currently unknown to Plaintiffs
5 and represent the true names or capacities of the legal entities that execute, authorize, or
6 are otherwise responsible for the conduct and damages alleged herein.

7 **COMMON FACTUAL ALLEGATIONS**

8 **A. Arizona Releasees**

9 15. There are over 40,000 inmates in the direct or indirect custody of the
10 Arizona Department of Corrections at any given time, housed in approximately 16
11 corrections complexes. The department releases more than 19,000 inmates each year.

12 16. Any money an inmate may have possessed at the time of incarceration is
13 placed into a custodial account while the inmate remains incarcerated at an Arizona
14 corrections facility. Subsequent funds may be deposited (or withdrawn) into this
15 account while the inmate is incarcerated. For example, an inmate may earn funds
16 through work programs, or receive funds sent by friends or family.

17 17. Any funds an inmate does not spend while incarcerated are the property of
18 the inmate and returned upon release.

19 18. Arizona releasees receive money they possessed while incarcerated on a
20 debit card issued by BofA, which BofA refers to as the "CashPay Debit Card." The
21 terms of the BofA CashPay Debit Card are non-negotiable and not adequately disclosed.
22 If Arizona releasees want to access their own money, they must accept the BofA
23 CashPay Debit Card's terms.

24 19. Arizona releasees are not given or otherwise made aware of the terms
25 and conditions governing the BofA CashPay Debit Card prior to being released. Upon
26 being released, they are simply handed an envelope which contains a BofA CashPay
27 Debit Card and activation instruction sheet.

28

1 **B. BofA’s Debit Card Monopoly**

2 20. BofA imposes whatever terms and conditions it wishes on recipients of the
3 BofA CashPay Debit Card. BofA has perfected its scheme through two principal means.

4 21. First, since at least 2012, BofA has been the exclusive issuer of debit cards
5 to Arizona releasees. By securing an exclusive arrangement, BofA has insulated itself
6 from normal competitive market forces.

7 22. Second, BofA exploits a current loophole in federal law that curbs banks’
8 predatory practices designed to take advantage of debit cardholders. The Electronic Fund
9 Transfer Act (“EFTA”), 15 U.S.C. § 1693 *et seq.* and accompanying regulations, protect
10 most consumers’ rights in electronic funds transactions, including debit transactions.
11 The primary purpose of the EFTA “is the provision of individual consumer rights.” 15
12 U.S.C. § 1693(b). By way of example, the EFTA and its enabling regulations make it
13 illegal to require a consumer to receive payroll benefits (i.e., salary) in the form of a
14 prepaid debit card, because the fees associated with accessing money loaded onto a debit
15 card essentially reduce the total amount of money the consumer rightfully earned and to
16 which she is rightfully entitled.

17 23. However, the EFTA’s current enabling regulations are ambiguous as to
18 whether debit cards provided to releasees, such as the BofA CashPay Debit Card, fall
19 within the regulations’ ambit. For instance, Regulation E defines a “payroll card
20 account” as an account to which “electronic fund transfers of the consumer’s wages . . .
21 are made on a recurring basis.” 12 C.F.R. § 1005.2(b)(2). Some argue that the one-time
22 payout of money a releasee accumulated while incarcerated is not a “recurring” fund
23 transfer.¹ The same has been argued about government benefits, such as SSA disability
24 benefits or child support, issued via debit card. In other words, current Regulation E
25 does not expressly protect Arizona releasees or recipients of government benefits.

26
27 ¹ *See, e.g.*, Prison Policy Initiative, Comments to Proposed Amendments to Regulation
28 E (Mar. 18, 2015) (Ex. E).

1 24. In December 2014, the Consumer Financial Protection Bureau (“CFPB”)
2 announced proposed amendments to Regulation E, to address in part perceived gaps or
3 loopholes. *See* 79 Fed. Reg. 77102 *et seq.* (Dec. 23, 2014). One proposed amendment
4 would provide additional protections to recipients of “government benefits” in the form
5 of debit cards. *See id.*

6 25. Unfortunately, as currently proposed, the amendments to Regulation E
7 would not classify releasees’ receipt of their money on a BofA CashPay Debit Card as
8 either a “government benefit” or a traditional consumer debit transaction (such as payroll
9 benefits).

10 26. Thus, even if Regulation E is amended, Arizona releasees who receive a
11 BofA CashPay Debit Card will be one of the few subsets of consumers, if not the only
12 subset, which are not protected by the EFTA. This means that BofA may continue to
13 exploit Arizona releasees who are forced to receive and use BofA CashPay Debit Cards
14 if they ever want to access their own money.

15 **C. Plaintiffs’ Experience with the BofA CashPay Debit Card**

16 **1. Plaintiff Angela Morales**

17 27. Plaintiff Angela Morales was released from an Arizona corrections facility
18 in July 2016.

19 28. Upon her release, Ms. Morales was given a BofA CashPay Debit Card
20 loaded with her money that she possessed or accrued while she was incarcerated. She
21 was not told the balance on her card. A true and correct copy of the BofA CashPay
22 Debit Card handed to her is attached as Ex. B.

23 29. The debit card came with a sheet from BofA that explained how to activate
24 the card, and an FAQ about what BofA does with cardholders’ account information. *See*
25 Ex. C.

26 30. In her instance, the debit card also came with a pamphlet entitled “Bank of
27 America, Arizona Department of Corrections CashPay Visa / ATM Deposit
28 Agreement.” *See* Ex. D. Buried in the pamphlet is a “Schedule of Bank Fees,” which is

1 excerpted (and enlarged) below:

Arizona Department of Corrections CashPay® Visa Schedule of Bank Fees		SERVICES WITH FEES	
Bank Fees for Arizona Department of Corrections Prepaid Debit Card transactions will be charged to your Account as they occur on a daily basis.		ATM Transaction Fees *	
SERVICES WITH NO FEES		ATM Withdrawal (all ATMs in the U.S.)	\$1.50 per transaction
Purchase Transactions		ATM Withdrawal (all ATMs outside the U.S.)	\$3.50 per transaction
Purchase at Visa Merchants (signed, using PIN, online, phone, or mail purchases)	No Fee	Other Service Fees	
ATM Transactions *		Live Agent Customer Service Inquiry	\$2.50 per call
ATM Balance Inquiries or Declined Transactions (all ATMs)**	No Fee	PIN Change	No Fee for first change, \$0.50 thereafter
Other Services		Teller Cash Access (Available at financial institutions that accept Visa cards) (Limited to available balance only)	\$15.00 per transaction
Online or Automated Customer Service Inquiry	No fee	Card Replacement Domestic	\$15.00 per replacement
Online Funds Transfer	No fee	Card Replacement - Express Delivery (additional charge)	\$15.00 per request
		Card Replacement (outside the U.S.)	Quote provided at time of request, as price varies by country
		International Transaction	3% of U.S. dollar amount of transaction
		Check Issuance at Account Closure	\$5.00 per request

18 31. Among the unusual fees is a \$2.50 fee to speak with a BofA customer
19 service agent via telephone, and a \$15.00 per transaction fee for seeking window teller
20 assistance at a BofA branch location.

21 32. Ms. Morales has incurred at least one fee in connection with her BofA
22 CashPay Debit Card, and/or was subjected to BofA's oppressive fees and other features
23 in connection with the BofA CashPay Debit Card.

24 33. When she first went to a BofA branch location to withdraw some money
25 and to learn her balance (as it was not told to her upon release), the window teller could
26 not tell her what the balance was on her card. Ms. Morales subsequently made a second
27 trip to withdraw some of her money and to learn her balance. A different window teller
28 was able to inform Ms. Morales about her balance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. Plaintiff Gale Zylstra

34. Plaintiff Gale Zylstra was released from an Arizona corrections facility in March 2016.

35. Ms. Zylstra was given a BofA CashPay Debit Card upon her release, which purportedly possessed the money she earned or accrued during her incarceration. Ms. Zylstra does not recall receiving any materials along with the BofA CashPay Debit Card.

36. Ms. Zylstra incurred at least one fee in connection with her BofA CashPay Debit Card, and/or was subjected to BofA’s oppressive fees and other features in connection with the BofA CashPay Debit Card.

37. Ms. Zylstra who is confined to a wheelchair, put forth considerable effort to go to a Bank of America branch location to withdraw her money from the BofA CashPay Debit Card. The terms associated with the BofA CashPay Debit Card, including the fees, were particularly onerous to Ms. Zylstra. For instance, if she wished to check her balance by calling a live operator for convenience sake, she would be subject to a \$2.50 per call fee.

3. Plaintiff Daria Brill

38. Plaintiff Daria Brill was released from an Arizona corrections facility in May 2016.

39. Upon her release, Ms. Brill was given a BofA CashPay Debit Card that purportedly contained the money she had possessed or accrued while she was incarcerated. She remembers the card being accompanied by a sheet explaining how to activate her card. Ms. Brill does not recall receiving any card agreement, or terms and conditions, along with the BofA CashPay Debit Card.

40. Shortly after her release, Ms. Brill sought to withdraw funds from her BofA CashPay Debit Card. Ms. Brill incurred at least one fee in connection with her BofA CashPay Debit Card, and/or was subjected to BofA’s oppressive fees and other features in connection with the BofA CashPay Debit Card.

1 **D. BofA Benefits from Its Wrongful Conduct**

2 41. BofA significantly benefits from its fraudulent, deceptive, and unfair
3 conduct.

4 42. BofA charges releasees higher fees than they charge other consumers for
5 identical services or transactions. The below chart shows how the fees BofA charges
6 releasees in connection with its CashPay Debit Card exceed those it charges ordinary
7 consumers (see overleaf):

Transaction Type	BofA “regular consumer” CashPay Debit Card ²	BofA Inmate CashPay Debit Card ³
Teller-Assisted Transaction	\$0	\$15.00
Live Agent Customer Service Telephone Inquiry	1 waived each month, \$1.50 for each additional call	\$2.50 per call
International Transaction Fee	2.00%	3.00%
Card Replacement Fee – Domestic	1 waived per year, \$5.00 thereafter	\$15.00
ATM Withdrawal – Domestic	1 waived per week at BofA ATMs, \$1.50 for all others	\$1.50 per transaction

8
9
10
11
12
13
14
15
16
17
18
19 43. In addition, BofA has provided other CashPay debit card services in
20 Arizona, such as CashPay Debit Cards issued to Arizona state employees (i.e., the
21 Arizona CashPay Payroll Card Program), or cards issued to state retirement system
22 beneficiaries. These cards feature fees and other terms that are more favorable to
23 consumers than those associated with the BofA CashPay Debit Cards issued to Arizona
24

25
26 ² Bank of America, CashPay Card, Fee Information, *available at*
27 <https://prepaid.bankofamerica.com/cashpay/Program/Fee> (last visited September 29,
2016).

28 ³ Ex. F.

1 releases. In short, the BofA CashPay Debit Cards have the most onerous set of features
2 among any similar type of debit card BofA issues in Arizona.

3 44. Moreover, to the extent that BofA's fees represent substantial percentages
4 of Class members' card balances – or worse, exceeds those balances (e.g., a releasee
5 having to pay a \$15.00 teller fee to withdraw a balance of \$4.00), BofA's scheme
6 dissuades Arizona releasees from using BofA CashPay Debit Cards at all, which results
7 in the constructive forfeiture or non-use of Arizona releasees' own funds.

8 45. Upon information and belief, most or all of the fees that BofA charges bear
9 no relation to the actual costs borne by BofA. For instance, there is no rational reason
10 that making a withdrawal at a teller window, as opposed to an ATM, should cost a
11 releasee (but not other consumers) \$15.00. Similarly, using a debit card at an in-network
12 ATM (i.e., at a BofA ATM) normally does not result in a withdrawal fee.

13 46. BofA has enriched itself at the Class members' expense by charging
14 unfounded fees and erecting barriers to releasees' accessing their own money, and
15 keeping that money for itself through constructive or actual forfeiture.

16 **E. Class Members Are An Especially Vulnerable Group**

17 47. Arizona releasees are among those individuals least able to afford the
18 unusual and unfair fees, and an overall fee structure that dissuades and/or penalizes card
19 use, which is thrust upon them by BofA.

20 48. As one news outlet has reported, “experts say even small penalties can be
21 both more significant – and more insidious – for newly released prisoners, who tend to
22 have less money and banking experience, and face many other barriers to reintegrating
23 into society.”⁴ Companies like BofA can reap substantial profits on the backs of
24 releasees because they can exploit a unique, “(literally) captive market.” *Id.*

25
26
27
28 ⁴ Marketplace, “How big bank turn prisons into profit centers,” Jan. 28, 2105, *available*
at <http://www.marketplace.org/topics/wealth-poverty/how-big-banks-turn-prisons-profit-centers> (last accessed September 29, 2016).

1 knowledge of and can be ascertained only by resort to BofA's records.

2 54. The claims of the representative Plaintiffs are typical of the claims of the
3 Class in that the representative Plaintiffs, like all Class members, were issued BofA
4 CashPay Debit Cards upon their release from an Arizona corrections facility. The
5 representative Plaintiffs, like all Class members, have been damaged by BofA's
6 misconduct in that they have been harmed by the same types of deceptive, misleading,
7 and/or fraudulent pretenses and practices. Furthermore, the factual basis of BofA's
8 misconduct is common to all Class members, and represents a common thread of unfair
9 and unconscionable conduct resulting in injury to all members of the Class.

10 55. There are numerous questions of law and fact common to the Class and
11 those common questions predominate over any questions affecting only individual Class
12 members.

13 56. Among the questions of law and fact common to the Class are whether
14 BofA:

- 15 a. Wrongfully converted the funds of the Class;
- 16 b. Was unjustly enriched through the company's actions;
- 17 c. fraudulently concealed its past and ongoing wrongful conduct from
18 Plaintiffs and other members of the Class (to the extent applicable);
19 and
- 20 d. Violated consumer protection and other state laws.

21 57. Other questions of law and fact common to the Class include:

- 22 a. The proper method or methods by which to measure damages; and
- 23 b. The declaratory and injunctive relief to which the Class is entitled,
24 including but not limited to rescission or reformation.

25 58. Plaintiffs have suffered the harm alleged and have no interests antagonistic
26 to the interests of any other Class member.

27 59. Plaintiffs are committed to the vigorous prosecution of this action and
28 have retained competent counsel experienced in the prosecution of class actions and, in

1 particular, class actions on behalf of consumers. Accordingly, Plaintiffs are adequate
2 representatives and will fairly and adequately protect the interests of the Class.

3 60. A class action is superior to other available methods for the fair and
4 efficient adjudication of this controversy. Since the amount of each individual Class
5 member's claim is small relative to the complexity of the litigation, the vulnerability of
6 the class and the virtually unlimited financial resources of BofA, no Class member could
7 afford to seek legal redress individually for the claims alleged herein. Therefore, absent
8 a class action, the Class members will continue to suffer losses and BofA's misconduct
9 will proceed without remedy.

10 61. Even if Class members themselves could afford such individual litigation,
11 the court system could not. Individualized litigation would significantly increase the
12 delay and expense to all parties and to the Court. Individualized litigation would also
13 create the potential for inconsistent or contradictory rulings. By contrast, a class action
14 presents far fewer management difficulties, allows claims to be heard which might
15 otherwise go unheard because of the relative expense of bringing individual lawsuits,
16 and provides the benefits of adjudication, economies of scale and comprehensive
17 supervision by a single court.

18 **COUNT ONE**
19 **Unjust Enrichment**

20 62. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

21 63. By means of BofA's wrongful conduct alleged herein, BofA knowingly
22 and forcibly caused Plaintiffs and members of the Class to receive and to use the BofA
23 CashPay Debit Card by or under fraudulent, unfair, deceptive, coercive, unconscionable,
24 and/or oppressive means or conditions.

25 64. BofA knowingly received and retained wrongful benefits from Plaintiffs
26 and members of the Class. In so doing, BofA acted intentionally or with conscious
27 disregard for the rights of Plaintiffs and members of the Class.

28 65. As a result of BofA's wrongful conduct as alleged herein, BofA has been

1 unjustly enriched at the expense, and to the detriment, of Plaintiffs and members of the
2 Class.

3 66. BofA's unjust enrichment is traceable to, and resulted directly and
4 proximately from, the wrongful conduct alleged herein.

5 67. It is unfair and inequitable for BofA to be permitted to retain the benefits it
6 received, and is still receiving, without justification, from the wrongful conduct alleged
7 herein.

8 68. The financial benefits derived by BofA rightfully belong to Plaintiffs and
9 members of the Class, in whole or in part. BofA should be compelled to account for and
10 disgorge in a common fund for the benefit of Plaintiffs and members of the Class all
11 wrongful or inequitable proceeds received from them, including but not limited to total
12 disgorgement of all funds placed onto CashPay Debit Card accounts, and/or the amounts
13 of fees incurred. A constructive trust should be imposed upon all wrongful or
14 inequitable sums received by BofA traceable to Plaintiffs and the members of the Class.

15 69. Plaintiffs and members of the Class have no choice but to take the BofA
16 CashPay Debit Card, and have no adequate remedy at law.

17 70. BofA's fraudulent, unfair, deceptive, coercive, unconscionable, unilateral,
18 and/or oppressive conduct amounts to an illusory promise, and/or demonstrates a lack of
19 mutual consideration, rendering any agreement that may exist unenforceable,
20 unconscionable, inequitable, void, or voidable.

21 **COUNT TWO**
22 **Rescission**

23 71. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

24 72. In the alternative to Count One, in the event a valid agreement is found to
25 exist between BofA and members of the Class, and/or the placement of or access to
26 balances on CashPay Debit Card accounts is not deemed to be improper, any such
27 agreement should be rescinded.

28 73. Consent by Plaintiffs and members of the Class to the terms governing the

1 BofA CashPay Debit Card, including the fee schedule and initial and continued
2 placement of funds on the cards, was not real or free, and/or was given under force,
3 mistake, duress, coercion, fraud, and/or without consent or mutual material
4 consideration.

5 74. The terms governing the BofA CashPay Debit Card, including the fee
6 schedule and the initial and continued placement of funds on the cards, were not fully
7 disclosed to Plaintiffs and members of the Class. Thus, Plaintiffs and members of the
8 Class lacked proper notice concerning such terms.

9 75. The terms governing the BofA CashPay Debit Card, including the fee
10 schedule and the initial and continued placement of funds on the cards, contain
11 undisclosed, confusing, misleading, or abstruse conditions and terminology. BofA
12 unilaterally drafted and imposed these fees and other terms on Plaintiffs and the Class,
13 which renders any agreement between BofA and Plaintiffs and members of the Class an
14 unenforceable contract of adhesion.

15 76. Moreover, Plaintiffs and other members of the Class were forced or
16 induced to enter into any agreement governing the BofA CashPay Debit Card by fraud
17 or deceit, insofar as BofA misrepresented or omitted the full terms, nature, and fees
18 associated with the debit cards. For example:

- 19 (i) terms were not fully disclosed to Plaintiffs or members of the Class;
20 (ii) money was placed and kept on the BofA CashPay Debit Cards
21 without consent and according to a scheme or structure that
22 dissuaded or disincentivized Plaintiffs' and Class members' use of
23 their own funds; and
24 (iii) BofA representatives, at times, cannot even adequately or
25 accurately assist Class members with accessing or understanding
26 the amounts on the BofA CashPay Debit Cards.

27 77. BofA intended, knew, or reasonably should have known, that
28 representations and omissions it has made and continues to make in connection with the

1 BofA CashPay Debit Card were materially false, deceptive, and misleading.

2 78. As a direct and proximate result of BofA's conduct alleged herein,
3 Plaintiffs and members of the Class believed, and reasonably so, that they had no choice
4 to receive their money that was loaded on the BofA CashPay Debit Card than to accept
5 and use the card.

6 79. With any possible consent given only under force, mistake, fraud,
7 coercion, duress, and/or oppression, as set forth above, Plaintiffs seek rescission of any
8 allegedly valid agreement governing the BofA CashPay Debit Card and restitution for all
9 fees incurred, or return of card balances, on behalf of themselves and members of the
10 Class.

11 **COUNT THREE**
12 **Reformation**

13 80. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

14 81. In the alternative to Counts One and Two, in the event a valid agreement is
15 found to exist between BofA and members of the Class, any such agreement should be
16 reformed.

17 82. Consent by Plaintiffs and members of the Class to the terms governing the
18 BofA CashPay Debit Card, including the fee schedule and the initial and continued
19 placement of funds on the cards, was not real or free, and/or was given under force,
20 mistake, duress, coercion, fraud, and/or without consent or mutual material
21 consideration.

22 83. The terms governing the BofA CashPay Debit Card, including the fee
23 schedule and the initial and continued placement of funds on the cards, were not fully
24 disclosed to Plaintiffs and members of the Class. Thus, Plaintiffs and members of the
25 Class lacked proper notice concerning such terms.

26 84. The terms governing the BofA CashPay Debit Card, including the fee
27 schedule and the initial and continued placement of funds on the cards, contain
28 undisclosed, confusing, misleading, abstruse conditions and terminology. BofA

1 unilaterally drafted and imposed these terms on Plaintiffs and the Class, which renders
2 any agreement between BofA and Plaintiffs and members of the Class an unenforceable
3 contract of adhesion.

4 85. Plaintiffs and other members of the Class were induced to enter into any
5 agreement governing the BofA CashPay Debit Card, insofar as BofA misrepresented or
6 omitted the full terms and true fees associated with the inmate debit cards. For example:

- 7 (i) terms were not fully disclosed to Plaintiffs or members of the Class;
- 8 (ii) money was placed and kept on the BofA CashPay Debit Cards
9 without consent and according to a scheme or structure that
10 dissuaded or disincentized Plaintiffs' and Class members' use of
11 their own funds;
- 12 (iii) BofA representatives, at times, cannot even adequately or
13 accurately assist Class members with accessing or understanding
14 the amounts on the BofA CashPay Debit Cards.

15 86. BofA intended, knew, or reasonably should have known, that
16 representations and omissions it has made and continues to make in connection with the
17 BofA CashPay Debit Card were materially false, deceptive, and misleading.

18 87. BofA's fraud or bad faith is further evidence by its breach of the implied
19 covenant of good faith and fair dealing.

20 88. By common law or statute, the terms governing the BofA CashPay Debit
21 Card impose upon each party a duty of good faith and fair dealing. Good faith and fair
22 dealing, in connection with executing contracts and discharging performance and other
23 duties according to their terms, means preserving the spirit – not merely the letter – of
24 the bargain. Put differently, the parties to a contract are mutually obligated to comply
25 with the substance of their contract in addition to its form. Evading the spirit of the
26 bargain and abusing the power to specify terms constitute examples of bad faith in the
27 performance of contracts.

28 89. Subterfuge and evasion violate the obligation of good faith in performance

1 even when an actor believes their conduct to be justified. Bad faith may be overt or may
2 consist of inaction, and fair dealing may require more than honesty. Examples of bad
3 faith are evasion of the spirit of the bargain, willful rendering of imperfect performance,
4 abuse of a power to specify terms, and interference with or failure to cooperate in the
5 other party's performance.

6 90. BofA has breached the covenant of good faith and fair dealing through its
7 wrongful actions alleged herein, through both affirmative misrepresentations and
8 purposeful omissions, and Plaintiffs and members of the Class have suffered damages as
9 a result.

10 91. In addition, any agreement between BofA and Plaintiffs and members of
11 the Class not only evidences BofA's fraud or bad faith as set forth above, but also
12 accident or mistake.

13 92. The same conduct set forth above could also demonstrate a mutual
14 mistake, insofar as both sides to any agreement governing the terms of the BofA
15 CashPay Debit Card would understand and believe that deposits could be made. In
16 addition, both sides to any agreement were mutually mistaken insofar as BofA
17 representatives have been unable to report balances or facilitate transactions. This
18 reveals a potential misunderstanding of each other's intent based on the terms governing
19 the relationship, to the extent that such a relationship is found to have been validly
20 formed. Further, mutual mistakes were relied on by BofA and Plaintiffs and members of
21 the Class.

22 93. Accordingly, to the extent the releasees and BofA have entered into any
23 form of an agreement, the agreement should be reformed with reasonable and fair terms
24 that are specific and determinable.

25 94. As a direct and proximate result of BofA's conduct alleged herein,
26 Plaintiffs and members of the Class believed, and reasonably so, that they had no choice
27 to receive their money that was loaded on the BofA CashPay Debit Card than to accept
28 and use the card.

COUNT FOUR
Conversion

1
2
3 95. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

4 96. BofA had and continues to have a duty to maintain and preserve the funds
5 of Plaintiffs and members of the Class, and to prevent their diminishment through their
6 own wrongful acts.

7 97. By placing Plaintiffs' and Class members' funds into BofA inmate debit
8 card accounts without consent, failing to inform them of material terms, making it
9 difficult to understand the fees associated with those accounts, charging unusual fees in
10 connection with the BofA CashPay Debit Card, and creating a scheme that dissuades or
11 disincentivizes use of one's own money, BofA has, without proper authorization,
12 assumed and exercised the right of ownership over these funds, in hostility to the rights
13 of Plaintiffs and Class members without legal justification.

14 98. BofA has wrongfully asserted possession, collected fees, or created a
15 scheme and circumstances that dissuades or disincentivizes use of one's own money
16 from Plaintiffs and members of the Class. BofA has taken specific and readily
17 identifiable funds from their accounts in payment of such fees in order to satisfy them.

18 99. BofA continues to retain these funds unlawfully and without the consent or
19 Plaintiffs or other members of the Class.

20 100. BofA intends to permanently deprive Plaintiffs and the Class of these
21 funds.

22 101. These funds are properly owned and identifiable by Plaintiffs and
23 members of the Class, not BofA. Yet, BofA now claims that it is entitled to the funds'
24 ownership or control, contrary to the rights of the Plaintiffs and members of the Class.

25 102. Plaintiffs and the members of the Class are entitled to immediate
26 possession of these funds. BofA have wrongfully converted these specific and readily
27 identifiable funds.

28 103. As a direct and proximate result of this wrongful conversion, Plaintiffs and

1 members of the Class have suffered and continue to suffer damages. BofA’s wrongful
2 conduct is continuing.

3 104. By reason of the foregoing, Plaintiffs and the members of the Class are
4 entitled to recover from BofA all damages and costs permitted by law, including all
5 amounts that BofA have wrongfully converted.

6 **COUNT FIVE**
7 **Arizona Consumer Fraud Act**

8 105. Plaintiffs repeat the preceding paragraphs as if set forth fully herein.

9 106. The Arizona Consumer Fraud Act, § 44-1521, *et seq.* prohibits the “use or
10 employment . . . of any deception, deceptive or unfair act or practice, fraud, false
11 pretense, false promise, misrepresentation, or concealment, suppression or omission of
12 any material fact with intent that others rely upon such concealment, suppression, or
13 omission.”

14 107. BofA has engaged in practices violative of the Arizona Consumer Fraud
15 Act, as alleged herein. For example, Plaintiffs and members of the Class obtained
16 unwanted and unrequested services in the form of debit card services. BofA engaged in
17 unlawful conduct, made affirmative misrepresentations or omissions, or otherwise
18 violated the Arizona Consumer Fraud Act by, inter alia, knowingly, intentionally,
19 recklessly and negligently misleading Plaintiffs and members of the Class about the
20 terms, fees, and other features or conditions associated with the BofA CashPay Debit
21 Card.

22 108. Further, BofA has violated the Arizona Consumer Fraud Act by forcing
23 releasees into this disadvantageous relationship. If inmates want to access their own
24 money, they are required to use a BofA CashPay Debit Card, and to be subjected to the
25 deceptive or unfair fees, terms, and structure that dissuades or disincentivizes use.

26 109. To the extent applicable, BofA intended that Plaintiffs and other members
27 of the Class would rely on the company’s misrepresentations, or acts of concealment and
28 omissions, including those in connection with the BofA CashPay Debit Card terms or

1 fee schedule. Further, to the extent applicable, reliance can be presumed under the
2 circumstances.

3 110. BofA's conduct proximately caused Plaintiffs and members of the Class to
4 suffer palpable injury, including but not limited to transaction-related fees that would
5 otherwise not have been incurred in whole or in part, and the dissuasion or disincentive
6 to use one's own money due to the structure and nature of the BofA CashPay Debit Card
7 program.

8 111. As redress for BofA's repeated and ongoing violations, Plaintiffs and the
9 Class are entitled to, inter alia, damages and declaratory or injunctive relief.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiffs and the Class demand a jury trial on all claims so
12 triable and judgment as follows:

- 13 1. Declaring BofA's conduct alleged herein to be fraudulent, deceptive,
14 wrongful, unfair, inequitable, and unconscionable;
- 15 2. Restitution owing to Plaintiffs and the Class as a result of the wrongs
16 alleged herein in an amount to be determined at trial;
- 17 3. An accounting and disgorgement of the ill-gotten gains derived by BofA's
18 misconduct, including but not limited to BofA's relinquishment of any
19 funds properly possessed or owed to Plaintiffs and the Class;
- 20 4. Actual damages in an amount according to proof, including double or
21 treble damages to the extent permitted by law or equity;
- 22 5. A temporary and permanent injunction enjoining BofA from engaging in
23 the same wrongful conduct going forward;
- 24 6. Punitive and exemplary damages;
- 25 7. Pre-judgment and post-judgment interest at the maximum rate permitted
26 by applicable law;
- 27 8. Costs and disbursements assessed by Plaintiffs in connection with this
28 action, including reasonable attorneys' fees;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 9. Rescission of the agreement between the parties;
- 10. Reformation of the agreement between the parties; and
- 11. Such other relief as this Court deems just and proper.

DATED this 3rd day of November, 2016.

ANAPOL WEISS

/s Jo Ann Niemi
Jo Ann Niemi
Attorney for Plaintiffs

GOLOMB & HONIK, P.C.
Ruben Honik (*pro hac vice pending*)
David J. Stanoch (*pro hac vice pending*)
1515 Market Street, Suite 1100
Philadelphia, PA 19102
Phone: (215) 985-9177
Fax: (215) 985-4169
Email: rhonik@golombhonik.com
dstanoch@golombhonik.com

EXHIBIT A

Cardholder Frequently Asked Questions

[What is CashPay?>>](#)

[What are the benefits of having CashPay?>>](#)

[How do I sign up for a CashPay card?>>](#)

[How long will it take to receive my card?>>](#)

[Will my name appear on my CashPay card?>>](#)

[Can my CashPay account be a joint ownership account with my spouse?>>](#)

[Can I use my CashPay card immediately?>>](#)

[How can I be sure of the balance in my account?>>](#)

[How do I make a Visa purchase using my CashPay card?>>](#)

[Can I get cash at a POS terminal?>>](#)

[Can I transfer funds from my CashPay account to a checking or savings account?>>](#)

[Do I have to take my entire pay on payday?>>](#)

[Is there a daily maximum I can take from my CashPay account?>>](#)

[When are transaction fees charged?>>](#)

[Who should I call with questions about my CashPay account?>>](#)

[Am I responsible for transactions that I did not make?>>](#)

[How do I dispute a transaction?>>](#)

[What are CashPay Customer Service hours?>>](#)

[Who should I contact concerning the amount of pay or amount credited to my account?>>](#)

[Can I use my local banking center for customer service on this account?>>](#)

[How do I get my name or address changed on this account?>>](#)

[What time of day can I withdraw or make purchases with my pay?>>](#)

[What will I receive in my card package?>>](#)

[How do I cancel this service?>>](#)

What is CashPay?

CashPay is a Visa®-branded card account, which allows the company to offer direct deposit to those employees who do not have a checking account or who do not want their pay, deposited into their existing bank account. The deposit account is FDIC-insured and follows all Regulation E requirements. It enables the company to move toward a totally electronic payroll. The employee has access to their pay 24 hours a day, 7 days a week via purchases everywhere Visa debit cards are accepted, ATMs and PIN-based point-of-sale (POS) terminals.

[Back to list of questions](#) ^

What are the benefits of having CashPay?

The principal benefits to CashPay employees are:

- Saves time – easy access to pay by 9:00am (standard direct deposit availability of funds) and no waiting in lines to cash pay check
- Convenience – use for purchases everywhere Visa debit cards are accepted, pinned point-of-sale terminals and to make withdrawals at virtually any ATM 24 hours a day
- Provides security – no need to walk around with large amounts of cash
- Eliminates check-cashing cost – some pay up to 15% of face value to cash check at check-cashing stores
- Improves control over money – take only what you need, when you need it
- Account information and customer service – available 24 hours a day, 7 days a week

[Back to list of questions](#) ^

How do I sign up for a CashPay card?

Contact your Program Administrator representative.

[Back to list of questions](#) ^

How long will it take to receive my card?

Once you sign up it will take approximately 5-7 business days to receive your card. It will arrive via U.S. postal mail. Please read all information included with your card carefully to ensure proper activation and use of your card.

[Back to list of questions](#) ^

Will my name appear on my CashPay card?

Yes, your name will appear on the CashPay Card.

Note: If you receive an instant issued CashPay Visa Card directly from your employer, your name will not appear. After 3 value loads or 60 days, whichever comes first, a personalized card will be sent to you via U.S. mail.

[Back to list of questions](#) ^

Can my CashPay account be a joint ownership account with my spouse?

No. All CashPay accounts will be issued in your name only, similar to how your paycheck is issued in only your name.

[Back to list of questions](#) ^

Can I use my CashPay card immediately?

Once your card is received you must call into CashPay Customer Service or visit online customer service to activate your card. Once this occurs, you may use your card as soon as the company makes the deposit.

[Back to list of questions](#) ^

How can I be sure of the balance in my account?

You can complete a balance inquiry using automated account information via the toll-free customer service number, at an ATM, or you may also check your balance online at www.bankofamerica.com/cashpay (<http://www.bankofamerica.com/cashpay>). It is recommended you perform a balance inquiry before performing a transaction so you will know how much money is available in your CashPay account.

[Back to list of questions](#) ^

How do I make a Visa purchase using my CashPay card?

You can use your CashPay Visa-branded card everywhere Visa debit cards are accepted. Just press “credit” and you will be asked to sign a receipt for your purchase.

Note: If your company issues a CashPay ATM card, you may use your card at PIN-based Maestro and Interlink point-of-sale locations and at Bank of America, Visa and Cirrus ATMs only. These cards will not be accepted for Visa signature purchases.

[Back to list of questions](#) ^

Can I get cash at a POS terminal?

Many merchants, like grocery and convenience stores and the U.S. post offices, will offer the ability to take up to a certain amount in cash back with a pinned point-of-sale purchase. The amounts could vary by merchant, but usually are \$20, \$50 or \$100.

[Back to list of questions](#) ^

Yes, if you have an originally-issued CashPay Visa card, you may perform an Online Funds Transfer via the CashPay Customer Service website at www.bankofamerica.com/cashpay (http://www.bankofamerica.com/cashpay) (fee will apply) to transfer funds from your CashPay account to a traditional checking or savings account owned by you in the United States. You will need to register a “transfer-to” account prior to performing your first transfer. A minimum value of \$20.00 may be transferred and you may only have up to two different “transfer-to” accounts in your profile. To begin this process you will simply sign on to the CashPay Customer Service website and select the “Transfer funds” link within your online Account Summary page.

[Back to list of questions](#) ↗

Do I have to take my entire pay on payday?

No. You may use your CashPay card everywhere Visa debit cards are accepted, at pinned point-of-sale (POS) terminals and at ATMs for any portion of your available balance as often as you like. You may withdraw up to \$1,000 from an ATM during any 24-hour period, while you may withdraw any amount of your pay at the teller. Safeguard your money and take only what is needed.

[Back to list of questions](#) ↗

Is there a daily maximum I can take from my CashPay account?

Yes, there is a daily maximum ATM withdrawal limit. You may withdraw up to \$1,000 from an ATM during any 24-hour period. This is to help protect you against ATM cash out fraud. ATM owners determine how much their ATM’s will dispense per transaction (up to 40 bills) and you may need to make multiple withdrawals to reach the \$1,000 limit.

[Back to list of questions](#) ↗

When are transaction fees charged?

Transaction fees are charged as they occur.


[Back to list of questions](#) ↗

Who should I call with questions about my CashPay account?

You will be provided the toll-free CashPay Customer Service number when you receive your card. This number is displayed on the back of your card, as well as within your user guide information. You may also obtain account information via online customer service.

[Back to list of questions](#) ↗

The Bank of America “Zero Liability” Policy protects you against fraudulent transactions if your card is lost or stolen (subject to certain conditions). If you lose your card or someone uses your CashPay card without your permission, it is important that you contact us as soon as you can to report your card lost or stolen, report any unauthorized transactions and begin the error resolution or dispute process. The account agreement you receive with your card will provide specific instructions on the dispute process and the time frames that apply to the Bank of America “Zero Liability” Policy. In addition, Visa Purchase Security and Visa Zero Liability programs also protect the consumer for unauthorized card use (Visa-brand cards only).


[Back to list of questions](#) 

How do I dispute a transaction?

All account disputes should be directed to CashPay Customer Service. You should contact us as soon as you can if you think your statement or receipt is wrong, or if you need more information about a transfer on the statement or receipt.

If you are a cardholder that does not receive a monthly account statement, we must hear from you no later than 60 days after the earlier of the date you electronically access your account, if the error or problem could be viewed in your electronic history; or the date we sent the FIRST written history on which the error or problem appeared, but in any event you must report the error or problem no more than 120 days after the transaction allegedly in error was credited or debited to your account. If you are a cardholder that receives a monthly statement, we must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

A customer service representative will provide you with a dispute form to complete and return. A dispute form may also be obtained on the CashPay Customer Service website.

[Back to list of questions](#) 

What are CashPay Customer Service hours?

For your convenience automated account information, dedicated Customer Service Representatives and www.bankofamerica.com/cashpay (<http://www.bankofamerica.com/cashpay>) are available 24 hours day, 7 days a week.

CashPay automated account information options include:

- Card activation
- PIN selection and changes
- Check account balance and recent transactions
- Check date/amount of last deposit
- Opt to speak to a Customer Service Representative

CashPay Customer Service representatives can help you with the above options, plus:

- Change of name and address

- Respond to questions about transactions on your account statement
- Reset your PIN
- Process statement requests
- Investigate fraudulent transactions
- Process lost/stolen/damaged cards
- Request an emergency card replacement
- Request an emergency cash transfer
- Close your account

www.bankofamerica.com/cashpay (<http://www.bankofamerica.com/cashpay>) options include:

- Card activation
- Balance inquiry
- Transaction history
- ATM locator
- PIN change
- [FAQ \(Frequently Asked Questions\)](#)

[Back to list of questions](#) ^

Who should I contact concerning the amount of pay or amount credited to my account?

Contact your company's payroll representative -- Do not call CashPay customer service.

[Back to list of questions](#) ^

Can I use my local banking center for customer service on this account?

No. All CashPay customer service needs must be directed to the toll-free CashPay Customer Service number. Banking centers can assist with standard checking and savings accounts, but not CashPay.

[Back to list of questions](#) ^

How do I get my name or address changed on this account?

All account maintenance activities should be directed to CashPay Customer Service.

What time of day can I withdraw or make purchases with my pay?

Your pay will generally be available at the traditional opening of business on the payday, or approximately 9 am. After this time, you can access your pay by making purchases or withdrawing funds at any ATM 24 hours a day.

[Back to list of questions](#) ^

What will I receive in my card package?

The following items are in your Card package:

- CashPay card
- Safety tips when using the ATM
- User guide information
- Deposit Agreement, Schedule of Fees and Privacy Notice

[Back to list of questions](#) ^

How do I cancel this service?

Notify your employer that you wish to be paid by another option and call customer service to close the account directly.

Note: Only the account owner or Bank of America can close a CashPay account.

[Back to list of questions](#) ^

EXHIBIT B

Bank of America



PREPAID CARD

CASHPAY®

[REDACTED]

GOOD
THRU 4 / 17

DEBIT

CASHPAY CARD

VISA

EXHIBIT C

FACTS**WHAT DOES BANK OF AMERICA, N.A., PREPAID CARD SERVICES GROUP (THE "BANK"), DO WITH YOUR PERSONAL INFORMATION?****Why?**

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and Employment Information
- Account balances and Payment history
- Transaction history and Purchase history

When you are *no longer* our customer, we continue to share your information as described in this notice.

How?

All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons the Bank chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does the Bank share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	No	We don't share
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For nonaffiliates to market to you	No	We don't share

Questions?

Call 800.845.8683 (Money Network customers), 855.333.4896 (English; All other Prepaid Card customers), 855.355.5057 (Spanish; All other Prepaid Card customers) or go to www.bankofamerica.com/prepaidprivacynotice



DPP-045775

Who we are

Who is providing this notice?	Bank of America, N.A., Prepaid Card Services Group
-------------------------------	--

What we do

How does the Bank protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
--	---

How does the Bank collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> • Open an account or provide account information • Give us your contact information or tell us where to send the money • Pay your bills <p>We also collect your personal information from other companies.</p>
--	---

Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> • sharing for affiliates' everyday business purposes — information about your creditworthiness • affiliates from using your information to market to you • sharing for nonaffiliates to market to you <p>State laws and individual companies may give you additional rights to limit sharing.</p>
--------------------------------	--

Definitions

Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • The Bank does not share with our affiliates
------------	--

Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> • The Bank does not share with nonaffiliates so they can market to you
---------------	---

Joint marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> • The Bank doesn't jointly market
-----------------	---

Bank of America U.S. legal entities

Bank of America U.S. legal entities that utilize the names: Bank of America, Banc of America, U.S. Trust, LandSafe, or Merrill Lynch, as well as the following entities: BACAP Alternative Advisors, Inc., BofA Advisors LLC, BofA Distributors, Inc., General Fidelity Life Insurance Company, Managed Account Advisors LLC, NationsCredit Financial Services Corporation
--

Here is your Bank of America® CashPay® Visa card.

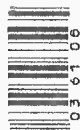


[REDACTED]



Your new Bank of America CashPay® Visa® card is enclosed.

[REDACTED]



CASHPAY CARD

IMPORTANT:

This carrier is your CashPay User Guide.

Please keep for future reference.

About your Bank of America CashPay Visa card:

- Your pay is deposited into your card account by 9 a.m. every payday.
- Your CashPay card gives you convenient access to your pay without carrying around a lot of cash.
- If your card is lost or stolen, immediately call **1.866.213.4074**. For assistance for the hearing impaired, call the TTY line at **1.866.656.5913**.

Activate your card today.

- Call **1.866.213.4074** (TTY line at **1.866.656.5913**) or visit www.bankofamerica.com/cashpay.
- When prompted, create a four-digit Personal Identification Number (PIN) to use at ATMs.
- Your PIN is the access code to your account for all pinned point-of-sale purchases and ATM transactions. Memorize this number and do not share it with anyone.

Sign the back of your card.

How to use your CashPay card:

Visa merchant purchases:

1. Know the balance and present your card.
2. If you are asked to enter your PIN, choose "credit".
3. Sign your receipt, take it and keep track of your balance.

Purchase and/or cashback at the Point of Sale:

1. Know your balance and swipe your card.
2. Choose "debit" and enter your PIN.
3. Select the amount you would like to get in cash if desired. This amount will be added to the amount of your purchase and the total will be deducted from your account.
4. Take your cash, your receipt and keep track of your balance.

At the ATM:

1. Insert your card and enter your PIN.
2. Select "checking" to make a withdrawal or "checking" and "balance inquiry" to check your balance.
3. Enter the amount you want to withdraw.
4. Take your cash, your card and receipt. Using your CashPay card effectively at ATMs outside of the United States is subject to the network availability of each country.

Where to use your CashPay card:

- Make purchases everywhere Visa debit cards are accepted and at pinned point-of-sale merchant locations.
- Get cash back at pinned point-of-sale terminals.
- Access cash at more than 1 million ATMs worldwide.

Important information

Read your CashPay Agreement for important information about your account. When you use your CashPay card or any of the CashPay services, or authorize others to use them, you agree to the terms and conditions in the CashPay Agreement. This carrier is your CashPay User Guide. Keep it and refer to it for customer service and transaction information.

BEFORE YOU USE YOUR CARD:

Read the information on both sides of this carrier and activate your CashPay card.

90561

For your protection

- **You must first activate your card by calling customer service or by using the website.**
- **Zero liability:** If your card is ever lost or stolen, we will reimburse you for any unauthorized card transactions, subject to certain terms and conditions set forth in the CashPay Visa/ATM Deposit Agreement.
- **Fraud monitoring:** We review how and where your card is being used in order to block potential fraud if abnormal patterns are detected.
- **Bank of America Privacy Policy:** We protect your Customer Information from disclosure to third party marketers who want to sell you their own products and services.

Transaction limitations

- **ATM Withdrawals** — You may withdraw up to \$1,000 from an ATM during any 24-hour period.

ATM Safety Tips

Safety tips when you use your Bank of America® CashPay card at ATMs. Be aware of your surroundings at ATMs.

- If you notice anyone or anything suspicious or unsafe when you approach an ATM, use another ATM or return later.
- At enclosed ATMs, close the door completely. Don't open vestibule doors while you are making your transaction.
- When you use a drive-up ATM, be sure passenger windows are closed and your doors are locked.
- If you must use an ATM at night, consider taking someone with you.
- The activity around Bank of America ATMs may be monitored/recorded by surveillance cameras.*

Protect your card by keeping it in a safe place. If your CashPay card is lost or stolen, simply contact Bank of America Customer service immediately and you're safeguarded against unauthorized card transactions.

Protect your privacy. Do not share your PIN with anyone or write it down, especially on your card. While at an ATM, enter your PIN discreetly at the keypad. After completing your transaction, be sure to put away your card, cash and transaction record before exiting the ATM area. Use your transaction record for easy record keeping.

Request emergency assistance. If you need emergency assistance, call 911 from the nearest telephone. Report all crimes immediately to law enforcement and your local banking center. If you have a complaint about the security of a Bank of America ATM, call Bank of America Corporate Security at 1.800.222.7511.

*Activity around Bank of America ATMs is monitored/recorded in New York

CashPay Customer Service

If you need help at any time, Bank of America is ready, around the clock.

Automated account information options: 1.866.213.4074

- Check your balance
- Find the date and amount of your last deposit
- Change your PIN
- Check recent transactions

Customer assistance: 1.866.213.4074

TTY assistance for the hearing impaired: 1.866.656.5913

Outside the U.S. --- call collect: 423.262.1650

With live customer service, you can:

- Activate your card
- Report a lost, stolen or damaged card
- Change your name or address
- Ask questions about your statement
- Get an emergency cash transfer via Western Union. Fees may apply for this service.

Secure online assistance:

www.bankofamerica.com/cashpay

- Balance inquiry
- Transaction history
- Dispute form/affidavit
- ATM locator
- PIN change
- Frequently asked questions

Special transactions:

Gas Stations: Paying at the pump may cause a hold of up to \$100; consider paying inside and signing the receipt.

Restaurants: Restaurants may verify you have enough in your account for the dining bill. Make sure you have enough funds to cover any added tip.

Hotels: The hotel may hold the amount of your estimated bill, making that amount unavailable for other purchases. When you check out, the hold may take days to be removed.

Auto Rentals: You may use your CashPay card for final payment for a rental car, but a credit card may be necessary to reserve a rental car. **Returning a Purchase**

Returning a Purchase: Store return policies vary. You may receive a credit to your account or a store credit. A credit to your account may take a week to process before funds are available for use.

Paying Bills: Pay bills automatically, directly from your CashPay account.

Don't forget to activate your CashPay card before use:

1.866.213.4074 or go online to: www.bankofamerica.com/cashpay

Bank of America, N.A. Member FDIC. ©2015 Bank of America Corporation.

ACTIVATE YOUR CARD

www.bankofamerica.com/cashpay
1.866.213.4074 (TTY 1.866.656.5913)
Remove sticker after activation
This card cannot be used until activated.



EXHIBIT D



**Arizona Department
of Corrections
CashPay[®] Visa[®]/ATM
Deposit Agreement**

Effective Date January 2016

CashPay Visa/ATM Deposit Agreement

By requesting and using or allowing another to use your CashPay Visa or ATM Card, you agree to be bound by the terms and conditions of this CashPay Visa/ATM Deposit Agreement ("this Agreement"). This Agreement discloses the terms and conditions of your CashPay Account and you are not entitled to any rights or benefits given to other Bank of America account customers or debit card holders at Bank of America unless such rights or benefits are contained in this Agreement. **Please read this Agreement carefully and it for future reference.** In this Agreement: "Account" means the deposit account opened by your Card; "Card" or "CashPay Card" means the CashPay Visa or CashPay ATM Card issued by us to enable you to receive (i) payroll from your employer ("Employer"), or other benefits, student financial aid or other funds from a government agency or institution ("Agency") on behalf of the Employer or Agency; "you" and "your" mean the customer to whom we issue a Card or his or her legal representative; and "we", "us", and "Bank of America, N.A." mean Bank of America, N.A.

General Information.

General Account Information. Your Card is not a gift card. Your Account is funded by your Employer or Agency with deductions for transactions and fees as more fully described in the Agreement. No interest is paid on the balance for any period of time. Your Account is insured by the Federal Deposit Insurance Corporation. Coverage may be limited if you have another deposit account with us.

Individual Accounts Only. Each Account is owned by the individual who receives payments from the Employer or Agency. No joint ownership of an Account is permitted. You may have only one Card for each Account.

Accounts are Not Transferable and Assignments are Subject to Our Approval. Your Account is not transferable. We reserve the right not to acknowledge or accept attempted transfers or assignments of, or purported security interests in, your Account.

Business Days. For purposes of this Agreement, our business days are Monday through

Authorized Use of Card. If you authorize someone else to use your Card or PIN, you will be responsible for any transactions initiated by such person(s) with your Card or PIN. Transactions will be considered unauthorized only after you notify us that the person is no longer authorized to use your Card.

Negative Balances. The amount available on your Card will be reduced by the amount of your transactions plus applicable fees. Any transaction that will create a negative balance in your Account is not permitted. However, if a negative balance in your Account does occur, you agree (a) that we may take the amount of the negative balance from subsequent additions to your Account or (b) to pay us on demand the amount of the negative balance.

6. Bank Fees.
Schedule of Bank Fees. Bank fees associated with the Card program are listed in the Fee Schedule. These fees are imposed by us and retained by us. In addition, when you make a withdrawal at certain ATMs or POS terminals, the owner may charge you a "convenience fee" or "surcharge fee" for using that device. If the owner does charge such a fee, you will be notified of the amount of that fee before you complete the transaction and you may cancel the transaction before the fee is assessed.
Payment of Fees by You. You agree to pay all fees listed in the Fee Schedule. Fees will be taken from the balance of your Account as they apply. Neither your Employer nor your Agency may charge you any fees in connection with your Card or your Account.
Payment of Fees by Employer or Agency. Some Employers or Agencies will pay some Cardholder fees. Contact your Employer or Agency to determine if this applies to you.

7. Documentation of Transactions.
Transaction Documentation. You usually can get a receipt at the time you make a transaction at an ATM or POS terminal, except that you may not get a receipt from certain ATM or POS terminals if the amount of the transaction is \$15 or less.
Preauthorized Credits. You can call us at 1.866.213.4074, 1.866.656.5913 TTY or 423.262.1650 (Collect, when calling outside the US), to find out whether or not a direct deposit, such as for your payroll, has been made. See the Fee Schedule for a possible fee for a Customer Service Inquiry.

Deposit Notifications from Employer or Agency. Your Employer or Agency will tell you each time it sends us funds to be added to your Account. Contact your Employer or Agency with any questions about the amount of a deposit.
Delivery of Statements and Notices. We will deliver any notices under this Agreement to the last address we have on our records for you. If you request to receive your monthly Account statement by mail, we will deliver it to the last address we have on our records for you. **You agree to notify the CashPay Customer Service Center at the address below promptly, in writing, of any change of address.** If you receive your monthly Account statement by mail, you may request that rather than receiving it by mail, you can review it electronically. If you wish to do so, you may make this request online at www.bankofamerica.com/cashpay or you may contact us at the CashPay Customer Service Center at the address or phone number below.

CARDHOLDERS WHO DO NOT RECEIVE MONTHLY ACCOUNT STATEMENTS BY MAIL

Access to Your Account Information. You may obtain information about the amount of money you have remaining in your Account by calling 1.866.213.4074, 1.866.656.5913 TTY, or 423.262.1650 (Collect, when calling outside the U.S.). This information, along with a 60-day history of Account transactions, is also available online at www.bankofamerica.com/cashpay.

You also have the right to obtain a 60-day written history of Account transactions by calling 1.866.213.4074, 1.866.656.5913 TTY, or 423.262.1650 (Collect, when calling outside the U.S.), or writing to us at: Bank of America CashPay Cardholder Services, PO Box 8488, Gray, Tennessee 37615-8488.
Prompt Review of Account Information. You agree to promptly review your Account Information and to notify the CashPay Customer Service Center at the address or phone number above at once if any Account information shows transactions that you did not make or authorize. Section 9 below has more specific information about disputing transactions, fees, or errors.

Monthly Card Account Statements. We will provide you with an Account statement monthly for every month in which your Account is open. The statement will include information about the transactions you made, your deposits, fees and adjustments to your Account.
Prompt Review of Statements. You agree to promptly review your monthly Account statements and to notify the CashPay Customer Service Center at the address or phone number above at once if any statement shows transactions that you did not make or authorize. Section 9 below has more specific information about disputing transactions, fees, or errors shown on your monthly Account statement.

8. Claims by Third Parties Against Your Account. If a third party makes a claim against funds in your Account, or if we have reason to believe there is or may be a dispute over matters such as the ownership of your Account or the authority to withdraw funds, we may, in our sole discretion (a) continue to rely on current enrollment forms or other Account documents, (b) honor the competing claim upon receipt of evidence we deem satisfactory to justify such action, (c) freeze all or part of the funds until the dispute is resolved to our satisfaction, or (d) pay the funds into an appropriate court of law for resolution.
Liens and Attachments. Following receipt by us of any notice of lien, process in attachment, garnishment or other proceeding relating to you or your Account, we are authorized, without notice to you, unless otherwise required by law, to withhold transfer of so much of the balance of your Account as may be the subject of such notice or process, and to pay such amount to the court or creditor, in accordance with applicable state or federal law, including applicable federal or state unemployment insurance benefits laws, without responsibility to you for such withholding or payment or for refusal to honor transfers made by you. We may charge your Account the legal Process Fee stated in the Fee Schedule for each legal order or process that directs us to freeze, attach or withhold funds or other property from your Account.

CARDHOLDERS WHO RECEIVE MONTHLY ACCOUNT STATEMENTS BY MAIL

9. Electronic Funds Transfer Rights
a. Bank of America's "Zero Liability" Policy for Unauthorized Transactions. Federal law (described in the Regulation E Liability Disclosure in paragraph (b) below) may limit your liability for unauthorized transactions on your Account, but you may still be liable in some circumstances. Under the Bank of America "zero liability" policy, you may incur no liability for unauthorized use of your Card up to the amount of the unauthorized transaction, provided you notify us within a reasonable time of the loss or theft of your Card, Card number or PIN or its unauthorized use, subject to the following terms and conditions.

Excluded transactions. Our "zero liability" policy does not apply to any unauthorized electronic fund transfer on an account which does not involve use of your Card or Card number.
"Unauthorized" defined. A transaction is considered "unauthorized" if it is initiated by someone other than you (the cardholder) without your actual or apparent authority, and you receive no benefit from the transaction. A transaction is not considered "unauthorized" if (1) you furnish your Card, Card number or other identifying information to another person and expressly or implicitly give that individual authority to perform one or more transactions, and the person then exceeds that authority; or (2) for any other reason we conclude that the facts and circumstances do not reasonably support a claim of unauthorized use.
"Reasonable" time defined. Reasonable time will be determined in our sole discretion based on the circumstances but will not be less than the time frames specified under the Electronic Fund Transfer Act or Regulation E (see the Regulation E Liability Disclosure in paragraph (b) below).

Other considerations. We may deny you the benefit of this policy (1) if we ask you for a written statement, affidavit or other information in support of the claim, and you do not provide it within the time requested or within a reasonable time if no date is stated, or (2) under any other unusual circumstances where we believe denial is appropriate.
Limitation of our Liability. Our liability under this policy is limited to reimbursing you for the amount of your loss up to the face amount of any unauthorized card transaction covered by this policy. We are not liable for any claims of special, indirect or consequential damages.
Your rights under Regulation E. If your claim does not meet the prescribed conditions for reimbursement under the above policy, you still retain any consumer rights you may have under Regulation E, as described in paragraph (b) below, and we will automatically re-examine the claim in accordance with those rights. Those rights do not apply to business cards.
b. Regulation E Liability Disclosure: Your Liability in Case of Loss, Theft, or Unauthorized Transactions.

Contact the CashPay Customer Service Center Promptly. Please contact the CashPay Customer Service Center at the numbers listed below AT ONCE if you believe your Card has been lost or stolen or if you believe that someone may use or has used your PIN assigned to your Card without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your Account, if you tell us within two business days after you learn of the loss or theft, you can lose no more than \$50 for an unauthorized transaction or a series of related unauthorized transfers should someone use your Card or PIN.
If you do NOT tell us within two business days after you learn of the loss or theft of your Card or PIN and we can prove we could have stopped someone from using your Card or PIN without your permission if you had told us, you could lose as much as \$500.
Also, if your monthly Account statement or your Account history shows transfers that you did not make, including those made by Card, card number, code or other means, tell us at once. If you receive a monthly Account statement and you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had contacted us on time.

If you do not receive a monthly Account statement and do not tell us within 60 days after the earlier of the date you electronically access your Account if the error could be viewed in your electronic history or the date we sent the FIRST written history on which the error appeared (but in any event within 120 days after the transaction allegedly in error was credited or debited to your Account), you may not get back any money you lost after the applicable 60 or 120 day period if we can prove that we could have stopped someone from taking the money if you had contacted us on time.

10. Regulation E Liability Disclosure: Your Liability in Case of Loss, Theft, or Unauthorized Transactions.

Contact the CashPay Customer Service Center Promptly. Please contact the CashPay Customer Service Center at the numbers listed below AT ONCE if you believe your Card has been lost or stolen or if you believe that someone may use or has used your PIN assigned to your Card without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your Account, if you tell us within two business days after you learn of the loss or theft, you can lose no more than \$50 for an unauthorized transaction or a series of related unauthorized transfers should someone use your Card or PIN.
If you do NOT tell us within two business days after you learn of the loss or theft of your Card or PIN and we can prove we could have stopped someone from using your Card or PIN without your permission if you had told us, you could lose as much as \$500.
Also, if your monthly Account statement or your Account history shows transfers that you did not make, including those made by Card, card number, code or other means, tell us at once. If you receive a monthly Account statement and you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had contacted us on time.

If you do not receive a monthly Account statement and do not tell us within 60 days after the earlier of the date you electronically access your Account if the error could be viewed in your electronic history or the date we sent the FIRST written history on which the error appeared (but in any event within 120 days after the transaction allegedly in error was credited or debited to your Account), you may not get back any money you lost after the applicable 60 or 120 day period if we can prove that we could have stopped someone from taking the money if you had contacted us on time.

11. Regulation E Liability Disclosure: Your Liability in Case of Loss, Theft, or Unauthorized Transactions.

Contact the CashPay Customer Service Center Promptly. Please contact the CashPay Customer Service Center at the numbers listed below AT ONCE if you believe your Card has been lost or stolen or if you believe that someone may use or has used your PIN assigned to your Card without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your Account, if you tell us within two business days after you learn of the loss or theft, you can lose no more than \$50 for an unauthorized transaction or a series of related unauthorized transfers should someone use your Card or PIN.
If you do NOT tell us within two business days after you learn of the loss or theft of your Card or PIN and we can prove we could have stopped someone from using your Card or PIN without your permission if you had told us, you could lose as much as \$500.
Also, if your monthly Account statement or your Account history shows transfers that you did not make, including those made by Card, card number, code or other means, tell us at once. If you receive a monthly Account statement and you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had contacted us on time.

If a good reason (such as a long trip or hospital stay) keeps you from notifying the CashPay Customer Service Center, we will extend the time periods.

NOTE: These liability rules are established by Regulation E. Our "zero liability" policy, as described in paragraph (a) above, regarding unauthorized transactions on personal accounts that involve the use of a personal Card, may give you more protection, provided you report the transactions promptly. In Massachusetts, the two day and 60 day time limits for reporting unauthorized transactions do not apply and the \$500 limit does not apply. You should also note that when you give someone your Card or PIN, you are authorizing that person to use your Card and you are responsible for all transactions that person performs with your Card or PIN. These Transactions are authorized transactions. Transactions are considered unauthorized only after you notify us that the person is no longer authorized. Remember, do not write your PIN on your Card or carry your PIN with you. This reduces the possibility of someone using your Card without your permission if it is lost or stolen.

Telephone Number and Address for Notice of Unauthorized Transaction, Lost or Stolen Card or PIN, or if You Believe that Someone Else May Use Your Card or PIN.

If you believe that your Card or PIN is lost or stolen or that someone may use or has used your Card or PIN without your permission:

Telephone the CashPay Customer Service Center at: 1.866.213.4074, 1.866.656.5913 TTY or 423.262.1650 (Collect, when calling outside the U.S.).

Or write to:

Bank of America CashPay Cardholder Services

P.O. Box 8488

Gray, Tennessee 37615-8488.

You may contact the CashPay Customer Service Center 24 hours per day/365 days per year.

c. Our Liability.

Our Failure to Complete a Transaction. If we do not complete a transfer to or from your Account on time or in the correct amount according to this Agreement, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (i) If, through no fault of ours, you do not have enough money in your Account to complete the transaction;
- (ii) If the ATM where you are making the transaction does not have enough cash;
- (iii) If the ATM or POS terminal was not working properly and you knew about the breakdown when you started the transaction;
- (iv) If circumstances beyond our control (such as power outages, equipment failures, fire or flood) prevent the transaction, despite reasonable precautions that we have taken.
- (v) If your Card or PIN has been reported to be, or suspected of being, lost or stolen, and we have taken action to prevent transactions with your Card or PIN.

d. Error Resolution.

In Case of Errors or Questions About Your Transactions:

**CARDHOLDERS WHO DO NOT RECEIVE MONTHLY
ACCOUNT STATEMENTS BY MAIL**

Telephone the CashPay Customer Service Center at: 1.866.213.4074, 1.866.656.5913 TTY, or 423.262.1650 (Collect, when calling outside the U.S.).

Or write to:

Bank of America CashPay Cardholder Services

P.O. Box 8488

Gray, Tennessee 37615-8488

Call or write as soon as you can if you think an error has occurred in your Account.

Arizona Department of Corrections
CashPay® Visa Schedule of Bank Fees
 Bank Fees for Arizona Department of Corrections
 Prepaid Debit Card transactions will be charged to
 your Account as they occur on a daily basis.

SERVICES WITH NO FEES	
Purchase Transactions	
Purchase at Visa Merchants (signed, using PIN, online, phone, or mail purchases)	No Fee
ATM Transactions *	
ATM Balance Inquiries or Declined Transactions (all ATMs)**	No Fee
Other Services	
Online or Automated Customer Service Inquiry	No fee
Online Funds Transfer	No fee

SERVICES WITH FEES	
ATM Transaction Fees *	
ATM Withdrawal (all ATMs in the U.S.)	\$1.50 per transaction
ATM Withdrawal (all ATMs outside the U.S.)	\$3.50 per transaction
Other Service Fees	
Live Agent Customer Service Inquiry	\$2.50 per call
PIN Change	No Fee for first change, \$0.50 thereafter
Teller Cash Access (Available at financial institutions that accept Visa cards) (Limited to available balance only)	\$15.00 per transaction
Card Replacement Domestic	\$15.00 per replacement
Card Replacement - Express Delivery (additional charge)	\$15.00 per request
Card Replacement (outside the U.S.)	Quote provided at time of request, as price varies by country
International Transaction	3% of U.S. dollar amount of transaction
Check Issuance at Account Closure	\$5.00 per request

... however, we may make the change
 agree with the change, you may close
 Account or keep it open, you accept

... on your Card and you separate from
 funds on your Account. We will close
 employer, and if you have not spent the
 may contact the CashPay Customer
 balance less the Check Issuance Fee.
 may close or suspend your Account
 transactions using your Account for a
 remains our property. We may cancel
 Account has been closed, you agree
 account, we may, at our option, apply
 benefit. If you have not spent the
 may contact the CashPay Customer
 ng balance less the Check Issuance

... close your Account, all transactions
 Account will be closed to further use.
 d to reduce the balance to zero before
 the CashPay Customer Service Center
 our Account, less the Check Issuance
 understand that you are responsible
 closure to the same extent as provided
 o destroy your Card after cancellation.

... and remitted as unclaimed property
 period of time defined by that state's law.
 no further liability to you for the funds
 cy to reclaim your funds.

... regulations of the United States and,
 itions of the State of North Carolina. A
 valid or unenforceable will not affect

... may communicate certain information
 need to be made will be based on the
 ng but not limited to this Agreement

SERVICES WITH FEES	
ATM Transaction Fees *	
ATM Withdrawal (all ATMs in the U.S.)	\$1.50 per transaction
ATM Withdrawal (all ATMs outside the U.S.)	\$3.50 per transaction
Other Service Fees	
Live Agent Customer Service Inquiry	\$2.50 per call
PIN Change	No Fee for first change, \$0.50 thereafter
Teller Cash Access (Available at financial institutions that accept Visa cards) (Limited to available balance only)	\$15.00 per transaction
Card Replacement Domestic	\$15.00 per replacement
Card Replacement - Express Delivery (additional charge)	\$15.00 per request
Card Replacement (outside the U.S.)	Quote provided at time of request, as price varies by country
International Transaction	3% of U.S. dollar amount of transaction
Check Issuance at Account Closure	\$5.00 per request

*ATM owners may impose an additional "convenience fee" or "surcharge fee" for certain ATM transactions (a sign should be posted at the ATM to indicate additional fees); however, you will not be charged any additional convenience or surcharge fees at a Bank of America ATM. A Bank of America ATM means an ATM that prominently displays the Bank of America name and logo.

**Balance inquiries may not be available at all ATMs outside the U.S.

CashPay® is issued by Bank of America, N.A. Member FDIC.
©2016 Bank of America Corporation



**Arizona Departments
of Corrections
CashPay® Visa®/ATM
Deposit Agreement**

Effective Date January 2016

CashPay Visa/ATM Deposit Agreement

By requesting and using or allowing another to use your CashPay Visa or ATM Card, you agree to be bound by the terms and conditions of this CashPay Visa/ATM Deposit Agreement ("this Agreement"). This Agreement discloses the terms and conditions of your CashPay Account, and you are not entitled to any rights or benefits given to other deposit account customers or debit card holders at Bank of America unless such rights or benefits are contained in this Agreement. **Please read this Agreement carefully and keep it for future reference.** In this Agreement, "Account" means the deposit account accessed by your Card, "Card" or "CashPay Card" means the CashPay Visa or CashPay ATM Card issued by us to enable you to receive (i) payroll from your employer ("Employer"), or (ii) benefits, student financial aid or other funds from a government, agency or institution of higher learning ("Agency") on behalf of the Employer or Agency; you and "your" mean the customer to whom we issue a Card or his or her legal representative and "we," "us," and "our" mean Bank of America, N.A.

1. General Information.

General Account Information. Your Card is not a gift card. Your Account is funded by your Employer or Agency with deductions for transactions and fees as more fully described below. No interest is paid on the balance for any period of time. Your Account is insured by the Federal Deposit Insurance Corporation. Coverage may be limited if you have another deposit account with us.

Individual Accounts Only. Each Account is owned by the individual who receives payments from the Employer or Agency. No joint ownership of an Account is permitted. You may have only one Card for each Account.

Accounts are Not Transferable and Assignments are Subject to Our Approval. Your Account is not transferable. We reserve the right not to acknowledge or accept attempted pledges or assignments of or purported security interests in your Account.

Business Days. For purposes of this Agreement, our business days are Monday through Friday, excluding bank holidays.



DPP-045980

We must allow you to report an error until 60 days after the earlier of the date you electronically access your Account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared, but in any event, you must report the error no more than 120 days after the transaction allegedly in error was credited or debited to your Account. You may request a written history of your transactions at any time by calling us at 1.866.213.4074, 1.866.656.5913 TTY, or 423.262.1650 (Collect, when calling outside the U.S.), or writing us at Bank of America CashPay Cardholder Services, P.O. Box 8488, Gray, Tennessee 37615-8488.

You will need to tell us:

- (a) Your name and Card account number.
- (b) Why you believe there is an error, and the dollar amount involved.
- (c) Approximately when the error took place.

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

For errors involving new accounts, POS, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your Account for the amount you think is in error. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation. If you need more information about our error-resolution procedures, call us at 1.866.213.4074, 1.866.656.5913 TTY, or 423.262.1650 (Collect, when calling outside the U.S.), or write to us at Bank of America CashPay Cardholder Services, P.O. Box 8488, Gray, Tennessee 37615-8488.

CARDHOLDERS WHO RECEIVE MONTHLY

ACCOUNT STATEMENTS BY MAIL

Telephone the CashPay Customer Service Center at: 1.866.213.4074, 1.866.656.5913 TTY, or 423.262.1650 (Collect, when calling outside the U.S.)

Or write to:

Bank of America CashPay Cardholder Services

P.O. Box 8488

Gray, Tennessee 37615-8488

Call or write as soon as you can if you think your monthly Account statement or receipt is wrong or if you need more information about a transaction listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (a) Tell us your name and Card account number.
 - (b) Describe the error or the transaction you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
 - (c) Tell us the dollar amount of the suspected error.
- If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

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

For errors involving new accounts, POS, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your Account for the amount you think is in error. We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of documents that were used in the investigation.

10. Preauthorized Transactions

Right to Stop Payment and Procedure for Doing So. If you have told us in advance to make regular payments out of your Account, you can stop any of these payments. Here's how: Call us at 1.866.213.4074, 1.866.656.5913 TTY, or 423.262.1650 (Collect, when calling outside the U.S.), or write us at: Bank of America CashPay Cardholder Services, P.O. Box 8488, Gray, Tennessee 37615-8488. In time for us to receive your request, three business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.

Notice of Varying Amounts. If these regular payments may vary in amount, the person you are going to pay will tell you, 10 days before each payment, when it will be made and how much it will be.

Our Liability for Failure to Stop Payment of Preauthorized Transfers. If you order us to stop one of these payments three business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

11. Privacy

As part of establishing your Account, you will receive with your Card a copy of the Prepaid Card Privacy Notice which generally addresses our policy for handling and disclosing information for your Card. You may view our Privacy Notice at www.bankofamerica.com/prepaidprivacy. With respect to any information we collect from you as a result of your Card, we will only share such information related to your Account, from time to time, subject to any applicable financial privacy laws or other laws or regulations, (a) where it is necessary for completing transactions; (b) in response to any subpoena, summons, court or administrative order, or other legal process which we believe requires our compliance; (c) in connection with collection of indebtedness or to report losses incurred by us; (d) in compliance with any agreement between us and a professional, regulatory or disciplinary body; (e) in connection with potential sales of businesses; and (f) to service providers who help us meet your needs by assisting us in providing the services under this Agreement.

12. Recording and Monitoring Telephone Calls

We may record or monitor telephone calls between you and us. We need not remind you of our recording or monitoring before each call unless required to do so by law.

13. Amendments/Termination

Amendments. We may, at any time, change the terms and conditions in this Agreement, including the amount of any fee. We may add new terms and conditions and we may delete or amend existing terms and conditions. We generally send you advance notice of

an adverse change. If a change is not adverse to you, however, we may make the change at any time without advance notice. If you do not agree with the change, you may close your Account. However, if you continue to use your Account or keep it open, you accept and agree to the change.

Separation from Employer. If you receive payroll on your Card and you separate from your Employer, you may not receive any additional funds on your Account. We will close your Account after your separation from your Employer, and if you have not spent the remaining balance prior to account closure, you may contact the CashPay Customer Service Center to request a check for the remaining balance less the Check Issuance Fee.

Our Closure or Suspension of Your Account. We may close or suspend your Account at any time, including if you have not made any transactions using your Account for a period of time no less than 180 days. Your Card remains our property. We may cancel your right to use your Card at any time. Once your Account has been closed, you agree to discontinue using your Card. If we close your Account, we may, at our option, apply the remaining balance to a new account for your benefit. If you have not spent the remaining balance prior to account closure, you may contact the CashPay Customer Service Center to request a check for the remaining balance less the Check Issuance Fee.

Your Closure of Your Account. If, at the time you close your Account, all transactions have cleared and there is no remaining balance, your Account will be closed to further use. If there is a remaining balance, you may use your Card to reduce the balance to zero before closing your Account. Alternatively, you can contact the CashPay Customer Service Center and request a check for the remaining balance of your Account, less the Check Issuance Fee, or request an Emergency Cash Transfer. You understand that you are responsible for negative balances that occur after your notice of closure to the same extent as provided in this Agreement for an open Account. You agree to destroy your Card after cancellation.

14. Unclaimed Property

Any remaining unclaimed balance will be reported and remitted as unclaimed property to the appropriate state as required by state law after a period of time defined by that state's law. After we turn the funds over to the state, we have no further liability to you for the funds and you must apply to the appropriate state agency to reclaim your funds.

15. Governing Law/Severability

This Agreement will be governed by the laws and regulations of the United States and, to the extent not so covered, by the laws and regulations of the State of North Carolina. A determination that any part of this Agreement is invalid or unenforceable will not affect the remainder of this Agreement.

16. English Document Controlling

As a service we provide to you at your request, we may communicate certain information to you in Spanish. Any legal clarifications which may need to be made will be based on the use and application of the English versions, including but not limited to this Agreement and the Fee Schedule.

ATM	or m
Trans	
Online	
Service	
Online	

EXHIBIT E



(413) 527-0845
69 Garfield Ave Floor 1,
Easthampton, Mass. 01027
www.prisonpolicy.org
www.prisonersofthecensus.org

March 18, 2015

Richard Cordray, Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2014-0031
RIN 3170-AA22
Proposed Amendments to Regulation E: Curb exploitation of people
released from custody

Dear Mr. Cordray:

Pursuant to the rulemaking notice issued in the above-referenced proceeding (the “Notice”),¹ Prison Policy Initiative (“PPI”) respectfully submits the following comments concerning the need for clarification of Regulation E’s applicability to correctional facility “release cards.” As discussed in more detail below, release cards are open loop prepaid cards (which may or may not be reloadable) that are branded as debit cards by a major payment-card network (usually MasterCard). Release cards are issued on behalf of jails or prisons that owe money to people who are released from the facility. While release cards are a relatively new phenomenon, they are being adapted by an increasing number of agencies and often carry complicated and exorbitant fees.

People being released from correctional facilities are forced to use prepaid cards that come with oppressive terms and conditions. Accordingly, PPI believes that the Bureau should take immediate steps to address this issue by clarifying that release cards are deemed to be government benefit payments for purposes of proposed section 1005.15 of Regulation E. In addition, because of the broader problems with financial services inside correctional facilities, the Bureau should conduct an additional rulemaking proceeding to promulgate specific regulations applicable to correctional facility trust accounts.

I. Introduction and Background

With a total incarcerated population of more than 2.4 million people,² the United States sees millions of people released from prison or jail each year.

¹ 79 Fed. Reg. 77102, *et seq.* (Dec. 23, 2014).

² Peter Wagner & Leah Sakala, “[Mass Incarceration: The Whole Pie](#)” (Mar. 12, 2014).

For example, 623,337 people were released from prison in 2013,³ and the year before nearly 12 million people were released from local jails.⁴

When people leave a correctional facility, they are often owed money by the correctional authority. The nature of these debts can vary, but as a general matter, a person is usually entitled to a refund of his or her “inmate trust account” balance.⁵ Money in a trust account may consist of funds that a person had in his or her possession when originally taken into custody,⁶ funds that a person earns while working inside a prison or jail,⁷ or money sent by friends and relatives.

A. Release Cards Are Becoming More Prevalent

In 2014, the Association of State Correctional Administrators conducted a survey of thirty-three state corrections agencies, which asked about the agencies’ use of release cards.⁸ According to the survey, seventeen responding agencies (52%) use prepaid debit cards as a method of refunding trust account balances.⁹ Of those agencies, most report that fees are imposed on cardholders,¹⁰ and nine report that the agency implemented the use of release cards within the last three years.¹¹

Use of release cards is also growing in local jails,¹² where population turnover is higher than in prisons. Although the prevalence of release-card use by jails

³ U.S. Dept. of Justice, Bureau of Justice Statistics, *Prisoners in 2013* (NCJ No. 247282) (rev. Sept. 30, 2014), at 10.

⁴ Wagner & Sakala, *supra* note 2.

⁵ See e.g., N.Y. Corr. Law § 500-c(7) (sheriff’s duty to maintain inmate trust accounts); 37 Tex. Admin. Code § 269.1(2)(L) (jail operator must keep a record of all receipts and expenditures of inmate accounts).

⁶ See e.g., Cal. Gov. Code § 26640 (sheriff’s duty to account for “all money and valuables found on each prisoner when delivered at the county jail”).

⁷ Isaac Colunga, *An Alternative Look at the Takings Clause and Inmate Trust Accounts*, 39 U. Tol. L. Rev. 791, 792 (2008) (“[I]n furtherance of security within U.S. prisons, many states prohibit inmates from possessing money while incarcerated. Yet, at the same time, states compensate prisoners for labor performed while incarcerated and deposit those payments into interest-bearing ‘trust’ or ‘spend’ accounts, which are established and maintained for each prisoner.” (footnotes omitted)).

⁸ Detailed responses to the ASCA Survey are available at <http://www.webcitation.org/6WSoQ5hDf> (the “Detailed Response Analysis”); a summary report is available at <http://www.webcitation.org/6WSoalJpb> (the “Summary Report”).

⁹ Summary Report, *supra* note 8, at 1.

¹⁰ *Id.* Although only eleven agencies responded “yes” to the question asking whether there were fees imposed in connection with release cards, of those states responding “no,” three (Arkansas, Florida, and Michigan) provided narrative responses indicating that fees are actually imposed, but for various reasons the respondents did not answer in the affirmative. Of the four states responding “no” without a narrative explanation, two (Indiana and Virginia) report using Jpay as a vendor. As discussed *infra*, note 19, Jpay does not make its fee schedules publicly available; however, PPI has no evidence of any Jpay release cards that are *not* subject to substantial fees. Thus, it is highly likely that fees are imposed on the release cards issued in all (or nearly all) of the seventeen systems that utilize cards.

¹¹ *Id.* at 2.

¹² See generally Amirah Al Idrus, “[Debit cards slam released prisoners with sky-high fees, few protections](#),” Center for Public Integrity (Sept. 30, 2014).

is not centrally tracked, at least three lawsuits have been filed challenging the practice.¹³

Some correctional agencies manage release-card programs in-house, while others outsource management to third party contractors.¹⁴ However, even agencies that manage programs in-house must contract with another entity to issue the cards and process transactions. In fact, a review of publicly available contracts reveals a variety of firms involved with issuance and management of release cards. This confusing array of entities (generally referred to here as “vendors”) creates an environment ripe for consumer exploitation, by allowing various contractors and subcontractors to evade responsibility for error resolution and other customer service through diffusion of accountability.¹⁵

B. Release Card Fees Are Complex and Costly

Vendors frequently charge predatory fees that do not appear to be based on actual costs. The chart on the following page summarizes some release-card fees found in publicly-available sources.

¹³ *Adams v. Craddock*, U.S. Dist. Ct., W.D. Ark. Case No. 13-cv-5074-jlh (Benton County Arkansas); *Mickelson v. County of Ramsey*, U.S. Dist. Ct., D. Minn. Case No. 13-CV-2911 (SRN/FLN) (Ramsey County, Minnesota); *Regan v. Stored Value Cards*, U.S. Dist. Ct. N.D. Ga. Case No. 14-cv-1187-AT (Rockdale County, Georgia).

¹⁴ Summary Report, *supra* note 8, at 3.

¹⁵ For example, the Ramsey County Contract and Benton County Contract (*see infra*, note 16) used by Keefe Commissary Networks (“Keefe”), both state that release cards “will be issued by First California Bank . . . and transactions [will be] processed by a third-party company called Outpay Systems, L.L.C.” (§ 2). The same contract states that Keefe “shall provide technical support and coordination . . . for processing inmate trust fund balances to Client inmates at the time of release.” *Id.* While the identity of the issuer (First California Bank) seems somewhat clear, it is not apparent what the respective roles of Keefe and Outpay Systems, L.L.C (“Outpay”) are. Although it appears that Outpay acts as a “third party processor,” it is not clear whether Keefe itself is a third party processor, an “independent sales organization,” or some other type of service provider (as such terms are defined in [MasterCard Rule § 7.1](#)). Of particular concern is the fact that the sole point of contact with both correctional facilities and cardholders appears to be the entity that markets the program (in this instance, Keefe), even though MasterCard rules *prohibit* that type of third-party service provider from being a party to the actual cardholder agreement. MasterCard Rule § 7.7.2. Thus, holders of release cards are forced to enter into a contractual relationship with a financial institution with which neither the cardholder nor the correctional facility has any meaningful interaction.

		V E N D O R			
		Keefe Commissary ¹⁶	Numi Financial ¹⁷	ReleasePay ¹⁸	Jpay ¹⁹
F E E T Y P E	Account maintenance	\$1.50/week	\$3.50/week	\$2.50/week	\$2/week (NJ) \$6/month (NC) \$0.50/week (TN)
	Per transaction	none	\$0.95 for PIN-based	none	\$0.70 (CO, GA & TN)
	Balance inquiry	\$1.50 at ATM	\$1.50 at ATM \$0.50 - \$3.95 by phone	\$1.50 at ATM	\$0.50 (TN & MI)
	Inactivity	none	none	\$2 after 90 days	\$2.99 after 90 days (TN and MI)
	Refund & close account	\$30	\$9.95	\$25	\$9.95 (TN & MI)
	Other cash withdrawal fees	\$6 for ACH \$2.75 for ATM	\$3.50 for ATM \$0.95 for cash-back at merchant	not specified	\$2 at ATM (CO, GA, TN, MI)
	Declined transaction	not specified	\$0.50	none	\$0.50 (TN)

The above list of fees (which is not comprehensive) illustrates the complexities that cardholders face when trying to maximize the value of their money. It is no secret that those who are incarcerated are disproportionately low-income.²⁰ Thus the impact of such fees will be felt even more acutely by those with low balances on prepaid cards. A cardholder incurs a maintenance fee (usually charged *weekly*) which is levied whether or not there is account activity. As an example, if someone is released with \$125,²¹ a \$2-per-week maintenance fee is

¹⁶ The same fee schedule is used in Ramsey County, Minnesota and Benton County, Arkansas, as disclosed in the respective litigation referenced in note 13, *supra*. The relevant contracts are attached hereto as **Exhibit 1** (“Ramsey County Contract,” which was filed as Exhibit A to the Second Amended Complaint (ECF No. 14) in *Regan v. County of Ramsey*), and **Exhibit 2** (“Benton County Contract,” which was filed as Exhibit 2 to the Plaintiff’s Statement of Undisputed Material Facts (ECF No. 34) in *Adams v. Craddock*. See *supra*, note 13 for additional details about the aforementioned litigation.

¹⁷ Cardholder agreement (attached hereto as **Exhibit 3**) was filed as Exhibit 2 to the Declaration of Brad D. Golden (“Golden Declaration,” ECF No. 7) filed in *Regan v. Stored Value Cards* (see *supra*, note 13).

¹⁸ Cardholder agreement is attached hereto as **Exhibit 4**, and is available at <http://releasepay.com/docs/008%20T&Cs%20E-S.pdf>

¹⁹ Jpay is a leading provider of release cards, however it does not make its fee schedule available online unless a user creates an account linked to a particular prepaid card. This lack of transparency is another reason why Regulation E (including proposed § 1005.19) should cover release cards. Jpay fees in this table are gathered from the following sources: Detailed Response Analysis, *supra* note 8 (Colorado, Georgia, North Carolina, and Tennessee); Idrus, *supra* note 12 (Michigan); N.J. Dept. of Corr., “[The new JPay Release card is here](#)” (New Jersey).

²⁰ See, e.g., U.S. Dept. of Justice, Bureau of Justice Statistics, [Survey of State Prison Inmates, 1991](#) (NCJ No. 136949) (Mar. 1993), at 3 (out of 521,765 survey participants, 86% had annual income less than \$25,000 after being free for at least a year); Bruce Western, “Invisible Inequality,” in *Punishment and Inequality in America* (2006), at 85-107 (about a third of incarcerated individuals were not working when they were admitted to prison or jail).

²¹ The hypothetical figure of \$125 is based on average release-payment amounts reported by Nevada, Ohio, and Virginia. As part of the MCPA RFP (see *infra*, note 52 and accompanying text), the states of Nevada, Ohio, and Virginia reported that the average trust account refund upon release was, respectively, \$176.92, \$103, and \$105. [MCPA Amendment No. 1](#) (Apr. 13, 2011), at 5-6. The average of those three amounts is \$128.31, which is rounded to \$125 for purposes of this example.

equivalent to a finance charge of 77% per year. If that same hypothetical cardholder makes ten purchases of \$12 each, then a \$0.50 per-transaction-fee would amount to \$5, or 4% of the entire card balance (on top of maintenance fees). If the cardholder wishes to convert a prepaid card into cash, he or she must pay \$10 to \$30 (i.e., 8% to 24% of the entire deposit amount) merely to close the account. Alternatively, if the cardholder simply tries to spend the card balance by using it for payments, he or she will likely end up with a residual unspent amount that is either consumed by fees or forfeited to the vendor,²² thereby inflating the vendor's profits,²³ despite the fact that card vendors incur no credit risk, because all card transactions are prepaid by the consumer.

As indicated in the previous table, some vendors may charge different cardholder fees under different contracts. This variation indicates that consumer fees are not cost-based, but instead are merely a profit mechanism that is undisciplined by either regulatory oversight or an efficient marketplace.

In addition to the monetary fees extracted by vendors, cardholders are often forced by into contracts with binding arbitration provisions²⁴ notwithstanding the fact that the consumer has been coerced into the contract and thus has not voluntarily agreed to arbitrate.²⁵ Cardholders who are forced waive their right to access the courts also effectively relinquish their right to enforce their already diluted contractual rights and remedies; therefore, regulation that ensures fair terms, meaningful consumer choice, and meaningful dispute resolution is acutely needed.

²² One release card provider even boasts that facilities benefit from release cards because the cards “eliminate unclaimed property reporting.” Golden Decl., *supra* note 17 ¶ 3. This appears to be a common practice among prison-related vendors, *see also* [Comments of Prison Policy Initiative](#), Fed. Communications Comm’n, WC Dkt. No. 12-375 (Jan. 21, 2015) (describing similar account-forfeiture practices by providers of inmate telecommunications service companies).

²³ *See generally*, Tim Barker, “[Prison services are profitable niche for Bridgeton company](#),” St. Louis Post-Dispatch (Feb. 15, 2015) (“In 2012 . . . Keefe Commissary Network, along with two other subsidiaries, recorded a robust \$41 million net income on \$375 million in sales.”).

²⁴ Both Numi Financial and ReleasePay include arbitration clauses in their cardholder agreements (see Exhibits 3 and 4, respectively). Cards issued by Keefe Commissary also appear to be subject to mandatory arbitration, based on website [Terms and Conditions](#). As noted in note 19, *supra*, Jpay does not make its cardholder agreements publicly available.

²⁵ When courts enforce arbitration provisions contained in adhesive contracts, they typically do so under the theory that even a contract offered on a “take-it-or-leave-it” basis allows the party with less bargaining power to walk away. *E.g.*, *Montgomery v. Applied Bank*, 848 F.Supp. 2d 609, 616 (S.D.W.Va. 2012) (holding arbitration provision in credit agreement enforceable because “Plaintiff puts forth no evidence of a pressing need and the record is devoid of any evidence that she had no other alternative but to enter into a credit card agreement with this particular Defendant.”). The same cannot be said of release cards (at least in facilities that do not offer other payment methods), because a consumer must agree to the cardholder agreement in order to receive *their own money*.

C. The Promised Benefits of Release Cards Are Dubious

Release-card vendors often claim that such cards provide a variety of benefits to cardholders and correctional facilities, although both types of benefits are dubious. Typically, release cards are promoted as more convenient for cardholders than receipt of a paper check.²⁶ Such promotional claims overlook several important details. First, while prepaid cards can be used at many retail outlets, they cannot be used to pay some critical expenses that are incurred by people recently released from prison. For example, few landlords accept payment cards for payment of rent or security deposits. Recently released people may also be required to pay fines or user fees to various government agencies (such as probation offices), many of which do not accept payment cards. Second, while it is true that cashing a check can be an expensive proposition for unbanked consumers, that does not necessarily mean that release cards are a less costly option. Again, suppose someone is released from prison with \$125. A fee at a retail check-casher could realistically be one payment of three to four dollars.²⁷ If the same amount is loaded onto a prepaid card, the cardholder is more likely to make a series of smaller withdrawals.²⁸ Assuming two ATM withdrawals with a \$2.75 ATM fee (the average ATM fee reported on the chart above), the cardholder would end up paying \$5.50 in fees—more than the average cost of cashing a check. Moreover, for cards with large balances, a cardholder may be forced to make multiple ATM withdrawals, since some ATMs cap withdrawals at \$400 per transaction.²⁹

Release-card vendors claim that the cards are “more secure” than cash or checks.³⁰ This assertion overlooks the fact that many release cards (especially in the high-turnover jail environment) are issued without the cardholder’s name embossed on the card.³¹ Accordingly, there is no way for merchants to effectively ensure that a card user is the rightful holder, and lost or stolen cards can easily be used by an unauthorized party. Moreover, while a releasee who

²⁶ *E.g.*, ReleasePay, [Promotional Flier](#).

²⁷ *E.g.*, Jean Ann Fox & Patrick Woodall, [Cashed Out: Consumers Pay Steep Premium to “Bank” at Check Cashing Outlets](#), Consumer Federation of America (Nov. 2006), at 6 (survey conducted in 2006 reported average cost to cash a government-issued check (other than Social Security) at retail check cashing stores was 2.78% of the face amount); Walmart, [MoneyCenter – Check Cashing webpage](#) (cashing a check up to \$1,000 at Walmart incurs a maximum fee of \$3).

²⁸ *See e.g.*, Helmut Stix, “[The Impact of ATM Transactions and Cashless Payments on Cash Demand in Austria](#),” *Monetary Policy and the Economy* (2004, 1st qtr), 90, 99 (“[T]he use of ATMs is associated with higher frequencies of withdrawal and thus with lower cash holdings.”); *see generally* Bd. of Governors of the Fed. Reserve System, [Report to Congress on Government-Administered, General-Use Prepaid Cards](#) (Jul. 2014), at 1-2 (“Although the prepaid cards provided under government-administered programs usually offer cardholders one or more free automated teller machine (ATM) cash withdrawals per month, ATM withdrawal fees constitute 58 percent of all card-holder fee revenue that issuers collected in 2013.”)

²⁹ *See* “Prestige Prepaid MasterCard Cardholder FAQ,” *Regan v. Stored Value Cards* (*see supra*, note 13), Class Action Complaint (ECF No. 1), Exhibit B, at 14.

³⁰ *E.g.*, Golden Decl., *supra* note 17 ¶ 3 (release cards “offer released persons immediate access to their money in a medium that is . . . more secure than cash”); ReleasePay, *supra* at 26.

³¹ Golden Decl., *supra* note 17, Exh. 1; *Mickelson v. County of Ramsey* (*see supra*, note 13), Declaration of Erik Mickelson (ECF No. 70), Exh. 1.

receives cash can decide to carry only a portion of his cash on his person, a cardholder cannot similarly reduce the risk of loss of a prepaid card—if he carries the card and loses it, then the entire balance is at risk.³²

As for jails and prisons themselves, vendors typically promise “reduce[d] accounting department costs and resources.”³³ It is unclear how significant such cost reductions are, since facilities still bear the ultimate responsibility for maintaining inmate trust accounts and determining how much money a person is owed upon his or her release.³⁴ In reality, the true “benefit” that facilities receive is the ability to shift follow-up customer service issues to a contractor that was not selected by the customer/cardholder, and which therefore has no economic incentive to provide quality service to cardholders.³⁵ In addition, many facilities have structured their contracts with release card vendors so that all costs of the service are borne entirely by consumers, instead of the contracting agency.³⁶ The federal Bureau of Prisons has awarded a release card contract (covering the sizeable federal prison system) to JPMorgan Chase on a non-competitive basis.³⁷ Such procurement methods do not promote competition or incentivize awarding contracts based on value to the cardholder, but instead reward those vendors that most effectively shift financial liabilities from the facility to the cardholder.

D. Incarcerated People Are Particularly In Need of the Protections of the EFTA

The primary purpose of the Electronic Fund Transfer Act (“EFTA”) “is the provision of individual consumer rights.”³⁸ As lower income people—most of whom have experienced (by virtue of their incarceration) a disruption in their

³² See generally, Fumiko Hayashi & Emily Cuddy, “[General Purpose Reloadable Prepaid Cards: Penetration, Use, Fees, and Fraud Risks](#),” Fed. Reserve Bank of Kansas City Working Paper No. RWP 14-01 (Feb. 2014), at 36-39 (discussing fraud risks and prepaid cards). Notably, MasterCard’s protections for cardholder liability in the event of unauthorized charges do not apply until the cardholder’s “identity is registered by or on behalf of the Issuer in connection with such issuance and/or sale.” MasterCard U.S. Rule § 6.3. In the context of release cards, it is not clear whether such “registration” occurs in the facility (upon card issuance) or if the cardholder must register after release by establishing an online account at the vendor’s website. If the latter, then there is reason for concern because people leaving prison or jail are more likely than the population at large to lack reliable and convenient internet access.

³³ Golden Decl., *supra* note 17, ¶ 3.

³⁴ See Ramsey County Contract and Benton County Contract (*supra*, note 16), both at § 13 (“Client [i.e., the correctional facility] agrees that it shall . . . assume all liability for any Client 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 Client inmates.”).

³⁵ See e.g. JPay, [Former release card promotional webpage](#) (“The release card . . . effectively outsources any post-release service issues from the agency to JPay”).

³⁶ E.g., Ramsey County Contract and Benton County Contract (*supra*, note 16), both at § 6 (“All fees shall be assessed to the card holder/inmate.”).

³⁷ Daniel Wagner, “[Megabanks have prison financial services market locked up](#),” Center for Public Integrity (Oct. 2, 2014). The lack of competitive bidding appears to be based on the provisions of 12 U.S.C. § 90.

³⁸ 15 U.S.C. § 1693(b).

ability to earn a living—people leaving prison and jail are likely to need timely access to their funds, and thus are particularly susceptible to abusive provisions contained in adhesive contracts. If someone is released from a facility that mandates the use of release cards, then that person is also forced into a financial relationship with an unfamiliar financial entity whose customers (correctional facilities) are not its account holders (releasees).

Consumers who leave prison or jail are acutely in need of the fundamental protections of Regulation E. For example, release cards are frequently used to pay accumulated wages that a person has earned while incarcerated. Yet vendors appear to have exploited Regulation E's definition of "payroll card account"³⁹ by arguing that even though wages were accumulated incrementally over time, the one-time payout upon the wage-earner's release from custody vitiates the regulatory protections applicable to payroll cards. Accordingly, PPI hereby requests that the Bureau issue an official interpretation stating that the prohibition on compulsory issuance of payroll cards⁴⁰ applies any time a release card contains earned wages.

II. The Bureau Should Address Release Cards As Part of the Current Rulemaking

In light of the widespread unfair practices in the release card industry, the Bureau should take this opportunity to apply Regulation E to all release cards.

A. The Bureau Should Classify Release Cards as Government Benefit Cards

The Bureau has proposed a revised § 1005.15 that provides more detailed protections to recipients of government benefits.⁴¹ Although proposed § 1005.15(a)(2) defines "government benefit account" in broad terms, the Bureau should expressly affirm that this definition applies to release cards.

Neither existing Regulation E nor the proposed revisions define "government benefit," and because release cards often hold money that a person earned, received as a gift, or possessed upon their incarceration, one could argue that the funds on such cards are not government benefits. Nonetheless, release cards are used exclusively for the purpose of making government-to-consumer payments and the rationale for protecting recipients of government benefits applies with particular force to people who are leaving correctional facilities.

³⁹ 12 C.F.R. § 1005.2(b)(2) (defining a payroll card account as an account to which "electronic fund transfers of the consumer's wages . . . are made *on a recurring basis*" (emphasis added)).

⁴⁰ See Proposed § 1005.18(b)(2)(i)(A), Notice, *supra* note 1, at 77299.

⁴¹ Notice, *supra* note 1, at 77140-77145.

Accordingly, PPI respectfully suggests that the Bureau make the following changes⁴² to the proposed § 1005.15(a):

(2) Definitions. For purposes of this section, the following definitions apply:

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

(ii) “Government benefit” is deemed to include payment of funds by or on behalf of a government agency to a consumer in connection with the consumer’s release from a prison, jail, detention center, or other correctional facility, regardless of the original source of such funds.

Such language would clarify the applicability of Regulation E to release cards and would provide much-needed consumer protections for people who are released from prison or jail. For over a decade, the federal government has recognized that “*all* consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E, absent a showing that compliance costs outweigh the need for consumer protections.”⁴³ In the case of release cards, there is absolutely no evidence that Regulation E compliance would impose significant costs, and the need for consumer protection is particularly strong—a person leaving a correctional facility should not be compelled to use a complex and costly financial product to access funds in which he or she holds an unconditional ownership interest.

B. The Bureau Should Adopt Other Proposals to Strengthen Regulation E’s Prepaid Card Provisions

PPI understands that other commenters have, or will soon, propose additional modifications to the Regulation E amendments contained in the Notice. PPI supports the following proposals and asks that such provisions apply to release cards:

- Balance inquiries should be free and convenient. Consumers will not be empowered to responsibly use prepaid cards until they are able to easily verify current account balances. Although Regulation E generally requires account statements, both the current and proposed versions of Regulation E relax these protections in the context of

⁴² Insertions and deletions are shown as compared to the version of § 1005.15 that was published in the Notice. Insertions are denoted by underlining and deletions are denoted by ~~striketrough~~.

⁴³ 59 Fed. Reg. 10680 (Mar. 7, 1994) (emphasis added) (Federal Reserve’s announcement of final rule applying Regulation E to government benefit payments).

government benefit cards.⁴⁴ Although it is understandable that the Bureau may want to allow additional flexibility for government agencies, PPI believes that the Bureau should remain consumer-focused. Specifically, consumers should be able to access their account balance for free, by a method of the consumer's own choosing—either by ATM inquiry, telephone, internet, or by receiving regular paper statements.

- Mandatory arbitration and class-action bans should be prohibited. As noted previously,⁴⁵ people leaving correctional facilities have little or no meaningful choice when they are issued release cards. The prevalent use of arbitration provisions in take-it-or-leave-it cardholder agreements is troublesome. If vendors violate applicable laws or contractual requirements, then they should be held accountable in court (absent truly voluntary consumer consent to arbitration). The Bureau should use its authority under 12 U.S.C. § 5518(b) to prohibit mandatory arbitration provisions in prepaid card contracts.
- Certain types of fees should be categorically prohibited. Most prominently, fees for customer service should be banned, as this is a cost of doing business that should not be imposed on cardholders who need help deciphering the maze of confusing terms and conditions that so often accompany prepaid cards. Additionally, declined transaction fees appear to be a simple case of rent-seeking, as it is unclear how vendors or issuers incur costs to decline a transaction authorization.
- Cardholder funds should be held in insured accounts. The proposed amendments require a warning if a prepaid card is not protected by deposit insurance.⁴⁶ If a release-card vendor becomes insolvent and cardholder funds are not in an insured account, the impacts for cardholders could be catastrophic.⁴⁷ A reference to deposit insurance buried in voluminous disclosures is unlikely to provide meaningful consumer protection. PPI supports proposals to require that all prepaid cards fund be held in an insured deposit account.
- Fee schedules and cardholder agreements should be publicly available. As noted previously,⁴⁸ one of the largest release-card vendors in the country does not make cardholder agreements publicly available. This lack of transparency makes it difficult (if not impossible) for cardholders (as well as cardholders' caregivers and attorneys) to understand their contractual rights. Although the proposed rule requires public posting account agreements,⁴⁹ PPI supports proposals to require that agreements be searchable by the name of the entity (or entities) that brand the card and provide customer support.

⁴⁴ 12 C.F.R. § 1005.15(c); Proposed § 1005.15(d)(1), Notice, *supra* note 1, at 77298.

⁴⁵ *Supra*, text accompanying notes 24-25.

⁴⁶ Proposed § 1005.18(b)(2)(i)(B)(13), Notice, *supra* note 1, at 77300.

⁴⁷ *See generally*, James Steven Rogers, *Unification of Payments Law and the Problem of Insolvency Risk in Payment Systems*, 83 Chi. Kent L. Rev. 689, 715-718 (2008) (discussing insolvency of non-bank payment providers).

⁴⁸ *Supra* note 19.

⁴⁹ Proposed § 1005.19, Notice, *supra* note 1, at 77304.

III. The Bureau Should Convene a New Rulemaking Proceeding to Further Address Consumer Protection Issues Related to Correctional Facility Trust Accounts

Because incarcerated people have no meaningful consumer choice and are particularly susceptible to victimization by abusive business practices, the Bureau should conduct a more comprehensive review of financial services in correctional facilities. As an initial step, the Bureau should exercise its authority under the EFTA⁵⁰ to directly regulate release card fees. Specifically, the Bureau should prohibit fees for inactivity, swipe transactions, declined transactions, customer service inquiries, balance inquiries, and non-ATM cash withdrawals. The Bureau should also cap all other permissible fees at amounts that resemble vendors' actual costs.

The Bureau should also address larger issues beyond release cards. There is a growing industry of payment service providers who specialize in correctional facility trust account management.⁵¹ In 2011, the Multi-State Corrections Procurement Alliance issued a request for proposals (the "MCPA RFP")⁵² seeking bids from companies for management of inmate trust accounts. Two contracts were awarded (to Keefe Group and Jpay). The contents of the MCPA RFP and the proposals received by the successful bidders indicate that there are many questionable practices in the correctional-facility financial services industry. Robust oversight by the Bureau is warranted.

Among the troublesome practices in the correctional facility financial services industry are:

- Correctional facilities claim to be reducing their own costs by outsourcing management of trust accounts. Yet both Keefe Group and Jpay agree to provide contracting facilities with a "commission" (kickback) for each deposit received into a trust account.⁵³ These fees, paid by families and friends sending money to loved ones in prison, provide a revenue stream to the same agencies who claim to be cutting expenses through outsourcing.
- Even though service providers appear to be engaging in money transmission, some have suggested that "few" companies in this niche industry comply with state money transmitter regulations.⁵⁴
- Vendors boast that they can provide automated electronic processing of credit and debit transactions to and from trust accounts,⁵⁵ but never even mention compliance with EFTA and Regulation E.
- Vendors may not comply with unclaimed property laws.⁵⁶

⁵⁰ 15 U.S.C. § 1693l-1(d)(1).

⁵¹ See generally, Daniel Wagner, "[Prison bankers cash in on captive customers](#)," Center for Public Integrity (Sept. 30, 2014).

⁵² Available at <http://www.webcitation.org/6WUcrjHwy>.

⁵³ [Keefe Group Cost Proposal](#) at 8, 16; [Jpay Cost Proposal](#) § 3.10.

⁵⁴ [Jpay Technical Proposal](#), at 21.

⁵⁵ E.g., *id.*, at 18-27.

⁵⁶ See *supra*, note 22.

March 18, 2015

Page 12 of 12

- Regulation E's consumer protections are premised on financial institutions providing account holders with periodic statements,⁵⁷ but incarcerated account holders appear to only be able access their account history from shared kiosks in public areas (which may be subject to usage restrictions and/or fees), thus limiting the consumer's ability to verify accurate account activity.

The growth in outsourcing means that end-user customers of correctional facility banking systems (i.e., incarcerated people and their friends and families) are forced to do business with financial middlemen that are incentivized to charge non-cost-based fees. Even worse, the middlemen frequently extract revenue through fees, and then split that fee revenue with the correctional facilities that award the exclusive contracts. This situation will never result in fair treatment of consumers without the oversight of the Bureau.

IV. Conclusion

For the reasons stated herein, PPI asks that the Bureau modify the proposed amendments to Regulation E as detailed in Section II, and conduct a further rulemaking proceeding to address the widespread problems in the correctional facility financial services market.

Respectfully submitted,



Stephen Rahe, Esq.
Pro Bono Legal Analyst

⁵⁷ See generally, 12 C.F.R. § 1005.9(b).

EXHIBIT F

Fee Information

Schedule of Bank Fees

Bank fees for CashPay transactions will be charged to your account daily.

Monthly Fees

Fee Type	Fee
Monthly Maintenance	No fee

ATM & Purchase Transaction Fees *

Fee Type	Fee
ATM Withdrawal Domestic	1 waived per week at Bank of America ATMs \$1.50 for all others
ATM Withdrawal International	\$3.50
ATM Balance Inquiries	2 waived each month, \$.50 thereafter
ATM Transaction Decline	No fee
Signature-Based Purchase at Visa Merchants**	No fee
Pinned POS Purchase	No fee

Other Service Fees

Fee Type	Fee
----------	-----

Fee Type	Fee
Automated Customer Service Inquiry	4 waived each month, \$.50 thereafter
Live Customer Service Inquiry	1 waived each month, \$1.50 for each additional call
International Customer Service Inquiry	1 waived each month, \$5.00 for each additional call
PIN Changes	1 waived per year, \$.50 thereafter
Emergency Cash Transfer for remaining account balance (under \$20.00)	1 waived per year
Emergency Cash Transfer Domestic	\$15.00
Cash Access (limited to available balance only) **	No Fee
Online Funds Transfer Fee**	\$1.50 per transfer
Card Replacement Domestic	1 waived per year, \$5.00 thereafter
Card Replacement - Express Delivery (additional charge)	\$15.00
Card Replacement International	\$15.00
International Transaction Fee	2% of U.S. Dollar amount of transaction
Check Issuance Fee	\$5.00
Legal Process Fee	\$100 (or such other amount as may be set by law)

* ATM owners may impose an additional “convenience fee” or “surcharge fee” for certain ATM transactions (a sign should be posted at the ATM to indicate additional fees); however, you will not be charged any additional convenience or surcharge fees at a Bank of America ATM.

A Bank of America ATM means an ATM that prominently displays the Bank of America name and logo.

Balance inquiries may not be available at all ATMs outside the U.S.

**This feature is only available with the CashPay Visa Card.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
DARIA BRILL, ANDREA MORALES, and GALE ZYLSTRA, on behalf of themselves and all other similarly situated,
(b) County of Residence of First Listed Plaintiff Maricopa
(c) Attorneys (Firm Name, Address, and Telephone Number) Jo Ann Niemi, Anapol Weiss, 8700 E. Vista Bonita Dr., Ste. 268, Scottsdale, AZ 85255

DEFENDANTS
Bank of America, N.A.,
County of Residence of First Listed Defendant Mecklenburg
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332
Brief description of cause: Consumer fraud in connection with debit cards.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 11/03/2016 SIGNATURE OF ATTORNEY OF RECORD s/ Jo Ann Niemi

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Bank of America Exploits Ex-Convicts](#)
